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

Reserved on: 28.10.2026
Pronounced on: 06.11.2026
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Whether the operative part or full judgment is pronounced: ***Full***

HCP No.250/2025

GOWHAR MAQBOOL RATHER

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. Hussain Rashid, Advocate.

Vs.

UT OF J&K & ORS.

...RESPONDENT(S)

Through: - Mr. Hakeem Aman Ali, Dy. AG.

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

JUDGMENT

1) The petition, through the medium of this petition, has challenged order of detention bearing No.23/DMB/PSA /2025 dated 25.06.2025, issued by the District Magistrate, Baramulla, in terms of Section 8 of the Jammu and Kashmir Public Safety Act. 1978 (for short, "the Act").

2) The petitioner has assailed the order of detention on the following grounds:-

(i) That there is complete non-application of mind on the part of the detaining authority, as the

impugned order has been passed on the basis of the same material pursuant to which the earlier order of detention dated 17th of September 2018 was issued against the petitioner, but was quashed by this Court in terms of order dated 26th of February 2019.

(ii) That the order of detention has been issued on the recommendations of the Senior Superintendent of Police, Sopore, and the grounds of detention are the verbatim reproduction of the dossier, with the only change that instead of word 'subject', 'you' has been employed by the detaining authority in the grounds of detention.

(iii) That there is no live link and proximate link between the alleged illegal activities attributed to the petitioner and the order of detention, as illegal acts which have been attributed to the petitioner are of year 2008 and 2018 and these activities, as such, cannot be relied upon for detaining the petitioner.

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(iv) That the wife of the detenue had submitted a representation before the detaining authority, but the same was not considered by the respondents.

3) The respondents in turn have filed the response stating therein that, upon perusal of the material submitted by the Senior Superintendent of Police, Sopore, the detaining authority carefully examined the same and, upon deriving subjective satisfaction that the detention of the petitioner was imperative, issued order of detention dated 25th of June 2025. The respondents have further furnished the details of the activities allegedly carried out by the petitioner in the years 2008 and 2018, in connection with the registration of two FIRs, i.e., FIR No. 263 of 2008 and FIR No. 244/2018. It has also been stated that the petitioner was discreetly using encrypted applications and VPNs to maintain contact with over-ground workers (OGWs) affiliated with proscribed terrorist outfits. Following the recent terrorist attack in Baisaran Valley, Pahalgam, there was a strong apprehension that the petitioner may again become active, thereby posing a more serious threat to the Union Territory of Jammu and Kashmir. It is further stated that the warrant of detention was executed by the police on 27th of June 2025, whereafter the petitioner was lodged in Central Jail, Kot Bhalwal. The petitioner was

informed, vide communication dated 27th of June 2025, of the grounds of detention and his right to make a representation to the detaining authority as well as to the Government. The order of detention was subsequently confirmed by the Government in terms of order dated 21st of July 2025. The respondents have also stated that the representation submitted by the wife of the petitioner was considered and rejected as being devoid of merit, and the petitioner was duly informed of the same.

4) Heard and perused the record.

5) The first ground raised by the petitioner is that the grounds of detention are the verbatim reproduction of the dossier, which clearly reflects the non-application of mind on the part of the detaining authority. This Court has perused the grounds of detention and also the dossier, and finds that except for cosmetic changes in the form of replacement of word "subject" by "you", there is no material and substantial difference between the two, and as such, it is indicative of the fact that the detaining authority has simply reproduced the dossier while passing the order of detention and has not applied its mind independently. This exhibits non-application of mind on the part of detaining authority. While formulating the grounds of detention, the

Detaining Authority has to independently apply its own mind and cannot simply reiterate whatever is written in the police dossier. The similarity of contents of grounds of detention and police dossier in the instant case clearly exhibits the mechanical functioning of the detaining authority, thereby making the impugned order of detention unsustainable in law. Reliance is placed on the judgment of the Supreme Court in the case of **Jai Singh and ors.** vs. **State of J&K** (**AIR 1985 SC 764**).

6) Next, it was contended that the representation submitted against the order of detention was not decided by the respondents. The record of detention reveals that the representation dated 08.07.2025 was forwarded by the District Magistrate to the Home Department in terms of communication dated 23.07.2025, and in terms of communication dated 29.07.2025, the respondent Nos. 1 sought comments from the Additional DGP, CID, J&K, and thereafter, in terms of order dated 04.09.2025, the representation submitted against the order of detention was rejected, and in terms of communication dated 05.09.2025, the petitioner was informed about the rejection of the representation. There is a delay of nearly two months in deciding the representation, which has not been

explained by the respondents. The question that arises for determination is as to whether delayed consideration of representation satisfies the requirement of law.

7) The aforesaid question has been answered by the Hon'ble Supreme Court of India in the case of **Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur and others,** (**2021) 20 SCC 98**. It would be apt to refer to observations made by the Supreme Court in para 47 of the judgment, which are reproduced 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."*

8) From the aforesaid law laid down by the Hon'ble Apex Court, it is manifest that delaying of decision on the representation of the detenue amounts to an infringement of a valuable right, which is available to a detenue in terms of the provisions contained in Section 13 of the Jammu & Kashmir Public Safety Act. Failure to decide the representation of a detenue within a reasonable time in an expeditious manner strikes at the valuable right of a detenue emanating from the provisions of Section 13 of the Jammu & Kashmir Public Safety Act.

9) In the present case, there is no explanation from the side of the respondents with regard to the delay of about two months in deciding the representation of the petitioner. This unexplained slackness on the part of respondents to take a decision on the representation of the petitioner renders the impugned order of detention illegal.

10) For the afore-stated reasons, the petition is **allowed** and the impugned detention bearing No.23/DMB/PSA /2025 dated 25.06.2025, issued by the District Magistrate, Baramulla, is quashed. The respondents are directed to

release the petitioner from the preventive custody forthwith, provided he is not required in connection with any other case.

11) The detention record be returned to learned counsel for the respondents.

(Rajnesh Oswal)
Judge

Srinagar,
06.11.2026
"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **NO**



MADAN LAL VERMA
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I attest to the accuracy and
integrity of this document