

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

LPA No. 312/2025 in HCP No. 115/2025

Reserved on: 11.08.2026

Pronounced on: 01.10.2026.

Uploaded on: 01.10.2026.

*Whether the operative part or
full judgment is pronounced: Full*

**Aabid Majeed Sheikh
S/o. Abdul Majeed Sheikh
R/o. Dadasara, Tehsil Tral, District Pulwama.**

...Petitioner(s)/Appellant(s).

Through: Mr. S. T. Hussain, Sr. Advocate with
Ms. Nida Nazir, Advocate.

Vs.

- 1. Union Territory of Jammu & Kashmir through
Principal Secretary to Government,
Home Department, Civil Secretariat, Srinagar/Jammu.**
- 2. District Magistrate, Pulwama.**
- 3. Superintendent District Jail Poonch, Jammu.**

...Respondent(s).

Through: Ms. Maha Majeed, AC vice
Mr. Jehangir Ahmad Dar, GA.

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE
JUDGMENT**

(Per-Mohd Yousuf Wani-J)

1. Impugned in this Letters Patent Appeal is the judgment dated 21.11.2025 passed by the learned Single Bench of this Court, [hereinafter referred to as the "Writ Court" for short], in Habeas Corpus Petition No. 115 of 2025 titled "*Aabid Majeed Sheikh alias Rajgade versus Union Territory of Jammu & Kashmir and others*", whereby the petition impugning the detention order No. DMP/PSA/28/2025 dated 03.05.2025 issued by the respondent No. 2,

i.e., District Magistrate Pulwama, [hereinafter referred to as the “Detaining Authority” for short], in respect of appellant, was dismissed as meritless.

2. The appellant came to be detained by the Detaining Authority in exercise of its powers under Section 8 of the Jammu and Kashmir Public Safety Act, 1978, [hereinafter referred to as the “PSA” for short] with a view to prevent him from acting in any manner prejudicial to the security of the state.
3. Aggrieved by the detention order aforementioned, the appellant/detenué assailed the same before this Court through HCP No. 115/2025, which, however, came to be dismissed by the Writ Court vide the impugned judgment, as meritless.
4. The impugned judgment has been assailed on the ground, inter alia, that the learned Writ Court did not appreciate the case of the appellant/detenué as projected through the memo of the writ petition and the arguments advanced. That the detention order is bad under law as having been issued by the Detaining Authority on mere apprehension, as is evident from the last paragraphs of the grounds of detention basing the same. That the Detaining Authority acted upon the unverified materials/dossier submitted by the police concerned without conducting any exercise at its end for verification of the same so as to record its satisfaction. That the appellant/detenué was earlier arrested in 2016, 2018 and 2020, on the basis of false and frivolous allegations in connection with the investigations in case

FIR Nos. 172/2016, 50/2018 and 195/2020 of Police Station Awantipora, in all of which cases, he was bailed out by the competent courts on account of his *prima facie* non-involvement pending trials. That the respondents did not challenge the bail orders granted in favour of the appellant, as he did not violate the terms and conditions of any of the bail orders. That since his release in the case FIR No. 195/2020 of Police Station Awantipora, no specific allegation was levelled against the appellant herein, as he used to behave as a peaceful and law-abiding citizen. That the Detaining Authority, while issuing the impugned detention order, wholly and solely acted on the police dossier, which is evident from the grounds of detention being a replica of the same. That the learned Writ Court has not appreciated the aforementioned facts and passed the impugned judgment, which suffers from illegality. That there was no proximity or live-link between the last alleged incident of 2020, resulting in registration of case FIR No. 195/2020 of Police Station Awantipora and the passing of the impugned detention order in May 2025, after a gap of five years, which fact was also under-estimated by the learned Writ Court.

That the learned Writ Court did not also appreciate the fact that the respondents, instead of invoking the powers under PSA to illegally justify the appellant's detention, could have thrown challenge to the bail orders. That there was no whisper in the grounds of detention that the appellant/detenué has violated any

condition of bail order, which fact was to be considered by the learned Writ Court while passing the impugned judgment. That the Detaining Authority, while passing the impugned detention order, observed the mandatory constitutional guarantees in breach by not providing a copy of the detention record in full to the detenu, as also by not informing him at an earliest that he has a right to make a representation to the detaining authority as well as to the government. That the representation filed by the appellant/detenu through his father was not considered by the respondents, who instead forwarded it to the learned Advisory Board along with its reference and even did not inform him about the final outcome of the same. That the grounds of detention are vague and non-existent, on the basis of which no prudent person can make an effective representation. That the appellant/detenu had already been taken into custody before passing of the impugned detention order, which material fact escaped the attention of the learned Writ Court while passing the impugned judgment.

