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

HCP 279/2025

Reserved on: 22.10.2026
Pronounced on: 30.10.2026
Uploaded on: 31.10. 2026
Whether the operative part or full judgment is pronounced: ***Full***

1. **Ajaz Ahmad Seh** (aged 26 years)
S/o Gulam Nabi Seh
R/o Sehpora, Tehsil Rajpora and District Pulwama
Through his father, Gulam Nabi Seh S/o Late Mohd Shaban She, R/o Shepora, Tehsil Rajpora, District Pulwama, aged
R/o Sehpora, Tehsil Rajpora, District Pulwama

…Petitioner(s)/Appellant(s).

Through: Mr. Mohammad Ayoub Bhat, Advocate with
Ms. Mahajabeen Bhat, Advocate

Vs.

1. **Union Territory of Jammu and Kashmir**
Through Chief Secretary to the Government, Home Department, J &K, Civil Secretariat, Srinagar/Jammu
2. **District Magistrate,** Pulwama

...Respondent(s).

Through: Mr. Jahangir Ahmad Dar, GA

CORAM:HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGEMENT
30.10.2026

Brief facts of the case

1. The petitioner, Ajaz Ahmad Seh, aged 27 years, a resident of Shehpora, Tehsil Rajpora, District Pulwama, by profession a driver, has been taken into preventive custody vide Order No. 34/DMP/PSA/2025 dated 28.07.2025 (hereinafter referred to as "the impugned order"), passed by respondent No. 2 in exercise of the powers conferred under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as "the Act"), on the basis of a dossier submitted by the Senior Superintendent of Police (SSP), Pulwama.

2. The petitioner has approached this Court through his father and is presently lodged in District Jail, Udhampur. Pertinent to mention that, according to the petitioner, he was initially taken into custody by the police in the first week of July 2025, whereafter the impugned order dated 28.07.2025 came to be issued against him.

3. As per the grounds of detention, the petitioner is alleged to have remained in contact with one Aashiq Ahmad Nengroo, stated to be a terrorist handler affiliated with Jaish-e-Mohammad (JeM), through telephone number +#####370023 and the encrypted application Zangi, accessed through a secured VPN, for the purpose of communicating with handlers based in Pakistan-occupied Kashmir/Pakistan.

4. It is further alleged that the petitioner acted as an Over Ground Worker (OGW) by providing food, shelter, clothing, transportation and information to active terrorists, including one Haris Nazir, a resident of Kachipora, Rajpora, Pulwama.

5. The grounds of detention also make a reference to the execution of bonds under Sections 126 and 170 of the Bharatiya Nagarik Suraksha Sanhita, 2023, on 21.04.2025, 04.06.2025 and 04.07.2025, respectively. It is further alleged that, notwithstanding the same, the petitioner continued to indulge in activities involving obstruction of the daily activities of the local residents and intimidation.

6. The police dossier records that the petitioner was in contact with terrorist handlers, was being encouraged to join the ranks of terrorists and to motivate other local youth to do so, and was providing information regarding the movement of the security forces in the area.

7. The dossier further records that the petitioner was assessed to be at risk of engaging in activities associated with terrorist organisations. It also refers to the possibility of his involvement in the targeted killings of non-local labourers, political workers, Kashmiri Pandit employees and police personnel.

8. On the basis of the material contained in the police dossier and the grounds of detention, the competent authority passed the impugned order under Section 8 of the Act, whereby the petitioner has been placed under preventive detention. Feeling aggrieved of the same, the petitioner has approached this Court.

Submissions on behalf of the petitioner

9. Learned counsel for the petitioner submits that respondent No. 2 has passed the impugned order on the basis of an undated report furnished by the Senior Superintendent of Police, Pulwama, without due application of mind. It is contended that the allegations set out in the grounds of detention are largely speculative and rest on presumptions and conjectures, rather than on substantiated material.

10. It is further submitted that no specific allegations, supported by adequate material, have been attributed to the petitioner. According to the petitioner, the absence of details concerning the alleged activities renders the grounds of detention vague.

11. Learned counsel further submits that the petitioner was furnished only with the detention order, the grounds of detention and the police dossier, whereas the other documents relied upon by the detaining authority were not supplied to him. It is also contended that, during the period of his

detention, the petitioner was denied access to legal assistance, his relatives and the concerned authorities, thereby impairing his right to make an effective representation to the Government or the detaining authority.

