

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.189/2025

Reserved on: **16.04.2026**

Pronounced on: **22.04.2026**

Uploaded on: **23.04.2026**

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

**Ghulam Hassan Malla,
S/O Mohammad Jamal Malla,
Through his wife Sara Begum,
R/O Harden Sever, Lolab, Kupwara.**

...Petitioner(s)

Through: Adv. Sami Sabir Lone.

Vs.

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

2. District Magistrate, Kupwara.

3. Superintendent Central Jail, Jammu.

...Respondent(s)

Through: GA Faheem Nisar Shah.

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

JUDGMENT

- 1.** Habeas Corpus Petition is a legal instrument used to challenge unlawful detention. It compels the authorities to bring the detained individual before the court to examine the legality of their detention.
- 2.** The petitioner herein namely Ghulam Hassan Malla is aggrieved of the order passed by the District Magistrate, Kupwara-respondent No.2 (for short 'Detaining Authority'), who, in exercise of powers conferred on him under **Section 8(1)(a)(i) of the J&K Public**

Safety Act, 1978, has detained the petitioner in order to prevent him from the activities prejudicial to the security of the UT of J&K in terms of detention Order No. **16-DMK/PSA of 2025 dated 01.05.2025** (for short 'impugned order').

1. The order of detention is challenged *inter alia*, on the grounds that the respondents have not followed due procedure of law while detaining the detainee under the preventive law which renders his detention illegal; that the illegal activities attributed to the detainee are all imaginary, false, baseless, concocted and based on surmises; that the detainee was illegally implicated in FIR No. 57/2013 under Section 13 of Unlawful Activities (Prevention) Act registered at Police Station, Lalpora; that the petitioner after facing full trial in said FIR No.57/2023 had finally been acquitted from the case; that after registration of FIR No. 57/2013 there are no fresh allegations leveled against the detainee; that the detaining authority has not applied its mind while preparing the grounds of detention and has acted as spokesman of the Police agencies and has framed the grounds of detention at their behest; that there is no cogent material to detain the detainee under the preventive law; that the satisfaction is illusory and not valid one; that the detention of the detainee is patently illegal and against the law and deserves to be quashed.
2. Respondents, pursuant to notice after admission of the petition to hearing, filed their counter affidavit, wherein it is stated that the order of detention is based on a reasonable prediction of future behavior of the detainee. The detainee's anti-national and illegal activities have posed a serious threat to the public safety and security

of State. It is submitted that the preventive detention is devised to afford protection to the Society and the object is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing. It is further stated that any preventive measures, even if they involve some restraint or hardship upon individuals, do not contribute in any way to the nature of punishment.

3. Learned counsel for the detainee has raised the plea of vagueness in the grounds of detention. It is being stated that the allegations leveled in the grounds of detention relate to the year 2013 and those activities have no proximity with present time for the purpose of preventive detention unless any fresh activity is not attributed to the petitioner. It is also contended by the learned counsel for the petitioner that it is not mentioned in the impugned detention order that normal law was ever invoked before taking recourse to preventive detention law and that too was applied merely on the basis of surmises and conjectures. It was prayed to upset the impugned order being unsustainable for the aforesaid grounds.
4. Learned counsel for the respondents, *ex adverso*, supporting the detention order, contended that the detainee's continuous anti-national and illegal activities, made it imperative to detain the detainee under the provisions of Public Safety Act and there were sufficient grounds available for such detention. It is further contended that the live link is still sustaining, as the detainee is still involved in the anti-national activities and the adverse reports led the sponsoring agency to recommend the detainee for preventive detention under the provisions of the Public Safety Act.

5. Heard, perused the material available on record and considered the same.
6. The detaining authority has based the detention order on the grounds that the detainee was category-B Over Ground Worker (OGW) of banned organization of JKLF, involved in providing food and shelter to terrorist besides providing logistic support to them; that he was involved in a case registered at Police Station, Lalpora in the year 2013 vide FIR No.57/2013 under sections 7/27 A. Act, 307 RPC and 13 Unlawful Activities (Prevention) Act, in which charge-sheet was laid before Sessions court, Kupwara, with the accusation to have assisted a terrorist Mohd Amin Malla R/O Gadwad Server, with food, shelter on 23.07.2013, who was killed in an encounter by troops of 18RR(Army); that he influenced by the radical ideology had indulged in subversive activities; and that in view of terrorist attack in Baisaran Valley of Pahalgam and to curb his activities, it was imperative to detain the detainee to provide peaceful environment in the region.
7. The allegations leveled against the detainee that he was involved in terrorist acts particularly promoting subversive activities and influenced by radical ideology having friendships with terrorists and radicals directly or indirectly, is all vague and in such a situation the detainee would not be in a position to submit an effective and a meaningful representation before the detaining authority or the competent authority in the Government, to have a fresh look into the matter. Vagueness does invalidate the detention order in the circumstance. In this regard reliance can be placed on the judgment of the Apex Court, in case titled '**Chaju Ram Vs. State of J&K**'

reported as **AIR 1971 SC 263**, wherein it has been observed and enunciated that:-

“Even as to the grounds, we have something to say. The grounds charge him with having conspired with some leaders of Democratic Conference and having incited landless people of R.S.Pura Tehsil to forcibly occupy the land comprised in Nandpur Mechanised Farm and to have persuaded them to resist violently any attempt to evict them. No details of the leaders of the Conference or of the persons incited or the dates on which he conspired or incited the squatters or the time when such conference took place, are mentioned. It would be impossible for anybody to make a representation against such grounds. These grounds, on the authorities of this Court, too numerous to be cited here, must be held to be vague. Therefore on both the twin grounds, namely, that he was deprived of his right to make a representation and also because the grounds in themselves were very vague, we must hold that there was no compliance with the law as laid down in the Jammu and Kashmir Preventive Detention Act. The result, therefore, is that the detention must be declared to be unlawful and Chaju must be declared to be entitled to his liberty. He is ordered to be released. The detenu was questioned by us and he expressed a desire that he may not be released in Delhi, because he has no means of going back. He asked to be released in Jammu. We direct therefore that he shall be taken back to the place where he was in detention in Jammu and released within the shortest possible time.”

