No. 6
Regular Cause list

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

HCP 38/2025

Date of Pronouncement: 22.10.2026
Uploaded on : 23.10.2026

Gulzar Ahmad Vaid, Aged 23 years
S/O Mohd Yousuf Vaid
R/O Mukhdampora Marhama Bijbehara,
District Anantnag through his father
Mohammad Yousuf Ved, Aged 50 years
S/O Abdul Aziz Ved
R/O Mukhdampora, Marhama Bijbehara
District Anantnag

…Appellant(s)/Petitioners(s)

Through: Mr. M. Usman Gani, Advocate

Vs.

1. **UT of J&K, through Principal Secretary to Govt., Home Department, J&K, Civil Secretariat Srinagar/Jammu**
2. **District Magistrate, Anantnag Kashmir**
3. **Senior Superintendent of Police, District Anantnag, Kashmir**
4. **Superintendent Central Jail Koth Bhalwal Jammu**

...Respondent(s)

Through: Mr. Ilyas Nazir Laway, GA

CORAM:
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE.

JUDGMENT
22.10.2026

(ORAL)

1. Petitioner, through his father, has invoked writ jurisdiction of this Court, under Article 226 of the Constitution of India, for the quashment of order dated 31.12.2024, whereby, he has been directed to be detained under the provisions of Public Safety Act, 1978 ["PSA"].

2. As the factual matrix would unfold, Senior Superintendent of Police (SSP), Anantnag- respondent No. 4, submitted a dossier to District

Magistrate Anantnag- respondent No. 2, alleging *inter alia* that criminal involvement of the petitioner had surfaced in the terror eco-system. A case FIR No. 219/2022 for offences under Sections 120-B/130 IPC and 18 & 39 of Unlawful Activities Prevention Act ["UAPA"] was registered at Police Station Anantnag on 02.07.2022, whereby, it was alleged that some inmates lodged in different jails had developed contacts with active terrorist namely Sajad Gull, Sajad Jath @ Ali and Lateef Ahmad Rather @ Abdullah Bai of LeT, a banned terrorist outfit. During investigation, an OGW namely Aabid Ashraf Ganie disclosed that he had remained in close contact with other OGWs, including the detenue, with a view to provide logistic support/transportation to the terrorists. The sponsoring officer asserted that though, due to insufficient evidence, arrest of the detenue could not be affected, however, the investigating agency was on the job to collect comprehensive evidence against the network and soon after it would be collected, the detenue and his associates will be formally arrested in the case. It was apprehended that if the detenue and his associates would be allowed to remain at large, they will not only tamper the evidence, but it may also prove fatal for the outcome of the case. The detenue was bound down and released on surety bond and his activities were kept under surveillance.

3. On the basis of the aforesaid allegations, SSP Anantnag, sponsored detention of the detenue on the ground that he was deeply influenced by anti-national narratives and associated with the terrorists operating in the district.

4. On the basis of aforesaid dossier submitted by the sponsoring officer, the detaining authority has concluded that since activities of the detenue were

highly prejudicial to the integrity and sovereignty of the Union of India and security of the Union Territory, as such, with a view to prevent him from indulging in similar activities, it was imperative to detain him under the provisions of PSA.

5. Petitioner is aggrieved of the impugned order and his detention primarily on the ground that grounds of detention are vague, irrelevant and non-existent in the eyes of law. According to the petitioner, the allegations contained in the dossier are bereft of specific details and without any reference to his past conduct. According to the petitioner, the grounds of detention, which are basis of impugned order, do not disclose any eminent threat to the security of the Union Territory or sovereignty of the country.

6. It is contention of the petitioner that the detaining authority has not followed the constitutional and statutory procedural safeguards, as provided under Article 22(5) of the Constitution of India and Section 13 PSA.

7. According to the petitioner, the vague allegations against him are based on mere whims, caprices and surmises of the detaining authority and are ipso-facto insufficient and inconsistent with the provisions of PSA and the grounds of detention, being bereft of specific details renders the order of detention non-existent in the eyes of law.

8. Petitioner has prayed for quashment of the impugned order and his immediate release from the detention.

9. The plea has been opposed on the other side by the respondents, primarily reiterating the dossier and the grounds of detention. According to the respondents, none of the legal, constitutional, fundamental or statutory right of the petitioner is found to have been violated, as the impugned

order came to be passed by the detaining authority only after the statutory requirements and constitutional guarantees were scrupulously adhered to.

10. It is contention of the respondents that the detenue was not only informed about his right of making representation to the detaining authority, as also to the Government, but his signatures to this effect were also obtained on the execution report. It is contended that the examination of the material as well as detention order by the Government, as also by the Advisory Board is a proof that detention order was confirmed by the competent authority after due diligence and following the constitutional mandates. According to the respondents, since the grounds of detention sufficiently connect the detenue with the activities those are prejudicial to the integrity of the country and security of Union Territory, present petition is liable to be dismissed.

11. Having heard learned counsel for the parties, I have gone through the detention record.

12. It is by far a settled position of law that security of the State and maintenance of public peace and tranquility is an absolute and exclusive domain of the executive and subjective satisfaction of the detaining authority to detain a person, when he refuses to desist from his anti-social or anti-national activities, is not open to the objective assessment of the writ court. However, it is equally trite that liberty of an individual cannot be curtailed on omnibus and dogmatic allegations of the sponsoring officer. True it is, that writ court is not vested with the power or jurisdiction to substitute its view with the satisfaction of the detaining authority, however, conduct of the detaining authority exercising such a vast jurisdiction of pre-trial detention, should also be reasonable and in

consonance with the concept of fairness. It is the rule of law which should guide the detaining authority to act in a manner, which is fair and reasonable, having due regard to the concept of fundamental right of life and liberty enshrined in Article 21 of the Constitution of India.

