S. No.
S-127

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 139/2025
CM No. 7818/2025
CM No. 7819/2025
CM No. 6132/2025
CM No. 6133/2025

Reserved on: 23.02.2026
Pronounced on: 27.04.2026
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Whether the operative part or full judgment is pronounced: Full

Mehraj Din Malik, Age 37 years
(Member J&K Legislative Assembly from Doda East)
S/o Sh. Shamas Din, R/o Tandla, Tehsil Chilly Pingal,
District Doda. Through his father
Sh. Shamas Din, Age 65 years, S/o Sh. Abdullah Malik,
R/o Tandla, Tehsil Chilly Pingal, District Doda. …..Petitioner(s)

Through: Mr. Rahul Pant, Sr. Advocate
Mr. Muzaffar Iqbal Khan, Advocate
Mr. S S Ahmed, Advocate
Ms. Appu Singh Salathia, Advocate
Mr. Tariq Mougal, advocate
Mr. Zulkarnain Chowdhary, Advocate

Vs

1. Union Territory of J&K through its Principal Secretary, Home Department, Civil Secretariat, Jammu
2. The District Magistrate, Doda.
3. S. Harvinder Singh (IAS), Deputy Commissioner, Doda
4. Senior Superintendent of Police, Doda.
5. Superintendent District Jail, Kathua ….. Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG
Mr. Sunil Sethi, Sr. Advocate

Coram: HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

JUDGMENT

01. Impugned in the instant petition filed under the provisions of Article 226 of the Constitution of India is the order of detention bearing No. PSA 05 of 2025 dated 08.09.2025 issued by the respondent No.2-District Magistrate, Doda (hereinafter referred to as **'the Detaining**

Authority') in exercise of his powers under section 8 (1) (a) (ii) of Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as the PSA for short) whereby the petitioner, namely, **Mehraj Din Malik, S/o Sh. Shamas Din, R/o Tandla, Tehsil Chilly Pingal, District Doda** has been ordered to be detained and kept in District Jail Kathua with a view to prevent him from acting in any manner pre-judicial to the maintenance of the 'Public Order.'

02. The order impugned has been assailed on the main grounds that the petitioner/detenu is a permanent resident/domicile of the UT of J&K and a citizen of India, thus entitled to invoke the extraordinary writ jurisdiction of this Court for the enforcement of his fundamental rights enshrined in Part-III of the Constitution of India. That he believes in the sovereignty and integrity of India. That he is an educated person with his qualification as M.A, B.Ed. That he represents the most backward constituency of Doda District in the J&K Legislative Assembly and has always been very vociferous concerning the issues pertaining to the general public like poor/inadequate infrastructure in the Education/Health Departments, poor connectivity of roads etc etc. That prior to his being elected as a Member of Legislative Assembly from Doda East Constituency, he was also a member of District Development Council (DDC) from Kahara Constituency and even during his Council Meetings as the then Member DDC, he used to raise the issues of general public importance. That the District Administration, Doda was indifferent to the issues being highlighted by the petitioner/detenue as also slow in implementing the schemes formulated by the Central Government and the Government of Union Territory of J&K.

That the petitioner/detenu has his old parents, wife and four daughters at his home who have been badly suffering on account of his detention.

That a dispute was already going on in the Constituency area of the petitioner between him as an elected representative and the District Administration Doda with regard to a Primary Health Centre (PHC) at Kencha, Tehsil Kahara, District Doda. That the Health Centre was existing earlier in a rented building at Kencha belonging to one Mr. Abdul Rashid S/o Abdul Aziz. That the Health Department had proposed shifting of the hospital building into the house of one Ghulam Ali S/o Abdul Sattar to the disliking of the public. That the petitioner in larger public interest had already approached the Deputy Commissioner, Doda by way of a representation submitting that no such shifting be done without ascertaining the views of the local population as public wanted the Health Centre to continue at its original position. That, however, the District Administration without caring for the concern expressed by the petitioner being the representative of the area, ordered the shifting of the hospital and the local public protested against such shifting of the Health Centre. That the Police Station, Gandoh came to registered an FIR bearing No. 90/2025 under Sections 221, 329(3), 351(2), 305(e), 191(2) of Bharatiya Nayaya Sanhita (BNS), 2023 dated 06.09.2025 against the petitioner and others in an illegal way on the direction of the District Administration, Doda. That the petitioner being the elected as MLA, representative in view of the immense public pressure, had a session of Facebook Live, wherein he aggressively put-forth the views of the public regarding the arbitrary shifting of the Health Centre and also expressed

his annoyance with the Deputy Commissioner. That the utterances of the petitioner were not taken well by the District Administration, Doda particularly, the Deputy Commissioner, who made Daily Dairy Reports (DDRs) vide DDR No. 45 dated 07.09.25025 of Police Station, Doda and DDR No. 25 dated 07.09.2025 of Police Station, Thathri to be entered into the records of the aforesaid Police Stations against the petitioner/detenu.

That the Deputy Commissioner, Doda, who had become a party in the aforementioned shifting row, ought to have disassociated himself or should have recused from exercising his powers under the PSA. He should have at the first instance referred the matter to the Government of J&K through Divisional Commissioner, Jammu for taking an appropriate decision in the matter with the seeking of legal opinion from the Law Department who instead in a vindictive manner issued the impugned detention order, which is legally unsustainable being hit by doctrine of personal bias, as he became a judge in his own cause.

That the perusal of the impugned detention order clearly reveals that the same is mainly based on 18 FIRs and 16 DDR reports registered/recorded against the petitioner/detenue at different Police Stations of District Doda. That out of 18 referred FIRs, the cases arising out of three FIRs have already been closed/compounded/withdrawn when trials are going on in the cases pertaining to 14 FIRs with investigation going on in one case FIR No. 90/2025 dated 06.09.2025 of Police Station, Gandoh.

That all the 14 cases FIRs in which trials are going on came to be registered on the basis of political rivalry as the allegation in almost all the said FIRs is aggressive behavior of the petitioner for raising the issues of the public. That the petitioner stands already bailed out in almost all the

case FIRs pending trials in different Courts. That there was no justification for the preventive detention of the petitioner being an elected representative of a Constituency which is highly backward. That in view of the damage caused by the recent floods, the infrastructure in District Doda has got badly damaged and at several points the roads are closed and people are suffering. That under the said circumstances, the detenu is required to espouse the cause of the public and his detention at this juncture has frustrated the aspirations of his voters. That the detention of the petitioner is apparently malafide and arbitrary as the sole reason is the personal grudge and bias of the detaining authority with him.

That this Court has in its several decisions held that the personal liberty of a person is the most cherished fundamental right and same cannot be curtained in a whimsical manner particularly in a situation when the detenue has already been proceeded under the normal criminal law and has been facing trial in so many cases. That the detention of the petitioner in the facts and circumstances of the case appears to be punitive rather than preventive.

That the detention of the petitioner also on the basis of 16 DD Reports of Police Stations Gandoh, Thathri and Doda is unjustified as the contents of the said reports are unverified and not disclosing the commission of cognizable offences. That this Court in **Kewal Krishan vs Financial Commissioner, ACS Home Department & Ors [WP(Crl) No. 20/2023]** has observed that DDR reports prepared in quick succession just to detain the petitioner and being bereft of details of the activities of the detenue could not have been relied upon by the detaining authority while issuing the order of detention.

That the impugned detention order is also bad in the eyes of law as the petitioner has not been informed regarding the time schedule under which he has to make a representation to the Government of J&K/District Magistrate, Doda against his detention and the non-specification of the time schedule has vitiated the detention of the detenue.

That the record of the detention especially the grounds basing the same have used the words "re-submitted dossier" of the police which is clearly indicative of the fact that the earlier dossier submitted by the police to the detaining authority was returned for making the deficiency good by recording of DDR reports against the petitioner/detenue in different Police Stations. That the copy of the detention order in full, especially the grounds of detention was not furnished to the petitioner/detenue.

That it is a matter of grave concern that the petitioner has been allegedly booked on the grounds of public order, when the public is with him and since his detention, the life in entire Chenab Valley has been paralyzed as the people came out on the roads to express their resentment against the arbitrary detention of the detenue with a view to suppress his voice for public concern.

That the respondents with a view to tarnish the image of the detenu have been circulating doctored/edited videos in the social media thereby misleading the general masses and making them to believe that the detenu has made anti-national speeches when the fact remains that such acts of the respondents are politically motivated, who feel threatened with the growing popularity and mass based support of the detenue.

That the allegation of violation of Code of Conduct during election cannot be made basis for preventive detention under PSA. That the

impugned detention order appears to be outcome of non-application of mind. That the irrelevant material having no nexus or proximity with the object, has been made basis of the impugned detention order.

That the term "public order" has not been properly understood by the detaining authority as the allegations against the petitioner do not constitute public order in terms of the provisions of the PSA. That the detenue through his father made a representation to the respondents on 20.09.2025 through an email as well as speed post against his detention which was not decided till filing of the petition. That the alleged activities of the petitioner are having no nexus or proximity with the impugned order of detention, being stake. That the respondents instead ought to have taken steps for cancellation of the bail already granted to the detenu in the criminal cases and not to have misused the provisions of the PSA. That the rights of the petitioner under Constitution as well as PSA regarding making of effective representation as regards his detention has been denied to him.

That the impugned order apparently reveals that the provisions of PSA have been invoked by the detaining authority illegally to bring an ordinary law and order issue in the domain of "public order" for illegally justifying the detention of the petitioner.

03. The petitioner has accordingly prayed for issuance of writs of certiorari and mandamus for setting aside/quashing the impugned detention order bearing No. PSA 05 of 2025 dated 08.09.2025 issued by the respondent No.2 under PSA and for directing his immediate release from illegal detention with payment of Rupees Five Crores for curtailing his personal liberty.

04. The respondents have resisted the petition of the detenu through counter affidavit filed by the learned detaining authority on the grounds that the averments of the writ petition are factually incorrect and legally misconceived, thus denied. That the detention of the petitioner is not punitive and is rather preventive having been ordered on justified reasons on the basis of the dossier submitted by the Senior Superintendent of Police, Doda containing the previous and present conduct of the detenue, report of Executive Magistrate, Kahara and reliable information available with the office of the detaining authority. That since the conduct of the petitioner/detenue was posing threat to the maintenance of "public order", therefore, it was recommended as per the police dossier that he be detained under the provisions of PSA in the interest of the public order.

That as per dossier re-submitted by Senior Superintendent of Police, Doda vide No. Conf/PSA/2025/23634/C dated 07.09.2025, 18 FIRs and 16 DDRs have been lodged/registered against the petitioner/detenu right from the year 2014 to 2025. That in addition to the dossier, report of the Executive Magistrate, Kahara & reliable information available with the office of detaining authority, was also scrutinized. That upon perusal of all these, following was found about the activities of the petitioner/detenue:

i) That the petitioner/detenue is a history sheeter (Category-A) of Police Station Gandoh since 2017 and is habitual of adopting violent and illegal means without any respect for law of land.

ii) That the detenu has a long history of disrupting functioning of the Public Offices engaged in providing services to the common public by means of locking the same, heckling & creating hostage situations and use of force to adversely impact public service delivery thus causing public order issues.

iii) Inciting people to create public order issues and consistently

demanding action by force rather than opting for constitutional means available under law.

iv) Exploiting social media to spread misinformation and provocative speeches/communal/videos, calling upon his followers to gather, become a mob and overtake institutions/target individuals directly inciting unrest and communal disharmony.

v) Instigating youth to adopt violence, giving calls to followers to burn government offices, and even glorifying anti-national activities of prescribed terrorists like Burhan Wani & Masood Azhar and asking innocent public to act like Lashkar (armed militia) to get things done and "improve system" by force.

vi) That unlawful actions of the detenu are continuous/incremental in nature with consistent provocation to public especially youth to follow the suit.

vii) That his statements/arguments always aim to portray legally established institutions and their activities in bad light and encourage youth to disobey and oppose their lawful authority through Goondaism and lawlessness.

viii) That his deliberate use of proactive words and consistent threats to those opposing him during public gatherings (many times unlawful on road with halted traffic) further augmented by his social media outreach has huge potential of misleading youth towards illegal activities, violence and social evils like crime against women & drug abuse etc. which benefit anti-national elements by destabilizing society and thereby fermenting exploitation of vulnerable youth by causing public disorder.

ix) That the emergency services have been repeatedly hampered due to the detenu's consistent activities like threats issued by him to dislodge trained functionaries and replacing them with touts to run Govt. institutions which have caused significant public order issues even inside/outside strategically vital installation and hospital premises.

That the above factual aspects about the detenu lead to the following inferences:-

That although fundamental rights enshrined in the constitution guarantee freedoms necessary for individual liberty and dignity however they are not absolute as the constitution itself places reasonable restrictions in the interest of larger public good, such as public order, morality, decency, security of the State, sovereignty and integrity of India. That further claims of the petitioner regarding secular ethos, mutual co-existence & plural values are denied as there are recorded instances of petitioner glorifying activities of prescribed militants like Burhan Wani & Masood Azhar who were instrumental in attacking the security of the state challenging the sovereignty and integrity of India. That in addition to this, the detenu has on record also come out in open support of an OGW category-I namely Rehmatullah S/o Abdul Ghani Paddar through provocative speeches while mobilizing crowd/public against state's action in the interest of security of state, has association with another OGW category-1 namely Mohd. Rafi alias Pinka S/o Ghulam Qadir Sheikh and whenever the state took any action to protect the security, sovereignty & integrity of state in restricting such OGW's under preventive detention, the detenu has time and again incited general public while trying to give colors to such actions as "harassment of poor people" & carries out such activities with an intent to misguide and alienate people. That further, his appeals to general public to act as "Lashkars (armed militia)", mocking religious sentiments of other faiths clearly establish that the petitioner does not believe in the aforementioned values. That he is also time and again recorded to have incited the public on regional lines, as well as to make anyone or everyone, including officials posted from outside his constituency unwelcome and harassed.

That the order of detention dated 08.09.2025 is based on a detailed dossier re-submitted by the Senior Superintendent of Police, Doda, corroborated by reliable information available as well as report of the Executive Magistrate, Kahara (Tehsildar). That the District Magistrate under Section 8 of the PSA has thoroughly considered the material placed before him and, upon drawing sufficient satisfaction that the activities of the detenu are pre-judicial to the maintenance of public order, passed the order strictly in accordance with law, following due process.

