

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.8/2025
CM 171/2025

Reserved on: 24.04.2026

Pronounced on: 29.04.2026

Uploaded on: 30.04.2026

Whether the operative part or full
judgment is pronounced: Full

Mohammad Ashraf Sheikh
S/O Late Wali Mohammad Sheikh
R/O Kawoosa Khalisa Tehsil Narbal,
District Budgam.

...Petitioner(s)

Through: Adv. Adil Pandit
Adv. Nida Nazir.

Vs.

1. Union Territory of J&K through
Commissioner/ Secretary,
Home Department,
Civil Sectt. Srinagar.

2. District Magistrate, Budgam.

3. Superintendent District Jail, Baderwah.

...Respondent(s)

Through: Dy.AG Bikramdeep Singh.

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

JUDGMENT

1. Impugned in this petition is the Detention Order No. **DMB/PSA/11 of 2024** dated **23.11.2024** (for short 'impugned order') passed by respondent no. 2-District Magistrate, Budgam in terms whereof petitioner came to be detained under Section- 8 of The J&K Public Safety Act, 1978 in order to prevent him from acting in a manner prejudicial to the 'security of State'.

2. Through the medium of the present petition, petitioner assails his detention order, on the grounds that the detenu has been detained under the Public Safety Act on false and flimsy grounds without any justification; that the grounds of detention are vague and mere assertions of the detaining authority and no prudent man can make an effective and meaningful representation against these allegations. Further plea of the detenu is that he has not been provided the material/documents relied upon by the detaining authority, so as to make an effective representation before the detaining authority; that he was not informed that he can make a representation before the District Magistrate, therefore, a valuable right of the detenu stands defeated; that the Detaining authority, while passing the impugned order, has relied upon the stale grounds, therefore, the same is not sustainable. It was prayed to quash the impugned order for the afore-stated grounds.
3. Counter affidavit has been filed by respondent No. 2-District Magistrate Budgam resisting the present petition. It is contended that detaining a person under the provisions of Public Safety Act is always preventive in nature and its sole aim is to prevent a person from pursuing anti-national/anti-social activities, which are prejudicial to the maintenance of public order/security of the State. In the instant case there is enough material against the detenu which is highly suggestive of the fact that the normal law of the land is not sufficient to prevent him from continuing with his anti-national activities and it is evident that the detenu is highly motivated and is not likely to desist from anti-national and unlawful activities.
4. Heard learned counsel for the parties, perused the detention record produced by learned counsel for the respondents and considered.

5. Perusal of the detention record would indicate that the detenu was earlier apprehended in a case registered vide FIR No. 35/2022 under sections 7/25 IA Act, and 13, 23, 39 UA(P) Act at P/S Beerwah and was released on bail on 19.11.2022 by the competent court of law. Again the detenu was apprehended in a case registered vide FIR No.55/2024 under sections 447, 323, 354 IPC at P/S Magam. Thereafter, the detenu was kept under preventive measures several times under section 107/151 Cr.PC (now 126/170 BNSS) on 06.05.2023, 29.08.2023, 03.04.2024, 03.07.2024 and 01.08.2024, for his involvement in anti-national activities. The aforesaid reasons persuaded the Detaining authority to curb his activities to order detention of the detenu under the provisions of The J&K Public Safety Act.

6. Undoubtedly Right of personal liberty is a most precious right guaranteed under the Constitution of India. A person is not to be deprived of his personal liberty, except in accordance with procedures established under law and the procedure as laid down in the case '**Maneka Gandhi vs. Union of India, (1978 AIR SC 597)**', is to be just and fair. The personal liberty may be curtailed where a person faces a criminal charge or is convicted of an offence and sentenced to imprisonment. Where a person is facing trial on a criminal charge and is temporarily deprived of his personal liberty owing to criminal charge framed against him, he has an opportunity to defend himself and to be acquitted of the charge in case prosecution fails to bring home his guilt. Where such person is convicted of offence, he still has satisfaction of having been given adequate opportunity to contest the charge and also adduce evidence in his defense.