13. Coming back to the case, petitioner is aggrieved of the impugned order, primarily on the ground of vagueness of allegations and absence of "live and proximate link" between the sole criminal activity attributed to him and the impugned order of detention. It is contention of the petitioner that since the grounds of detention are vague in nature, it prevented him from making an effective representation, as a result whereof, his fundamental right guaranteed under Article 22(5) of the Constitution of India was infringed.

14. A perusal of the record would show that the detenue came to be detained on the basis of solitary FIR, i.e., FIR No. 219/2022, whereby, it was alleged that some inmates lodged in different jails had made contact with active terrorist namely Sajad Gull, Sajad Jath @ Ali and Lateef Ahmad Rather @ Abdullah Bai of banned terrorist LeT outfit. They hatched criminal conspiracy to carry out terrorist activities in the valley in general and District Anantnag in particular, by carrying out attacks on the security forces/police forces with the object to commit anti-national activities, which are prejudicial to the integrity and sovereignty of the country and UT of J&K. It is also alleged that during investigation, OGW Aabid Ashraf Ganie disclosed that he was close associate of killed terrorist Uzair Khan, a resident of Nagam Kokernag of LeT outfit and he has been working as OGW. He also disclosed that he remained in close contact with other OGWs of different areas, including the detenue.

15. It is intriguing to note that it is own case of the respondents that investigating agency is on the job to collect comprehensive evidence against the network and soon after evidence would be collected, the detenue and his associates will be formally arrested. If the grounds of detention are carefully glanced over, it is manifest that detenue came to be detained in the present case on the basis of mere apprehension and without any evidence in the sole FIR against him, which is not permissible in law.

16. It is also contention of the respondents that detenue was bound down and released on surety bond and his activities were kept under surveillance. However, neither the recommending officer nor the detaining authority has recorded any reason, as to how the security proceedings were found insufficient to prevent the detenue from engaging in activities prejudicial to the sovereignty & integrity of the country and security of the Union Territory. After a passing reference to the magisterial proceedings, purportedly under Section 129 BNSS, the dossier and the grounds of detention are ominously silent about further details of the proceedings, as to whether he was ever served upon any show-cause notice by the concerned Executive Magistrate, as to why he should not execute a bond for good behavior or whether he was required to execute an interim bond as an immediate measure envisaged under Section 135(3) BNSS and if he executed any such bond, whether he violated the terms and conditions of the bond.

17. True it is, that preventive detention under PSA is a distinct executive measure, independent of the security proceedings, under BNSS and both can co-exist, however, when a detenue is stated to be facing legal proceedings under Section 129 BNSS, the detaining authority is obliged to

demonstrate the compelling reasons as to why security proceedings were insufficient to prevent him from engaging in activities prejudicial to the security of the State or sovereignty of the country. Preventive detention cannot be invoked by the executive unless there are compelling reasons and emergency based justifications, which could not be addressed by the ordinary law of land.

18. Another aspect of the matter, which needs attention of this Court is inordinate delay in the disposal of representation of the detenue.

19. The detenue preferred a representation against his detention to the department of Home. The representation was sent to District Magistrate by the Department of Home on 03.02.2025, and it came to be disposed of on 22.04.2025, i.e., after a delay of two and a half months.

20. The constitutional safeguards guaranteed to a citizen under Article 22(5) of the Constitution of India are of vital significance in the matter of preventive detention, where a person is deprived of his personal liberty at a pre-trial stage. The constitutional mandate is not restricted to merely affording an opportunity to the detenue to make a representation, but it extends to the consideration of his representation and communication of its decision with reasonable dispatch and expedition.

21. Hon'ble Supreme Court in "***Sarabjeet Singh Mokha Vs. District Magistrate, Jabalpur & Ors. (2021) 20 SCC 98***" has held that the Government by delaying the consideration and disposal of representation deprives the detenue of the valuable right under Section 8(1) of PSA. Relevant observation contained in para 47, for the facility of reference, is extracted below:

> ***"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."***

22. It is evident from the aforesaid observation of Hon'ble Supreme Court that delay in deciding the representation of a detenue amounts to infringement of his valuable right, which is available to him in terms of provisions of Section 13 PSA.

23. If the present case is approached with the aforesaid observations of the Apex Court, it is manifest that inordinate delay on the part of Department of Home in deciding the representation of the detenue in the present case renders the impugned detention order illegal.

24. Viewed from every angle, the impugned order passed by respondent No. 2 does not sustain in the eyes of law. Hence, present petition is allowed and impugned order, is quashed.

25. The detenue is directed to be immediately released from the detention, provided he is not involved in any other case.

26. Detention record, after perusal, is returned to learned counsel for the respondents in the open court.

27. Disposed of in the manner as indicated above.

(RAJESH SEKHRI)
JUDGE

Srinagar:
22.10.2026
Adil Ismail

- Whether the Judgment is Reportable? Yes
- Whether the Judgment is Speaking? Yes

HIGH COURT
JAMMU & KASHMIR AND LADAKH