That the allegations of indifferent attitude of District Administration towards public issues raised and slow implementation of welfare schemes etc., are denied out rightly. That the detenu has a long history of forcibly demanding illegal actions like allowing illegal mining, shifting Govt. offices arbitrarily or pushing officials to sign illegal papers whenever objected to or contested, with their heckling, manhandling, hostaging and threatening even in full public gathering. That at times, the mob swayed by provocative speeches of the detenu as elected MLA-showed signs of even lynching of officials thereby forcing them to submit to his illegal demands. That there are multiple instances of the detenu even heckling, threatening police & traffic officials to submit to him by force. That it is because of such prejudicial activities of the detenu, showing no respect to substantive laws that a dossier was submitted by the Sr. Superintendent of Police, Doda with recommendations to detain the detenu and accordingly detention order in question has been passed by the detaining authority based on the aforementioned Police dossier, report of Executive Magistrate, Kahara and reliable information available, explicitly keeping in view public order of the district.

That the allegations like wrongful application of the PSA to the case of detenu, jealousy, being politically motivated, rising popularity, bold depositions of the detenu etc., are blasphemous and denied out rightly. That regards the issuance of the detention order under PSA, it is to submit that detenu has been acting in ways detrimental to public order even since 2014 when first FIR was lodged against him. That thereafter, he was categorized at P/S Gandoh as history sheeter (Category-A) in 2017 and has continued so due to his repetitive illegal activities. That though some FIRs lodged against him were compounded / withdrawn under amnesty granted by the Govt., the detenu did not reform or mend his ways but instead got emboldened to carry out such illegal activities. That his illegal, immoral and violent activities coupled with incitement to lakhs of his followers became incremental and graver in nature and has been causing repeated public disorder, which is slowly and steadily becoming a norm for the detenu and his followers especially youth.

That looking at all these facts and evolving situation, a police dossier recommending the preventive detention of the detenu was submitted to the District Magistrate vide Conf/PSA/2024/24218/C dated 30.07.2024 featuring 10-FIRS and 12-DDRs which was returned to police for re-consideration and submission of updated status. That the detenu, who had become a member of Legislative Assembly (MLA) of the UT of J&K and as such expected to mend his ways upon swearing of sacred oath upon Indian Constitution as Hon'ble Legislator not just continued his illegal and inflammatory activities but he crossed all limits openly brandishing his "MLA status" calling upon his drastically increased followers / fan base to carry out all illegal activities like mining, traffic rules violation, heckling

and attacking Govt. officials as well as private individuals including law enforcement agencies like police and traffic cops whosoever came their way. That the situation had become so worse that the officials enforcing law and guiding the public towards a law based society fearing the detenu's reprimand and threats slowly and steadily stopped doing so. That anyone who pleaded with detenu being MLA about rules and laws was heckled by the later and his followers in his open "Darbar" That the morale of front line and emergency staff was also severely affected and they were hesitant to perform their duties. That on one instance after the repetitive threats, public humiliation and harassment of staff of GMC Doda by the detenu and his followers, the District Magistrate & Senior Superintendent of Police, Doda had to go to Govt. Medical College, Doda to convince all senior doctors to change their decision of mass resignation in the best interest of patient care / Emergency services. That the preventive detention of the detenu was ordered only as a measure of last resort when the action under substantive law with 8-additional FIRs and 4-DDRs (totaling to 18-FIRs & 16-DDRs) couldn't deter the detenu from mending his ways and he could be seen saying on record that FIRs meant nothing to him and that he being a lawmaker could change laws coming his way. That his consistent and escalatory unruly, immoral, illegal and violent activities forced the police to re-submit a fresh dossier (incorporating details of the earlier dossier dated 30.07.2024) on the basis of which along with report of Executive Magistrate, Kahara (Tehsildar) and reliable information, the office of the Deputy Commissioner was constrained to order his immediate detention under PSA for maintenance of public order in the district and this action, as stated in the said detention

order No. 05 of 2025 dated 08.09.2025 was issued only after drawing sufficient satisfaction that his remaining at large would definitely lead to large scale public disorder especially at a time when the district is reeling with large scale damages due to natural calamity. That to conclude, as per the dossier re-submitted by Senior Superintendent of Police, Doda, 18 FIRs & 16 DDRs have been lodged/registered against the detenu right from year 2014 to 2025.

That the detaining authority in addition to the aforementioned FIRS/DDRs has also taken into account report of Executive Magistrate (Tehsildar) Kahara, under No. 301-307/Gen/TK dated 06.09.2025 as well as reliable information available with his office and upon drawing sufficient satisfaction passed the detention order in question. That the behavior of the detenu has already caused disruption of public services in the past like suspension of non-emergency services by doctors of GMC, Doda & similar reaction by Safai Karamcharies of Municipality Doda after threats & derogatory verbal assault by the detenu. That the detention order passed is fully justified, as the detenu's continuous, provocative, and violent activities pose an imminent threat to public order, communal harmony, and governance particularly at such a time when District Doda is facing disaster like situation and engaged in providing relief and reconstruction measures.

That the detenu on the same night i.e 06.09.2025 clearly admitted about illegal seizing of the hospital items in an interview given to one Mr. Raja Shakeel on his social media account and further stated that he will

not accept the rules and shall further illegally seize the medical equipment wherever the administration decides to store it contrary to his wishes.

That, while the detenu was being detained, he tried to flee and even crossed the gates of the Dak Bungalow and as such the police officials had to bring him back to the Dak Bungalow for necessary formalities to be completed before he was sent to the lodgment centre. That at that time, outside the Dak Bungalow, some media persons were seen capturing the moment on their mobile phones/camerns and sensing opportunity, the detenu gave a call while looking at those cameras/phones and incited the public and his followers to gather and enforce a district-wide road blockade by making provocative statements such as "Poora Chakka Jam kardo" and "Jo jahaan hai waha se uth kay aajaaye."

That on the evening of same day i.e 08-09-2025, the 'PRO' of the detenu namely one Irfan Malik reiterated the incitement of the detenu and gave a call to public including women, children, old & infirm on communal lines to come on the roads and protest against alleged illegal detention. That the adverse impact of detenu's repeated instigation became evident on 09-09-2025, when large gatherings from various parts of the district assembled near Clock Tower. Doda, and outside his office, thereby creating a serious law and order situation in the town area.

That in view of the deteriorating situation, the office of the Respondent No.2, was forced to issue prohibitory orders under Section 163 BNSS vide 3600-14/DM/Doda dated 09-09-2025 throughout the district but that also didn't deter the infuriated miscreants who came on road on the call of detenu and his PRO acting on his behalf. That the

assembled mob blocked the main road, raised inflammatory slogans, and obstructed the free movement of the general public, causing significant disruption. That the mob also attempted to proceed towards a sensitive location near the residence of a BJP leader, with the apparent intent to incite communal tension which was stopped by Police authorities to prevent any full blown communal unrest in the town area.

That similar incidents of protests and violence were also reported from Sub-divisions of Thathri and Gandoh. That as per reports received from Sub-Division Thathri & Gandoh, as a result of provocative calls/statements given by the detenu at the time of his detention on 08-09-2025, thousands of the individuals violated the prohibitory orders issued u/s 163 of BNSS and converged from various areas of Tehsils of Kahara, Thathri, Gandoh and Chilli Pingal and as an unlawful assembly, resorted to illegal activities like breaking police barriers, stone pelting on government officials and their vehicles at several places like Kahara, Dunadi, Thathri, Kandhote & Farash Morh, Bhatyas, Bamoo etc. That the deliberate involvement of women, juveniles and underage children added to the complexity and heightened risk which prompted the police to avoid use of force on the mob. That activities of the mob (mostly youth) caused significant disruption to public order at a time when the district was already reeling with large scale damages due to natural calamity and the NH-244 closure due to a massive slides. That protests by the mob at different locations also led to large scale disruption of traffic and consequent traffic jams which unfortunately lead to death of an infant at Pul Doda due to being stuck and delay in reaching Associated Hospital of GMC Doda.

That the violence reached its peak when the mob reached Kandhote and the officials stationed at Doda Headquarter including DIGP DKR, SSP Doda and ADC Doda reached the location to prevent them from reaching Hindu populated Premnagar where there were high chances of communal clashes. That the senior officials tried to convince the youth to go back home and even arranged vehicles through ARTO Doda and ARTO Kishtwar for their return journey, but when it went dark, some miscreants climbed the slopes of adjoining hills and started fresh stone pelting on the Govt. officials injuring many police personnel and while doing so, reached a Hindu populated habitation on upper Kandhote where they damaged vehicles of the people belonging to the other community. That as a result, the residents of the areas belonging to Hindu community also came out and ruffled some by passers and as such there was every possibility of communal clash in the said village.

That the situation was doused after night long intervention of SDM and SHO Thathri who remained on spot and ensured that everybody stayed indoors. That most of the miscreants under the garb of darkness managed to flee and police detained few amongst them. That FIR Nos (i). 0055/2025 u/s 125/132/121(1)/191(2)(3) of BNS dated 10.09.2025, (ii) 0193/2025 u/s 126(2)/132/121/125/191(2) dated 10.09.2025 and (iii) FIR No. 0091 U/s 126(2)/125/132/191(2)/49 of BNS dated 09.09.2025 came to be registered at P/S Thathri, P/S Kishtwar and P/S Gandoh respectively, in respect of the incidents.

That looking at the worsening situation coupled with the circulation of provocative content and misinformation through various social media platforms, the internet services were snapped throughout the district

during the intervening night of 09/10-09-2025, strict enforcement along with additional requisition and subsequent deployment of companies of CAPF and Indian Reserve Police was done to bring down such cases of violence in the district. That the Magistrates were deployed at each vulnerable location of the district to work alongside police personnel and ensure effective implementation of prohibitory orders. However, despite law incidents of violence were reported in Doda town on 10-09-2025 which forced police to detain more such miscreants and Police Station Doda accordingly registered FIR No. 210 u/s 223 of BNS on 10-09-2025. That the situation was brought under control by the evening of 10-09-2025, strict vigil on social media posts led to blocking of approximately 300 accounts featuring such inflammatory posts which also helped douse the heightened sentiments.

That subsequently, the District administration in presence of DIGP DKR, DM Doda and SSP Doda conducted meetings with civil society members and heads of various religious places to assist in pacifying the tense situation caused as a result of the detenu's provocative call coupled with his PRO's communal appeal. As a result of the public outreach as well as confidence building measures, situation was brought under control, restrictions were lifted in a phased manner and district was brought back to normalcy

That the constitution itself places reasonable restrictions on fundamental rights of a citizen in the interests of larger public good, such as public order, morality, decency, security of the State, sovereignty and integrity of India and it is based on this concept that preventive detention laws like Public Safety Act, 1978 get legitimate backing to detain a

person purely for preventive purposes to desist him from performing any action affecting maintenance of public order or security of the state. That further, it has been held in a catena of judgments that the act/law applies evenly to all & a member of legislative assembly has no immunity against the same if he/she indulges in such prohibited activities. As such, allegations of silencing voice etc. are devoid of any merit and denied out rightly.

That the shifting of Ayush Arogya Mandir (AAM) Kencha and not the primary health Centre (PHC) as alleged by the detenu has been carried out by the Health department, Doda in view of damaged condition of the existing rented building. That although initially the building of Ghulam Hussain was preliminarily identified as proposed building however keeping in view a public resolution having more than 50 signatures submitted by a deputation of the general public of the village in favour of Sh. Abdul Rasheed S/o Abdul Aziz vide order No. BMO/T/202-03 dated 23.04.2025 a committee of seven members was constituted by BMO Thathri to conduct a comprehensive survey and recommend the most suitable, safe, and publically accepted building for relocation. That subsequently, upon inspection of both locations viz structures of Abdul Rashid and Ghulam Ali and also keeping in view aspirations of the general public, the committee recommended the centre to be shifted to the building of Abdul Rashid based on the ground that the said building was most suitable, safe and publicly accepted for relocation besides stating that the building of Ghulam Ali lacked electricity and adequate bathroom facilities & accordingly passed order dated 07.05.2025 which was

subsequently confirmed by Chief Medical Officer, Doda vide Order No. CMO/D/2025-26/292-95 dated 10.06.2025, read with corrigendum No. CMO/D/2025-26/309-11 dated 13.06.2025.

That on account of the rainfall on 26.08.2025, when one of the walls of the center collapsed posing risk to both staff and patients, Chief Medical Officer, Doda, vide letter No. CMO/D/Damage-rains-floads/2025-26/4262-65 dated 01.09.2025 directed the Block Medical Officer, Thathri, to shift the AAM to the new building of Abdul Rashid, selected based on both merit & wish of general public. However, the detenu who himself had admitted regarding the opinion of general public for building of Abdul Rashid S/o Abdul Aziz for the purpose of AAM, Kencha in contradiction to his stand & utter disregard to public opinion & Health Department order forcefully and illegally trespassed the premises along with his companions and committed theft using force and threats and took away medical equipment and other items including life saving drugs and kept them in the house of Ghulam Ali s/o Abdul Sattar on 06.09.2025, when the AAM centre had been made partially functional in new building. That Ghulam Ali S/o Abdul Sattar is encroacher of the state land and his intended building (for AAM) stands constructed on state land bearing khasra no. 58. That in spite of aforementioned facts, the detenu threatened and obstructed the govt. officials in shifting of the center despite repeated efforts and explanations by them.

That resultantly, due to arising public disorder, team comprising Tehsildar Kahara (Executive Magistrate 1 Class), SDPO Gandoh and CMO Doda were deputed on spot to liaison with the detenu being an MLA and ensure retrieval of stolen medical equipments, records and

essential medicines and their disbursal especially when the centre was opened after a gap of 10 days due to adverse weather, damages to road and building. But this infuriated the detenu further who could not be convinced and made provocative statements against the District Administration while obstructing and threatening Govt. servants and public opposing him on spot. That despite multiple rounds of efforts by aforementioned team, the detenu did not budge and even brandished his power of being a law maker and said that he could change the laws. That the detenu even came on record to say that he would steal and shift the medical equipment's of the centre forcibly every time the health department officials will try to shift the same to the committee's recommended centre. That view of above, FIR No. 90/2025 came to be registered against the detenu and his associates on the report of the BMO Thathri.

That throughout the entire episode, the detenu not only engaged in the said prejudicial act of seizing hospital equipments including life saving drugs but also incited his followers against the general public as well as administration who were opposing the detenu. That in view of above facts, the act of detenu cannot be termed as a result of sudden impulse but as a matter of policy i.e deliberate and declared intent to defy lawful authority. That a detailed report dated 06.09.2025 was also submitted by the Executive Magistrate, Kahara (Tehsildar) which clearly reveals the grave public order situation created by the detenu & his companions.

