HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.239/2025

Reserved on: 30.04.2026

Pronounced on: 11.05.2026
Uploaded on: _____

Whether the operative part or full judgment is pronounced: Full

Fariz Gulzar (18 years)
S/O Gulzar Ahmad Wani
(through his father)
R/O Hunipora Wanpora,
Tehsil & District Pulwama

…Petitioner(s)

Through: Adv. Shaheryar.

Vs.

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

2. District Magistrate, Pulwama.

…Respondent(s)

Through: GA Furqan Yaqub Sofi.

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

JUDGMENT

1. The present petition under Article 226 of the Constitution seeks issuance of a writ of habeas corpus for quashing Detention Order No. **11/DMP/PSA/25** dated **30.04.2025** passed by respondent No.2-District Magistrate, Pulwama, whereby the detenue, stated to be a juvenile, has been detained under the provisions of the *Jammu & Kashmir Public Safety Act, 1978* (for short "PSA") in order to deter him to act in a manner prejudicial to the 'security of the State'.

2. The main thrust of challenge is that the detenue was a juvenile on the date of alleged activities as well as on the date of registration of FIR No.293/2023**,** on the basis of which impugned detention order was passed, rendering the impugned order legally unsustainable.

3. Learned counsel for the petitioner, while reiterated the grounds urged in the petition, argued that the petitioner was below 18 years on the relevant date and, thus, governed by the *Juvenile Justice (Care and Protection of Children) Act, 2015*. He submits that the detaining authority has failed to consider this crucial aspect; that the petitioner has been detained under the Public Safety Act on false and flimsy grounds without any justification. He further raised the plea of vagueness in the grounds of detention. It is being stated that the allegations leveled in the grounds of detention relate to the year 2023 and those activities have no proximity with present time for the purpose of preventive detention unless any fresh activity is not attributed to the petitioner. It was prayed to upset the impugned order being unsustainable for the afore-stated grounds.

4. Learned counsel for the respondents, *ex adverso,* submits that the petitioner is a habitual offender whose activities are prejudicial to the security of the State; that the detention of the petitioner is based on subjective satisfaction derived from relevant material; and that the PSA does not expressly bar detention of a juvenile.

5. Heard learned counsel for the parties, perused the detention record produced by learned counsel for the respondents and considered.

6. Briefly stated facts of the present case are that the detenue came to be arrested in FIR No.293 of 2023 for the offences under Sections 302 IPC, 2/25 A.Act, registered at Police Station, Pulwama, alleging

involvement in antinational/subversive activities; that the petitioner was also found working as potential OGW of killed terrorists namely Riyaz Ahmad Dar @ Khalid @ Sheeraz R/O Sathergund Kakapora and Rayees Ahmad Dar R/O Larve Pulwama; that the petitioner was earlier lodged in Juvenile Home Harvan, Srinagar for a period of almost one year and three months and was subsequently released on bail on 02.01.2025; that after his release the detaining authority observed the activities of the petitioner highly prejudicial to the security of the State; that being highly motivated to carry out the nefarious designs, the petitioner was not likely to desist from indulging in subversive activities, therefore, the detaining authority in order to prevent him from indulging in the activities which are prejudicial to the security of the State ordered to detain him, invoking the provisions of The J&K Public Safety Act, 1978.

7. It is not in dispute that the impugned detention order relies upon case of year 2023 i.e. FIR No.293/2023 registered against the detenue, the allegations of indulging himself in subversive activities, and the Police dossier recommending preventive detention of the petitioner.

8. The petitioner has placed on record the Secondary School Examination Certificate issued by The Jammu & Kashmir Board of School Education, indicating the date of birth of the petitioner as 11.04.2007. The said document has not been rebutted by the respondents. Rather it is also the case of the respondents that detenue as juvenile was involved in the case in the year 2023. The grounds of detention has indicated the age of the detenue as 18 years and 16 days as on date of his detention under Public Safety Act i.e., 30.04.2025, which means that on the date of his alleged involvement in the case registered in the year 2023, he

was of the age of 16 years or so, as such, he was juvenile on the day of occurrence. Moreover, he was detained in a Juvenile Home and tried by a Juvenile Board.

9. A child in conflict with law cannot be equated with an adult offender so as to justify preventive detention. The scheme of Juvenile Justice Act excludes the application of punitive or preventive detention mechanisms meant for adults. Preventive detention laws like Public Safety Act are exceptional in nature and must be strictly construed. Application of such law to a juvenile defeats the very object of juvenile justice jurisprudence. In view of the law laid down by the Supreme Court of India in '**Jarnail Singh v. State of Haryana'** reported as **AIR 2013 SC 3467,** while making reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, held that:-

> ***"…In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion."***

10. The next question is whether alleged activities committed during juvenility by the detenue can be relied upon to justify his preventive detention. Admittedly, the petitioner was juvenile when he was arrested

in case No. 293/2023 and was later on released on bail after spending fifteen months in Juvenile Home Harvan, Srinagar. The Hon'ble Supreme Court in a case **'Union of India & Ors. Vs. Ramesh Bishnoi'** reported as **(2019) 19 SCC 710** observed that :-

> ***"…The thrust of the legislation, i.e. 'The Juvenile Justice (Care and Protection of Children) Act, 2000' as well as 'The Juvenile Justice (Care and Protection of Children) Act, 2015' is that even if a juvenile is convicted, the same should be obliterated, so that there is no stigma with regard to any crime committed by such person as a juvenile. This is with the clear object to reintegrate such juvenile back in the Society as a normal person, without any stigma. Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015 lays down guidelines for the Central Government, State Governments, the Board, and other agencies while implementing the provisions of the said Act….."***