That the Government of Union Territory of Jammu & Kashmir does not have the competence to prescribe the period of detention under the provisions of Article 22(7) of the Constitution of India. That subsequent to the abrogation of Article 370 of the Constitution of India, the provisions contained in the PSA could not have been applied/invoked.

5. We have heard the learned counsel for the parties in respect of the matter.
6. The learned counsel for the appellant, while reiterating his said stand taken in the memo of LPA, contended that the impugned order/judgment of the learned Writ Court dated 21.11.2025 suffers from illegality, as the learned Writ Court has not appreciated the facto legal scenario of the case.
7. He contended that there was no justification under law for detention of the appellant under the provisions of PSA. He further contended that the appellant was falsely involved in three case FIRs in 2016, 2018, 2020, in which he was bailed out by the competent courts after being satisfied that there appear no reasonable grounds of his involvement in the said cases.

He contended that in view of the bar created under Section 43D of the ULA(P) Act, the Id. Designated Court could not have bailed the appellant out unless observing that there appear no reasonable grounds of his involvement in the cases pending trial. The learned counsel further contended that there was nothing on record available with the Id. Detaining Authority to the effect of violation of any bail conditions by the appellant/detenué. He contended that the bail orders granted in favour of the appellant were not at all thrown to challenge, in accordance with the law, by the respondents.

8. He further contended that appellant's detention came to be ordered only on mere apprehension of the Detaining Authority, made to

believe the same by the sponsoring authority, as is evident from the last paras of the detention order. He further contended that the detaining authority has acted on the police dossier without recording his satisfaction, which was *sine qua non* for passing of the detention order, touching the liberty of the appellant.

He further contended that the Government of Union Territory of Jammu and Kashmir was not competent to prescribe the period of detention in view of the provisions contained in Article 22(7) of the Constitution of India. He further contended that after the abrogation of Article 370 of the Constitution of India and with the application of the central laws to the Union Territory of Jammu and Kashmir, the PSA could not have been invoked.

He also contended that the copy of the detention record in full was not provided to the appellant/detenu, who was only made to sign on a cyclostyled receipt, thereby preventing him from making an effective and in-time representation against his detention to the Detaining Authority. That the representation which, however, was filed on his behalf by his father was not considered either by the Detaining Authority or by the Government, but was forwarded with the reference to the learned Advisory Board and was also not informed about the final outcome of the same.

9. The learned counsel for the appellant in support of his contentions placed reliance on the judgments of the Hon'ble Supreme Court of India as also of this Court cited as:

- i. *Dhanya M vs State of Kerala & Ors Criminal Appeal No. 2897/2025 decided on 6th June, 2025.*
- ii. *Tahir Riyaz Dar vs UT of J&K and Ors in LPA No. 121/2025 decided on 06.11.2025*

10. The learned counsel prayed for setting aside of the impugned judgment as well as the impugned detention order.

11. **Per contra**, the learned counsel for the respondents contended that the impugned judgment of the Ld. Writ Court is manifestly in accordance with the law and does not suffer from any sort of illegality. He contended that the activities of the appellant/detenué upon being found prejudicial to the security of the State, his detention order was issued by the Detaining Authority on the recommendation of the District Police Office made through dossier. He contended that the case against the appellant/detenué was examined by the Detaining Authority in accordance with the law and the detention order was issued upon proper application of the mind by the Detaining Authority.

He contended that the grounds urged by the appellant in this LPA are legally misconceived, untenable and without any merit and, as such, the instant appeal deserves to be dismissed. That there was no vagueness or staleness in the grounds of detention.

The learned counsel further contended that the object of preventive detention is 'preventive' rather than 'punitive'. He further contended that the preventive detention is not a parallel of the

criminal proceeding as the object of the two is almost different. He further contended that whole of the materials relied upon by the Detaining Authority was furnished to the appellant/detenué and the same was read over and explained to him in his local language also. That the appellant/detenué was also informed that he can make a representation to the Government as well as to the Detaining Authority against his detention.

He further contended that all statutory requirements and constitutional guarantees have been complied with by the Detaining Authority and the impugned order was issued validly and legally.