That three DDRs were recorded by the Police department as a result of the sequence of the events which have been mentioned in the Counter-Affidavit. That a detailed dossier containing 10-FIRs & 12-DDRs was submitted by the then Senior Superintendent of Police, Doda vide no. Conf/PSA/2024/24218/C dated 30.07.2024 to the deponent wherein it was recommended that activities of the detenue are highly prejudicial to the maintenance of public peace, tranquility & order and as such he may be detained under the provisions of Public Safety act. 1978 for a maximum period. That however, the deponent in his capacity as District Magistrate upon perusal returned back the same vide office letter No. 1509-10/DM/Doda dated 15.10.2024 for consideration and submission of current/updated status of the detenu. That thereafter contrary to allegation made regarding specific incorporation of 3 DDRs dated 07.09.2025, additional 8 FIRs and 4 DDRs were registered against the detenu post submission of previous dossier who continues to be a history sheeter of Category-A at P/S Gandoh since 2017. That the said additional FIRs & DDRS stand incorporated in the re-submitted dossier, perusal of which along with other material record clearly revealed that the detenu has failed to mend his ways and it was concluded that the detenu's illegal activities are consistent and incremental to cause public disorder which fact convinced the mind of the deponent to pass the detention order in the interests of the public order in the district. That since the re-submitted dossier contains detailed information about conduct of detenu including 10-FIRS and 12-DDRs which were a part of earlier dossier, the entire information on the basis of which the detention has been ordered has been supplied to the detenu.

That the detention order in question has been passed by the deponent in his capacity as District Magistrate and as such the allegations of conflict, malicious and malafide intention, bias, indifferent attitude, revenge, grudge etc. leveled in the writ petition is denied out rightly. That because of the consistent illegal activities of detenu, the dossiers dated 30.07.2024 and 07.08.2025 were submitted by the Sr. Superintendent of Police, Doda with the recommendations that the detenu be detained under the Public Safety Act for maximum period, as such, the claims of managing a quick dossier with malafide, malicious intention etc, are out rightly denied and the same is devoid of any merit.

That the deponent in his capacity as District Magistrate under Section 8 of the PSA has thoroughly considered the material placed before him and upon being satisfied that the activities of the detenu are prejudicial to the maintenance of public order, passed the order strictly in accordance with law. That therefore, the allegations of bias or hot exchange of words are denied as the same are uncalled for since the detention order in question has been passed by the detaining authority while performing an administrative function expressly conferred upon him by statute and upon careful consideration of the police dossier along with all the relevant records and inputs as objective necessity and with bonafide intent keeping in view Public order of the district. That, the exercise of jurisdiction by the District Magistrate cannot be labeled as acting as a judge in his own cause. That only public order has been explicitly emphasized and relied upon before invoking powers under section 8 of the PSA to detain the detenu only for preventive purposes, for which the District Magistrate is empowered to and as such the

question of recusal of a statutory duty merely on the whims and fancies of the detenu is uncalled for and hence rejected.

That the competent authority, after careful consideration of the information, concluded that the detenu's continued presence and his unlawful activities in society posed a serious risk to the public order of the district. That the detention order dated 08.09.2025 passed strictly in accordance with the law stands approved by the Govt. vide order no. Home/PB-V/736 dated 18.09.2025.

That allegations of FIRs being political in nature are denied out rightly as perusal of FIRs clearly reveals involvement of detenu right from 2014 in various prejudicial activities like insulting modesty of a woman (FIR no. 130/2025), use of criminal force to obstruct a public servant from lawful discharge of his duties, intentional insults to provoke breach of peace, endangering life & personal safety of others, heckling & making public officials hostage, inciting general public towards violence, making public office non-functional for several days, creating political stunts in public offices & many more.

That the detenu is no authority to judge performance of any public official and lawful remedies are available to raise issues pertaining functioning of public offices, as such involvement of detenu in aforementioned acts clearly establishes that the detenu believes in goondaism, as if the laws don’t apply to him and getting his things done by force/violent manner instead of legally established norms/rules.

That it is a settled legal principle that right to comment or criticize upon measures undertaken by the Govt. doesn't confer the right to incite

people to resort to violence against Govt & its functionaries as has been done by the detenu on numerous occasions. That the aforementioned prejudicial acts of the detenu have created both law & order issues as well as public order issues in the past and they have great propensity to disturb the same in future as well.

That the detention order in question has been passed for maintenance of public order based on the detailed material record viz police dossier, report of Executive Magistrate, Kahara and reliable information which clearly reveals consistent, incremental prejudicial activities of the detenu. Moreover, it has been clearly held by the courts that preventive detention can co-exist with criminal prosecution i.e failure to prosecute doesn't not invalidate a preventive detention order passed strictly in conformity to rules. That reasonable restrictions imposed by the administration post detention of the detenu were a result of the instigation/provocation by the detenu to deliberately cripple administrative machinery, halt relief operations, and disrupt public supplies, which squarely falls within disturbance of "**public order"**.

That the detention order in question has been passed keeping in view police dossier comprising of 18-FIRs and 16-DDRs, Report of Executive Magistrate, Kahara as well as reliable information available. That the detenu has long history of getting involved in prejudicial activities and accordingly FIRs/ DDRs stand lodged against him right from 2014.

That the detaining authority has provided all vital information viz background of detention etc, to the detenu besides the information that he

can make a representation to the Govt. against the order passed, strictly as per the provisions of the Public Safety Act and as such allegations leveled are without any merit and denied out rightly. That accordingly a representation dated 20.09.2025 was submitted by the detenu through his father Shamas Din, which has been considered by the deponent as well as the Govt. The averment of the detenu regarding non-specification of time are uncalled for, as no such time period has been prescribed by the act. That the detenu must be put to the strict proof with respect to the judgments specifying vitiation of the detention order merely on basis of non-specification of the time.

That the detention order, along with all the relevant documents has been served upon the detenu through Sh. Vinod Kumar, JKPS-116312 ASP, Bhaderwah, who also explained grounds of detention as well as means available to him including representation to the Govt. in the language fully understood by him and in lieu of which his signatures were obtained as acknowledgment of receipt.

That the detenu has a long history of indulging in prejudicial activities and in this regard the answering respondent/deponent may be permitted to file an application before the Court to bring on record and ply videos of the detenu stored in a pen drive wherein the detenu can be seen inciting general public, passing derogatory remarks against public officials, glorifying activities of prescribed militants like Burhan Wani & Masood Azhar etc. Therefore, the allegations of circulating doctored videos, tarnishing image of the detenu etc. are totally false and denied out rightly.

That a representation dated 20.09.2025 was emailed to the office of the detaining authority through Sh. Shamas Din, R/o Tandla, Tehsil Chilly Pingal, District Doda, father of the detenu on 20-09-2025 at 05:34PM and through registered post on 25.09.2025 wherein he requested for revocation/ quashment of the detention order passed vide No. PSA-05 of 2025 dated 08.09.2025 and immediate release of the detenu, citing certain points. That the said representation has been considered by the detaining authority vide Order No. 4106-10/DM/Doda dated 26.09.2025. That the Government also considered the said representation independently vide No Home/PB-V/494/2025/7681254 dated 08.10.2025 and found the same to be without merit.

That the detention order in question is purely preventive in nature and has been passed explicitly keeping in view the public order of the district. That registration of FIR No. 90/2025 U/S 221, 329(3), 351(2), 305(e), 191(2) BNS at Police Station Gandoh on 06-09-2025 and recording of three DDRs, i.e, DDR No.45 dated 07-09-2025 at Police Station Thathri, DDR No. 14 dated 07.09.2025 at Police Station Doda and DDR No. 25 dated 07.09.2025 at Police Station Thathri against the detenu depict the proximate nexus with the consistent prejudicial activities on the part of the detenue.

That the detenu has filed a pre-mature petition before the Court as he himself has admitted in the Petition that on 20.09.2025, he had submitted an representation before the District Magistrate, Doda and the Govt. through email & speed post.

05. The petitioner/detenu has arrayed the Deputy Commissioner, Doda by name as respondent No.3 on the main allegation that he passed the impugned detention order in his capacity as District Magistrate Doda (respondent No.2) by misusing and abusing his authority, to wreck personal vengeance with the petitioner.

Respondent No.3- Shri Harvinder Singh, Deputy Commissioner, Doda has accordingly filed a reply in his said capacity also by averring that the writ petition is misconceived and not maintainable in its present form, in asmuch as, the detention order in question has been passed by the answering respondent under Section 8 of the PSA in his capacity as the District Magistrate, Doda. That same has been passed on the detailed dossier submitted by the Senior Superintendent of Police, Doda, Report of Executive Magistrate, Kahara (Tehsildar) and reliable information available in his office.

That he neither has nor claims any personal interest in the matter and all actions have been taken bonafidely and in accordance with the provisions of the statute governing preventive detention.

That he has been wrongly arrayed as a party in his personal capacity by mentioning his name when the impugned order was issued by him while performing an administrative function expressly conferred upon him by the statute, with bonafide intend for maintenance of public order of the district.

That the specific allegations of annoyance, animosity, non-consideration of detenue's views etc leveled in Para No.8 of the petition, allegations of malafide intention, personal bias, concealment of facts etc leveled in Para No.9 of the petition and the allegations of being head on with each other, malicious and malafide intention, biased and indifferent

attitude, personal bias, grudge and judge in his own cause etc leveled in Para No.10 of the petition against him are a result of personal imagination of the petitioner/detenue and hence denied out rightly. That such allegations appear to be a deliberate attempt on the part of the petitioner to distort the true facts of the case so as to mislead the Court.

06. In his short rejoinder dated 19.11.2025, the petitioner has out rightly denied the alleged baseless allegations made by respondent No.2 i.e detaining authority in the Counter Affidavit to the effect that there are recorded instances of the petitioner/detenue glorifying the activities of militants like Burhan Wani and Masood Azhar and that he i.e detenue has came out in open support of an OGW Category-I namely Rehmatullah S/o Abdul Ghani Paddar through provocative speeches while mobilizing crowd/ public against Government's action in the interest of security of State as also his i.e detenue's alleged association with other OWG Category-I namely Mohd Rafi alias Pinka S/o Ghulam Qadir Sheikh.

The petitioner/detenu has also out rightly denied the further allegations made in the Counter Affidavit filed by respondent No.2 to the effect that he i.e detenu appealed to the general public to act as Lashkars. It has been pleaded in the rejoinder that respondent No.2 has made bold observations in the Counter Affidavit just to justify the slapping of detention order. It has been further averred in his rejoinder by the petitioner that he has full faith in the Constitution of India and has never indulged in any activity prejudicial to the security of the state. That respondent No.2 has tried to tarnish the image of the detenue by highlighting edited videos of the detenue through electronic/social media so that a narrative is built

that the detenue has a soft corner for anti-national elements. That the false cases were registered against him and all are of political nature based on the instances where he espoused the cause of the general public. That respondent No.2 has attempted to malign his image by connecting his name with anti-national elements named in the Counter Affidavit when the fact remains that the detenu is a public leader and believes in sovereignty and integrity of India.

07. Respondent No.2 while responding to the Rejoinder of the petitioner through his supplementary affidavit dated 02.12.2025 has pleaded;

(1) That the detenue has a long history of indulging in activities prejudicial to the maintenance of public order, and his conduct has been consistently found to be inimical to the peace, tranquility, and security of the area. The record placed before the detaining authority clearly establishes the continued involvement of the detenue in acts having a direct bearing on disturbing public order.

(2) That with respect to the recorded instances of the detenue glorifying prescribed militants such as Burhan Wani & Masood Azhar, extending support for OGW namely Rehmatullah S/o Abdul Ghani Paddar etc., appealing general public to act as Lashkars, Mocking religious sentiments of other faiths etc. through provocative speeches, it is submitted that the said assertion is based on specific material available with the competent authority. The activities of the detenue, including his public speeches, gatherings, and statements, have contributed to creating an atmosphere of radicalization and provocation, thereby adversely impacting public order.

(3) That the deponent has already filed an application before this Court seeking permission to bring on record & play the video

recordings in open court in which the detenue is clearly seen glorifying the aforementioned militants and indulging in such prejudicial activities.

(4) That the said application is pending consideration before this Court, and upon being granted permission, the respondents shall place on record the relevant video material in a Pen Drive or in such manner as deemed appropriate by this Court.

(5) That the said video evidence, once taken on record, will further substantiate that the detenue's conduct was grossly prejudicial to public order and thereby fully justified the issuance of the impugned detention order under the Public Safety Act.

(6) That the present affidavit is being filed to clarify and reaffirm the stand of the respondents and to place before this Court the factual position with respect to the allegations made in the counter affidavit and the application already submitted for bringing additional material on record.

(7) That further the allegations of trying to tarnish image, highlighting edited videos, curbing voice & maligning image etc. leveled by the detenue in rejoinder are denied out rightly. Further, it is submitted that allegations of FIRs being political in nature are denied out rightly as perusal of FIRs clearly reveals involvement of detenu right from 2014 in various prejudicial activities like insulting modesty of a woman (FIR no. 130/2025), use of criminal force to obstruct a public servant from lawful discharge of his duties, intentional insults to provoke breach of peace, endangering life & personal safety of others, heckling && making public officials hostage, inciting general public towards violence, making public office non-functional for several days, creating political stunts in public offices & many more.

08. I have heard learned counsel for the parties at length in respect of the matter.

09. The learned counsel for the petitioner Mr. Rahul Pant, Sr. Advocate assisted by Ms. Appu Singh Salathia, Mr. S S Ahmed and Mr. Zulkarnain Choudhary, Advocates while reiterating his stand already taken in the writ petition, very vehemently contended that the impugned detention order is bad under law being the outcome of absolute non-application of mind on the part of detaining authority and is based on distorted facts. He contended that the allegations leveled against the petitioner and made basis of impugned detention order are far from the facts. That the case FIR numbers which have been made the basis for passing of the impugned detention order cover the stale allegations against the petitioner having no proximity or live link with the object i.e the passing of impugned detention order.

10. That a perusal of 18 FIRs relied upon by the detaining authority will show that the first three FIRs were registered about a decade back from the date of passing of the impugned detention order, thus, having no proximity with the object of passing of the impugned order. The learned counsel contended that some of the cases have already been withdrawn/compounded by the government when one of the case FIR has been closed as not admitted during investigation. That most of the case FIRs pertain to the allegations of violation of Modal Code of Conduct. He further contended that even if the allegations made in the rest of the criminal cases can be supposed to be true for arguments sake, the same pertain to issues of law and order and not the public order. Regarding the entries made in DDRs, the learned counsel contended that same cannot be considered for passing a preventive order as being unconfirmed and un-investigated.

The learned Senior counsel further contended that the copy of the detention record has not been furnished to the detenu in entirety so much so that the learned counsel for the respondents/UT also made an application to the Court for permission to play some videos in support of the allegations against detenu without the same being made a part of the detention record with the furnishing of a copy of the same to the detenue.

The learned counsel further contended that the respondents made inordinate delay in deciding the representation of the petitioner which fact vitiates the detention order and renders the same liable to be quashed. It was submitted that a representation against the detention order was made by the detenu through his father by submitting the same to the Government as well as to the detaining authority through email on 20.09.2025. That respondent No.1 was under a legal obligation to address the same expeditiously but the said representation came to be decided on 08.10.2025 as conveyed through communication No. Home/PB-V/494/ 2025/7681254 dated 08.10.2025. He contended that the respondents/ government waited for the opinion of the Advisory Board till 06.10.2025 and thereafter rejected the representation of the detenue on 08.10.2025. He contended that the Government was under an obligation to decide the representation of the detenue irrespective of or even before the opinion of the Advisory Board.

