

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**  
**HCP 3/2025**

**Reserved on : 11.09.2025**  
**Pronounced on : 26.09.2025**

Washif Fayaz Vaid, Aged 22 Years  
S/O , Fayaz Ahmad Vaid,  
R/O Vaid Mohalla Bijbehara, District Anantnag  
Kashmir  
Through His Father, , Fayaz Ahmad Vaid,  
S/O Ab. Aziz Vaid,  
R/O Vaid Mohalla Bijbehara, District Anantnag  
Kashmir.

...Appellant(s)/Petitioner(s)

Through: Mr. M. Usman Gani, Advocate

v.

1. U.T of Jammu and Kashmir, through  
Commissioner/Principal Secretary to  
Government, Home Department J&K,  
Civil Secretariat Srinagar, Kashmir
2. District Magistrate, Anantnag Kashmir
3. Superintendent Central Jail Koth  
Bhalwal Jammu.

...Respondent(s)

Through: Mr. Ilyas Nazir Laway, GA

**CORAM:**

**HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE.**

**JUDGMENT**

1. This petition has been filed by the petitioner, Fayaz Ahmad Vaid, father of Washif Fayaz Vaid, S/O Fayaz Ahmad Vaid, R/O Vaid Mohalla Bijbehara, District Anantnag Kashmir, (hereinafter to be referred as "detenue"), to assail the order No. 20/DMA/PSA/DET//2024 dated 20.05.2024, (hereinafter to be referred as "impugned order"), passed by Respondent No.2, District Magistrate, Anantnag Kashmir, whereby, the detenue has been detained under preventive detention in terms of the provisions of the J&K Public Safety Act, 1978.

## **FACTUAL MATRIX:**

2. The detainee is stated to be an innocent, peace-loving and law-abiding citizen, who has falsely been implicated in case FIR No. 49/2024, under Section 18 and 20 of the Unlawful Activities (Prevention) Act, 1967, 7/25 Arms Act and 3/4 of Explosive Substances Act of Police Station, Anantnag.
3. It is averred in the petition that the detainee has never been involved in any FIR and there is no involvement of the detainee particularly in case FIR No. 49/2024, which has been reflected in the grounds of detention. It is stated in the petition that the detainee has not involved himself in any kind of criminal activity; he has falsely been booked in cases of stone pelting. The respondents have not attributed any specific allegation on the basis whereof the detainee has been detained. It is also stated in the petition that grounds of detention would itself state that the evidence collected against the detainee are not sufficient to book him.
4. Furthermore, it is stated in the petition that the detainee has only been furnished with a copy of 'order of detention' and grounds of detention, which, on the face of it, shows that the detaining authority has not followed the procedural safeguards as provided under Section 13 of Public Safety Act and have violated the mandate of Article 22(5) of Constitution of India as the detainee has been rendered incapacitated to move a representation on the basis of the insufficient material supplied to him. The impugned order of detention has neither been approved, nor has any reference been made to the Advisory Board, within the statutory period. The detainee has not been heard by the Advisory Board, either directly or through his counsel.

5. Upon notice, respondents appeared and filed the counter affidavit, resisting the claim of the petitioner, *inter alia*, on the grounds that the impugned order is well-reasoned, legal and does not call for interference; the detenue had been found harboring, providing logistic support to the terrorists which depicts his very nefarious designs against UT and Union of India; the name of the detenue surfaced during investigation of case FIR No. 49/2024, under Section 18, 20, Unlawful Activities (Prevention) Act; the grounds of detention are precise, proximate, pertinent and relevant as there is no vagueness or staleness attached therewith; the safeguards provided in the Act have been complied with judiciously as the detenue was provided with the relevant detention material and he was made aware of his right to make representation to the Government as also to the Detaining Authority against his detention; the respondent No. 2 derived satisfaction vis-à-vis the prejudicial activities of the detenue, therefore, issued the impugned order against him.
6. I have heard learned counsel for the parties, considered their submissions and have given my thoughtful consideration to the material placed before me.
7. The detenue has admittedly been detained under the provisions of the J&K PSA, for his involvement in case FIR 49/2024 of Police Station Anantnag. The said FIR does not pertain to one single individual, but is registered against a terror network as stated in the counter affidavit, therefore, the offence committed by the detenue is not specified except for mentioning that the name of the detenue has surfaced during investigation of the said FIR. The grounds of detention and the counter affidavit are lacking the specific details as regards the alleged role of

