

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

.....

LPA no.145/2026

Reserved on: 20.08. 2026
Pronounced on: 24.09.2026
Uploaded on: 25.09.2026

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

Anwar Jan (Choudhary) Age 49 years S/o Mohd. Sardar R/o Anderwan Sagam Tehsil Kokernag District Anantnag A/P Palth Tehsil and District Samba through brother namely Fiyaz Ahmad age 35 years S/o Mohd Sardar R/o Anderwan Sagam Tehsil Kokernag District Anantnag

.....Appellant(s)

Through: Mr. M.A.Goni, Sr. Advocate with Mr. Tanveer Ahmad, Advocate
Versus

1. Union Territory of J&K through Commissioner/Secretary Home
Department, Civil Secretariat, Jammu-180001
2. District Magistrate, Anantnag 182202
3. Senior Superintendent of Police, Anantnag 182202
4. Superintendent District Jail Bhandarwah 182204

.... Respondent(s)

Through: Mr. Ilyas Laway, GA

CORAM:

HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE MOHD YOUSUF WANI, JUDGE

JUDGMENT

Per: Sanjeev Kumar-J:

1. This *intra* court appeal arises from an order and judgement dated 30th June 2026, passed by learned Single Judge [*“Writ Court”*] in HCP no.01/2026 titled ‘*Anwar Jan (Choudhhary) v. UT of J&K and others*’, whereby the Writ Court has dismissed the said habeas corpus writ petition filed by appellant to throw challenge to his detention made by District Magistrate, Anantnag [*“detaining authority”*] under Section 8 of

J&K Public Safety Act, 1978 [*“the Act of 1978”*] vide Order no.32/DMA/PSA/DET/2025 dated 1st December 2025 (hereinafter referred to as *“impugned order of detention”*)

2. The judgement impugned is assailed by appellant on several grounds. However, before adverting to the grounds of challenge urged by Mr. M. A. Goni, learned senior counsel appearing for appellant, we deem it appropriate to take note of few facts germane to the disposal of this appeal.
3. The appellant is stated to be involved in various criminal activities and, therefore, was arrested many a times in connection with cases – FIR nos. 201/2015; 256/2015; 100/2017; 45/2021; 60/2021; 28/2022. Earlier, appellant was detained vide Order no.06/PSA/2018 dated 8th October 2018. The said detention order was challenged by him in HCP no.11/2019. By virtue of order/judgement dated 22nd April 2019 aforesaid detention order was quashed and as a corollary thereof the appellant/detenu was released from custody. In addition to these FIRs, the appellant is said to be involved in bovine smuggling, which resulted in registration of seven FIRs, viz. FIR nos. 126/2022, 127/2022, 128/2022, 129/2022, 132/2022, 134/2022, 137/2022. All these FIRs have been registered under Section 188/109 IPC, and 11 of Prevention of Cruelty to Animals Act, 1960. Given those activities, District Magistrate, Samba, issued detention order no.02/PSA/2023 dated 3rd January 2023. Challenge thereto was thrown by appellant in WP(C) no.352/2023 and in terms of order dated 20th February 2023, the said detention order was stayed. Nevertheless, he is stated to have again indulged in criminal activities resulting in registration of FIR nos.55/2025 and 121/2025.

According to petitioner, bail in FIR no.55/2025 has been granted in his favour by court of law whereas application for grant of bail in FIR no.121/2025 has been dismissed, but no reference to this extent has been made by detaining authority in impugned order of detention and, that detenu was already in custody in connection with case FIR no.121/2025 since 14th November 2025.

4. Perusal of record abundantly makes it clear, as is also discernible from bare reading of impugned order of detention, that the dossier and other connected documents in respect of detenu had been produced by Senior Superintendent of Police, Anantnag, before detaining authority vide letter no.CS/71/2025/12487-92 dated 15th July 2025, seeking detention of appellant/detenu under the Act of 1978. The detaining authority having gone through the material brought to his notice by Senior Superintendent of Police, Anantnag, formed an opinion that with a view to prevent appellant from acting in any manner prejudicial to the public order of State/UT, it had become imperative to place him under preventive detention in exercise of powers conferred under Section 8 of the Act of 1978. As a result whereof, the detaining authority, vide Order no.32/DMA/PSA/DET/ 2025 dated 1st December 2025, has placed appellant under preventive detention. The grounds of detention, running into four pages, besides other material, are also claimed to have been served upon appellant.

5. Feeling aggrieved by his detention, appellant preferred HCP no.01/2026, seeking issuance of writ of certiorari to quash order of detention. The petition was resisted by respondents. In Reply Affidavit filed by respondent no.2, the stand was taken that all the procedural safeguards as

envisaged under the Act of 1978 and the Constitution of India, had been observed in letter and spirit, and that the order of detention was perfectly legal, justified and in consonance with detention law.

