

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No. 298/2025

Reserved on: 31.08.2026

Pronounced on: 02.09.2026

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

Suhail Fayaz Najar
S/O Fayaz Ahmad Najar,
R/O Hariparigam
Tehsil Awantipora, District Pulwama.

...Petitioner(s)

Through: Adv. Waseem Shamas.

Vs.

1. Union Territory of J&K through
Principal Secretary to Govt.,
Home Department,
Civil Sectt. Srinagar.

2. District Magistrate, Pulwama.

3. Senior Superintendent of Police,
Awantipora.

4. Superintendent District Jail,
Udhampur, Jammu.

...Respondent(s)

Through: GA Jehangir Ahmad Dar.

CORAM: HON'BLE MR. JUSTICE M. A.CHOWDHARY, JUDGE

JUDGMENT

1. Through the medium of the instant petition, the petitioner has called in question the Detention Order No. **33/DMP/PSA/25** dated **10.07.2025** passed by the

respondent No. 2-District Magistrate Pulwama, whereby the petitioner has been detained under the provisions of the Jammu and Kashmir Public Safety Act, 1978 (for short, “the Act”), on the satisfaction that his activities were prejudicial to the security of the State. The petitioner seeks quashing of the said detention order and his immediate release from preventive detention.

- 2.** The case projected by the petitioner is that the impugned order suffers from non-application of mind and has been passed on the basis of vague, stale and irrelevant material. It is submitted that the petitioner had earlier figured in case FIR **No. 46/2021** under Sections 18, 19, 20, 38 UA(P) Act registered in Police Station Awantipora, but was subsequently enlarged on bail by the competent Court dropping these charges. Thereafter, on **03.02.2023**, he was detained in proceedings under Sections **107/151 Cr.PC** and was released by the competent Magistrate on furnishing bond.
- 3.** Another grievance raised by the petitioner is that the material relied upon by the detaining authority, on the basis whereof, the subjective satisfaction is stated to have been arrived at, was neither supplied nor read over in a language understood by the petitioner. It is contended that non-supply of such material deprived the petitioner of his valuable constitutional right to make an effective and meaningful representation against his detention.

4. The respondents, in opposition to the petition, have defended the detention order. It is submitted that the detaining authority, after carefully examining the dossier and the material placed before it, arrived at the requisite subjective satisfaction that the petitioner, if allowed to remain at large, was likely to indulge in activities prejudicial to the security of the State.
5. Learned counsel for the petitioner while arguing the matter submits that despite the aforesaid factual position, the detaining authority proceeded to direct his preventive detention without there being any fresh, specific or proximate material showing that the petitioner was indulging in activities prejudicial to the security of the State; that the petitioner as per Police dossier was working as a Waiter in a Hotel and there was no material disclosed to him showing his involvement in any activity connected with the alleged threat to the security of the State or to the peaceful conduct of the Annual Shri Amarnath Ji Yatra.
6. Learned counsel for the respondents, ex-adverso, contends that the detaining authority was conscious of the fact that the petitioner had been admitted to bail in case **FIR No. 46/2021** and that the said circumstance had duly been taken into consideration while passing the detention order; that the petitioner's release in proceedings under Sections 107/151 Cr.PC twice does not operate as a bar to the exercise of power under the Public Safety Act. It is

submitted that preventive detention is a distinct jurisdiction and the fact that proceedings under the Cr.P.C. had been initiated or that the petitioner had been released therefrom does not oust the jurisdiction of the detaining authority.

7. Heard learned counsel for the parties, and perused the pleadings as well as the detention record produced by the learned counsel for the respondents and considered the matter.

8. On perusal of the detention record it is revealed that the detainee was found involved in a case registered vide FIR No. 46/2021 u/s 18, 19, 20, 38 UA(P) Act at Police Station Awantipora wherein after discharge, he was admitted to bail. The grounds of detention reflect that the detainee was working as an 'OGW' for the banned terrorist organizations LeT/JeM by way of rendering logistic support like food, shelter and information about the security forces to the terrorists. The petitioner came to be arrested in the said case and during questioning he confessed that he was working as 'OGW' for those banned terrorist organizations, particularly to one terrorist namely Kifayat Ramzan Sofi, who was later on neutralized by the security forces. The petitioner, however, was later released on bail granted in his favour by the court of law.

9. At the outset, it needs to be emphasized that preventive detention constitutes an extraordinary encroachment upon

the personal liberty of a citizen. The power is preventive and not punitive. It is intended to prevent a person from doing something which the law seeks to prevent and not to punish him for something which he has already done.

10. The constitutional safeguards surrounding preventive detention are, therefore, required to be strictly complied with. **Article 22(5)** of the Indian Constitution, mandates communication of the grounds of detention to the detenu and further requires that he be afforded the earliest opportunity of making a representation against the order.

