

Serial No. 8
Reg. Cause List

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

HCP 103/2025

MOHAMMAD AZHAR U DIN

... Petitioner(s)

Through: Mr. Wajid Mohammad Haseeb, Advocate

Vs.

UNION TERRITORY OF J AND K AND
ORS

...Respondent(s)

Through: Mr. Bikramdeep Singh, Dy AG

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
25.09.2025

ORAL

1. In the instant petition, the petitioner herein has challenged detention order No. DMB/PSA/13 of 2025 dated 30.04.2025, passed by respondent-2 herein under and in terms of J&K Public Safety Act, 1978.
2. The impugned order has been challenged on multiple grounds urged in the petition.
3. Reply to the petition has been filed by the respondents, wherein the petition is being opposed *inter alia* on the

grounds that upon the collective assessment of the material furnished to the Detaining Authority by the sponsoring agency, the Detaining Authority ordered the preventive detention of the petitioner.

It is further stated that the petitioner was involved in multiple FIRs referred in the grounds of detention being FIR No. 100/2010, 115/2010 and 126/2020 registered with Police Station, Beerwah.

It is next stated that on multiple occasions the petitioner was warned regarding his said engagements detrimental to the State, yet he did not mend his ways and posed a significant risk to the security of the area.

It is also stated that there has been a credible apprehension that the petitioner is attempting to establish contact with the terrorist elements to provide shelter, logistic support and other assistance to the terrorists with an intent to facilitate terrorist act in the area, and, therefore, owing to said threat posed by the petitioner, the petitioner was ordered to be detained in terms of order of detention with a view to prevent him from acting in any manner prejudicial to the security of the State.

It is further submitted that the grounds of detention as also the order of detention was read over and explained to the petitioner in his own language and was informed about his right of making of a representation to the Government against his detention.

It is also stated that the Advisory Board also opined for continuous detention of the petitioner in terms of its opinion whereafter the order of detention came to be confirmed by the Government on 23.05.2025.

It is being lastly stated that the petition under reply is legally misconceived and without any merit and that the grounds of detention sufficiently connected the petitioner with the activities which on the face of it are highly prejudicial to the security of the State and that the impugned order does not suffer for any legal infirmity.

Heard counsel for the parties and perused the record.

4. According to the counsel for the petitioner, the detaining authority has shown its complete non-awareness while detaining the petitioner about the release of the petitioner on bail in the FIR 126/2020 which FIR now has been taken into consideration by the Detaining Authority being

latest in point of time qua the detention order as the other FIRs are remote in point of time having no proximate link with the impugned order.

It is also contended by the counsel for the petitioner that a representation came to be submitted by the petitioner against his detention which, however, was never considered and decision thereof conveyed to the petitioner, as such, the non-consideration and non-conveying the decision of the said representation renders the impugned order legally invalid.

5. On the contrary, the counsel for the respondents while opposing the submissions of the counsel for the petitioner would vehemently contend that the detaining authority while passing the impugned order has followed statutory requirements and adhered to constitutional safeguards.

It is also contended by the counsel for the respondents that the representation submitted by the petitioner on 08.05.2025, before the Detaining Authority came to be forwarded to the Government on 15.05.2025, whereupon the same was considered and rejected on 27.06.2025.

6. Insofar as aforesaid first plea of the counsel for the petitioner is concerned, indisputably the grounds of

detention as also the detention record produced by the counsel for the respondents, tends to show that the detaining authority has remained completely oblivious to the release of the petitioner on bail in FIR No. 126/2020 either on account of non-furnishing of details thereof by the sponsoring agency or for any other reason and had the Detaining Authority been furnished the said information about the release of the petitioner on bail, the Detaining Authority may have not detained the petitioner under preventive detention and may have required the sponsoring agency to take recourse to ordinary criminal law for seeking cancellation of bail in the event the petitioner was involved in activities prejudicial to the security of the State post release on bail.

In view of the aforesaid position obtaining in the matter, the impugned order cannot but be said to be legally invalid on this score alone.

7. Insofar as the aforesaid next plea of the counsel for the petitioner qua the representation is concerned, law is no more *res integra* and stands settled in case titled as **“Sunil Fulchand Shah Vs. Union of India reported in 2000(3) SCC 409”**, wherein it has been *inter alia*

held that the safeguards available to a person against whom an order of detention has been passed are limited, and, therefore, the courts have always held that all the procedural safeguards provided by the law should be strictly complied with and any default in maintaining the time limit has been regarded as having the effect of rendering the detention order or the continued detention, illegal.

Further the consistent view of the courts have been that delay in consideration of a representation filed by a detainee against his detention would also vitiate the order of detention.

8. In view of the above, the petition is **allowed** and impugned order No. DMB/PSA/13 of 2025 dated 30.04.2025, passed by respondent-2, is quashed with a direction to the concerned Jail Authority to release the petitioner from the preventive detention, unless the petitioner is required in any other case.
9. The detention record produced by the counsel for the respondents is returned back in open Court.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR:

25.09.2025

"S.Nuzhat"