6. The Writ Court, having considered rival contentions of parties and material on record, came to the conclusion that the order of detention was legally sound and did not suffer from any legal or procedural infirmity. The Writ Court, accordingly, dismissed the petition filed by appellant. This is how the instant appeal is before us, and appellant seeks his release from preventive detention of respondents.

7. Mr. M. A. Goni, learned senior counsel appearing for appellant, in recapitulation of the grounds taken in the memo of appeal, has stoutly urged that: the order of detention has been passed while appellant was already in custody since 14th November 2025 in connection with case FIR no.121/2025, without recording any compelling reasons or likelihood of his release; that detaining authority did not show any awareness of the fact that appellant had been admitted to bail in case FIR no.55/2025 by competent court, and no reference to the pendency of bail application in FIR no.121/2025 was made in grounds of detention; that the detention order wrongly mentions five sections of the Bharatiya Nyaya Sanhita (BNS), viz. 109, 126(2), 115(2), 309(4), 351 (3) in FIR no.121/2025, whereas, as a matter of fact, FIR contains only three sections, viz. 126(2), 109, 309 (4) of BNS, which is a patent factual error demonstrating non-application of mind; that the order of detention dated 1st December 2025 was executed on 19th December 2025 after an unexplained delay of eighteen days, which severs the live-link between the prejudicial activities and the order of detention; that before passing the order of

detention, the detaining authority had written a letter to the Director General of Prisons (DGP) with regard to the jails, whereby permission to lodge the appellant at District Jail, Bhaderwah, had already been sought, which reflects predetermination and total non-application of mind on the part of the detaining authority; that the grounds of detention are a verbatim reproduction of the police dossier; and that the appellant, being a semi-literate person, was not supplied with translated copies of the grounds of detention and material, rendering his right of effective representation under Article 22(5) of the Constitution nugatory.

8. *Per contra*, Mr. Ilyas Laway, learned Government Advocate, has sought to support the impugned judgment and contended that all statutory safeguards had been complied with; that the entire material was supplied to the detenu on the very day of execution of the warrant of detention; and that the subjective satisfaction of the detaining authority could not be subjected to judicial review.
9. We have heard the learned counsel for the parties and perused the record, including the detention record produced by learned counsel for respondents.
10. At the outset, it needs to be noticed that though subjective satisfaction of detaining authority is not amenable to judicial review on its correctness or sufficiency, the same is certainly subject to judicial scrutiny on the grounds of non-application of mind, non-consideration of relevant material, consideration of irrelevant material, *mala fides* and violation of constitutional and statutory safeguards. In this regard, we are fortified by the law laid down by the Hon'ble Supreme Court in the case of ***Rekha v. State of Tamil Nadu***, (2011) 5 SCC 244, in which it has been

authoritatively held that a detention order founded on vague grounds or passed without application of mind cannot be sustained.

11. Coming first to the fact that appellant was already in custody in connection with case FIR no.121/2025 since 14th November 2025, we find that neither grounds of detention nor order of detention disclose any awareness of detaining authority about the custody of detenu, nor has any compelling reason been recorded so as to justify the invocation of extraordinary power of preventive detention against a person who was already behind bars and available to the authorities.

12. It is trite law, as has been held by the Hon'ble Supreme Court in the cases of *Kamarunnissa v. Union of India, (1991) 1 SCC 128* and *Vijay Narain Singh v. State of Bihar, (1984) 3 SCC 14*, that preventive detention cannot be used as a substitute for ordinary law of the land and that when a person is already in custody, detaining authority must, on the basis of cogent material, be satisfied that there is a real possibility of his release and of his indulging in prejudicial activities thereafter. No such satisfaction is discernible from the impugned order of detention. The learned Writ Court has glossed over this vital aspect of the matter.

13. Similarly, the fact that appellant/detenu had been admitted to bail in connection with case FIR no.55/2025 by competent court, and his bail application in FIR no.121/2025 dismissed by learned Additional Sessions Judge, Anantnag, was pending before this Court at the time of passing of the impugned order of detention, in which he having been subsequently admitted to bail on 16th February 2026, finds no mention in the grounds of detention. The detaining authority has not shown any awareness of bail granted in FIR no.55/2025 and dismissal of bail application in FIR

no.121/2025. In *Rekha v. State of Tamil Nadu* (supra) the Hon'ble Supreme Court quashed a detention order in identical circumstances, holding that where the detaining authority was not even aware whether the bail application of the accused was pending, the subjective satisfaction stands vitiated and detention order cannot be sustained.

