

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No. 171/2025

Reserved on: **14.05.2026**

Pronounced on: **20.05.2026**

Uploaded on: **20.05.2026**

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

Irfan Ahmad Kuttay
S/O Gulshan Ahmad Kuttay,
R/O Chotipora,
District Shopian.

...Petitioner(s)

Through: Adv. Rehana Fayaz.

Vs.

1. Union Territory of J&K through
Commissioner/Secretary to Govt.,
Home Department,
Civil Sectt. Srinagar.

2. District Magistrate, Shopian.

3. Senior Superintendent of Police,
Shopian.

4. Superintendent Central Jail,
Jammu.

...Respondent(s)

Through: Dy.AG Bikramdeep Singh.

CORAM: HON'BLE MR. JUSTICE M. A.CHOWDHARY, JUDGE

JUDGMENT

1. Through the medium of the present petition filed under Article 226 of the Constitution of India, the petitioner seeks quashment of Detention Order No. **02/DMS/PSA of 2025** dated **28.04.2025** passed by respondent No. 2-District Magistrate Shopian under

the provisions of the Jammu and Kashmir Public Safety Act 1978, whereby the detainee has been placed under preventive detention in order to deter him from acting in any manner prejudicial to the 'security of the State/UT'.

2. The impugned detention order has been challenged primarily on the grounds that:

- (i) the detaining authority has relied upon old FIRs/cases in which the detainee already stands admitted to bail;
- (ii) the grounds of detention are vague and general in nature;
- (iii) the material relied upon has not been supplied to the detainee;
- (iv) the detainee had earlier been bound down under Section 107/151 Cr.P.C. (now Section 126/170 BNSS), yet the same has wrongly been used against him;
- (v) there has been non-application of mind on the part of the detaining authority; and
- (vi) the representation submitted by the detainee was neither properly considered nor communicated.

3. Learned counsel for the petitioner submits that the detainee had been arrested in cases registered vide FIR Nos. 09/2019, 15/2019 and 07/2020 and in both the aforesaid cases he has been enlarged on bail by the competent court of law; that once the detainee was granted bail, the preventive detention could not have been resorted to, on the basis of the very same allegations; that the allegations made in the grounds of detention are vague, bereft of particulars and no proximate live link exists between the alleged activities and the order of detention.

4. Per contra, learned counsel appearing for the respondents submits that the detainee is an OGW (Over Ground Worker) of terrorists and has been continuously involved in activities prejudicial to the security of the State/UT; that the detainee has been providing logistic support and assistance to militants and his activities posed a serious threat to public order and security; that all the material relied upon by the detaining authority including copies of FIRs, dossier and grounds of detention were furnished to the detainee against proper receipt and the grounds were also read over and explained to him in the language understood by him.
5. Heard learned counsel for the parties, perused the pleadings and gone through the detention record produced by the respondents.
6. The detention record reveals that the detainee has remained involved in FIR No. 09/2019 u/s 148, 149, 336, 353, 307 RPC; FIR No. 15/2019 u/s 148, 149, 332, 336, 353, 307 RPC; and FIR No. 07/2020 u/s 13, 39 ULA(P) Act, 7/25 Indian Arms Act, all registered at Police Station Imamsahib. The grounds of detention reflect that the detainee was working as an OGW of terrorists and was facilitating militant activities in the area by providing active support and assistance to them.
7. The first contention of learned counsel for the petitioner that the detainee had already been granted bail in the aforesaid FIRs and, therefore, preventive detention could not have been passed, is without merit. Preventive detention and prosecution in criminal law operate in different fields. The object of preventive detention is not to punish a person for an offence already committed, but to

prevent him from indulging in activities prejudicial to the security of the State/UT and maintenance of public order in future. The plea that stale and old cases of the years 2019 and 2020 have been based to order detention is not tenable, as the reference to those cases has been made to indicate antecedents of the detainee and while making such reference, his other activities as 'OGW' to provide logistic support to the terrorists of the proscribed organizations, have been made grounds to pass the impugned order.