12. The **learned** counsel for the respondents in support of his contentions placed reliance on the judgments cited as “*Haradhan Saha vs. State of West Bengal (1975) 3 SCC 198*”; “*Borjahan Gorev vs. State of West Bengal (1972) 2 SCC 550*”; “*Ashim Kumar Ray vs. State of West Bengal (1973) 4 SCC 76*”; “*Abdul Aziz vs District Magistrate, Burdwan (1973) 1 SCC 301*”; “*Debu Mahato vs. State of West Bengal 1974 AIR (SC) 816*”; “*Secretary to Govt, Public (Law and Order) and Anr. Vs. Nabila and another (2015) 12 SCC 127*”.
13. We have perused the record of the instant intra-court appeal, especially the impugned judgment dated 21.11.2025, the impugned detention order dated 03.05.2025, and the grounds of detention dated 3.5.2025. The detention record made available by the respondent has also been gone through.

14. We are of the view, that there was no proximity or live-link between the last incident of 2020, covered under the registration of case FIR No. 195/2020 of Police Station, Awantipora, and the need for passing the impugned detention order. The appellant, as admitted by the Detaining Authority in the grounds of detention, has been bailed out in all the three case FIR numbers.
15. The learned counsel for the appellant during his arguments vehemently contended that the impugned detention order was issued without any basis, only to take care of the mere apprehensions and unverified inputs. He further contended during his arguments that the appellant had already been taken into custody before passing of the impugned detention order. The respondents have not placed on record anything specific and concrete regarding the involvement of the appellant subsequent to his release in the last case FIR of 2020.
16. The Ld. Writ Court has not appreciated the important legal aspect that there was no proximity/live-link between the incident of 2020 and the need for passing of the impugned detention order in May, 2025.
17. The Hon'ble Supreme Court of India, in ***“Rajinder Arora versus Union of India and Others, AIR (2006) 4 SCC 796”***, inter alia, observed:

"The conspectus of the above decisions can be summarized thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention are proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be

laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinize whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.

18. In our opinion, we feel fortified with the judgment of the Hon'ble Apex Court passed in the case titled **“Rameshwar Shaw versus District Magistrate, Burdwan and Another, AIR 1964 SC 334”**, the relevant portion whereof is reproduced as under:

"In deciding the question as to whether it is necessary to detain a person, the authority has to be satisfied that the said person if not detained may act in a prejudicial manner and this conclusion can be reasonably reached by the authority generally in light of evidence about past prejudicial activities of the said person. When evidence is placed, the Detaining Authority has to examine the said evidence and decide whether it is necessary to detain the said person in order to prevent him from acting in a prejudicial manner. Thus, it was held that the past conduct or antecedent history of a person can be taken into account in making the detention order and it is largely from prior events showing tendencies or inclinations of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order. Further the past conduct or history of the person on which the authority purports to act should ordinarily be proximate in point of time and should have the rational connection with the conclusion that the detention of the person is necessary, that it would be irrational to take into account the conduct of a person which took the place years before the date of detention".

19. We are however conscious of the law as already laid down by the Hon'ble Apex Court in **“Naresh Kumar Goyal vs. Union of India (2005) 8 SCC 276”** and **“Haradhan Saha vs. State of W.B.**

(1975) 3 SCC”, to the effect that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent the anti-national, anti-social and subversive elements from imperiling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc.

“The power of preventive detention is a precautionary power exercised in reasonable anticipation. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during the prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of the prosecution is no bar to an order of preventive detention. The order of preventive detention is also not a bar to prosecution”.

“Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of the proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detainee”.

20. We are also of the opinion that it is not the number of acts that are determined for detention of an individual but it is the impact of the act which is material and determinative.

As hereinbefore mentioned, the impugned detention order appears to have been passed on vague, unverifiable and bald allegations unsupported with any evidence or material. It is unsafe to

consider such vague allegations as constituting a past act for deriving any inference about the future course of probable conduct on the part of detenue.

21. The grounds of detention basing the impugned detention order apparently **look as a “ditto” or “verbatim”** of the police dossier, which speaks of the non-application of mind on the part of the Detaining Authority. No doubt, the police dossier has to be the basic input and information to the Detaining Authority for consideration of the powers vested in it under the provisions of the PSA. Yet, the application of mind on the part of the Detaining Authority is a *sine qua non* for the passing of the detention order. The Detaining Authority is required under law to make some verification at its own level too by setting into motion its own machinery for its subjective satisfaction before proceeding to curtail one's liberty which is only permitted in accordance with law.