14. Yet another infirmity which strikes at the root of the impugned detention order is that it wrongly mentions five Sections of the BNS, i.e., 109, 126(2), 115(2), 309(4), 351(3) as having been invoked in FIR no.121/2025, whereas the FIR contains only three Sections, i.e., 109, 126(2) and 309(4). Such a patent factual error, going to the very substance of allegations against detenu, palpably establishes that detaining authority acted mechanically on police dossier without applying its independent mind. This also seriously prejudiced the constitutional right of detenu to make an effective representation against his detention as guaranteed under Article 22(5) of the Constitution of India. In terms of *Hadibandhu Das v. District Magistrate, Cuttack, AIR 1969 SC 43*, a detention order founded on factually incorrect material is unsustainable in law.

15. So far as the delay in execution of detention is concerned, though the detention order was passed on 01.12.2025, yet it was executed only on 19.12.2025. The respondents have failed to furnish any explanation for this unexplained delay of 18 days. The learned Writ Court has, however, confined the issue merely to the fact that the grounds of detention were supplied on the same day on which the warrant was executed, without examining the unexplained delay in execution of order of detention itself, more particularly when the detenu was available and in custody in

connection with case FIR no.121/2025. Such unexplained delay severs live and proximate link between alleged prejudicial activities and necessity of preventive detention and renders detention illegal, as held in by the Supreme Court in *Sk. Nizamuddin v. State of West Bengal, (1974) 4 SCC 358*.

16. What, however, tilts the scales conclusively against respondents is the material on the detention record itself which reveals that before passing impugned order of detention, District Magistrate, Anantnag, had already written a letter to Director General of Prisons (DGP) with regard to the jails, pursuant to which the office of the Director General of Prisons, J&K, issued a communication no.DS/PSA dated 26th November 2025, specifically directing that appellant/detenu be lodged at District Jail, Baderwah, under preventive detention laws. The said communication was issued on the very same day as the proposal of District Magistrate and five days prior to passing of order of detention dated 1st December 2025, whereas detention order itself came to be executed on 19th December 2025. Issuance of a prison allotment direction, pursuant to the letter of detaining authority, much before detention order was even passed, unmistakably establishes that the decision to detain appellant had already been taken in advance and that the detention order was passed as a mere formality. This reflects gross non-application of mind on the part of detaining authority and demonstrates that subjective satisfaction, mandated under the Act of 1978, was neither genuine nor independently arrived at. The impugned detention order is, therefore, vitiated in law.

17. Before parting with the judgment, we consider it necessary to observe that India's animal protection laws have changed over time. These

changes show how relationship between humans and animals has evolved, and how people's views on animal care have also shifted. The idea of protecting animals in India is very old. Ancient legal texts and religious scriptures taught people to treat animals with kindness. Two important ideas from Indian thought are "*ahimsa*", viz. non-violence, and "*dharma*" viz. duty. These ideas still shape how people in India see animals. Cows, elephants, and buffalo are respected in a special way, which is a unique part of Indian culture. The Prevention of Cruelty to Animals Act, 1960, was a very important law. It was made to stop unnecessary pain and suffering to animals. This law also gave police and other officials the power to punish people who are cruel to animals.

18. Besides, the smuggling of bovine animals is not only a criminal offence but it is also an act which hurts the religious sentiments of the largest population of India. Such activities, if established against any person, are highly objectionable and have the potential to disturb public tranquillity, and, therefore, the law enforcement agencies are expected to deal with such offenders with a firm hand in accordance with law.

19. The animals also feel pain, stress, and fear just like humans do, but our legal system still treats them like objects or property instead of living beings. Because of this, the rules made to protect them are extremely weak.

20. It is under India's main animal protection law written back in 1960, viz. Prevention of Cruelty to Animals Act, that someone who tortures, beats, or kills an animal can be fined as little as 10 to 50 rupees. Since these fines are so low, there is almost no fear of the law, which is why we see people committing acts of abuse just to post videos on social media for

views. While the courts have agreed that animals deserve to live without suffering, the written law has not changed enough yet. For real change to happen, the law needs to officially recognize the animal feelings and replace those tiny fines with strict jail time and heavy penalties.

21. Now coming to the case in hand, even in respect of such activities, the constitutional safeguards governing preventive detention are mandatory and not directory, and any infraction thereof vitiates the detention. The answer to such criminality lies in diligent and expeditious prosecution under the ordinary criminal law and not in throwing to winds the procedural safeguards enshrined under Article 21 and 22 of the Constitution.

22. Viewed from any angle, we do not find the impugned order passed by the Writ Court sustainable in law.

23. For all these reasons, we find merit in this appeal, and the same is accordingly allowed. Resultantly the petition, being HCP no.01/2026 is also allowed and the order of detention bearing no.32/DMA/PSA/DET/2025 dated 1st December 2025, passed by the District Magistrate, Anantnag, is quashed. The appellant shall be set at liberty, if he is not required in any other case.

24. Disposed of along with connected CM(s).

(MOHD YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR

24.09.2026

"Mir Arif"

Whether the judgment is reportable? Yes/No