11. The Supreme Court in ***Khudiram Das v. State of West Bengal*** reported as **(1975) 2 SCC 81**, has made it clear that although the satisfaction of the detaining authority is subjective, it is not wholly immune from judicial review. The Court can examine, *inter alia*, whether the authority had applied its mind, whether the satisfaction was based on relevant material and whether the exercise of power suffered from any infirmity which goes to the root of the detention. The Court held as under:-

“...It is, therefore, not only the right of the Court, but also its duty as well, to examine what are the basic facts and materials which actually and in fact weighed with the detaining authority in reaching the requisite satisfaction. The judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that it has taken into account only certain basic facts and materials and though other basic facts and materials were before it, it has not allowed them to influence its

satisfaction. The Court is entitled to examine the correctness of this statement and determine for itself whether there were any other basic facts or materials, apart from those admitted by it, which could have reasonably influenced the decision of the detaining authority and for that purpose, the Court can certainly require the detaining authority to produce and make available to the Court the entire record of the case which was before it. That is the least the Court can do to ensure observance of the requirements of law by the detaining authority....”

12. The existence of subjective satisfaction does not mean that the Court must accept every recital contained in the detention order as conclusive. The Court is entitled to examine whether there was material before the detaining authority which could reasonably lead to the satisfaction recorded by it.

13. In the present case, the main material against the petitioner appears to be his involvement in FIR No. 46/2021 registered under the UAPA and his subsequent undertaking of bonds under Sections 107/151 Cr.PC twice. So far as FIR No. 46/2021 is concerned, the petitioner had already been enlarged on bail. The respondents fairly conceded that the detaining authority was aware of the order granting bail in favour of the petitioner. Mere awareness of the order of bail, however, cannot by itself satisfy the requirement of application of mind. Once a person has been released on bail, the detaining authority is required to consider whether there

exists some fresh or continuing material which demonstrates that, notwithstanding, his release there is a real and proximate likelihood of his engaging in activities prejudicial to the security of the State.

14. The Supreme Court in ***Sama Aruna v. State of Telangana***, reported as **(2018) 12 SCC 150**, reiterated that preventive detention must rest upon a reasonable prognosis of future conduct based upon past conduct viewed in the surrounding circumstances, and that there must be a live and proximate link between the past conduct and the imperative need for detention. Where that link is snapped, detention becomes punitive rather than preventive.

15. This principle has subsequently been reiterated in ***Khaja Bilal Ahmed v. State of Telangana*** reported as **(2020) 13 SCC 632**, where the Supreme Court held that previous criminal activities may be relevant only where they have a direct nexus with the immediate necessity of detention. Mere reference to stale criminal cases cannot furnish the foundation for preventive detention in the absence of a clear causal connection with the apprehended future conduct. Relevant part from the said judgment is reproduced hereunder:-

“...The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material, material

which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detainee engaging in prejudicial activities in the future...”

16. Tested on the aforesaid principles, this Court finds that the material relied upon against the petitioner does not disclose any sufficiently specific or proximate activity subsequent to his release on bail which could furnish the necessary live link between his past conduct and the imperative necessity of his preventive detention. The subsequent detention of the petitioner under Sections 107/151 Cr.PC requiring Bonds for good conduct, also does not advance the case of the respondents.
17. The proposition urged on behalf of the respondents that proceedings under Sections 107/151 Cr.PC do not, as a matter of law, oust the jurisdiction of the detaining authority under the Act, is acceptable. Preventive

detention and preventive proceedings under the Cr.PC operate in different fields. But that proposition does not answer the real question arising in the present case. The issue is not whether the detaining authority had jurisdiction to invoke the Act after the petitioner had been released under Sections 107/151 Cr.PC, but the issue is whether the material available to the detaining authority disclosed a rational and proximate basis for concluding that the petitioner was required to be detained to prevent him from acting prejudicially to the security of the State.

18. The fact that the petitioner had been proceeded against under Sections 107/151 Cr.PC and thereafter released by the competent Magistrate was a relevant circumstance requiring consideration. The record, however, does not demonstrate that the said circumstance was considered in its proper perspective or that any fresh material emerged thereafter, establishing, likelihood of the petitioner indulging in activities prejudicial to the security of the State.

19. The reference made by the detaining authority to the Shri Amarnath Ji Annual Yatra (SANJAY) also does not cure the aforesaid defect. The sensitivity of the Yatra and the obligation of the State to maintain its peaceful conduct are undoubtedly matters of great importance. However, a general apprehension arising from the sensitive nature of an event cannot substitute for specific material connecting

the particular detainee with a threat to the security of the State. The reference of SANJAY was made in the detention order passed on 10.07.2025. Even the next SANJAY, 2026 has also been recently concluded peacefully. Preventive custody is detention of an individual based upon his anticipated future conduct. It cannot be justified merely by pointing to a general security situation or a sensitive public event unless the material before the detaining authority establishes the necessary nexus between the individual and the apprehended threat.

