

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

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Case No: LPA No.328/2025

Reserved on: 01.04.2026

Pronounced on: 14.05.2026

Uploaded on: 14.05.2026

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

Bahaar Nabi Mir, aged 28 years
S/O Ghulam Nabi Bahaar,
R/O Ferozpora Rafiabad,
Tehsil Watergam, District Baramulla
through His father Ghulam Nabi Mir,
aged 55 years, S/O Ghulam Hassan
Mir, R/O Ferozpora Rafiabad,
Tehsil Watergram, District Baramulla.

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

Through: Mr. Mir Umar, Advocate.

v/s

1. Union Territory of J&K
through Principal Secretary to
Government, Home Departmen
Civil Secretariat
Jammu/Srinagar.
2. District Magistrate, Baramulla.
3. Superintendent,
District Jail, Udampur, J&K.

Through: Mr. Hakim Aman Ali, Dy.AG

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.**

JUDGMENT

PER OSWAL-J

1. The appellant was detained pursuant to an Order No.08/DMB/ PSA/
2025 dated 29.04.2025, issued by respondent No.2-District

Magistrate, Baramulla, under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as “*the Act*”). The said detention order was challenged by the appellant through HCP No. 180/2025, titled “*Bahar Nabi Mir Vs. Union Territory of J&K and Others*”. However, the appellant remained unsuccessful, as the Habeas Corpus Petition preferred by the appellant was dismissed by the learned writ Court vide judgment dated 16.12.2025 (hereinafter referred to as ‘the impugned judgment’).

2. Being aggrieved of the impugned judgment dated 16.12.2025, the appellant has assailed the same, *inter alia*, on the following grounds:-

- (i) That learned writ Court has failed to properly appreciate and consider the grounds of challenge to the order of detention raised in the writ petition.
- (ii) That the detention order dated 29.04.2025 has been issued solely on the basis of FIR No. 185/2019, which was registered nearly five years prior to the issuance of the detention order in which the appellant has already been granted bail on 13.06.2020, and no fresh illegal activity has been attributed to the appellant thereafter up to the date of the detention order. This clearly establishes the absence of any “live and proximate link” between the alleged past conduct and the purported threat to the security of the Union Territory of Jammu & Kashmir. Consequently, the detention order is rendered arbitrary, unsustainable, and liable to be set aside in law.
- (iii) That the appellant submitted a detailed representation dated 16.05.2025; however, the same was considered only on

01.09.2025 and thereafter rejected. The inordinate and unexplained delay of approximately three months and fifteen days in considering and deciding the representation is violative of the constitutional safeguards guaranteed under law. Such delay vitiates the impugned order of detention and renders it illegal and unsustainable.

3. Learned counsel for the appellant has submitted that, in the grounds of detention, no illegal activity has been attributed to the appellant after he was enlarged on bail by the learned trial Court in FIR No. 185/2019 and, in the absence of any such subsequent activity, the appellant could not have been detained under the Act. It is further contended that, in the reply affidavit, the respondents have admitted that the representation dated 16.05.2025 was considered and decided vide order dated 01.09.2025, and the same was duly communicated to the appellant.

4. *Per contra*, Mr. Hakim Aman Ali, learned Dy.AG, submitted that the order of detention was passed after due consideration of the activities of the appellant, which were found to be prejudicial to the security of the State, and the whole of material relied upon by the detaining authority was provided to the appellant against proper receipt and the representation submitted by the father of the appellant was considered and decided by the Government and the decision thereupon was also communicated to the appellant. It is further submitted that all the procedural as well as constitutional safeguards were strictly followed and complied with at the time of issuance as well as execution of the detention order. Learned Dy.AG further contended that the learned

writ Court has rightly appreciated and adjudicated the controversy involved; therefore, this appeal being devoid of any merit deserves to be dismissed.