8. Merely because a detainee has been admitted to bail in criminal cases would not debar the competent authority from passing an order of preventive detention if the authority is satisfied that his activities are prejudicial to public order or security of the State/UT. In ***Haradhan Saha v. State of West Bengal & Ors.***, reported as **AIR 1975 SC 2150**, the Hon'ble Supreme Court held that preventive detention is qualitatively different from punitive detention and the pendency of prosecution or grant of bail does not invalidate an order of preventive detention. The Court held that:-

“...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 for doing it. The basis of detention is the satisfaction of the Executive of a reasonable probability of likelihood of the detainee acting in a manner similar to his past

acts and preventing him by detention from doing the same..."

Similarly, in ***Government of Andhra Pradesh v. Mohd. Nasrullah Khan*** reported as **(2006) 2 SCC 373**, the Hon'ble Supreme Court observed that even if a person is enlarged on bail, preventive detention can validly be passed if the detaining authority is satisfied that there is likelihood of the detainee indulging in prejudicial activities.

9. The contention of learned counsel for the petitioner regarding vagueness of grounds also does not deserve acceptance. A perusal of the grounds of detention demonstrates that the detaining authority while making reference to the involvement of the detainee in the aforesaid FIRs, has narrated his role, thereafter, as an OGW of terrorists. The grounds contain sufficient particulars enabling the detainee to make an effective and meaningful representation against the order of detention.
10. The detention record further reveals that the grounds of detention, notice of detention, copies of FIRs, detention order, statements of witnesses and other material (total 55 leaves) relied upon by the detaining authority were supplied to the detainee and the same were read over and explained to him in the language understood by him. The execution report bears the signatures of the detainee acknowledging receipt thereof. Thus, the plea that relevant material was not supplied is contradicted by the official record. In ***State Legal Aid Committee, J&K v. State of J&K*** reported as **2005 (II) SLJ 486**, it has been held that where the record demonstrates supply of material and

communication of grounds to the detainee, the requirement of Article 22(5) of the Constitution stands satisfied. Relevant part of the judgment is reproduced hereunder:-

“...Where the record demonstrates that the grounds of detention and material relied upon were furnished to the detainee and explained to him in the language understood by him the constitutional requirement under Article 22(5) stands complied with...”

11. The argument regarding non-application of mind is equally misconceived. The detention order reflects due awareness on the part of the detaining authority regarding the involvement of the detainee in anti-national activities and the necessity to prevent him from acting in any manner prejudicial to the security of the State/UT. The subjective satisfaction recorded by the detaining authority cannot be substituted by this Court unless shown to be based on no material or suffering from patent illegality.
12. So far as the plea regarding representation is concerned, the record produced by the respondents demonstrates that the representation submitted by the detainee was considered by the competent authority and the same came to be rejected. Merely because the representation was rejected does not render the detention illegal. The procedural safeguards contemplated under law stand complied with.
13. The Hon'ble Supreme Court in ***Pebam Ningol Mikoi Devi v. State of Manipur*** reported as (2010) 9 SCC 618, held that judicial review in matters of preventive detention is limited to

examining the procedural safeguards and existence of material for subjective satisfaction of the detaining authority. The Court observed as under:-

“...The Court cannot sit in appeal over the subjective satisfaction arrived at by the detaining authority except on limited grounds such as non application of mind, mala fides, or non compliance with procedural safeguards...”

- 14.** The cumulative material placed before the detaining authority clearly reflects that the detainee was involved in activities prejudicial to the security of the State/UT and was acting as an ‘OGW’ of terrorists. The detaining authority, on the basis of the material placed before it, arrived at the requisite subjective satisfaction for passing the order of detention. This Court does not find any constitutional or statutory infirmity in the impugned order.
- 15.** Viewed thus, the petition is found devoid of merit and, is, accordingly, **dismissed**. The impugned detention order is upheld.
- 16.** Scanned detention record is directed to be sent back.

**(M. A. CHOWDHARY)
JUDGE**

Srinagar
20.05.2026
Muzammil. Q

Whether the order is reportable: Yes / No