12. It is urged that the grounds of detention substantially replicate the contents of the dossier prepared by the Senior Superintendent of Police, Pulwama. It is submitted that respondent No. 2 has merely reproduced the police version, without independently evaluating the material on record, and has thereby failed to arrive at the requisite subjective satisfaction for ordering preventive detention.

13. It is contended that the impugned order is unsupported by any strong reasons or cogent material necessitating the preventive detention of the petitioner. It is asserted that he has no criminal antecedents and that the alleged communications with terrorist handlers through virtual means have not been substantiated by any evidence supplied to him. Without prejudice to the said contention, it is argued that such allegations, even if accepted for the sake of argument, could well be addressed under the ordinary criminal law.

14. It is further submitted that the statutory safeguards relating to the approval of the detention order and the reference of the matter to the Advisory Board have not been complied with within the prescribed period. It is also contended that the petitioner was not afforded an opportunity of being heard by the Advisory Board, either in person or through legal assistance, thereby violating the procedural safeguards governing preventive detention.

15. Learned counsel further submits that the detention order and the grounds communicated to the petitioner are couched in technical English, which he is unable to comprehend adequately, having studied only up to Class XII and being employed as a driver. It is contended that the failure to communicate the grounds and the supporting material in a language understood by him has deprived him of the opportunity to make an effective representation.

16. It is also argued that the impugned detention infringes the constitutional protections available to the petitioner, as no sufficient justification has been furnished for resorting to detention under the Act. It is further submitted that the petitioner earns his livelihood by driving a commercial vehicle and supports his family, which has suffered financial and personal hardship owing to his continued detention.

17. It is contended that preventive detention cannot be founded solely on an apprehension of possible future misconduct, without adequate material supporting such apprehension. According to the petitioner, the impugned order has been passed hastily and mechanically, without due consideration of the circumstances or of sufficient material warranting recourse to preventive detention.

18. The petitioner further assails the manner in which the detention order was executed, contending that the authority entrusted with its execution could not have further delegated that function to another officer. It is submitted that such further delegation is impermissible in law and constitutes an additional ground for setting aside the impugned order.

19. On the aforesaid grounds, the petitioner seeks quashing of the impugned order on the grounds of non-application of mind, procedural irregularities and violation of the constitutional and statutory safeguards governing preventive detention.

Submissions on behalf of the respondents

20. Per contra, learned counsel for the respondents submits that preventive detention is intended to prevent a person from engaging in activities prejudicial to the security of the State, and not to punish him for his past conduct.

21. It is submitted that the impugned order bearing No. 34/DMP/PSA/25 dated 28.07.2025 was passed by the District Magistrate, Pulwama, after considering the police dossier and the accompanying material and upon arriving at the requisite subjective satisfaction. The respondents maintain that the detention was ordered to prevent the petitioner from engaging in activities prejudicial to the security of the State.

22. That the constitutional and statutory safeguards under Article 22(5) of the Constitution of India and Section 13 of the Act were duly complied with. It is submitted that the detention order, the grounds of detention and the supporting material were furnished to the petitioner within the prescribed period and that he was informed of his right to make a representation to the detaining authority or the Government.

23. It is further submitted that the detention warrant was executed on 29.07.2025 by ASI Bashir Ahmad of District Police Lines, Pulwama, and the petitioner was lodged in District Jail, Udhampur. According to the respondents, the contents of the detention order and the grounds of

detention were read over and explained to the petitioner in a language understood by him, and his signatures were obtained on the execution report.

24. That the petitioner, though informed of his right to make a representation, did not avail himself of the said remedy. It is further submitted that no material has been placed on record to establish that any representation was submitted to the Home Department or that any such representation remained unconsidered.

25. Learned counsel for the respondents further submits that the grounds of detention contain specific, relevant and proximate particulars of the activities attributed to the petitioner and are neither vague nor stale. It is contended that the material considered by the detaining authority sufficiently demonstrated the necessity of preventive detention under the Act.

26. That the detaining authority exercised its powers independently and applied its mind to the material furnished by the police before passing the impugned order. The respondents deny that the impugned order was passed mechanically or without adequate consideration of the relevant facts and circumstances.

27. The respondents lastly contend that Section 10 of the Act provides for independent treatment of each ground of detention where an order is based on multiple grounds.

LEGAL ANALYSIS

28. Heard learned counsel for both the parties and perused the material on record, including the detention record produced by the respondents.