The learned Senior counsel while placing reliance on the judgment of the Hon'ble Supreme Court passed in case titled ***"Ranjit Dass vs State of West Bengal", 1972(2) SCC 516***, submitted that a delay of 19 days occasioned by the Government in considering the representation of a detenue has been opined as fatal for the detention order.

The learned senior counsel further contended that a detenu is within

his right to raise additional grounds in his petition or during his arguments notwithstanding the taking of the same in the earlier representation. He further contended that DD Reports having been made as basis of the impugned detention order are un-confirmed and un-investigated reports which could not have been so made as the ground for detention order. He further contended that the grounds basing the impugned detention order apparently look to be the replica of the police dossier, thus being bereft of the application of mind on the part of detaining authority. The learned counsel very vehemently contended that the allegations in almost all the pending criminal cases relied upon by the detaining authority pertain to normal law and order issues and not the social order. That the detaining authority was under an obligation to justify that the ordinary law of the land was not sufficient to deal with the situation. He contended that it is well settled that a detention order cannot be made a substitute for pressing into service the ordinary law of the land so as to relieve and absolve the investigating authority of its functions to investigate crimes.

The learned senior counsel further contended that the Hon'ble Supreme Court of India has quashed the impugned detention orders in a number of cases on the ground of the failure of the detaining authorities to furnish the entire material and documents relied upon by them in passing of the social orders. The learned senior counsel submitted that the issue regarding shifting of the Health Sub Centre at Kencha had been pending for several months and was under the notice of both District Administration and the petitioner as MLA concerned. That for nearly about 15 years, the Health Centre had been functioning in a rented private house belonging to one Mohd Rafiq S/o Ghulam Hussain in Ward No. 2, Kahara at a nominal

rent of ₹100-200 per month as no other house owner was willing to provide premises at that time. That upon the re-assessment under new Government Rent Rules, it was observed that the Government Institutions should preferably be accommodated only in buildings constructed on propriety land. That since the house of Mohd Rafiq was situated on State land as such the shifting process was already under official consideration. That when the house of Mohd Rafi got completely damaged, an official committee was constituted for identification of the alternative locations within the same ward. That the majority of the local residents and the petitioner being the MLA concerned supported shifting of the Health Centre to the house of one Ghulam Ali S/o Abdul Sattar in the same Ward No.2 at Kencha. That however, some Health Department officials and the Deputy Commissioner, Doda allegedly showed their inclination for shifting of the Health Centre to the house of Mr. Asif Iqbal located in a different Ward despite public objection.

11. It was argued by Ms. Appu Singh Salathia, Advocate learned counsel, for the petitioner/detenu that admission of the reliance upon the videos by the respondents is clear from the grounds of the detention itself and it is surprising that the application was filed in the Court for permission to ply the videos in open Court. That there is equally an admission on the part of the respondents that they did not supply copies of the videos to the petitioner/detenu. She submitted that non-supply of the said videos referred to and relied upon by the detaining authority denies the opportunity to the petitioner/detenue to make an effective representation and such lapse vitiates the detention order.

The learned counsel further contended that the detaining authority in its counter affidavit *inter alia* admitted that while passing the impugned detention order, reliance was also placed on (i) Dossier re-submitted by the Senior Superintendent of Police, Doda containing previous and past conduct of the detenue, (ii) Report of Executive Magistrate (Tehsildar), Kahara and (iii) reliable information available with the Deputy Commissioner. She submitted that apart from the non-supply of the videos, the aforesaid documents were not also furnished to the detenue which amounts to the infraction of the provisions of Article 22 of the Constitution of India and the provisions of clause 13(2) of the PSA.

The learned counsel further contended that the respondents have occasioned inordinate and intentional delay in deciding the representation dated 20.09.2025 of the petitioner/detenue. She submitted that it has been admitted by the detaining authority in its counter affidavit particularly at Paras 13 and 25 that a representation was submitted on behalf of the petitioner both to the Government as well as to the Deputy Commissioner on 20.09.2025 by email whereafter a hard copy of the same was also submitted on 25.09.2025. That the representation dated 20.09.2025 received by the respondents through email on the same day came to be rejected on 08.10.2025 i.e after 18 days. That the respondents did not explain in their affidavit as to why the representation was considered after 18 days. She submitted that actually the respondents waited for the opinion of the Advisory Board and took the said opinion as an excuse for rejection of the representation. She submitted that it is well settled by the Hon’ble Supreme Court that Government is under an obligation to decide the representation of a detenu immediately after the same is received,

independent of the opinion of the Advisory Board and a delay of 18 days in deciding the representation has already been held to be fatal to the detention order.

The learned counsel further submitted that no ground at all was made out in the backdrop of allegations against the petitioner even if supposed to be true, for presuming that the alleged activities amount to breach of 'public order'. She submitted that the allegations in all the FIRs relied upon by the detaining authority amount to a **law and order issue** and not the **public order** as alleged. She further contended that there is no proximity or nexus between the FIRs relied upon by the detaining authority being stale and the object of passing the detention order.

She further submitted that it is a settled legal position that unverified and uninvestigated DDRs cannot be made the basis to snatch the liberty of a person.

Ms. Appu Singh Slathia, Advocate in support of her arguments placed reliance on the judgments cited as **(1) Sudhir Kumar Saha v. Commissioner of Police, Calcutta & Anr, 1970 AIR 814, (2) Smt. Bimla Dewan v. Lieutenant Governor of Delhi, 1962 AIR 1257, (3) Abdul Razak Nannekhan Pathan v. Police Commissioner, Ahmedabad & another, 1989 AIR 2265, (4) Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City & Anr, 1989 AIR 491, (5) Mallada K Sri Ram v. The State of Telangana and others, 2022 Live Law (SC) 358, (6) Ravinder Kumar Gupta v. UT of J&K and others, WP (Crl) No. 21/2022), (7) Prince Jitendrabhai Aghara through Jitendra Kumar Amarshibhai Aghara v. State of Gujarat (R/Special Civil Application No. 20567 of 2022, (8) Bank Sneha Sheela v. The State of Telangana and others [Criminal Appeal No. 733 of 2021-SC],**

(9) Ameena Begum v. State of Telangana and others [Criminal Appeal of 2023-SC], (10), Mohd. Yousuf and Mohd. Aslam v. Union territory of J&K and others [LPA No. 69/2022 and LPA No. 76/2022], (11) Nenavath Bujji etc. v. The State of Telangana and others [Criminal Appeal Nos. 1738-39 of 2024-SC], (12) Aqib Ahmad Renzu v. Union Territory of J&K and others [LPA No. 171/2024], (13) Adil Hussain Mir v. UT of J&K and others [HCP No. 287/2024], (14) Bilal Ahmad v. UT of J&K and others [HCP No. 82/2025, decided on 05.02.2026], (15) Abdul Razak Nannekhan Pathan v. Police Commissioner, Ahmedabad and another, 1989 AIR 2265, (16) Shiv Prasad Bhatnagar v. State of Madhya Pradesh and another, 1981 AIR 870, (17) Mallada K Sri Ram v. The State of Telangana and others, 2022 Live Law (SC) 350, (18) Sama Aruna v. State of Telangana and another [Criminal Appeal No. 885 of 2017-SC], (18) Pritam Singh v. Union territory of J&K and others [HCP No. 83/2024], (19) Mohammad Yousuf Rather v. The State of Jammu and Kashmir,1979-1979 AIR 1925, (20) Sajad Ahmad Bhat v. Union Territory of J&K [HCP No. 183/2025], (21) Abdul Sattar v. Union Territory of Jammu and Kashmir and others [HCP No. 159/2024], (22) Javaid Iqbal Reshi v. Union Territory of Jammu and Kashmir and others [HCP No. 160/2024], (23) Shafayat Amin Shah v. Union Territory of Jammu and Kashmir and others,[WP Crl No. 194/2022], (24) Sarpreet Singh v. Union Territory of Jammu and Kashmir and others [WP Crl No. 27/2021], Shabir Ahmad Malik v. Union Territory of Jammu and Kashmir and others [WP Crl No. 165/2021], (25) Sajad Ahmad Bhat v. UT of J&K and others[HCP No. 183/2025], (26) Adil Hussain Mir v. UT of J&K and others [HCP No. 287/2024], (27) Mohhd Jaffer SSheikh vv. UT of J&K [HCP 20/2025], (28) Javaid Ahmed Baigh v. UT of J&K [WP (Crl) 61/ 2003], (29) Shabir Ahmad Dar v. UT of J&K [HCP 314/2024] , (30) Thahira Haris etc. v Government of Karnataka & Ors [Criminal Appeal Nos.733-734

of 2008-SC, (31) Abdul Sattar vs UT of J&K & Ors [HCP 119/2024], (32) Shafayat Amin Shah v. Union Territory of Jammu and Kashmir and others [WP Crl No. 194/2022, (33) Sarpreet Singh v. Union Territory of Jammu and Kashmir and others [WP Crl No. 27/2021], (34) Danish Haneef Wani v. State of J&K and others [WP Cr No. 669/2019], (35) Aqib Ahmad Renzu v. Union Territory of J&K and others[LPA No. 171/2024], (36) Shabir Ahmad Malik v. Union Territory of Jammu and Kashmir and others [WP Cf. No. 165/2021], (37) Icchu Devi Choraria v. Union of India & Ors, 1980 Legal eagle (SC) 354, (38) Mrs. Nafisa Khalifa Ghanem v. Union of India and others, (1980)6 SC CK 0005-SC), (39) Mohinuddin v. District Magistrate Beed and others, 1987 AIR 1977, (40) Vijay Kumar v. State of Jammu and Kashmir and others, 1982 AIR 1023, (41) Dr. Rahamatullah v. State of Bihar and another, 1981 AIR 2069, (42) Isfaq Ahmad Wani v. Union Territory of J&K [HCP No. 162/2024], (43) Bilal Ahmad v. UT of J&K and others [HCP No. 82/2025, date of decision 05.02.2026], (44) Mohinuddin v. District Magistrate Beed and others, 1987 AIR 1977, (45) Icchu Devi Choraria v. Union of India & Ors, 1980 Legal eagle (SC) 384, (46) Ghulam Haider v. UT of J&K and others, [HCP No. 83/2025], (47) Jaffar Ahmad Parray v. Union Territory of J&K and another [WP Crl No. 209/2023], (48) Rekha v. State of Tamil Nadu TR Sec To Govt & Another [Criminal Appeal No. 755 of 2011-SC], (49) Bank Sneha Sheela v. The State of Telangana and others [Criminal Appeal No. 733 of 2021-SC], (50) Subhash Popatlal Dave v. Union of India and another [Writ Petition (Crl) No. 137 of 2011], (51) Nenavath Bujji etc. v. The State of Telangana and others [Criminal Appeal Nos. 1738-39 of 2024-SC], (52) Sama Aruna v. State of Telangana and another [Criminal Appeal No. 885 of 2017-SC]

12. Mr. Muzaffar Iqbal Khan, Advocate, Ld. counsel for the petitioner

very vehemently submitted that the impugned detention order is illegal, arbitrary and unconstitutional as the same is not only violative of the statutory provisions but also strikes at the very root of democratic governance, where an elected representative of the people has been detained for serving the public order.

He submitted that the representation submitted by the detenue was not decided independently by the detaining authority which amounts to the violation of provisions of Section 13 of PSA as well as the provisions of Article 22(5) of the Constitution of India. He submitted that the representation on behalf of the detenue was submitted to the detaining authority as well as to the government as provided under Section 13 of the PSA. That the detaining authority failed to independently consider and decide the same and instead mechanically forwarded the same after making some observation which amounts to abdication of statutory responsibility. That such conduct demonstrates non-application of mind and renders the continued detention illegal.

The learned counsel in support of his arguments placed reliance on the authoritative judgment of the Hon'ble Supreme Court of India cited as ***Kamlesh Kumar Ishwardas Patel etc vs Union of India & Ors, 1995(3) Crime (SC) 26*** and contended that it has been authoritatively laid down in the said case that preventive detention order is rendered illegal on account of the failure on the part of the officer who had made the order of detention to independently consider the representation submitted by the detenu against his detention and to take a decision on the said representation.

The learned counsel further contended that the impugned detention order has been *inter alia* based on some irrelevant allegations having no

foundational basis in the shape of registration of any FIR to that effect while placing reliance on the authoritative judgment of the Hon'ble Supreme Court in **Ameena Begum vs State of Talengana & Ors (2023) 9 SCC 587**, the leaned counsel submitted that it has been held that when relevant and irrelevant material is taken into consideration, the detention order is vitiated and is rendered liable to be quashed.

The learned counsel further contended that the alleged grounds of the detention order clearly reveal presence of emotions, beliefs and prejudices of the detaining authority for passing the order. He contended that the detaining authority should have informed himself about the caution sounded by the Hon'le Apex Court in **Rajesh Gulati vs Government of NCT of Delhi** that a detaining authority should be free from emotions, beliefs or prejudices while ordering detention. He further contended that a detaining authority must be cautious and circumspect that no extra or additional words or sentence finds place in the order of detention. He alleged that in the present case the order of detention is full of irrelevant material such as false and malicious reference to the use of drug and commission of anti-national activities which fact itself is sufficient to render the detention order illegal. While again placing reliance on the judgment of the Hon'ble Supreme Court in **Ameena Begum vs State of Talengana & Ors** (supra), he contended that it has been *inter alia* laid down in the said case that "the detaining authority must be cautious and circumspect that no extra or additional word or sentence finds place in the order of detention, which evinces the human factor, his mindset of either acting with personal predilection by invoking the stringent preventive detention laws to avoid or oust judicial scrutiny, given the restrictions of

judicial review in such cases, or as an authority charged with the notion of overreaching the courts, chagrined and frustrated by orders granting bail to the detenue despite still opposition raised by the State and thereby failing in the attempt to keep the detenue behind bars".

The learned counsel submitted that the Hon'ble Supreme Court of India in **Banka Sneha Sheela vs The State of Telangana, 2021 0 Supreme (SC) 414** and **Frances Coralie Mullin vs W.C Khambra (1980) 2 SCR 1095** highlighted its role as also the role of the High Courts in case of preventive detention by laying down that same has to be one of internal vigilance. That no freedom is higher than personal freedom and no duty higher than to maintain it unimpaired. That the Court's writ is the ultimate insurance against illegal detention. That Article 22(5) vests in detenue the right to be provided with an opportunity to make a representation.

He further argued that it has been held by the Hon'ble Supreme Court in **Banka Sneha Sheela vs The State of Telangana** cited (supra) that Article 22 (3) is an exception to Article 21 and preventive detention is repugnant to democratic ideas.