All the grounds of detention framed by the detaining authority and basing the impugned detention order are replica of **police dossier**. The dossier of the police concerned submitted to the detaining authority and the grounds of detention framed by the latter, when both are kept and perused in juxtaposition, clearly reveal that the detaining authority has followed the police dossier in its entirety. Thus, there is reason to believe that the impugned detention order is bereft of subjective satisfaction and non-application of mind on the part of the detaining authority.

22. In ***“Jai Singh and Others v. State of J&K, AIR 1985 SC 764, decided on 24.01.1985”***, the Hon'ble Apex Court, inter alia, observed:

"First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited "The subject is an important member of"

Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, S/o Ram Singh, resident of village Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find greater proof of non-application of mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner."

23. A ***Division*** Bench of this Court, in similar facts and circumstances, in ***“Showkat Ali versus Union Territory of Jammu and Kashmir and Ors, LPA No. 19 of 2024, decided on 26-07-2024”***, while deliberating upon the necessity of subjective satisfaction of the Detaining Authority on the basis of supporting material, has, *in paras 10 to 14*, made the following observations:

“10. There is a plethora of judgements of the Supreme Court and the various high Courts of the country on the aspect of "subjective satisfaction" to be arrived at by the detaining authority which would reflect the application of mind on its

part. The main grounds for setting aside an order of preventive detention are the non-application of mind of the detaining authority or the denial of opportunity or material to the detainee to enable him to make an effective representation against his detention. That brings this court to the question as to whether subjective satisfaction can be arrived at by the detaining authority only based on bald allegations in the police dossier, without there being any facts/material in support of those allegations?

11. Before proceeding further, certain questions come to the mind of this Court. (a) Firstly, is there any difference between an "Allegation" and "Charge"? and (b) secondly, if there is a difference between the two, is there a variation in their application qua a criminal trial and in proceedings under the preventive detention laws? And (c) thirdly, what is required in the grounds of detention, an allegation or a charge?

12. An allegation is an imputation. It need not be verifiable. Charge on the other hand is also an imputation, albeit verifiable. An imputation without material in support is an allegation and an imputation with supporting material is a charge which prima facie reflects that what is imputed, maybe true. Thus, allegation is the genus and charge its species. By analogy, the concept can be understood at the stage of framing charge in a criminal trial. The chargesheet filed by the police may level several allegations against the accused in the chargesheet but, the Trial Court frames charge for only those allegations for which prima facie evidence exists in the chargesheet. While an allegation may be generalised, non-specific and broad based, a charge must be specific, precise and accord a reasonable opportunity to the person so charged to conduct his defence or proffer an explanation. Thus, a verifiable allegation/imputation is a charge.

13. To answer the second question that this Court has posed to itself, this Court is of the opinion that there is a marked difference in the operation of "charge" in a criminal trial and in proceedings under the preventive detention laws. In a criminal trial, the one who imputes i.e., the prosecution, bears the onus probandi of proving every single charge against the accused which if not proved beyond reasonable doubt, may

result in the acquittal of the accused. While, in proceedings under the preventive detention laws, the onus probandi of giving a convincing explanation to the imputations levelled by the detaining authority, is on the detainee and if the same satisfies the detaining authority or the advisory board, his detention may be revoked.

14. As regards the third question as to what is required to be stated in the grounds of detention viz., allegations or charge, this Court is of the view that the grounds of detention must lay down the charge against the detainee. It must be precise, unequivocal and unambiguous. The detainee must be in a position to give a specific reply/rebuttal to the charge and that is only possible where charge is specific and precise. Else, the detainee is only able to give a bare denial by stating that the allegation is false. However, if the charge is specific regarding the date, time and the specific act of the detainee which requires him to be taken into preventive detention then, the detainee is able to give a specific response of denial rather than a bare denial. Thus, this Court is of the view that the grounds of detention must lay down the specific charge against the detainee rather than unsubstantiated and unverifiable allegations. If the grounds of detention are based on unsubstantiated allegations, the same, along with the order of detention can be quashed as the detainee has not been given an opportunity to make a viable representation either to the detaining authority or to the advisory board. The opportunity to represent to the abovementioned authorities is not a hollow formality. To detain a person only based on allegations without there being any material to substantiate those allegations would imperil the fundamental right of the individual enshrined in article 21 of the Constitution.

24. It has been averred in the instant LPA and was also pleaded in the learned Writ Court that the Detaining Authority did not furnish to the appellant/detainee the copies of the detention record in full at the time of his arrest pursuant to the impugned detention order, which

prevented him from making an effective and meaningful representation at the earliest.