the detainee like the kind of activity that he has engaged in, the year in which such activity has been done and the place where such activity was undertaken etc. Once the allegations, on the basis whereof the detention has been ordered, are lacking in material particulars and do not specify in all reasonable and logical background as to what has actually been done by the detainee to warrant invoking of the special law against him, the whole exercise undertaken in pursuance thereof by the detaining authority gets vitiated. All that is said in the counter affidavit and in the grounds of detention against the detainee is that his name surfaced during investigation of case FIR No. 49/2024 of Police Station, Anantnag, with absolutely no elaboration as to the manner in which such name has surfaced in the investigation. Without explaining such material particular, the invoking of the Special Act, preventive detention, as against the ordinary law is absolutely unwarranted and out of question. The preventive detention is only required to be exercised, though being the prerogative of the Detaining Authority as to how and in what circumstances such provision of law is required to be invoked, but it does not *ipso facto* make the detaining authority immune to judicial scrutiny.

8. The detainee has admittedly been detained only on the basis of the FIR, which is not specifically registered against any individual, but is a general FIR registered against a terror network, as stated hereinbefore, and in the process, the names that may appear to have been somehow related with the larger network without their role having been defined in black and white, tantamount to misuse of authority and such an order issued in pursuance of a sham exercise is bound to fail. Although the respondents have made an effort to

convince this Court that the impugned order of detention is passed on proper application of mind and after the detaining authority derived satisfaction as regards the activities of the detainee being prejudicial to the maintenance of the security of State that the detention of the detainee was ordered, however, there is absolutely no reason provided as regards the specific allegation against the detainee anywhere including the FIR in question as well.

9. In that view of the matter, the respondents have been wholly unjustified in pressing into service the Special Law against the detainee. The safeguards provided by the Constitution and the statute in respect of the detainees are not irresolute, but have sound reasoning and logic. The subjective satisfaction of the detaining authority in detaining an individual is far greater a condition precedent than how it appears to have been perceived by the detaining authority as it is grossly inconceivable in the instant case.
10. The detaining authority has to apply its mind independently without getting influenced by the material placed before it by the police agencies and derive satisfaction that in-fact invoking of special law is warranted as the ordinary/substantive law would not be of any consequence to prevent the detainee from indulging in the similar kind of acts he is accused of having done in the past, it connote an action taken by an authority on the basis of his own personal belief and opinion that the preventive detention is warranted to prevent future harm, rather than it being on unascertained objective facts or evidence. There is nothing before this Court to form an opinion as to how and in what manner the subjective satisfaction has been derived by the

detaining authority, there being no specific allegation of any kind whatsoever on record against the detenue.

11. The Apex Court, in case titled *“Ameena Begum vs. State of Telangana”* reported as (2023) 9 SCC 587, has held that the detention order cannot sustain if the same appears to have been issued without deriving subjective satisfaction by the detaining authority. It would be profitable to reproduce paragraph No. 28 of the said judgment hereinbelow:

*“28. In the circumstances of a given case, a Constitutional Court when called upon to test the legality of orders of preventive detention would be entitled to examine whether*

*(i) the order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;*

*(ii) in reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;*

*(iii) power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;*

*(iv) the detaining authority has acted independently or under the dictation of another body;*

*(v) the detaining authority, by reason of self-created rules of policy or in any other manner not authorized by the governing statute, has disabled itself from applying its mind to the facts of each individual case;*

*(vi) the satisfaction of the detaining authority rests on materials which are of rationally probative value, and*

*the detaining authority has given due regard to the matters as per the statutory mandate;*

*(vii) the satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;*

*(viii) the ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;*

*(ix) the grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and*

*(x) the timelines, as provided under the law, have been strictly adhered to.”*

12. For all what has been said hereinbefore, the petition succeeds and is allowed as such. The impugned order dated 20.05.2024, bearing No. 20/DMA/PSA/DET//2024, passed by Respondent No. 2 against the detenu namely, Washif Fayaz Vaid, S/O Fayaz Ahmad Vaid, R/O Vaid Mohalla Bijbehara, District Anantnag, Kashmir, is quashed and the detenu is directed to be released from preventive custody forthwith.
13. The detention record be returned to the learned counsel for the respondents against receipt.
14. Disposed of.

**(MOKSHA KHAJURIA KAZMI)**  
**JUDGE**

**SRINAGAR:**  
26.09.2025  
“Misba ”

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|---------------------------------------|-----|
| ❖ Whether the Judgment is Reportable? | No. |
| ❖ Whether the Judgment is Speaking?   | Yes |