29. At the outset, it needs to be emphasised that preventive detention is a precautionary measure and not a substitute for the ordinary criminal process. The power of preventive detention, being an extraordinary invasion of personal liberty, must be exercised sparingly, cautiously and only in strict conformity with the constitutional and statutory safeguards governing its exercise. The object of such detention is to prevent a person from engaging in activities prejudicial to the security of the State or other interests specified under the relevant law, and not to punish him for alleged acts already committed.

30. The mere existence of allegations of a serious nature cannot, by itself, justify recourse to preventive detention. The authority must apply its mind to whether the circumstances genuinely warrant preventive detention and whether the statutory purpose can appropriately be achieved through the ordinary criminal law.

31. It is equally well settled that preventive detention cannot be resorted to as a convenient alternative to criminal prosecution. Where the alleged conduct constitutes an offence under the ordinary criminal law, the competent authorities are expected to consider the available legal remedies and proceed in accordance with law. The availability of preventive detention does not absolve the authorities of the obligation to distinguish between the need to investigate and prosecute an alleged offence and the necessity of preventing future prejudicial conduct. Although the existence of an alternative criminal remedy does not, in

every case, preclude preventive detention, the latter cannot be invoked mechanically without a rational and legally sustainable basis for concluding that such extraordinary action is warranted.

32. The Hon'ble Supreme Court in **Rekha v. State of Tamil Nadu, (2011) 5 SCC 244**, has held as under:

> *"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".*

33. Furthermore, the Hon'ble Supreme Court in **Vijay Narain Singh v. State of Bihar, (1984) 3 SCC 14**, held 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."*

34. The Constitution Bench of the Hon'ble Supreme Court in **Dr Ram Krishan Bhardwaj v. The State of Delhi and others, 1953 SCR 708**, observed as under:

> "*Preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court."*

35. The Constitution Bench of the Hon'ble Supreme Court in M**. Nagaraj & Ors. V. Union of India & Ors., (2006) 8 SCC 212,** observed:

> *"It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution by reason of the basic fact that they are members of the human race."*

36. The Nine-Judge Constitution Bench of the Hon'ble Supreme Court in **I.R. Coelho (Dead) by LRs. V. State of Tamil Nadu, (2007) 2 SCC 1,** observed:

> *"It is necessary to always bear in mind that fundamental rights have been considered to be the heart and soul of the Constitution….. Fundamental rights occupy a unique place in the lives of civilized societies and have been described in judgments as 'transcendental', inalienable, and primordial."*

37. The aforesaid legal position makes it abundantly clear that preventive detention, being an extraordinary measure that directly impinges upon the personal liberty of an individual, must be resorted to with utmost caution and strictly within the parameters prescribed by law. It is incumbent upon the detaining authority to examine whether the ordinary law of the land is sufficient to deal with the alleged activities, for where the existing criminal law provides an adequate mechanism to address the situation, recourse to preventive detention would be legally impermissible. The power of preventive detention cannot be employed as a substitute for ordinary criminal proceedings, to circumvent the safeguards available under criminal law, or merely to keep a person in detention when the requirements of the governing statute are not satisfied. The settled position, therefore, is that such power must be exercised on the basis of relevant material, upon due application of mind, and only when the

circumstances of the case demonstrably warrant preventive intervention in accordance with law.

38. This Court is further mindful that the existence of an ordinary criminal remedy does not automatically render preventive detention impermissible. There may be circumstances in which preventive detention is lawfully warranted notwithstanding the possibility of criminal prosecution. However, the existence of such circumstances must emerge from the material considered by the detaining authority and from a legally sustainable assessment of the necessity for preventive action. In the present case, the absence of adequate particulars of the alleged activities, coupled with the failure of the grounds to sufficiently demonstrate why recourse to preventive detention was necessary, assumes significance in determining the validity of the impugned order.

39. Preventive detention legislation cannot be permitted to become an instrument for bypassing the safeguards of the ordinary criminal process or for detaining a person on the strength of allegations that remain insufficiently particularised. The extraordinary nature of the power demands that the detaining authority exercise it only upon genuine application of mind to the facts and circumstances of the case. Where the grounds fail to disclose the requisite factual foundation for the apprehension of future prejudicial conduct, or where the decision-making process does not demonstrate the independent satisfaction required by law, the resulting deprivation of liberty cannot be sustained.