25. It is the case of the appellant/detenu that the result of the representation made by him through his father was not communicated to him.

26. **Non-supply of the entire set of documents basing and referred to in the detention order at an earliest contravenes the provisions of Article 22 (5) of the Constitution. The Constitutional mandate regarding information to the petitioner/detenu that he has a right to make representation to the detaining authority or to the Government in respect of his preventive detention is not to be taken as a mere formality by making mention of the words, "the detenu was also informed that he can make a representation to the detaining authority or to the government in respect of his preventive detention" in the previously cyclostyled/computerized receipts but is meant to be followed with utmost fairness, responsibility and accountability having regard to the fact that detenu's fundamental right to life and personal liberty is being curtailed on account of his apprehended conduct. The detaining authority and the government in case of making any representation by the detenu to them as regards his detention are under a constitutional obligation to accord due consideration under law to the same and to intimate the result of the**

consideration to the detenu through the concerned jail authority or through his home people.

27. The relevant portion of the law laid down by the Hon'ble Supreme Court of India in case titled "***Shalini Soni Vs. Union of India (1980) 4 SCC 544***", deserves a needful mention as under: -

"The Article 22 (5) has two facets (1) communication of the grounds on which the order of detention has been made; (2) opportunity of making a representation against the order of detention. Communication of the grounds pre-supposes the formulation of the grounds and formulation of the grounds requires and ensures the application of the mind of the detaining authority to the facts and materials before it, that is to say to pertinent and proximate matters in regard to each individual case and excludes the elements of arbitrariness and automatism (if one may be permitted to use the word to describe a mechanical reaction without a conscious application of the mind). It is an unwritten rule of the law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only eschewing the irrelevant and the remote. Where there is further an express statutory obligation to communicate not merely the decision but the grounds on which the decision is founded. It is a necessary corollary that the grounds communicated, that is, the grounds so made known, should be seen to pertain to pertinent and proximate matters and should comprise all the constituent facts and materials that went in to make up the mind of the statutory functionary and not merely the inferential conclusions. Now, the decision to detain a person depends on the subjective satisfaction of the detaining authority. The Constitution and the statute cast a duty on the detaining authority to communicate the grounds of detention to the detenu. From what we have said above, it follows that the grounds communicated to the detenu must reveal the whole of the factual material considered by the detaining authority and not merely the inferences of fact arrived at by the detaining authority. The matter may also be looked at from the point of view of the second facet of Article 22(5). An opportunity to make representation against the order of detention necessarily implies that the detenu is informed of all that has been taken into account against him in arriving at the decision to detain him. It means that the detenu is to be informed not merely, as we said, of the inferences of fact but of all the factual material which have led to the inferences of fact. If the detenu is not to be so informed the opportunity so solemnly guaranteed by the Constitution becomes reduced to an exercise in futility. Whatever angle from which the question is looked at, it is dear that "grounds" in Article 22(5) do not

mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The 'grounds' must self-sufficient and self-explanatory. In our view copies documents to which reference is made in the 'grounds' may be supplied to the detenu as part of the 'grounds'."

28. In "**Rajammal v. State of Tamil Nadu and others, 1999 (1) SCC 417**", it has been held that:

"It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be in clause (5) of Article 22 convey the message that the representation. should be considered and disposed of at the earliest."

29. In "**K. M. Abdulla Kunhi v. Unio of India (1991) 1 SCC 476**", it has been held as follows:

"... it is settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

30. In "**A.K. Roy Vs. Union of India, (1982) 1 SCC 271**", it was held at para 70 of the judgment as under: -

"70. We have the authority of the decisions in... for saying that the fundamental rights conferred by the different articles of Part III of the Constitution are not mutually exclusive and that therefore, a law of preventive detention which falls within Article 22 must also meet the requirements of Articles 14, 19 and 21."

31. However, the contentions of the learned counsel for the appellant/detenu to the effect that Government of Union Territory of Jammu and Kashmir does not have the competence to prescribe the period of detention in terms of provisions of Article 22[7] of the Constitution of India and that subsequent to the abrogation of Article 370 of the Constitution of India, resulting in the application of Central

laws to the Union Territory of Jammu & Kashmir, the Jammu & Kashmir Public Safety Act, 1978, could not have been applied, are without any force.

The learned writ court has addressed both the issues in accordance with the law.