Division Bench of this Court in a case '**Tahir Riyaz Dar vs. Union Territory of J&K' (LPA No.121/2025)** decided on **06.11.2025**, observing that the preventive detention must be based on relevant, proximate and legally admissible material and the acts committed as a juvenile, lose their determinative value for future preventive action**,** held as under:

> ***"…An illegal act committed by a juvenile does not stigmatize his future and likewise, any illegal act committed by the juvenile cannot form the basis for issuance of a detention order under the Act subsequently, more particularly when the juvenile cannot be detained under the Act. As such, this Court is of the view that the appellant could not have been detained for activities allegedly committed while he was juvenile.***

11. Applying the aforesaid principle, it is evident that the detention order in the present case is substantially founded upon FIR of year 2023 and allegations pertaining to the period when the detenue was a juvenile. A perusal of the detention order reveals no reference to the age of the petitioner, no consideration of applicability of the Juvenile Justice Act, but only mechanical reproduction of the Police dossier. The failure to consider a vital and relevant factor i.e., juvenility of the petitioner on the date of alleged activities, renders the order vitiated on account of non-application of mind. It is well settled that subjective satisfaction must be based on complete and relevant material, failing which the order cannot be sustained.

12. Another limb of the argument is with regard to preventive detention which is an exception to personal liberty and must be strictly construed. In **"Rekha Vs. State of Tamil Naidu & Anr."** reported as **(2011) 5 SCC**, the Supreme Court held that detention cannot be resorted to when ordinary law is sufficient. It has been observed that:-

> ***"29. Prevention 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."***

13. In the present case the detenue could have been dealt with under the Juvenile Justice framework, however, Detaining Authority has shown no compelling necessity to bypass such mechanism. The impugned detention order, thus, fails the test of reasonableness, legality, and proportionality**.**

14. Besides his involvement in case FIR registered in the year 2023, detenue has been alleged to have worked as OGW providing logistic support to killed terrorists Riyaz Ahmad Dar and Rayees Ahmad Dar residents of Larve Pulwama, subversive activities motivating youth of the areas for joining the terrorist ranks and closely associated with the active terrorists**.** The grounds of detention, however, did not specify the particular activities but vague and general statements have been made.

15. The Apex Court in a case titled "**Jahangir Khan Fazal Khan Pathan Vs. Police Commissioner & Anr."** reported as **(1989) 3 SCC 590** observed on the sustainability of detention order on vague averments in the grounds of detention as under:-

> ***"8. The other grounds regarding the vagueness of the averments made in the grounds about the petitioner indulging in criminal activities apart from the five criminal cases lodged under the Prohibition Act and mentioned in the ground of detention do not satisfy the requirements envisaged in Section 3(1) of the PASA Act inasmuch as the said five specific criminal cases have no connection with the maintenance of***

> ***public order. The aforesaid criminal activity does not appear to have disturbed the even tempo of life of the people of Ahmedabad City or of the particular locality. Furthermore the averments have been made in the grounds are; Accordingly, upon careful perusal of complaint and papers enclosed with the proposal it appears that you are a prohibition bootlegger, doing illegal activity of selling English and Deshi liquor. You and your companion are bearing and showing deadly weapons like Rampuri knife to the innocent persons passing through the said locality on the premise of being of police „Batmider" of Police. And you are beating innocent persons who oppose your activity of liquor etc. These statements are vague and without any particulars as to what place or when and to whom the detenue threatened with Rampuri knife and whom he has alleged to have beaten. These vague averments made in the grounds of detention hereinbefore are bad inasmuch as the detenue could not make an effective representation against the impugned order of detention. As such the detention order is illegal and bad."***

16. In a case "**Ameena Begum Vs. State of Telengana & Ors."** reported as **(2023) 9 SCC 587** the Hon'ble Supreme Court laid down following tests to determine the validity of order of detention:-

> ***"49.The other aspect requiring some guidance for detaining authorities and on which we wish to comment is that there is no requirement in law of orders of detention being expressed in language that would normally be considered elegant or artistic. An order of detention, which is capable of comprehension, has to precisely set forth the grounds of detention without any vagueness. The substance of the order and how it is 36 understood by the detenu determines its nature. An order in plain and simple language providing clarity of how the subjective satisfaction was formed is what a detenu would look for, since the detenu has a right to represent against the order of detention and claim that such order should not have been made at all. If the detenu fails to comprehend the grounds of detention, the very purpose of affording him the opportunity to make a representation could be defeated. At the same time, the detaining authority ought to ensure that the order does not manifest consideration of***

extraneous factors. 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 detenu despite stiff opposition raised by the State and thereby failing in the attempt to keep the detenu behind bars".

17. For what has been observed and held by the Apex Court in the afore-quoted cases and having regard to what has been observed hereinabove by this Court, the impugned detention order is vitiated and does not sustain in the eyes of law.

18. Viewed thus, the present petition is allowed and the impugned Detention Order No. **11/DMP/PSA/25 dated 30.04.2025,** is, hereby, quashed. As a sequel, the detenue namely Fariz Gulzar S/O Gulzar Ahmad Wani R/O Hunipora Wanpora Tehsil & District Pulwama, is directed to be released from the custody forthwith, if not required in any other case(s).

19. Scanned detention record, as produced, be sent back.

(M. A. CHOWDHARY)
JUDGE

Srinagar
11.05.2026
Muzammil. Q

Whether the order is reportable: Yes / No