It was further argued by the learned counsel that the detaining authority failed to communicate to the detenue the time frame within which he could make effective and timely representation, thereby violating Article 22(5) of the Constitution of India. While placing reliance on the judgment of Jitendra s/o Sri Rajendra Nath Mishra vs District Magistrate & Ors, the learned counsel submitted that it has been held in the said case that, "We make no bones in observing that a partial communication of a right (in the grounds of detention) of the type in the instant case, wherein the time limit for making a representation is of essence and is not communicated in the

grounds of detention, would vitiate the first fundamental right guaranteed to the detenu under Article 22(5) of the Constitution of India, namely of being communicated, as soon as may be, the grounds of detention.

The learned counsel further contended that the detenue is a duly elected MLA chosen by the people of Doda to raise their grievances, solve their problems and fight for their rights. That the detenue has consistently worked for the welfare of the common people, as a result of which people openly support him and stand by him. That due to his detention under PSA, the people of his constituency, have been suffering as the public grievances have remained unheard and the democratic representation stands paralyzed.

He further contended that the detention order refers to 18 FIRs, all relating merely to alleged violation of the Model Code of Conduct, which by no stretch of imagination, constitute activities prejudicial to public order or security of the State. He further contended that the very object of the PSA is to protect the interests of the public, whereas in the present case, the PSA has been invoked against a person who is working for the public. That PSA is meant to be invoked where the public order or security of the State is threatened and not where a public representative is protecting public interest.

It was further contended by the learned counsel that the detaining authority bears personal animosity towards the detenu and has acted with a pre-determined and biased mind. That the Deputy Commissioner had earlier made complaints and personal attacks against the detenu, and the present detention is nothing, but personal revenge. That no authority can be a judge in its own cause, and the Deputy Commission being personally involved, could not have passed or participated in the detention process.

That such action amounts to colourable exercise of power, rendering the detention unconstitutional.

Mr. Muzzaffar Iqbal Khan, Advocate in support of his arguments placed reliance on the judgments cited as, **(i) Kamleshkumar Ishwardas Patel etc vs Union of India & Ors, 1995 3 Crimes (SC) 26, (ii) Ameena Begum vs The State of Telangana & Ors, 2023 INSC 788, (iii) Banka Sneha Sheela vs The State of Telangana & Ors, 2021 0 Supreme (SC) 414, (iv) Makhan Din vs Union Territory of J&K & Ors [WP(Crl) 21/2020, decided on 20.11.2020], (v) Jitendra s/o Sri Rajendra Nath Mishra vs Dist. Magistrate & Ors, 2004 CRILJ 2967, (vi) Najmussaquib vs State of J&K & Ors [WP(Crl) 42/2019, decided on 28.02.2020**].

13. *Per Contra*, the learned counsel for the respondents/UT Mrs. Monika Kohli, learned Sr. AAG and Mr. Sunil Sethi, learned Sr. Advocate, in rebuttal, argued that the petition filed on behalf of the petitioner impugning the detention order in question is totally meritless as the detention order in question has been passed by the learned detaining authority (respondent No.2) on the basis of concrete and substantial grounds regarding the involvement of the petitioner in the commission of criminal acts with strong tendency to disturb the public order. They submitted that the detention order in question came to be issued by the learned detaining authority in exercise of his bonafide powers under the provisions of Section 8 of the PSA with a view to prevent the detenue from acting in a manner prejudicial to the public order.

The learned counsels submitted that some out of 18 number of criminal cases registered against the petitioner/detenue in addition to various Daily Dairy Reports cover the actions of the detenue that carried

tendency to promote, propagate and attempt to create a fear of enmity, hatred and disharmony in the society on the ground of religion and community etc.

The learned counsel very vehemently contended that the object of the preventive detention laws is preventive rather than punitive. They submitted that there was more than sufficient material available before the learned detaining authority for *prima facie* making a reasonable opinion that having regard to the activities of the petitioner, he (petitioner) is likely to act in the manner prejudicial to the social order.

The learned counsel invited the attention of the Court towards the case FIR No. 105 of 2023, registered at Police Station, Gandoh under Section 153-A, 295-A IPC to substantiate that the activities of the detenue were prejudicial to the public order and in case he was not kept under his preventive detention, there was every apprehension of the serious incidents of public disorder at his hands. It was contended that the aforesaid case FIR No. 105/2023 came to be registered at Police Station, Gandoh on 27.12.2023 when one Baldev Singh S/o Tej Ram R/o Ghill Tehsil Gandoh/ complainant produced a memorandum of Hindu Jan Sabha Bhalessa mentioning that on the said date a meeting of Hindu Jan Sabha was called under the president ship of Sh. Baldev Singh at Gandoh. That during meeting the viral video on social media of one Mehraj Din DDC Kahara- hurting the sentiments of the Hindu Community was discussed came to be discussed. That he has stated in his viral video against the nation and tried to instigate the youth of majority community against Hindu community. That he in his viral video tried to spread the hatred between two communities which can create law and order problem in Bhallessa at any

time etc.

The learned counsel further submitted that on 07.09.2025 a report vide DDR No. 14 was entered in the Daily Diary of Police Station, Doda to the effect that at that day an information has been received from reliable sources that the Sikh community has held a protest at Gurudwara Saw Mohalla as the MLA Doda Mehraj Din Malik (detenue) has uploaded a video on social media in which he has abused the Deputy Commissioner, Doda Harvinder Singh. That the sentiments of the Sikh community, have got hurt. That MLA Doda wants to disturb the peaceful atmosphere and communal harmony in district Doda, due to which there can be law and order problem in the district particularly Doda town.

The learned counsel submitted that a number of Reports stand entered in the Daily Diaries of the different police stations of Doda evidencing the propagating and instigating behavior of the detenue for disturbing the public order. They submitted that 18 number of criminal case FIRs as mentioned in the grounds of detention vis *(1) FIR No. 22/2014, u/ss 353,323,504 RPC (2) FIR No. 54/2016, u/ss 341,504 RPC, (3) FIR No. 59/2016, u/ss 336, 504, 353, 427, 147 RPC, (4) FIR No. 103/2021, u/ss 353, 427, 504 IPC, (5) FIR No. 103/2023 u/ss 341,504, 506 IPC, (6) FIR No. 105/2023, u/ss 153-A, 295-A IPC, (7) FIR No. 55/2023, u/ss 307,332,336,323,341,147,148 IPC, (8) FIR No. 46/2024, u/s 188 IPC, (9) FIR No. 47/2024, u/s 188 IPC, (10) FIR No. 48/2024 u/ss 353,,452,147,504,506 IPC, (11) FIR No. 212/2024, u/s 223 BNS, (12) FIR No. 92/2024, u/s 223 BNS, (13) FIR No. 229/2024, u/ss 132/351(2)/352/223 BNS, (14) FIR No. 94/2024, u/ss 126(2), 115(2), 351 (2), 352, 307, 324(4) BNS, (15) FIR No. 96/2024, u/ss 223 BNS, (16) FIR No. 99/2024, u/s 125*

BNS, (17) FIR No. 130/2025, u/ss,356(2), 79, 351(2) BNS and (18) FIR No. 90/2025, u/ss 221, 329 (3), 351(2), 305(e), 191(2) BNS, of Police Stations, Gandoh, Bahu Fort, Jammu and Doda stood registered against the petitioner/detenu, which is sufficient to demonstrate his past and future apprehended conduct. That besides the case FIRs, 16 DDR Reports stand entered in the Daily Diaries of different police posts/stations of the District Doda revealing the illegal activities of the detenu.

The learned counsel submitted that a copy of the detention record in entirety was furnished to the petitioner/detenue at the time of his arrest in execution of the detention order and he being highly qualified person is supposed to have been informed about the allegations against him.

It was also contended that the petitioner was informed of his right to move representation to the learned detaining authority and also to the Government. That the representation filed on behalf of the petitioner was duly considered by the Government with communication of the result thereof.

The learned counsel submitted that the detention order under challenge does not suffer from any sort of illegality as the same stands passed by the learned detaining authority upon proper application of mind. They also contended that having regard to the material against the detenue basing the detention order, it is not proper for the petitioner to allege that the detention order is the result of animosity between him and the District Magistrate, Doda.

The learned counsel very vehemently contended that some of the criminal cases registered against the detenu as also the Daily Diary reports entered against him clearly portray the tendency of his actions to lead to

social disorder. They submitted that registration of the case FIR No. 05/2023 of Police Station, Gandoh under Sections 153-A, 295-A IPC as also the Daily Diary Report No.14 dated 07.09.2025 of Police Station, Doda are indicative of the fact that the resentment was shown by Hindu and Sikh communities in protest to the actions of the detenu. It was further contended that the detenu does not even respect the dignity of women and has made repeated derogatory and threatening remarks against lady doctors serving at GMC, Doda. That the illegal activities of the subject and the resultant action of youth following him as many a times brought to standstill the entire government machinery especially emergency services at Associated Hospital, GMC, Doda on 29.05.2025, cleanliness activities by Municipality staff on another occasion and relief/restoration work in Tehsil Kahara in the aftermath of disaster induced losses on 05.09.2025. That a balance is required to be maintained between the personal liberty of the subject, his right as a Legislator to raise important public issues within the ambit of law and the peace, tranquility and safe future of the society. They further contended that the detenu does not believe in peaceful resolution of the matters through means available under law. They further contended that the detenu has no respect or ambition for harmonious coexistence and always behaves in an inappropriate manner causing unrest and violence which became his daily habit and is unfortunately fancied by lakhs of youth following him, who unknowingly get motivated to walk his dangerous path. That in view of the gravity of his regular involvement in anti-social and criminal activities coupled with his consistent determination of not correcting himself, there was inevitable need to deter him from becoming a larger threat to the safety of public.

The learned Senior Additional Advocate General Mrs. Monika Kohli submitted that there is a distinction between “law and order” and the “public order”. That “ law and order” is broader and larger interest which refers to every day enforcement of laws and prevention/detection of crimes, maintenance of peace at individual or local level and handling routine breaches of law and also covers all kinds of disorders. That the “public order” on the other hand is graver and calls for strong state action as it falls under the serious category and narrower circle. That it is concerned with disturbance that affects the community or society at large creating widespread fear, in security, affects social fabric and as such disturbs normal functioning of the society as well as public tranquility.

She submitted that the distinction is of the degree and extent of the impact on society. That an act to paralise life of the area may qualify for the public order. That since the preventive detention is based on the reasonable apprehension, as such, the words of a person having pernicious tendency or intention of creating public disorder, fall under the category of “public disorder.”

The learned counsel while placing reliance on the authoritative judgment of the Hon’ble Apex Court cited as **(1) Arun Gosh vs State of West Bengal, AIR 1970 SC 1228**, contended that it has been held by the Hon’ble Apex Court in the said case that the governing test in this regard is degree and reach of the act of the person. The relevant portions of the judgment referred to by the learned counsel are reproduced as hereunder:-

> “… the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society
>
> 3…. Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the

> community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished, from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order….. It is always a question of degree of the harm and its effect upon the community. This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."

She submitted that the acts of the detenu which affected the society to a severe extent, thus leading to public disorder are, shutting down of markets due to his instigating calls, stopping of non-emergency services by doctors of GMC, Doda in protest who also threatened to go ahead with mass resignation pen drive strike of the Safai Karamcharis against the act of the detenu seizing of lifesaving medicines besides other medical equipments by the petitioner at Medical Centre Kencha call to stop paying Lorry Adda Fee and promoting illegal mining etc., making public office dysfunctional for days, creation of hostage like situation for public servants, exploitation of social media to spread misinformation and derogatory speeches, instigating youth to adopt violence, calling for burning government offices and even comparison of his followers with Lashkars like Burhan Wani, glorifying militants and extending support to upper ground workers.

She submitted that it is not the number of acts which determines the questions as to whether detention is warranted but it is the impact of the act which is decisive. Learned counsel in support of her contentions placed reliance on the judgments cited as **(i) Ashok Kumar vs Delhi Administration & Ors, AIR 1982 SC 1143, (ii) Gautam Jain vs Union of India & Anr, Criminal Appeal No. 2218 of 2014, (iii) State of T.N & Anr vs Nabia & Anr, (2015) 12 SCC 127 and (iv) CPI(M) vs Bharat**

Kumar & Ors, AIR 1998 SC 184.

The learned Senior Additional Advocate General further contended that the purpose of the preventive detention laws is preventive in nature and not the punitive. She submitted that subsequent to the dossier for detention under PSA of the detenue by the Senior Superintendent of Police, Doda in 2024, eight additional FIRs and six additional DDRs have been lodged/registered against him. She submitted that there was every apprehension of a large damage to social fabric and harmonious coexistence by detenue's remaining at large.

Learned counsel in support of her contention placed reliance on the following extracts of the judgment of the Hon'ble Apex Court cited as **"Haradhan Saha & Anr vs State of West Bengal & Ors, 1974 AIR 2154**:

> "The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. 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 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 prosecution is no bar to an order of preventive detention. An 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 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 detenu."

She submitted that there is no alternate to the preventive detention and even if prosecution is possible, preventive detention can operate if activities of the detenue are continuous and there is likelihood that such actions may threaten or disturb "**public order**." She also placed reliance on

the other authoritative judgment of the Hon'ble Apex Court cited as **Sasti @ Satish Chowdhary v State of West Bengal, (1972) 3 SCC 826.**

Learned counsel further contended that all the material facts/information which has been relied upon by the learned detaining authority has been furnished to the detenue at the time of his detention except the reliable information which is submitted in the sealed cover confidentially. She further submitted that the allegations of petitioner to the effect that the detention order in question is outcome of the personal bias and animosity, is far from the facts. That the District Magistrate has not acted as a private individual but as a statutory body. The learned detaining authority has passed the detention order upon proper application of his mind. That the detention order was passed on the basis of material available with the learned detaining authority, *viz* Police Dossier, Report of Executive Magistrate and Reliable Information.

The learned Sr. AAG and Ld Sr. Advocate Mr. Sethi further contended that the arguments of the counsel for the petitioner to the effect that delay was occasioned in deciding the representation of the petitioner is false and devoid of any merit. She submitted that the detenue made a representation through his father through email on 20.09.2025 at 5.34 pm. That the representation also sent through post, was received by the respondents on 25.09.2025. That the detenue without waiting for the consideration of the representation, approached this Court through the medium of the instant writ petition on 24.09.2025 and as such, the petition is premature and merits dismissal.

The learned counsel further submitted that the representation through email was received at 5.34 PM on 20.09.2025 i.e after closing of

the office working hours on Saturday. That the registered copy of the aforesaid representation was received on 25.09.2025 and the learned detaining authority decided the same on 26.09.2025. That the result of the consideration of the representation was communicated to the father of the detenue as well as to the detenue through Superintendent Jail concerned. They submitted that, therefore, no delay has been caused in deciding the representation by the detaining authority. They submitted that the government also decided the representation on 08.10.2025. That a perusal of the calendar of 2025 reveals 21st September, 23rd September, 28th September, 1st October, 2nd October, 4th October and 5th October were either holidays or non-working days and as such, there is no question of occasioning delay in consideration of the representation of the detenue as alleged.

