IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 12.10.2026
Pronounced on: 30.10.2026
Uploaded on: 30.10.2026

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

HCP No.197/2025

AIJAZ AHMAD RATHER

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. M. Amin Khan, Advocate.

Vs.

UT OF J&K & ORS. ...RESPONDENT(S)

Through: - Mr. M. Younis Hafeez, Assisting Counsel.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) Through the medium of this petition, the petitioner has assailed the legality of the order of detention bearing No. 32/DMP/PSA/25 dated 07.05.2025 issued by respondent No.2-District Magistrate, Pulwama, whereby the petitioner has been placed under preventive detention in order to prevent him from acting in a manner prejudicial to the security of the State.

2) The order of detention (supra) has been impugned on the following grounds:

(a) That the detenue was not provided all the relevant material and the documents relied

upon by the detaining authority and the translated version thereof, thereby denying him a real and meaningful opportunity to make an effective representation against his detention;

(b) That the impugned order has been passed on the basis of stale and irrelevant grounds which are lacking proximate and live link with the detenue's current conduct and the impugned order has been passed in a mechanical manner without application of mind;

(c) That the grounds of detention are vague, indefinite and ambiguous;

(d) That there is an unexplained and unreasonable delay between the alleged activities and the passing of the detention order, which breaks the live and proximate link required between the incident and the order of detention.

3) The respondents have filed the counter affidavit stating therein that the activities of the petitioner have been found to be prejudicial to the security of the State and he has been taken into preventive custody as per the requirement of law. The order of detention was executed on 08.05.2025 by SI Mohd. Shafi and detenue was handed over to the Assistant Superintendent District Jail Kathua. The contents of grounds of detention and detention warrant/order were read over to the detenue. The detenue was informed about his

right to submit representation against his detention. The representation filed by the detenue was considered and rejected by the detaining authority on 20.05.2025 and the result of such consideration was conveyed to the detenue. Furthermore, another representation was filed on behalf of the detenue before the Home Department, which has also been rejected on 06.06.2025. It has been stated that the grounds urged by the petitioner in the petition are legally misconceived, untenable and without any merit. It has been further averred that the grounds of detention are precise, proximate, relevant and there is no vagueness or staleness in the same. It is stated that the impugned order of detention has been passed by the competent authority strictly in accordance with the provisions of law and whole of the material forming basis of the grounds of detention has been provided to the petitioner.

4) In order to lend support to the contentions raised in the counter affidavit, the respondents have produced the detention record.

5) Learned counsel for the petitioner has vehemently argued that the petitioner was not involved in any offence and despite that, on vague grounds, he has been detained in terms of the impugned order of detention. He has also

argued that the detaining authority has failed to establish any live or proximate link between the activities of petitioner and the order of detention.

6) *Per contra*, learned counsel for the respondents has submitted that the detaining authority, after perusing the dossier, has recorded its subjective satisfaction that the activities of the petitioner were prejudicial to the maintenance of security of the state and the grounds of detention cannot be termed as vague as the detaining authority has observed that the petitioner has been found working as OGW to active terrorist Ehsan-ul-Haq of Murran Pulwama and has been providing all possible assistance to the active terrorist for his movement from one place to another thereby evading his arrest. He has further argued that the representation submitted by the petitioner was duly considered and rejected by the detaining authority on 20.05.2025 and also by the Home Department on 06.06.2025.

7) Heard and perused the record.

8) The primary ground raised by the petitioner is that despite the fact that no FIR has been registered against the petitioner, he has been detained in terms of the impugned order of detention.

9) It is settled law that registration of FIR is not the condition precedent to the issuance of detention order as the sole purpose of detaining a person under the preventive detention laws is to deter him from indulging in the activities which provide basis for the issuance of an order of detention. In this context, it would be apposite to take note of the judgment of the Hon'ble Supreme Court in **Haradhan Saha v. State of W.B,** (1975) 3 SCC 198 and the relevant para is extracted as under:

> **19.** The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the Executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case a person is punished on proof of his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in Section 3 of the Act to prevent.

10) A perusal of the record reveals that the dossier was submitted by the sponsoring agency i.e. respondent No.3, thereby narrating that the petitioner has been working as OGW and providing logistic support to one active terrorist, Ehsan-ul-Haq of Murran Pulwama and the petitioner was bound down on 8th March, 2025 and 23rd April, 2025, but he did not change his behaviour and after taking note of the report submitted by the field agencies, the petitioner was

directed to be detained in terms of the impugned order of detention. Accordingly, the contention raised by the petitioner that no FIR has been registered against him and, as such, he could not have been detained under the Act supra, has no force and the same is rejected.