40. Adverting to the facts of the present case, the grounds of detention reveal that the detenue is alleged to have remained in contact with one Aashiq Ahmad Nengroo, stated to be a Pakistan-based terrorist handler affiliated

with the proscribed terrorist organisation Jaish-e-Mohammad, through a specified telephone number and the encrypted application Zangi, allegedly accessed through a secured Virtual Private Network (VPN). It is further alleged that the detenue was functioning as an Over Ground Worker (OGW), providing food, shelter, clothing, transportation and information to active terrorists, including Haris Nazir, and supplying information concerning the movement of security forces. The grounds also refer to his alleged involvement in activities intended to encourage local youth to join terrorist organisations.

41. The allegations, if supported by cogent material, are undoubtedly serious and warrant appropriate action in accordance with law. However, what assumes significance is that the grounds of detention, as placed before this Court, do not furnish adequate particulars of the alleged communications or activities. There is no clear indication of the specific dates on which the alleged communications took place, the nature or substance of the information purportedly exchanged, the particular acts by which logistical assistance was allegedly rendered, or the specific incidents from which the apprehension of future prejudicial conduct was drawn. The mere assertion that the detenue used an encrypted application or a VPN, or remained in contact with persons alleged to be associated with terrorist organisations, cannot, without further particulars and relevant supporting material, furnish an adequate basis for curtailing personal liberty through preventive detention.

42. Equally, the alleged communication with a person suspected of involvement in terrorist activities must be assessed in the context of the material available and the nature of the conduct attributed to the detenue. The grounds of detention must disclose sufficient particulars to enable

the detenue to understand the allegations against him and make an effective representation. General assertions, however grave in tenor, cannot be permitted to take the place of specific and intelligible grounds capable of being meaningfully answered.

43. If the investigating agency possessed material indicating that the detenue had used electronic communications to coordinate terrorist activities, transmitted information concerning security-force movements or provided assistance to members of a terrorist organisation, such material could have been examined and acted upon in accordance with the applicable criminal law. Depending upon the facts disclosed by the investigation, the relevant provisions of the Unlawful Activities (Prevention) Act, 1967, or other applicable penal statutes could have been invoked, subject to the ingredients of the offences concerned being satisfied. The authorities were not precluded from investigating the alleged activities, collecting electronic and other evidence, and initiating prosecution in accordance with law.

44. The question, therefore, is not whether the allegations could be regarded as serious, but whether the material disclosed a legally sustainable necessity for resorting to preventive detention rather than proceeding under the ordinary criminal process. The impugned grounds do not adequately explain why the alleged conduct, despite being capable of investigation under the applicable criminal law, necessitated the extraordinary measure of preventive detention. There is no subjective satisfaction by the detaining authority of why the ordinary legal process would be inadequate in the circumstances of the case or what particular feature of the alleged conduct justified the invocation of the Public Safety Act. Preventive detention cannot be sustained merely by invoking the

security of the State in general terms, without demonstrating a rational connection between the material relied upon and the necessity for the preventive measure adopted.

45. Another aspect which merits consideration is the reference in the grounds of detention to the detenue having been bound down on three occasions, namely, 21.04.2025, 04.06.2025 and 04.07.2025, under Sections 126 and 170 of the BharatiyaNagarik Suraksha Sanhita, 2023. While such proceedings may constitute relevant background circumstances, their mere existence cannot independently establish the necessity of preventive detention.

46. The manner in which the grounds of detention have been formulated by District Magistrate also raises a legitimate concern regarding the independent application of mind by the detaining authority. A comparison of the police dossier with the grounds of detention indicates substantial reproduction of the allegations put forward by the sponsoring agency. Although similarity between the dossier and the grounds is not, by itself, sufficient to invalidate an order of detention, the detaining authority is required to independently evaluate the material and arrive at its own subjective satisfaction. The statutory responsibility cannot be discharged by mechanically adopting the narrative supplied by the police.

47. In the present case, the grounds largely reiterate the allegations concerning the detenue's alleged association with terrorist handlers, his purported use of encrypted communications and his alleged role as an Over Ground Worker. However, they do not sufficiently demonstrate an independent evaluation of the specific circumstances that made preventive detention necessary. In particular, the absence of adequate

particulars concerning the alleged communications, the acts of assistance attributed to the detenue and the basis for apprehending their continuation renders the recorded satisfaction vulnerable to the objection that the material supplied by the sponsoring agency was accepted without the requisite independent scrutiny. The requirement of subjective satisfaction is not fulfilled merely by reproducing the allegations in the form of grounds of detention; it must reflect due application of mind to the material and the necessity of invoking the extraordinary power conferred by the Act.