The learned Sr. AAG submitted that it has been laid down by the Hon'ble Supreme Court in **K M Abdulla Kunhi and B L Abdul Khader vs Union of India & Ors, 1991 AIR 574** that there can be no hard and fast rule in the matter of consideration of the representation of the detenue. That it depends upon the facts and circumstances of each case. That there is no period prescribed either under the Constitution or under the concerned detention law within which the representation should be dealt with. That the requirement, however, is that there should not be supine indifference slackness or callous attitude in considering the representation. That any unexplained pleas in the disposal of the representation would be a breach of constitutional imperative and it would render the continued detention impermissible and illegal.

The learned counsel further submitted that there is no bar under law

for preventive detention of a legislature under compelling circumstances as the Articles 105 and 194 of the Constitution of India do not bar such a remedy. She submitted that no such bar is also found among the provisions of PSA. The learned counsel submitted that it has been laid down by the Hon'ble Apex Court in **Ansumali Majumdar & Ors vs State of West Bengal & Anr, AIR 1952 CAL 632, decided on 04.04.1952** that preventive arrest under statutory authority by executive power is not within the principle of the cases to which privilege from arrest has been decided to-extend. That it has been further held in the said case that to claim the extension of the privilege to such cases would be either the assertion of a new Parliamentary privilege or an unjustified extension of an existing one.

The learned counsel for the Respondents further contended that there was a close proximity or live link between the continued illegal actions of the detenue and the necessity for passing of the detention order. They submitted that the detenue has been indulging in prejudicial acts right from 2014 and since the submission of the last dossier in 2024, eight additional FIRs and six additional DDRs have been registered against him. They further submitted that the videos regarding which prayer was sought for plying of the same in the Court were considered by the detaining authority during passing of the detention order.

The learned Sr. AAG in support of her arguments placed reliance on the judgments cited as: **(i) State of Tamil Nadu & Anr vs Abd,ullah Kadher Batcha & Anr, Criminal Appeal No. 231/2001, decided on 12.11.2008, (ii) The State of Bombay vs Atma Ram Sridhar, AIR 1951 SC 157, (iii) State of Pnjab vs Sukhpal Singh, 1990 AIR 231, (iv) Abdul Nasar Adam Ismail through Abdul Basheer Adam Ismail vs The State**

of Maharashtra & Ors, 2013(3) ABR 812, and (v) Jahangir Ahmad Wani vs UT of J&K & Anr, LPA No. 124/2023, decided on 01.04.2024.

14. I have perused the instant petition, the reply affidavit filed by respondent No. 2, i.e., the Ld. Detaining Authority, the reply filed by respondent No. 3, i.e., Sh. Havinder Singh (IAS), Deputy Commissioner, Doda, who has also been impleaded in the petition by name, the Rejoinder filed by the petitioner, and the supplementary affidavit filed by respondent No. 2 (Detaining Authority) in response to the Rejoinder of the petitioner/detenu.

15. I have accorded by thoughtful consideration to the rival arguments exhaustively advanced by the learned counsel for the parties during several hearings that spread over a span of more than two months.

16. Without repeating the grounds urged in the petition and the resistance thereto through the reply affidavit, followed by the clarificatory Rejoinder and supplementary affidavit respectively, which have already been reproduced and portray the facts of the case from the own perspectives of the parties, this Court, for the sake of brevity, proceeds to address the following main issues involved in the case for adjudication:-

i) **Whether the allegations against the petitioner/detenu that have culminated into the registration of criminal case FIRs-some disposed of and some still pending trial, as also the recording of various Daily Diary Reports (DDR) at different Police Stations in the District, Doda have either created "social disorder" in terms of the provisions of the 8 (3) (b) of PSA are made a reasonable ground for believing that the petitioner/detenu was**

likely to act in a manner prejudicial to the "social order" and if the answer is in negative whether the impugned detention order suffers from non-application of mind. ?

ii) Whether the representation made by the petitioner/detenu through his father was considered in accordance with the law. ?

iii) Whether the preventive detention in the case has been invoked illegally by way of shortcut when the recourse to normal criminal law had already been made by way of the appropriate remedy. ?

iv) Whether there was any proximity or live link between the allegations against the detenu and the object of passing of the impugned detention order. ?

v) Whether the detaining authority was biased in the matter and as such acted as a Judge in its own cause. ?

vi) Whether the material relied upon by the learned detaining authority especially including "videos" was furnished to the detenu in the entirety. ?

vii) Whether a detenu can raise additional grounds in his HCP even if same have not been taken in the earlier representation. ?

Adjudication of the Issues:

Issue No.(i)

Whether the allegations against the petitioner/detenu that have culminated into the registration of criminal case FIR's-some disposed of and some still pending trial, as also into the recording of various Daily Diary Reports (DDRs) at different Police Stations in the District, Doda have either created "social disorder" in terms of the provisions of the 8 (3) (b) of PSA or make a reasonable ground for believing that the petitioner/detenu was

likely to act in a manner prejudicial to the "social order" and if the answer is in negative whether the impugned detention order suffers from non-application of mind. ?

17. The learned detaining authority in the grounds basing the impugned detention order has justified the passing of the same on the basis of allegations against the detenu covered under 18 number of criminal cases registered against him at Police Stations Gandoh, Doda and Bahufort Jammu right from 21.04.2014 to 06.09.2025 as also on the basis of allegations made under 16 number of Daily Diary Reports (DDRs) recorded regarding his alleged activities at different Police Stations of District Doda w.e.f 28.06.2021 to 07.09.2025.

18. A perusal of the list of criminal cases registered against the detenu reveals that three cases bearing FIR Nos. 22/2014, U/Ss 353, 323, 504 RPC; FIR 54/2016, U/ss 341, 504 RPC and FIR 59/2016 U/ss 336, 504,353, 427,147 RPC all of P/S Gondu stand already disposed of on 25.09.2014 and 31.03.2018 respectively as compounded and withdrawn on the part of the State. The said FIRs pertain to the allegations of omissions and commissions on the part of the detenu during election and while protesting against the Rural Development Department. That in respect of the 14 criminal cases viz, FIR Nos. 103/2021, U/ss 353, 425, 504 IPC; FIR 103/2023 U/S 341, 504, 506 IPC; FIR 105/2023 U/Ss 153-A, 295-A; FIR 55/2023 U/ss 307, 332, 336, 323, 341, 147, 148 IPC ¾ EPT Act; FIR 46/ 2024 U/ss 188 IPC; FIR 48/2024 U/ss 353, 452, 147, 504, 506 IPC; FIR 212/2024 U/s 223 BNS; FIR 229/2024 U/ss 132, 351(2), 352, 223 BNS; FIR 94/2024 U/ss 126(2), 115(2) 351(2), 352, 307, 304(4) BNS; FIR 96/2024 U/s 223 BNS; FIR 99/2024 U/s 125 BNS; FIR 130/2025 U/ss 356

(2), 79, 351(2) BNS of Police stations Gandoh, Doda and Bahu Fort, Jammu, the trials are going on in the competent criminal courts.

19. Perusal of the said fourteen cases reveals that, as rightly contended by learned counsel for the petitioner, they pertain either to alleged violations of the Model Code of Conduct during elections or to acts of resentment/protest by the petitioner, supported by some locals, against the alleged omissions in discharge of public duties.

20. However, FIR No. 105/2023 dated 27.12.2023 of Police Station Gandoh, registered under Sections 153-A and 295-A IPC, pertains to allegations against the detenu regarding instigation of communal disharmony. The allegations forming the subject matter of the said FIR, which is presently under trial, do not amount to "**public disorder**" within the meaning of the relevant provisions of the PSA.

21. So far as FIR No. 90/2025 of Police Station Gandoh is concerned, the same came to be registered on the very day, the dossier was submitted by respondent No. 4, i.e., SSP Doda, to respondent No. 2 i.e on 06.09.2025. The allegations against the petitioner/detenu are that he resisted the shifting of a Health Centre at Kancha Block Thatri, which had been ordered by the District Administration in the interest of better healthcare facilities, and also committed theft of emergency medicines and hospital equipments.

22. It is the case of the petitioner that, being the elected Member of the Legislative Assembly concerned, he had already requested the District Administration that the shifting of the Health Centre would not be in the interests of the public and had accordingly recommended that the Health

Centre be accommodated at the same venue in an alternate building, but the authorities paid no heed to the same.

23. Such allegations, in the opinion of the Court, do not amount to creating or instigating "public disorder,". The Registration of the case FIR, which had already been done in respect of the allegations was the proper course warranted under law for proof of the said allegations.

24. So far as the Daily Diary Reports (DDRs) recorded in relation to the illegal activities of the detenu at different Police Stations of Doda right from June 2021 to Sept 2025 are concerned, that mainly pertain to normal law and order infractions/violations. The said DDRs which have not been registered in the form of formal FIRs for want of proper verifications and for being without formal information reports could not have been considered for ordering the preventive detention of the detenu.

25. As already mentioned, DDR No. 14 dated 07.09.2025 of Police Station Doda, which was referred to by learned counsel for the respondents/UT during the course of arguments as an act of instigating communal disharmony by the detenu, does not, upon proper perusal and examination of its contents, lead to any such inference. As per the contents of the said DDR, the petitioner/detenu is alleged to have uploaded a video on social media abusing the Deputy Commissioner, Doda, in his capacity as the District Magistrate and not otherwise, as a member of a particular community.

26. DDR No. 45 dated 07.09.2025 of Police Station Thatri pertains to allegations in respect whereof an FIR already stands registered bearing No. 90 of 2025 at Police Station Gandoh.

27. As per the opinion of the court, recourse to preventive detention, in respect of allegations of common law and order infraction is unwarranted and illegal.

28. It is apt to reproduce the provisions of Section 8 (3) of the Act which defines the social order for the purposes of Section 8 (1) (a) (i) of the Act.

> "**8. Detention of certain persons**
>
> (3) For the purposes of sub-section (1 [(a) omitted.
>
> (b) "acting in any manner prejudicial to the maintenance of public order" means -
>
> (i) promoting, propagating or attempting to create, feelings of enmity or hatred or disharmony on ground of religion, race, caste, community, or region;
>
> (ii) making preparations for using, or attempting to use, or using, or instigating, inciting, provoking or otherwise, abetting the use of force where such preparation, using, attempting, instigating, inciting, provoking or abetting, disturbs or is likely to disturb public order;
>
> (iii) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of, mischief within the meaning of section 425 of the Ranbir Penal Code where the commission of such mischief disturbs, or is likely to disturb public order;
>
> (iv) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment of a term extending to seven years or more, where the commission of such offence disturbs, or is likely to disturb public order;
>
> [(c) —smuggling in relation to timber or liquor means possessing or carrying of illicit timber or liquor and includes any act which will render the timber or liquor liable to confiscation under the Jammu and Kashmir Forest Act, Samvat, 1987 or under the Jammu and Kashmir Excise Act, 1958, as the case may be;]
>
> [(d) —timber‖ means timber of Fir, Kail, Chir or Deodar tree whether in logs or cut up in pieces but does not include firewood;]
>
> [(e) —Liquor‖ includes all alcoholic beverages including beer]".

29. The Hon'ble Apex Court has in a catena of judgments noted the difference between, "law and order" and "public order".

30. In Ram Manohar Lohia Vs. State of Bihar (1966) 1 SCR 709, it was held by the Hon'ble Apex Court through Hon'ble M. Hidayatullah. J. (as the Chief Justice then was) at para 54 as under:-

> "54. *** Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are."

31. In Arun Ghosh Vs. State of West Bengal (1970) 1 SCC 98 again Hon'ble M. Hidayatullah, (CJ) observed that it is not the every case of a general disturbance to public tranquility which can be termed as public disorder and the test to be applied in such cases is whether the alleged act leads to the disturbance of the current of life of the community so as to amount to disturbance of the public order. That if the alleged act affects some individual or individuals leaving tranquility of the society undisturbed, the act cannot be termed as amounting to public disorder. In that case the petitioner/detenu was detained by an order of a district magistrate since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioner/detenu could be reprehensible, it was further held that it (read: the offending act) —does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of "public order".

The observations made by the Hon'ble Apex Court in the said case at para 3 are reproduced as under:-

> "3.*** Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. ... It is always a question of degree of the harm and its affect upon the community....This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."

32. In Kuso Sah Vs. The State of Bihar (1974) 1 SCC 195, the Hon'ble Apex Court through Hon'ble Y.V. Chandrachud, J. (as the Chief Justice then was) speaking for the Bench held at paras 4 & 6 as under:-

> "4. *** The two concepts have well defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. ***
>
> 6. *** The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised. ***‖

33. In Rekha Vs. State of Tamil Nadu, (2011) 5 SCC 244, the observations made by the Hon'ble Apex Court at its paras 21, 29 & 30 deserve a needful mention :-

> "21. It is all very well to say that preventive detention is preventive not punitive. The truth of the matter, though, is that in substance a detention order of one year (or any other period) is a punishment of

> one year's imprisonment. What difference is it to the detenu whether his imprisonment is called preventive or punitive?
>
> 29. Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the Rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.
>
> 30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal".

34. In Vijay Narain Singh Vs. State of Bihar, (1984) 3 SCC 14, the Hon'ble Apex Court has held at para 32 of the judgment through Hon'ble E.S.Venkataramiah, J. (as the Chief Justice then was) as under:-

> "32....It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardized unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an Accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorizing such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinizing the validity of an order of preventive detention which is based

> on the very same charge which is to be tried by the criminal court."

35. 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."

36. This Court is also fortified in its opinion with the recent authoritative judgment of the Hon'ble Apex Court cited as Ameena Begum Vs. The State of Telagana & Ors., Criminal Appeal arising out of SLP No. 8510 of 2023 decided on 04.09.2023 also referred to by the learned counsel for the petitioner in which it has been held at para 40 of the judgment as under:-

> "40. On an overall consideration of the circumstances, it does appear to us that the existing legal framework for maintaining law and order is insufficient to address like offences under consideration, which the Commissioner anticipates could be repeated by the Detenu if not detained. We are also constrained to observe that preventive detention laws--an exceptional measure reserved for tackling emergent situations--ought not to have been invoked in this case as a tool for enforcement of ―law and order‖. Thus, for the reason that, the Commissioner despite being aware of the earlier judgment and order of the High Court dated 16th August, 2021 passed the Detention Order ostensibly to maintain ―public order‖ without once more appreciating the difference between maintenance of ―law and order‖ and maintenance of ―public order‖. The order of detention is, thus, indefensible.