- 20.** Next plea raised by the petitioner is that the material relied upon by the detaining authority was not supplied to him. To rebut the said plea, the respondents have not been able to demonstrate from the record that the entire material relied upon for arriving at the subjective satisfaction was furnished to the petitioner so as to enable him to make an effective representation. The law in this regard is well settled. The right of representation under Article 22(5) is not an empty formality. Where the detaining authority relies upon documents or material in arriving at its satisfaction, the detainee must ordinarily be furnished copies thereof. Without such material, the grounds communicated to the detainee may remain incomplete and the opportunity to make an effective representation becomes illusory. The Supreme Court has reiterated that failure or delay in supplying relied-upon

documents can amount to denial of the constitutional right to make an effective representation. In the present case, the respondents have not satisfactorily established that the material which constituted the basis of the detention was supplied to the petitioner. The omission assumes greater significance because the petitioner was required to explain and contest the allegations arising out of his previous FIR and subsequent proceedings under Sections 107/151 Cr.P.C.

21. This Court is of the view that the grounds of detention lack the requisite degree of specificity. General expressions such as the petitioner's activities being prejudicial to the security of the State, without disclosing the precise acts, circumstances and material which demonstrate such propensity, do not afford a meaningful opportunity to the detainee to meet the allegations.

22. The petitioner has also specifically pleaded that the grounds of detention were neither read over nor explained to him in a language, fully understandable to him. The requirement of Article 22(5) of the Constitution is not satisfied by a mere formal communication or physical delivery of the grounds of detention. The object of communicating the grounds is to enable the detainee to understand the basis of his detention and to make an effective and meaningful representation against the same. Consequently, where the detainee is not conversant with

the language in which the grounds have been prepared, the grounds must be read over and explained to him in a language which he understands. The obligation assumes added significance in a case of preventive detention, where the detenue is called upon to challenge the subjective satisfaction of the detaining authority and represent against, within the limited period available to him. Unless the grounds are intelligible to the detenue, the constitutional safeguard guaranteed under Article 22(5) remains just illusory.

- 23.** In the present case, there is no satisfactory material on record to establish that the grounds of detention were read over and explained to the petitioner in a language fully understood by him. A mere endorsement or recital to that effect, without supporting material, cannot, in the facts of the present case, be treated as sufficient compliance where the detenue has specifically disputed such communication and understanding. The failure to establish that the grounds of detention were effectively communicated to and understood by the detenue has materially impaired his right to make an effective representation against the order of detention. Such failure constitutes a violation of the constitutional safeguard contained in Article 22(5) and furnishes an independent ground for invalidating the detention order.

24. Thus, apart from the infirmities noticed, hereinabove, relating to non-application of mind, vagueness of the grounds, absence of a live and proximate link between the alleged past conduct and the necessity for present preventive detention, and non-supply of the relied-upon material, the impugned detention order is also vitiated by failure to demonstrate effective communication of the grounds of detention to the petitioner, in a language understood by him.

25. The contention of the respondents that the detaining authority had considered the petitioner's bail order does not persuade this Court otherwise. An assertion of consideration cannot substitute for actual consideration apparent from the record. The question is whether the authority considered the implications of the petitioner's release on bail and whether there was any subsequent material demonstrating his propensity to indulge in prejudicial activities.

26. The Court does not sit as an appellate authority over the subjective satisfaction of the detaining authority. Nevertheless, where the satisfaction is shown to have been arrived at without proper consideration of relevant circumstances, on stale or vague material, or where constitutional safeguards have not been complied with, the Court cannot remain a silent spectator.

- 27.** For the foregoing reasons, the petition is allowed. The detention order No. **33/DMP/PSA/25** dated **10.07.2025** passed by respondent No.2-District Magistrate, Pulwama under the Jammu and Kashmir Public Safety Act, 1978, directing preventive detention of the petitioner herein on the ground that his activities are prejudicial to the security of the State, is hereby **quashed**. The respondents are directed to release the petitioner-detenué namely **Suhail Fayaz Najar S/O Fayaz Ahmad Najar R/O Hariparigam, Tehsil Awantipora District Pulwama**, forthwith from preventive detention, if his custody is not required in connection with any other case or proceedings in accordance with law.
- 28.** Scanned copy of the detention record be returned to learned counsel for the respondents against proper receipt.
- 29.** The petition stands **disposed of** accordingly.

(**M. A. CHOWDHARY**)
JUDGE

Srinagar
02.09.2026
Muzammil. Q

Whether the order is reportable: Yes / No