48. The requirement of independent application of mind assumes particular importance because the consequences of preventive detention are immediate and severe. The detaining authority is expected to examine not only the allegations but also their relevance to the statutory purpose, the proximity of the alleged conduct to the apprehended future activities, and the necessity of resorting to preventive detention. Where the grounds merely recite allegations without adequately disclosing the factual basis for the apprehension or the need for the extraordinary measure, the Court cannot presume that the requisite satisfaction has been lawfully arrived at.

49. This Court is fortified by the observations of this Court in **Noor-ud-Din Shah v. State of J&K & Ors.reported as 1989 SLJ 1,**wherein this Court quashed the detention order, which was only a reproduction of the Dossier supplied to the detaining authority on the ground that it amounted to non-application of mind. The Court observed as under:

> *"I have thoroughly by examined the dossier submitted by the Superintendent of Police, Anantnag, to District Magistrate, Anantnag as also the grounds of detention formulated by the latter for the*

detention of the detenue in the present case, and I find the said grounds of detention are nothing but the verbatim reproduction of the dossier as forwarded by the Police to the detaining authority. He has only changed the number of paragraphs, trying in vain to give it a different shape. This is in fact a case of non-application of mind on the detaining authority. Without applying his own mind to the facts of the case, he has acted as an agent of the police. It was his legal duty to find out if the allegations leveled by the police against the detenue in the dossier were really going to effect the maintenance of public order, as a result of the activities, allegedly, committed by him. He had also to find out whether such activities were going to affect the public order is future also as a result of which it was necessary to detain the detenue, so as to prevent him from doing so. After all, the preventive detention envisaged under the Act is in fact only to prevent a person from acting in any manner which may be prejudicial to the maintenance of public order, and not to punish him for his past penal acts. The learned District Magistrate appears to have passed the impugned order in a routine manner being in different to the import of preventive detention as or detained in the Act, Passing of an order without application of mind goes to the root of its validity, and in that case, the question of going into the genuineness or otherwise of the grounds does not arise. Having found that the detaining authority has not applied his mind to the facts of the case while passing the impugned order, it is not necessary to go to the merits of the grounds of detention, as mandated by Section 10-A of the Act."

50. Thus, applying the ratio of the aforesaid judgment to the facts of the present case and upon careful perusal of the record, this Court finds that the dossier and the grounds of detention are couched in substantially identical language, giving rise to a clear inference that the Detaining Authority has failed to independently assess and evaluate the material placed before it. Such substantial reproduction, in the absence of any indication of an independent application of mind, vitiates the subjective satisfaction required to be arrived at by the Detaining Authority before passing an order of preventive detention.

Conclusion

51. In view of the forgoing discussion and upon consideration of the grounds of detention, the submissions advanced by learned counsel for the parties and the material placed on record, this Court is of the considered view that the impugned order suffers from material legal infirmities. The allegations, though serious in their nature, have not been set out with sufficient particulars to disclose the specific conduct attributed to the detenue and the factual basis for apprehending its continuation. The grounds also fail to adequately demonstrate why the extraordinary power of preventive detention was necessary in the circumstances, particularly when the alleged activities, if supported by evidence, could have been investigated and dealt with under the applicable criminal law. The substantial reproduction of the police dossier, when considered alongside these deficiencies, further reinforces the concern that the requisite independent application of mind has not been adequately demonstrated.

52. It bears reiteration that the Court does not minimise the seriousness of allegations involving terrorist organisations or activities prejudicial to the security of the State. However, a perfect balance has to be maintained between the protection of the security of the State and the preservation of personal liberty. The former must be pursued within the limits of the law, and the latter cannot be curtailed except in strict conformity with the procedure established by law.

53. In view of the foregoing discussion, this Court finds that the impugned detention order cannot be sustained in law and warrants interference in the exercise of jurisdiction under Article 226 of the Constitution of India.

54. Accordingly, the petition is allowed and Order No. 34/DMP/PSA/2025 dated 28.07.2025, passed by the District Magistrate, Pulwama, under Section 8 of the Jammu and Kashmir Public Safety Act, 1978, is hereby quashed. The respondents are directed to release the detenue, Ajaz Ahmad Seh, forthwith, provided his custody is not required in connection with any other case or pursuant to any other lawful order.

55. The detention record shall be returned to learned counsel for the respondents against proper receipt by the Registry.

56. **Disposed of** accordingly.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR
30.10.2026
"Mubashir "

i. Whether the order is speaking: Yes
ii. Whether the order is reportable: Yes/No