37. In the above referred case, the allegation against the detenu was that he was habitually committing the offences including outraging the modesty of women, cheating, extortion, obstructing the public servants from discharging their legitimate duties, robbery and criminal intimidation along with his associates in an organized manner in the limits of ... and he is a 'Goonda' as defined in clause (g) of Section 2‖ of the relevant statute invoked by the

Commissioner. The Commissioner, with a view to prevent the Detenu from acting in a manner prejudicial to maintenance of public order, recorded not only his satisfaction for invoking the provisions of the Act but also recorded a satisfaction that the ordinary law under which he was booked is not sufficient to deal with the illegal activities of such an offender who has no regard for the society. Hence, unless he is detained under the detention laws, his unlawful activities cannot be curbed.

38. The Hon'ble Apex Court in the landmark judgment cited as Sushanta Goswami, In Re ([1968} Supreme Court of India) addressed the critical issue of preventive detention under Article 32 of the Indian Constitution. The said case involved a collective petition by Sushanta Goswami and 46 others challenging their detention under Section 3 (2) of the Prevention of Detention Act, 1950. The central question revolved around was whether the grounds for detention genuinely pertained to maintaining public order or was merely related to general law and order? The Hon'ble Supreme Court meticulously examined each petitioner's grounds for detention, categorizing them based on their relevance to "**public order"**.

The Court invalidated detention orders where the activities alleged did not directly threaten public order but were instead typical criminal offences such as theft, assault and property damage. Conversely, detention was upheld only where the activities posed a significant threat to the community's overall peace and satiability.

A pivotal aspect of the judgment was the Court's insistence that detention under the guise of preventing actions prejudicial to public order must be substantiated by concrete evidence showing a direct impact on societal harmony. The Court emphasized the necessity of a clear and direct correlation between the detainee's actions and the maintenance of public order.

The Court referenced two significant cases to support its stance:

Dwarka Das Bhatia Vs. State of Jammu & Kashmir (1956 SCR 945): This case underscored the importance of relevance in grounds for preventive detention, rejecting arbitrary detentions based on vague or unrelated reasons.

Pushkar Mukherjee Vs. State of West Bengal: A more recent decision at the time, this case further clarified the judiciary's view on maintaining the balance between State security and individual liberties, reinforcing stringent checks on detention orders.

The Court's legal reasoning hinged on interpreting “public order” with precision. It delineated between general disturbances of law and order and actions that genuinely threaten societal piece. The judgment clarified that not every act disrupting law and order qualifies as being prejudicial to public order.

For instance, petty thefts or assaults without broader societal implications do not meet the threshold for preventive detention under the Act.

Furthermore, the court critiqued the authorities' tendency to conflate individual criminal acts with threats to public order, thereby undermining the very essence of preventive detention. By setting aside detention orders lacking direct relevance, the court reinforced the principle that such extreme measures must be reserved for genuine threats to societal harmony.

39. It is profitable to reproduce the paras 11 and 19 of the judgment of the Hon’ble Apext Court delivered in “Shaik naznan vs. State of Telegana and ors (2023) 9 SCC 633 also referred and relied upon by the Apext Court in its subsequent judgment delivered in Nenavath Bujji etc vs. State of Telegana and ors Cr. Appeal Nos. 1738-39 of 2024 arising out of SLP Cr. Nos. 3390-91 of 2024 decided on 21.03.2024;

> “11. The detention order was challenged by the wife of the detenu in a habeas corpus petition before the Division Bench of the

Telangana High Court. The ground taken by the petitioner before the High Court was that reliance has been taken by the Authority of four cases of chain snatching, as already mentioned above. The admitted position is that in all these four cases the detenu has been released on bail by the Magistrate. Moreover, in any case, the nature of crime as alleged against the petitioner can at best be said to be a law and order situation and not the public order situation, which would have justified invoking the powers under the preventive detention law. This, however did not find favour with the Division Bench of the High Court, which dismissed the petition, upholding the validity of the detention order.

19. In any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case."

40. The paras 20 & 21 of the Judgement of this court cited as "***Ravinder Kumar Gupta vs. UT of J&K and ors WP (Crl) 21 of 2022***" decided on 21.09.2022 deserve a needful mention for appreciation of the issue under adjudication:-

"20. Ours is a democratic country and the personal liberty of the individual cannot be curtailed except according to the procedure established by law. If the law provides for curtailment of personal liberty under certain contingencies/conditions, then such conditions/contingencies must exist, then only, the personal liberty of an individual can be curtailed and that too according to the procedure prescribed by the law. The perusal of detention order reveals that in all the FIRs, the allegations against the petitioner are with regard to the commission of offences, which do not fall within the realm of "public order" as defined by section 8(3) of the Act as there are no allegations against the petitioner regarding his activities affecting public at large. The allegations may amount to law and order issue but in no manner can be said to have disturbed the public order. In Mallada K Sri Ram v. State of Telangana, 2022 SCC Online SC 424, Apex Court has considered the distinction between "law and order" and "public order" and observed as under:

"12. The distinction between a disturbance to law and order and a disturbance to public order has been clearly settled by a Constitution Bench in Ram Manohar Lohia v. State of Bihar. The Court has held that every disorder does not meet the threshold of a disturbance to public order, unless it affects the community at large. The Constitution Bench held:

"51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum

which includes at one end small disturbances and at the other the most serious and cataclysmic happenings Does the expression "public order" take in every kind of disorders or only some of them The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before if can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

52. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

21. In Banka Sneha Sheela v. State of Telangana reported in 2021 (9) SCC 415, where the detention order was issued on the basis of five FIRs registered under sections 406, 420 and 506 IPC, Apex Court held as under:

"9. ...learned counsel appearing on behalf of the petitioner has raised three points before us. First and foremost, he said there is no proximate or live connection between the acts complained of and the date of the detention order, as the last act that was complained of, which is discernible from the first 3 FIRs, (FIRs dated 12-12-2019, 12-12-2019 and 14-12-2019), was in December 2019 whereas the detention order was passed 9 months later on 28-9-2020. He then argued, without conceding, that at best only a "law and order" problem if at all would arise on the facts of these cases and not a "public order" problem, and referred to certain judgments of this Court to buttress the same. He also argued that the detention order was totally perverse in that it was passed only because anticipatory bail/bail applications were granted. The correct course of action would have been for the State to move to cancel the bail that has been granted if any further untoward incident were to take place.

12. While it cannot seriously be disputed that the detenu may be a "white collar offender" as defined under Section 2(x) of the Telangana Prevention of Dangerous Activities Act, yet a preventive detention order can only be passed if his activities adversely affect or are likely to adversely affect the maintenance of public order.

> "Public order" is defined in the Explanation to Section 2(a) of the Telangana Prevention of Dangerous Activities Act to be a harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave widespread danger to life or public health.
>
> 14. There can be no doubt that for "public order" to be disturbed, there must in turn be public disorder. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects "law and order" but before it can be said to affect "public order", it must affect the community or the public at large.
>
> 15. There can be no doubt that what is alleged in the five FIRs pertain to the realm of "law and order" in that various acts of cheating are ascribed to the detenu which are punishable under the three sections of the Penal Code set out in the five FIRs. A close reading of the detention order would make it clear that the reason for the said order is not any apprehension of widespread public harm, danger or alarm but is only because the detenu was successful in obtaining anticipatory bail/bail from the courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the detenu, there can be no doubt that the harm, danger or alarm or feeling of insecurity among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is make-believe and totally absent in the facts of the present case.
>
> 32. On the facts of this case, as has been pointed out by us, it is clear that at the highest, a possible apprehension of breach of law and order can be said to be made out if it is apprehended that the detenu, if set free, will continue to cheat gullible persons. This may be a good ground to appeal against the bail orders granted and/or to cancel bail but certainly cannot provide the springboard to move under a preventive detention statute. We, therefore, quash the detention order on this ground...."

41. So it is reiterated that the material brought before the learned detaining authority by the District Superintendent of Police, Doda was not of such a nature which could have been understood and apprehended as prejudicial to the "**public order**".

42. The alleged actions of the petitioner no doubt amount to infraction of normal criminal laws for which the legal mechanism in place was already pressed into service. The invocation of the provisions of the PSA to detain the petitioner rather than to pursue the prosecution against him appears to be an unjustified exercise tentamounting to violation of the

fundamental rights of the petitioner. Under these circumstances, the non-application of the mind is discernible in the matter.

43. It is a settled legal position that a detention order suffering from non-application of mind of the detaining authority cannot sustain under law.

44. An important distinction between the infraction of "law and order" and the "**public order**" needs to be inferred and drawn in terms of the affect and reach of the alleged activities of the person proposed to be detained under preventive detention laws. Breach of "Public order" must result in the "Public disorder" and the "Public disorder" needs to be understood as such a chaos and confusion which involves public at large having the tendency, to paralyze the day to day routine of the society. If an act of individual is alleged to have resulted in a sort of "disorder" inviting the attention of the administration for addressal thereof without any public resentment/disorder against such act, cannot be termed as "public disorder".

45. In the instant case, the petitioner/detenu, being an elected Member of the Legislative Assembly, is alleged to have caused hindrance to the Government authorities in the discharge of their functions and in the execution of their orders/plans. It is not the case of the learned detaining authority that there was any public unrest or resentment arising out of the actions of the petitioner/detenu. Any annoyance or ill will expressed by public servants against the petitioner/detenu, in his capacity as the concerned MLA, cannot amount to public disorder. There must be a direct

impact of the alleged act on societal harmony before the same can be adjudged as an act disturbing social order. Every contravention of law may affect order, but before it can be said to affect "public order," it must affect the community or the public at large.

46. In the backdrop of the aforementioned discussion held under the adjudication of this issue, the court is of the opinion that no ground was made out in the circumstances of the case for the detention of the petitioner/detenu, on the pretext of preventing him from acting in a manner prejudicial to the social order.

47. Even if the impugned detention order goes on this point also, yet the court feels it proper for the academic purposes to address the other issues also.

Issue No.(ii)

Whether the representation made by the petitioner/detenu through his father was considered in accordance with the law. ?

48. The court has already mentioned the elaborate discussions made by Mr. Muzaffar Iqbal Khan, Adv on behalf of the petitioner and Ms. Monika Kohli, Ld Sr.AAG & Mr. Sunil Sethi learned Sr. Advocate on the issue. The learned counsel for the petitioner contended that the representation made by the petitioner through his father was not decided by the District Magistrate in his capacity as the Detaining Authority who rather forwarded the same to the Home Department with his observations which act of the Detaining Authority offends the constitutional Bench Judgment of the Hon'ble Supreme Court, reported as, "***Kamlesh Kumar Ishwardass Patail etc vs. Union of India and Ors" (1995) 3 Crimes (SC) 26,*** in which, it has

been *interalia*, authoritatively laid down at **para-22** of the Judgment, "*where the detention order has been made under Section 3 of the COFEPOSA Act and the PIT NDPS Act by an officer specially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation to the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so results in denial of the right conferred on the person detained to make a representation against the order of detention. This right of the detenu is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorised by a State Government and to the Central Government where the detention order has been made by an officer specially empowered by the Central Government, and to have the same duly considered. This right to make a representation necessarily implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation and the failure to do so results in denial of the right of the person detained to make a representation.*"

49. The learned counsel for the petitioner also contended that without prejudice to the illegality caused in the matter by failure of the detaining authority to consider the representation of the petitioner independently, a delay was also caused in the consideration of the same by the disposal thereof on 08.10.2025.

50. Ld Sr. AAG & learned Sr. Advocate Mr. Sethi have argued for the respondents have explained with reference to the dates and the intervening holidays that no delay was caused in consideration of the representation of the petitioner both by the Detaining Authority as well as by the Government.

51. The court has already discussed the arguments of the learned counsel for the Respondents, on the issue to the effect that the representation dated 20.09.2025 came to be emailed as well as sent by post to the respondents at 5:34 PM on that day. That the registered copy of the representation was received by the respondents on 25.09.2025 and the Detaining Authority decided the same on 26.09.2025 with intimation to detenu's father as well as to the detenu through the Superintendent of the jail concerned.

52. It was also submitted by the learned counsel that 21st of Sept., 23rd Sept., 28th Sept., 1st of Oct., 2nd of Oct., 4th of Oct., and 5th of Oct. 2025 were either holidays or non working days and as such it is clear that the representation filed by the father of the *detenu* was decided expeditiously and independently by both the detaining authority as well as the Government.

53. The learned Sr. AAG in support of her arguments that the representation of the detenu was considered in accordance with the law placed reliance on the judgment of the constitutional Bench of the Hon'ble Supreme Court cited as "***K.M Abdulla Kunshi And B.L Abdul Khader vs. U.O.I and ors.,*** 1991 AIR 574, the para-12 of which deserves a needful mention:-

> "12. Clause (5) of Article 22 therefore, casts a legal obligation on the Government to consider the representation as early as possible. it is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard it depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

54. The papers evidencing the consideration of representation of the detenu by the learned detaining authority on 26.09.2025 and the Government Home Department on 08.10.2025 with the communication to the result of the same to the detenu are placed on the detention record, which have been perused.

55. The Court in the facts and circumstances of the case, is of the opinion, that no illegality appears to have been committed in the consideration of the representation.

Issue No.(iii)

> **Whether the preventive detention in the case has been invoked illegally by way of shortcut when the recourse to normal criminal law had already been made by way of the appropriate remedy. ?**

56. This issue is directly linked with Issue No.1 hereinbefore adjudicated upon in view of the involvement of the facto legal scenario. The learned counsel for the petitioner during their arguments *inter alia* submitted that the respondents chose to keep the petitioner/detenu under the prevention detention by way of a shortcut to relieve themselves of

pursuing the criminal cases that had earlier been registered against him with the police station Gandoh. They contended that even if the allegations against the petitioner/detenu could be supposed to have amounted to commission of any criminal offences, the appropriate remedy was the normal law and order machinery which was pressed into service by them. They submitted that when an act resulting in "social disorder" or likely to result in the same was neither committed nor could have been apprehended in the facts and circumstances of the case having record to the position of the detenu as an elected MLA, there was no legal justification for detaining him under the PSA.

57. The normal criminal law machinery can never be apprehended to be inadequate as the criminal procedural law takes care of any attempt to thwart the judicial process.

58. The learned counsel for the respondents/UT however, attempted to convince the Court that the acts committed by the detenu did cast adverse effects on the, "**social order**" with further likelihood of his repeating such crime. However, in the facts and circumstances of the case as already opined by this Court, no act is alleged or can be apprehended in the facts and circumstances of the case to have been/to be committed involving "social disorder".

59. The Jammu & Kashmir Public Safety Act provides for preventive detention of an individual with a view to prevent him from acting in any manner prejudicial to the "security of the State" or "Public order". The power of the authorities under the preventive detention laws cannot be

allowed to be misused for any reasons beyond the scope of the special legislation which in essence is a permissible exception to the precious fundamental right guaranteed under Article 21 of the Constitution of India. This issue is accordingly decided.