5. Heard learned counsel appearing for the parties and perused the record.
6. The contention raised on behalf of the appellant is that the order of detention is founded on vague grounds and that the grounds, if any, relied upon for detaining the appellant are stale in nature.
7. A bare perusal of the detention record reveals that respondent No.2, in terms of dossier dated 28.04.2025 submitted by respondent No.3, framed the grounds of detention, in which reference has been made to FIR No.185/2019 under Sections 7/25 Arms Act, Section 23, 39 UA(P) Act of Police Station Baramulla. The reference has also been made to two complaints filed under Section 107/151 Cr.PC dated 14.08.2023 and 30.03.2024 wherein it is stated that the appellant was released on personal bail bond. The appellant in ground (v) of the writ petition has specifically pleaded that he was never detained under preventive detention under BNSS or Cr.P.C. The respondents, in their reply, have not replied this contention of the appellant. The detention record further reveals that the detention warrant was executed on 03.05.2025. The receipt of the grounds of detention further reveals that the appellant was provided with copy of warrant (01 leaf), Notice of detention to the detenu (01 leaf), Grounds of detention (05 leaves), Copy of dossier (05 leaves), Copy of FIRs/Statement of witnesses and other relevant documents relating to detention (26 leaves), total (38 leaves).

8. A perusal of the complaint dated 30.03.2024 reveals that the allegations leveled in the said complaint against the appellant were that in the forthcoming Lok Sabha election, the appellant may indulge in illegal activities so as to sabotage the election. In the grounds of detention, no illegal activity is attributed to the appellant after registration of FIR 185 of 2019 except two complaints under Sections 107/151 Cr.P.C dated 14.08.2023 and 30.03.2024 in which the appellant was released on personal bail bond. The only allegation against the appellant is that he has engaged in encrypted communications with certain Over Ground Workers, stated to be active in District Sopore and that his conduct poses a significant threat to the peaceful and secure culmination of Shri Amarnath Yatra-2025. However, the respondents have failed to disclose the particulars or identities of the said Over Ground Workers or terrorists with whom he was allegedly associated. In the absence of such material particulars, it appears that the appellant has been detained merely to ensure the peaceful and secure culmination of Shri Amarnath Yatra-2025, rather than on the basis of any concrete or proximate incriminating activity attributable to him. In such view of the matter, when no illegal activity has been attributed to the appellant even after the alleged furnishing of bail bonds pursuant to the complaint under Sections 107/151 Cr.P.C. dated 30.03.2024, the appellant could not have been detained on the basis of such vague grounds.

9. While the dossier and the grounds of detention assert that the appellant continued to engage in activities warranting detention

following his release; these claims lack specific particulars. The allegations are entirely bald and vague, merely stating that the appellant remained in contact with ‘over ground workers’ without disclosing their identities. Furthermore, no material has been placed on record to substantiate these claims. Significantly, respondent No. 2 has failed to specify even a single illegal activity attributable to the appellant during the relevant period. Consequently, the impugned detention order is not only founded on vague and unsubstantiated grounds, but also reflects a clear case of non-application of mind on the part of the detaining authority.

10. It is a well-settled principle of law that preventive detention cannot be sustained on the basis of stale, vague, or indefinite allegations. The detaining authority is under a mandated constitutional obligation to furnish clear, precise, and proximate grounds. This requirement is a prerequisite to enabling the detenu to exercise his/her right to make an 'effective representation,' a fundamental safeguard guaranteed under Article 22(5) of the Constitution of India. Reliance is placed upon the judgment of the Supreme court in “**Jahangirkhan Fazalkhan Pathan V. Police Commissioner, Ahmedabad and another**”, (1989) 3 SCC 590, wherein it has been held that the order of detention passed on vague grounds deprives the petitioner of his right to make an effective representation against the order of detention.