Paras 6, 7, 8, and 8 of the impugned judgment are reproduced for the sake of convenience: -

“6. So far as the first contention raised by learned Senior Counsel appearing for the petitioner is concerned, it is to be noted that the Jammu and Kashmir Public Safety Act has been enacted by the Legislative Assembly of the erstwhile State of Jammu and Kashmir in the year 1978. After coming into force of the Jammu and Kashmir Re-organization Act, 2019, certain enactments legislated framed by the erstwhile State Legislature have been repealed whereas certain other legislations framed by the erstwhile State Legislature have been saved for their application to the Union Territory of Jammu and Kashmir, Table-4 of the Fifth Schedule of the J&K Re-organization Act gives the list of enactments which continue to remain in force in the Union Territory of Jammu and Kashmir and Union Territory of Ladakh even after re-organization of the erstwhile State of Jammu and Kashmir. The Jammu and Kashmir Public Safety Act, 1978, is one of the enactments which finds mention in the said table. Therefore, the said Act continues to have application in the Union Territory of Jammu and Kashmir.

7. That takes us to the issue as to whether the State Legislature has the power to fix the period of detention, as, according to the learned Senior Counsel appearing for the petitioner, clause (7) of Article 22 of the Constitution of India vests such power only with the Parliament. This question came up for discussion before the Constitution Bench of the Supreme Court in the case of **“Fagu Shaw vs. State of West**

Bengal, AIR 1974 SC 613". The Supreme Court while deliberating upon this issue observed as under:15

14. Under Entry 3 of List III of the Seventh Schedule, both Parliament and State Legislatures have plenary power to pass laws for preventive detention as respects the subjects mentioned therein. As ancillary to that power, or, as an inseparable part of it, Parliament and State Legislatures have power to fix the period of detention also. One cannot imagine a power to pass a law for detention unless that power carries with it the incidental power to provide for the period of such detention. Therefore, both Parliament and State Legislatures have power under the entry to provide for detention of a person for a specified period. The purpose of Article 22(4)(a) is to put a curb on that power by providing that no law shall authorize the detention of a person for a period exceeding three months unless an Advisory Board has reported within the period of three months that there is sufficient cause for detention. And, what the proviso means is that even if the Advisory Board has reported before the expiration of three months that there is sufficient cause for detention, the period of detention beyond three months shall not exceed the maximum period that might be fixed by any law made by Parliament under Article 22(7)(b). The proviso cannot mean that even if Parliament does not pass a law fixing the maximum period under Article 22(7)(b), the State Legislatures, for example, cannot pass a law which provides for detention of a person beyond three months. The period of such detention viz. detention beyond the period of three months, would then be a matter within the plenary power of Parliament or State Legislatures, as the case may be, as such a power is incidental to the power to pass a law with respect to the topics covered by Entry 3 of List III.

15. It is therefore clear that, but for the proviso to clause (4)(a) of Article 22, the Act, as it provides for the opinion of the Advisory Board, can authorize detention of a person for any period, by virtue of the plenary character of the legislative power conferred by the Entry. Whether such a law is liable to be struck down on the ground that it imposes unreasonable restrictions upon the fundamental rights under Article 19 is an altogether different question. The proviso says in effect that if Parliament fixes the maximum period under Article 22(7)(b), the power of Parliament and State Legislatures to fix the period of detention in a law passed under the Entry would be curtailed to that extent.

8. From the analysis of aforesaid legal position, it is clear that both Parliament and State legislatures have plenary power to pass laws for preventive detention and ancillary to that power, the Parliament and the State legislature have power to fix the period of detention also. In these circumstances, the contention of the petitioner that the State legislature did not have power to fix the period of detention is misconceived and is, therefore, without any merit.”

32. In the backdrop of the foregoing facto-legal scenario of the case, we allow the instant Letters Patent Appeal and set aside the impugned judgment dated 21.11.2025 of the learned writ court passed in HCP No. 115/2025. Consequently, the impugned detention order bearing No. DMP/PSA/28/2025 dated 03.05.2025 passed by the District Magistrate, Pulwama, in respect of the appellant also stands quashed.

33. As a result, the appellant detenu, namely, Aabid Majeed Sheikh, S/o. Abdul Majeed Sheikh, R/o Dadasara, Tehsil Tral, District Pulwama, is directed to be released from his preventive detention in this case, if not already released.

(MOHD YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR
01.10.2026
Shahid Manzoor

Whether the Judgment is Speaking	Yes
Whether approved for reporting	Yes