Issue No.(iv)

Whether there was any proximity or live link between the alleged acts of the detenu and the object of passing of the impugned detention order. ?

60. This court in the facts and circumstances of the case is of the opinion that there was no live link or proximity between the alleged criminal activities of the detenu covered under eighteen (18) number of FIRs and sixteen (16) DDRs, as already discussed under the adjudication of issue No.1and the need for passing of the impugned detention order. The alleged activities of the detenu covered under the aforesaid criminal case FIR's/DDR's do not amount to "public disorder". So when the detention of the detenu could have been justified only in case his alleged activities could have resulted in the "social disorder" or in the alternate it could have been genuinely apprehended having regard to his conduct that there is every likelihood of his acting in a manner prejudicial to such "public order", as such it is evident that in the absence of the happening of "social disorder" no proximity or live link could be imagined or inferred between the alleged activities and the object of passing the detention order.

61. Criminal cases involving the offences pertaining to normal law and order infraction even if having occurred/committed in close proximity in terms of time, of the detention order, the latter cannot with stand the test of legality.

62. Without prejudice to the opinion of the court that almost all the criminal cases registered against the detenu as well as the DDR entries pertain to normal law and order violations not justifying the detention under PSA, it is clear from perusal of the detention record that the most of the case FIRs against the detenu pertain to the Model Code of Conduct violations during elections and the agitations against the public authorities spreading over a period of last more than 10 years w.e.f 21.04.2024. It has already come on record that out of 18 number of criminal cases 3 number of cases were withdrawn/compounded itself by the state, when most of the criminal cases are reported pending trial. It is very needful to mention that some number of case FIR's came to be registered against the detenu after the earlier dossier of the SSP, Doda came to be returned by the respondent No.2, giving rise to reasonable suspicion regarding genuineness of the proceedings.

63. Any way there was no proximity or live link between the alleged acts of the detenu and the object for passing of the detention order.

64. There appears to be no proximity or live link between the alleged incidents dating back from April 2014 and the passing of the impugned detention order dated 8th Sept. 2025. The proximity is not only to be measured in terms of the time gap but firstly in terms of the ground for detention viz., (i) the security of the Union Territory of Jammu & Kashmir or (ii) maintenance of "public order" or (iii) smuggling, timber or liquor etc. In case any alleged unlawful activities amounting to penal offences under any statute even it committed at a time closely preceding the

preventive detention order have an effect of infraction of normal law and order without effecting the society at large, such activities though unlawful cannot be supposed to have proximity with the detention order passed on the ground of maintenance of public order. The right of an individual guaranteed under Article 21 of the Constitution of India mandates the keeping of a strict vigil on the executive actions from being misused under the garb of maintenance of "public order".

65. As hereinbefore observed, there lies a thin theoretic distinction between the terms "law and order" and the "public disorder" which most often are used interchangeably but the practical implications of the two concepts are all together different. As has been held by the Hon'ble Apex Court in Ram Manohar Lohia vs. State of Bihar and ors, 1966 SCR (1) 709, that contravention of law always affects order but before it can be said to effect public order, it must effect the community or the public at large. A mere disturbance of law and order leading to disorder is thus, not necessarily sufficient for action under the preventive laws. Thus, irrespective of the proximity or live link in terms of time gap between the alleged last incident of 06.09.2025 and the necessity for passing of the impugned detention order, the alleged activities of the petitioner/detenu which present a law and order situation to be taken care of under normal law cannot warrant and justify the preventive detention on the pretext of the "public disorder".

66. Since the preventive detention snaps the right of liberty being the most precious human right as such, same needs to be invoked in justified

circumstances where the recourse to normal criminal law which has to be done in any way, is genuinely felt inadequate to tackle the wrong doer.

67. The Hon'ble Supreme Court in case of "***Rekha vs. State of Tamil Nadu through Secretary to Government and Anr***" reported in (2011) 5 SCC 244 has laid emphasis on the fundamental right to life and personal liberty of a citizen of India guaranteed under Article 21 of our Constitution and has, accordingly, stressed for taking great care and caution while passing any preventive detention orders so that same are passed in case of genuine and inevitable need only without any misuse or abuse of the powers.

68. The preventive detentions need to be passed with great care and caution keeping in mind that a citizens most valuable and inherent human right is being curtailed. The arrests in general and the preventive detentions in particular are an exception to the most cherished fundamental right guaranteed under Article 21 of the Constitution of India. The preventive detention is made on the basis of subjective satisfaction of the detaining authority in relation to an apprehended conduct of the detenu by considering his past activities without being backed by an immediate complaint as in the case of the registration of the FIR and, as such, is a valuable trust in the hands of the trustees. The provisions of Clauses (1) and (2) of Article 22 of our Constitution are not applicable in the case of preventive detentions. So, the provisions of Clause (5) of the Article 22 of our Constitution, with just exception as mentioned in Clause (6), together with the relevant provisions of the Section 8 of PSA requiring for application of mind, subjective satisfaction, inevitability of the detention

order, proper and prompt communication of the grounds of detention and the information of liberty to make a representation against the detention order, are the imperative and inevitable conditions rather mandatory requirements for passing of a detention order.

Issue No. (v)

Whether the detaining authority was biased in the matter and as such acted as a judge in its own cause. ?

69. The learned counsel for the petitioner Mr. Muzaffar Iqbal Khan during his arguments *interalia* contended that the impugned detention order apparently on a mere perusal of the grounds basing the same, appears to be biased and actuated by malafides.

70. The learned counsel for the petitioner submitted that the contents of the case FIR 90/2025 registered with Police Station Gandoh on 06.09.2025 as well as the contents of DDRs bearing Nos. 27, dated 05.01.2025 of Police station Doda; 45, dated 07.09.2025 of P/S Thatri, 14, dated 07.09.2025 of P/S Doda and 25, dated 07.09.2025 of P/S Thatri clearly reveal that the District Administration especially the District Magistrate and the petitioner/detenu were not on good terms owing to mutual conflict in respect of some public matters. That it is revealed from the afore-referred DDRs that the petitioner/detenu was allegedly abusing and disrespecting the District Magistrate through social media posts.

71. The learned counsel submitted that the District Magistrate by passing the impugned detention order has acted as a judge in his own case. He submitted that as per the provisions of Section 8(2) of the PSA, the powers in respect of issuance of preventive detention orders can be

exercised by either Divisional Commissioner or District Magistrate. He contended that in the case of the petitioner it was not proper for the District Magistrate to exercise the powers in view of the differences between him and the petitioner/detenu on account of some constituency development matters. He contended that it was to be left to be considered by the Divisional Commissioner, Jammu as to whether there was a ground for the preventive detention of the petitioner/detenu or not. ?

72. The learned counsel submitted that it has been laid by the Hon'ble Supreme Court in "***Ameena Begum vs State of Talangana and ors cited (supra) and Rajesh Gulati vs. Government of NCT of Delhi (2002) 7 SCC 129"***, that a detaining authority should be free from emotions beliefs or prejudices while ordering detention. He contended that once it is evident from the grounds of detention basing the impugned detention order that same is actuated by malafides, then it can be safely said that the detention order is lacking the application of mind.

73. In the facts and circumstances of the case, this court is not of the opinion that the impugned detention order is based on malafides or emotions and instead there appears to be non-application of mind, as the court has hereinbefore opined that ground was not made out for framing an opinion by the learned detaining authority that the petitioner/detenu has either acted or is likely to act in a manner prejudicial "public order" distinguishable from "law and order".

74. This court is conscious of its limited power of review to see whether the impugned detention order is in accordance with the Statute or in compliance with the procedural requirements.

Issue No. (vi)

Whether the material relied upon by the learned detaining authority especially including "videos" was furnished to the detenu in the entirety. ?

75. The learned counsel for the petitioner Mr. Rahul Panth, Sr. Advocate during his arguments *interalia* contended that the learned detaining authority has failed to furnish the detention record basing the impugned order in entirety to the petitioner/detenu. He submitted that the learned detaining authority has made mention of videos in the grounds of detention but those videos were not furnished to the petitioner/detenu. He contended that the respondents have at the proceedings of the petition admitted such fact of their failure to furnish copies of the videos, by filing an application during final arguments seeking permission to ply the video in the open court. He contended that such videos cannot be considered nor allowed to plied without objections of the petitioner/detenu upon witnessing the same so as to rule out the editing of the same.

76. It is true that an application during proceedings of the case was filed on behalf of the respondents seeking permission to ply the videos to be produced by them in support of the detention order. The learned counsel for both the parties consensed to the suggestion of the Court that Court, let court see videos itself in the chambers as the plying of the same in the open court will not be proper.

77. Some of the videos out of the Pen Drive furnished by the learned counsel for the respondents were witnessed by the court. So under these circumstances it is not improper to say that the videos referred to in the grounds of detention were not furnished to the petitioner/detenu at the time of his detention and as a result he has been prevented from including allegations made on the basis of such videos in his representation, and to put forth his stand with respect to the said issue.

Issue No. (vii)

Whether a detenu can raise additional grounds in his HCP even if same have not been taken in the earlier representation. ?

78. It was contended by the learned counsel for the respondent Mr. Sunil Sethi, Sr. Advocate and Ms Monika Kohli, Sr. AAG *interalia* during their arguments that the petitioner has raised some new grounds during the arguments of the case as an improvement over the representation made by him to the learned detaining authority as well as to the Government first in point of time.

79. However, the learned counsel for the petitioner/detenu Ms. Appu Singh Salathia, advocate submitted in rebuttal that the contention of the detaining authority to the effect that no new ground(s) can be agitated during arguments in a habeas corpus petition which were not earlier mentioned in the representation or petition is not tenable under law. She submitted that law settled by the Hon'ble Apex court with regard to the habeas corpus petition(s) is very clear and once a detenu comes before the court and pleads that his detention is illegal, then irrespective of the grounds raised by him, it is the detaining authority which has to satisfy the court on all counts that the detention is legal.

80. The learned counsel for the petitioner during her arguments in respect of the issue relied upon the judgment of Hon'ble Apex Court cited as "***Mohi ud din @ Moin Master vs. District Magistrate Beed & Ors (1987) AIR 1977 decided on 28.07.1987"***. The relevant para-4 of which is extracted as under:-

> "4. It was an improper exercise of power on the part of the High Court in disallowing the writ petition on the ground of imperfect pleadings. The rule that a petitioner cannot be permitted to raise grounds not taken in the petition at the hearing cannot be applied to a petition for grant of a writ of habeas corpus. It is enough for the detenu to say that he is under wrongful detention, and the burden lies on the detaining authority to satisfy the Court that the detention is not illegal or wrongful and that the petitioner is not entitled to the relief claimed. [674DE] In the appeal the appellant having raised the ground of delay in disposal of his representation in Chief Minister's Secretariat it was the duty of the State Government to have placed all the material along with the counter affidavit".

81. She also placed reliance on the judgment of the Hon'ble Apex court in "***Ichhu Devi Chorari vs. Union of India and ors, 1980 legal eagle (SC) 384".***The relevant para of which is reproduced as under:

> "This practice marks a departure from that obtaining in England where observance of the strict rules of pleading is insisted upon even in case of an application for a writ of habeas corpus, but it has been adopted by this Court in view of the peculiar socio-economic conditions prevailing in the country. Where large masses of people are poor, illiterate and ignorant and access to the courts is not easy on account of lack of financial resources, it would be most unreasonable to insist that the petitioner should set out clearly and specifically the grounds on which he challenges the order of detention and make out a prima facie case in support of those grounds before a rule is issued or to hold that the detaining authority should not be liable to do anything more than just meet the specific grounds of challenge put forward by the petitioner in the petition".

82. The learned counsel in support of her contentions also placed reliance on the judgment of the Hon'ble Apex court cited as "***Ameena Begum vs. State of Talangana"*** cited (supra). The relevant para-25 of which judgment is reproduced as under:

> "25. Be that as it may, culling out the principles of law flowing from all the relevant decisions in the field, our understanding of the law for deciding the legality of an order of preventive detention is that even without appropriate pleadings to assail such an order, if circumstances appear therefrom raising a doubt of the detaining authority misconceiving his own powers, the Court ought not to shut its eyes; even not venturing to make any attempt to investigate the sufficiency of the materials, an enquiry can be made by the Court into the authority's notions of his power….."

83. As already laid down by the Hon'ble Apex Court, there is no bar for a detenu in a writ of habeas corpus to plead any ground during the proceedings of the case to convince the Court that his detention is illegal, notwithstanding the fact that any of such grounds have not been earlier pleaded in the basic petition. After all it is the obligation of the detaining authority to satisfy the court that his detention order is legal.

84. It has been laid down by the Hon'ble Supreme Court in ***Ameena Begum vs. State of Talangana*** (supra) that in the circumstances of a given case a constitutional Court when called upon to test the legality of the orders of preventive detention would be entitled to examine:

i) the order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;

ii) in reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;

iii) power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;

iv) the detaining authority has acted independently or under the dictation of another body;

v) the detaining authority, by reason of self-created rules of policy or in any other manner not authorized by the governing statute, has disabled itself from applying its mind to the facts of each individual case;

vi) the satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;

vii) the satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;

viii) the ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;

ix) the grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and

x) the timelines, as provided under the law, have been strictly adhered to.

xi) Should the Court find the exercise of power to be bad and/or to be vitiated applying any of the tests noted above, rendering the detention order vulnerable, detention which undoubtedly visits the person detained with drastic consequences would call for being interdicted for righting the wrong."

85. This court is conscious of the law laid down by a Constitutional Bench of the Hon'ble Supreme Court in ***"Haradhan Saha & anr vs. State of West Bengal and ors, 1974 AIR 2154 decided on 21.08.1974***" The relevant para is reproduced as under**.**

> **"**The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. 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 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 prosecution is no bar to an order of preventive detention. An 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 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 detenu."

86. As hereinbefore mentioned this court in the facts and circumstances of the case is of the opinion that there was no apprehension, that detenu is likely to act in any manner prejudicial to the "social disorder". The

allegations against the petitioner/detenu covered under the numerous FIRs are presently under investigation/trial before the competent authorities/courts.

87. In the backdrop of the foregoing discussion the petition is allowed and the impugned detention order bearing No. PSA 05 of 2025 dated 08.09.2025 issued by the respondent No.2 i.e District Magistrate, Doda is quashed with direction to the respondents to release the petitioner/detenu forthwith from his preventive detention in the instant case. The detention record is ordered to be returned back to the office of the Ld. Sr. AAG, along with confidential report and Pen drive.

88. Disposed of.

(MOHD YOUSUF WANI)
JUDGE

JAMMU
27.04.2026
Vijay/**Ayaz**

i) Whether the order is speaking: Yes
ii) Whether the order is reportable: Yes