11. In case titled ‘**Saeed Zakir Hussain Malik vs. State of Maharashtra**’ (2012) 8 SCC 233, the Hon’ble Supreme Court has held as under:

“27. As regards the second contention, as rightly pointed out by learned counsel for the appellant, the delay in passing the detention order, namely, after 15 months vitiates the detention itself. The question whether the prejudicial activities of a person necessitating to pass an order of detention is 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. Though there is no hard and fast rule and no exhaustive guidelines can be laid down in that behalf, however, when there is undue and long delay between the prejudicial activities and the passing of detention order, it is incumbent on the part of the court to scrutinize whether the Detaining Authority has satisfactorily examined such a delay and afforded a reasonable and acceptable explanation as to why such a delay has occasioned.

28. It is also the duty of the court to investigate whether casual connection has been broken in the circumstance of each case. We are satisfied that in the absence of proper explanation for a period of 15 months in issuing the order of detention, the same has to be set aside. Since, we are in agreement with the contentions relating to delay in passing the Detention Order and serving the same on detainee, there is no need to go into the factual details.”

12. Tested on the touchstone of the aforesaid legal principles, the impugned detention order, being founded on vague, stale, and unsupported material, cannot be sustained in the eyes of law.

13. Learned counsel for the appellant vehemently contended that a detailed representation had been submitted by the father of the appellant; however, there was an inordinate delay in its consideration. It was further submitted that, by way of a rejoinder, a specific ground highlighting a delay of about four months in deciding the representation was raised, yet the same was not adverted to or considered by the learned writ Court. This omission vitiates the impugned judgment and warrants interference by this Court.

14. After examining the detention record, it emerges that the representation dated 16.05.2025 was submitted by the father of the appellant and was considered and decided only vide order dated 01.09.2025. There is thus a delay of more than three months in

considering the said representation. Such inordinate and unexplained delay in consideration of the representation vitiates the impugned order of detention, rendering the same illegal and unsustainable in the eyes of law.

15. In this context, it would be apposite to take note of the judgment of the Hon'ble Supreme Court of India in *Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur and others*, (2021) 20 SCC 98, wherein the Supreme Court considered the legal effect of delay in deciding a detenu's representation, as well as the failure to communicate the decision to the detenu, on the validity of the order of detention. The governing principle has been succinctly laid down in paragraph 47 of the said judgment. The relevant extract reads as under:

“47. By delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of Section 8(1) of having the representation being considered expeditiously. As we have noted earlier, the communication of the grounds of detention to the detenu “as soon as may be” and the affording to the detenu of the earliest opportunity of making a representation against the order of detention to the appropriate government are intended to ensure that the representation of the detenu is considered by the appropriate government with a sense of immediacy. The State Government failed to do so. The making of a reference to the Advisory Board could not have furnished any justification for the State Government not to deal with the representation independently at the earliest. The delay by the State Government in disposing of the representation and by the Central and State Governments in communicating such rejection, strikes at the heart of the procedural rights and guarantees granted to the detenu. It is necessary to understand that the law provides for such procedural safeguards to balance the wide powers granted to the executive under the NSA. The State Government cannot expect this Court to uphold its powers of subjective satisfaction to detain a person, while violating the procedural guarantees of the detenu that are fundamental to the laws of preventive detention enshrined in the Constitution.”

16. We have carefully examined the judgment rendered by the learned writ Court and are of the considered view that the issues noticed and discussed hereinabove have not been adequately addressed and, in fact, have escaped the attention of the learned writ Court.

17. In light of the above, we are of the considered view that the judgment impugned dated 16.12.2025 is not sustainable in the eyes of law and accordingly, the same is set aside. Resultantly, order of detention bearing Order No. 08/DMB/PSA/2025 dated 29.04.2025, issued by the District Magistrate, Baramulla (respondent No. 2) under Section 8 of the Jammu and Kashmir Public Safety Act, 1978, being unsustainable in law is, accordingly, quashed. The appellant shall be released forthwith, if not required in connection with any other case.

18. The record be returned to the learned counsel appearing for the respondents.

19. Disposed of as above.

(Rajnish Oswal)
Judge

(Arun Palli)
Chief Justice

Srinagar

14.05.2026

Madan Verma-Secy

Whether order is speaking? **Yes**

Whether order is reportable? **No.**