7. Framers of the Constitution, however, have, by incorporating **Article 22(5)** in the Constitution, left room for detention of a person without a formal charge and trial and without such person being held guilty of an offence and sentenced to imprisonment by a competent court. Its aim and object are to save society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case it would be dangerous, for the people at large, to wait and watch as by the time ordinary law is set into motion, the person, having dangerous designs, would execute his plans, exposing general public to risk and causing colossal damage to life and property. It is, for that reason, necessary to take preventive measures and prevent a person bent upon to perpetrate mischief from translating his ideas into action. **Article 22(5)** of the Constitution of India, therefore, leaves scope for enactment of preventive detention law.
8. Having glance of the grounds of detention, it is clear that right from the year 2022 till 2024, the detenu was kept under preventive measures for his involvement in criminal/anti-national activities. It was found that the detenu was involved in the subversive activities and was working as OGW of proscribed outfit 'LeT'. It was also found that on 09.04.2022, SOG Hardupanzoo and 2 RR Army Camp, Aripanthan, during a search operation in the orchard land of Rathsun Beerwah apprehended the petitioner alongwith his associate namely Wajid Yousuf Akhoon R/O Rathsun and recovered 01 Chinese pistol, 12 live rounds of pistol, 02 pistol magazines and 08 posters of 'LeT' outfit from the petitioner and his associate. Accordingly, the detenu was arrested in the said case. However, after his release, he was alleged not to have desisted himself from indulging in anti-national activities. The detenu was again

involved in a case FIR No.55/2024 under sections 447, 323, 354 IPC. It is alleged that on 11.05.2024 one Mst. Raja Bano R/O Kawoosa in an injured condition made a complaint in PP Narbal, wherein she had alleged that the petitioner alongwith his two other associates intruded into the courtyard of her residential house and attacked her, torn out her clothes and pulled her hair, thereby outraged her modesty. It is suggestive of the fact that the petitioner with his previous terror background has evolved criminal mindset and has been typically involved in the acts to threaten the general public. As per the reports of concerned Beat Incharge, the petitioner always remains in search of opportunity to exploit any situation and lure/instigate other youth for executing subversive plans. The detaining authority after keeping in view the activities of the detenu highly prejudicial to the security of the State, detained him under preventive custody, in terms of the impugned order, which is under challenge in the present petition.

9. The record, produced by the State, reveals that the detenu was informed to make a representation to the detaining authority as also to the Government against his detention order if the detenu so desires. In compliance to District Magistrate's detention order, the warrant was executed by ASI Mohd. Altaf of PP Narbal (P/S Magam), by supplying the copy of detention warrant, grounds of detention, dossier, copies of FIRs and other documents against a proper receipt. Further the execution report reveals that the detenu can make a representation to the Government. It is also revealed that the detention warrant and grounds of detention were read over and explained to the detenu in Urdu/Kashmiri language which the detenu understood fully and signatures of detenu were also obtained. Thus, the contention of the

petitioner for not supplying the material incapacitating him from making an effective and meaningful representation, is not sustainable.

10. Referring to the observations made by the Constitution Bench of the Supreme Court in the case of **'The State of Bombay v. Atma Ram Shridhar Vaidya AIR 1951 SC 157'** would be advantageous. **Para- 5** of the said judgment lays law on the point, which is profitable to be reproduced hereunder:

"5. It has to be borne in mind that the legislation in question is not an emergency legislation. The powers of preventive detention under this Act of 1950 are in addition to those contained in the Criminal Procedure Code, where preventive detention is followed by an inquiry or trial. By its very nature, preventive detention is aimed at preventing the commission of an offence or preventing the detained person from achieving a certain end. The authority making the order therefore cannot always be in possession of full detailed information when it passes the order and the information in its possession may fall far short of legal proof of any specific offence, although it may be indicative of a strong probability of the impending commission of a prejudicial act. Section 3 of the Preventive Detention Act therefore requires that the Central Government or the State Government must be satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to (1) the defence of India, the relations of India with foreign powers, or the security of India, or (2) the security of the State or the maintenance of public order, or (3) the maintenance of supplies and services essential to the community it is necessary So to do, make an order directing that such person be detained. According to the wording of section 3, therefore, before the Government can pass an order of preventive detention it must be satisfied with respect to the individual person that his activities are directed against one or other of the three objects mentioned in the section, and that the detaining authority was satisfied that it was necessary to prevent him from acting in such a manner. The wording of the section thus clearly shows that it is the satisfaction of the Central Government or the State Government on the point which alone is necessary to be established. It is significant that while the objects intended to be defeated are mentioned, the different methods, acts or omissions by which that can be done are not mentioned, as it is not humanly possible to give such an exhaustive list. The satisfaction of the Government however must be based

on some grounds. There can be no satisfaction if there are no grounds for the same. There may be a divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction required by the section. One person may think one way, another the other way. If, therefore, the grounds on which it is stated that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of mala fides cannot be challenged in a court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government or the State Government, is ruled out by the wording of the section. It is not for the court to sit in the place of the Central Government or the State Government and try to determine if it would have come to the same conclusion as the Central or the State Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a court of law. Such detention orders are passed on information and materials which may not be strictly admissible as evidence under the Evidence Act in a court, but which the law, taking into consideration the needs and exigencies of administration, has allowed to be considered sufficient for the subjective decision of the Government.”

11. In accordance with the legal position, afore-stated, settled by the **Six-Judge Constitution Bench** way back in the year 1951, the scope of looking into the manner in which the subjective satisfaction is arrived at by the detaining authority, is limited. This Court, while examining the material, which is made basis of subjective satisfaction of the detaining authority, would not act as a court of appeal and find fault with the satisfaction on the ground that on the basis of the material before detaining authority another view was possible.
12. The courts do not even go into the questions as to whether the facts mentioned in the grounds of detention are correct or false. The reason for the rule is that to decide this, evidence may have to be taken by the

courts and that it is not the policy of the law of preventive detention.

This matter lies within the competence of the advisory board.

13. Those who are responsible for national security or for maintenance of public order must be the sole judges of what the national security, public order or security of the State requires. Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing. Justification for such detention is suspicion or reasonable probability and not criminal conviction, which can only be warranted by legal evidence. Thus, any preventive measures, even if they involve some restraint or hardship upon individuals, as held by the Supreme Court in the case '**Ashok Kumar v. Delhi Administration & Ors., AIR 1982 SC 1143**', do not contribute in any way of the nature of punishment.

14. Observing that the object of preventive detention is not to punish a man for having done something but to intercept and to prevent him from doing so, the Supreme Court held in the case '**Naresh Kumar Goyal v. Union of India & Ors., 2005 (8) SCC 276**', and reiterated in the judgment in a case titled '**Union of India and another v. Dimple Happy Dhakad**' (AIR 2019 SC 3428) that an order of detention is not a curative or reformatory or punitive, but a preventive action, acknowledged object of which being to prevent anti-social and subversive elements from endangering the welfare of the country or security of the nation or from disturbing public tranquility or from indulging in anti-national activities or smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances, etc. Preventive detention is devised to afford protection to society.

Rulings on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing so.

15. Viewed from any angle, this Court finds no illegality or infirmity in the impugned order of detention. The grounds of detention, on the basis of which impugned order came to be passed, are found definite and unambiguous.

16. For the foregoing reasons, present petition is **dismissed** and impugned order is upheld.

17. Scanned detention record, as produced, be returned to learned counsel or respondents.

(M. A. CHOWDHARY)
JUDGE

Srinagar
29.04.2026
Muzammil. Q

Whether the order is reportable: Yes / No