11) Secondly, it was contended that the grounds of detention are vague and no illegal activities have been detailed out in the grounds of detention necessitating the issuance of order detention.

12) As already noted above, the detaining authority took note of the dossier and after perusing the same and more particularly after taking note of the fact that the petitioner has been working as OGW to the active terrorist Ehsan-ul-Haq of Murran Pulwama and providing all possible assistance to him for his movement from one place to another so as to enable the said terrorist to evade arrest, recorded its satisfaction that it is necessary to detain the petitioner. It is important to note that OGWs operate covertly to avoid detection by security forces rather than in full public view. Consequently, direct evidence of their activities is rarely available, and intelligence reports often serve as the primary source regarding their illegal conduct. Once the sponsoring agency and the detaining authority have named

the particular terrorist to whom the petitioner was providing logistic support, it cannot be said that the petitioner has been detained on vague grounds. While assessing the legality of a detention order, this Court does not exercise appellate jurisdiction and cannot substitute its view for the subjective satisfaction of the Detaining Authority, especially where the Authority has evaluated all relevant circumstances necessitating the petitioner's detention. Reliance is placed upon the decision of the Apex Court in ***Union of India v. Arvind Shergill*, (2000) 7 SCC 601,** wherein it has been observed as under:

> **4. The High Court has virtually decided the matter as if it was sitting in appeal on the order passed by the detaining authority. The action by way of preventive detention is largely based on suspicion and the court is not an appropriate forum to investigate the question whether the circumstances of suspicion exist warranting the restraint on a person.** The language of Section 3 clearly indicates that the responsibility for making a detention order rests upon the detaining authority which alone is entrusted with the duty in that regard and it will be a serious derogation from that responsibility if the court substitutes its judgment for the satisfaction of that authority on an investigation undertaken regarding sufficiency of the materials on which such satisfaction was grounded. **The court can only examine the grounds disclosed by the Government in order to see whether they are relevant to the object which the legislation has in view, that is, to prevent the detenu from engaging in smuggling activity. The said satisfaction is subjective in nature and such a satisfaction, if based on relevant grounds, cannot be stated to be invalid.** The authorities concerned have to take note of the various facts including the fact that this was a solitary incident in the case of the detenu and that he had been granted bail earlier in respect of which the application for cancellation of the same was made but was rejected by the Court. In this case, there has been due application of mind by the authority concerned to that aspect of the matter as we

> have indicated in the course of narration of facts. Therefore, the view taken by the High Court in the circumstances of the case cannot be sustained.

Accordingly, this contention of the petitioner is misconceived and is rejected.

13) This Court has perused the detention record and finds that the detention order, communication addressed to the detenue, the grounds of detention and other documents comprising nine leaves were provided to the petitioner on 8th May, 2025 and in acknowledgement thereof, he has signed the execution report. The detenue also executed one receipt on 8th May, 2025, wherein he has also acknowledged that he has received copy of warrant, notice of detention, grounds of detention dossier, copies of complaints, beat report through Sub Inspector, Mohammad Shafi. Further the communication dated 7th May, 2025, addressed to the petitioner, which has been placed on record by the petitioner himself, reveals that the petitioner was informed about his right to make representation both to the detaining authority as well as to the Government against the order of detention.

14) The case of the petitioner was also referred to the Advisory Board for its opinion and in terms of report dated 27th May, 2025, the Advisory Board opined in favour of detaining the petitioner and thereafter the Government, in terms of order dated 06.06.2025, confirmed the detention

order. The record further depicts that the representation submitted by wife of the petitioner to the Government has been rejected on 06.06.2025 and the petitioner was informed about the same on 07.06.2025.

15) The representation dated 19.05.2025 submitted by the petitioner to the detaining authority has been considered and rejected by the said authority on 20.05.2025 and the result of consideration has been conveyed to the petitioner which is evident from communication bearing No. DMP/PA/25/233-36 dated 20.05.2025, which forms part of the detention record.

16) In view of the above this Court finds no reason to show indulgence. The petition lacks merit and is dismissed accordingly.

17) The detention record be returned to learned counsel for the respondents.

(Rajnesh Oswal)
Judge

Srinagar,
30.10.2026
"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **NO**

HIGH COURT JAMMU & KASHMIR AND LADAKH