8. It is the further argument of learned counsel for the petitioner that the grounds of impugned detention order is a verbatim copy of the dossier and no other material has been considered by the detaining authority which speaks volumes about the non-application of mind on the part of the detaining authority which does not justify the preventive detention and the detention order requires quashment.
9. In a case titled ‘**Jai Singh & Ors. v. State of Jammu & Kashmir**’ reported as **AIR 1985 SC 764**, it has been observed that if the detention order is verbatim copy of the dossier, it would amount to non-application of mind by the detaining authority. Para-13 of the judgment being relevant is reproduced as under:-

"13. Applying the settled legal position to the facts of the present case, I find that the order impugned cannot stand as it is based on grounds of detention, which is only verbatim copy of police dossier. The order of detention, for the reasons, exhibit total non- application of mind on the part of detaining authority and therefore, the petition is allowed and the detention order No. PSA/104 dated 16.10.2020 passed by the District Magistrate, Kathua- respondent No. 2 directing the detention of Balbir Chand S/O Rana R/O Chack Drab Khan, Tehsil and District Kathua is quashed. Respondents are directed to release the detenue forthwith, provided he is not required in connection with any other case".

10. On perusal of dossier prepared and submitted by the police to the detaining authority and the impugned order passed by him, based thereon, it is found that the impugned order, particularly the grounds therefor, and the grounds mentioned in the dossier by the police are almost verbatim, except for some cosmetic changes. The impugned order is, thus, not sustainable on this account alone.

11. It is also notable that normal law in the instant case had to be assumed to be sufficient to disable the detenue to indulge in any such activity which may have been in the estimation of the detaining authority to be treated prejudicial to the maintenance of public order. The preventive detention is not a quick alternative to normal process, is what has been laid down by the Hon'ble Apex Court in its three-Judge Bench judgment **"Rekha Vs. State of Tamil Naidu & Anr."** reported as (2011) 5 SCC, wherein it has observed that:-

"29. Prevention detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive

detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.

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.”*

12. Except the case FIR registered in the year 2013, wherein detenu was alleged to have provided food, shelter and logistic support to a terrorist who was killed in an encounter by the Army, there is no specific allegation against the detenu as to how and in what manner he had provided logistic support to any of the terrorists as an OGW.

13. The vague grounds cannot be based to deprive a citizen of his cherished fundamental right of liberty so as to detain him. Mere

apprehension that he was involved in some criminal activities in the year 2013, having been acquitted of all the charges by the trial court, there is no justification for preventive detention of the detainee in the year 2025 there being no live link and stale grounds.

14. In the case of “**Sama Aruna Vs. State of Telangana and others,**”

reported in **(2018)12 SCC 150** against a detention order dated 23.11.2016 passed by the Commissioner of Police Rachakonda Commissionerate, Rangareddy District, Telangana, the detainee, through his wife, had preferred a writ petition challenging preventive detention which came to be dismissed and the matter reached before the Hon’ble Supreme Court of India in an appeal. The order of preventive detention was based upon the grounds of detention which came to be referred to six criminal cases against the detainee, four of which are of 2007, one of 2013 and one of 2014. The detention came to be questioned on the plea of grounds being stale. The Hon’ble Supreme Court of India came to consider the relevance of 9 to 14 years’ old incidents resulting in FIRs through a grossly belated order of detention. In paragraphs 16 & 17, the Hon’ble Supreme Court of India came up with the following reference:-

“16. Obviously, therefore, the power to detain, under the Act of 1986, can be exercised only for preventing a person from engaging in, or pursuing or taking some action which adversely affects or is likely to affect adversely the maintenance of public order; or for preventing him from making preparations for engaging in such activities. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the

question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account. In Golam Hussain alias Gama v. Commissioner of Police, Calcutta and Ors. (1974)4 SCC 530, this Court observed as follows:

“5. No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil To Rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case.

Suffice it to say that in any case, incidents which are said to have taken place nine to fourteen years earlier, cannot form the basis for being satisfied in the present that the detenu is going to engage in, or make preparation for engaging in such activities.

- 17. We are, therefore, satisfied that the aforesaid detention order was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. The detention order must be based on a reasonable prognosis of the future behavior of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this*

case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. 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...”

15. The impugned detention order passed on vague grounds, verbatim copy of police dossier, and failure on the part of the detaining authority to record satisfaction that normal law proved insufficient to restrain the detainee and stale grounds with no live link between the alleged activities in the year 2013 and the detention order passed in the year 2025, is found liable to be quashed on these counts.

16. For what has been held by the Apex Court in the afore-quoted case laws and having regard to what has been observed hereinabove, the impugned detention order does not sustain in the eyes of law. As such, the present petition is allowed and the impugned detention order No. **16-DMK/PSA of 2025 dated 01.05.2025**, is set aside. As a result, the detainee namely Ghulam Hassan Malla S/O Mohammad Jamal Malla R/O Harden Sever, Lolab, Kupwara, is directed to be released from the custody forthwith, if not required in any other case(s).

17. Disposed of, in terms of the above alongwith connected application(s).

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

Srinagar
22.04.2026
Muzammil. Q

Whether the order is reportable: Yes / No