

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.228/2024
CM No.7678/2024

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**

Ahsan ul Haq Khanday
S/O Nazir Ahmad Khanday
through his wife Sabiya
R/O Nowpora, Kalan, Tehsil Sopore,
District Baramulla.

...Petitioner(s)

Through: Adv. Mohammad Wajid Haseeb.

Vs.

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

2. District Magistrate, Baramulla.

3. Superintendent of Police, Sopore.

...Respondent(s)

Through: Dy.AG Hakeem Aman Ali.

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

JUDGMENT

1. Impugned herein is the detention Order No. **35/DMB/PSA/2024** dated **16.05.2024** (for short 'impugned order') passed by respondent No.2-District Magistrate, Baramulla, whereby the petitioner was ordered to be detained under preventive custody in terms of **Section-8 of J&K Public Safety Act, 1978** (for short 'the Act') with a view to prevent

him from acting in any manner prejudicial to the 'security of UT of J&K'.

2. Through the medium of the present petition, the petitioner seeks quashment of the said detention order on the grounds that the detinue, in terms of the impugned order, has been detained under the Public Safety Act on false and flimsy grounds without any justification; that the grounds of detention are vague and mere assertions of the detaining authority and no prudent man can make an effective and meaningful representation against these allegations; that the detinue has not been provided the material/documents relied upon by the detaining authority so as to make an effective representation before the detaining authority; that he was not informed that he can make a representation before the District Magistrate, therefore, a valuable right of the detinue stands defeated; that the Detaining authority, while passing the impugned order, has relied upon the stale grounds, therefore, the same is not sustainable. It is prayed to quash the impugned order for the afore-stated grounds.

3. Counter affidavit has been filed by respondent No. 2-District Magistrate, Baramulla, vehemently, resisting the petition. It is contended that detaining a person under the provisions of Public Safety Act is always preventive in nature and its sole aim is to prevent a person from pursuing anti-national/anti-social activities, which are prejudicial to the maintenance of security of the State/public order; that there is enough material against the detinue which is highly suggestive of the fact that the normal law of the land is not sufficient to prevent him from continuing with his anti-national activities and it is evident that the

detenue is highly motivated and is not likely to desist from anti-national and unlawful activities.

4. Heard learned counsel for the parties and considered the rival submissions.
5. Perusal of the material available on file, would indicate that the detenue was arrested in a case registered vide FIR No.82/2021 under sections 506 IPC, 13 ULAP Act at P/S Sopore and was released on bail by the competent court of law. However, he continued his terror activities and did not mend his behavior persuading the Detaining authority to curb his activities to order detention of the detenue under the provisions of Public Safety Act.
6. Right of personal liberty is a most precious right guaranteed under the Constitution of India. A person is not to be deprived of his personal liberty, except in accordance with procedures established under law and the procedure as laid down in the case '**Maneka Gandhi vs. Union of India, (1978 AIR SC 597)**', is to be just and fair. The personal liberty may be curtailed where a person faces a criminal charge or is convicted of an offence and sentenced to imprisonment. Where a person is facing trial on a criminal charge and is temporarily deprived of his personal liberty owing to criminal charge framed against him, he has an opportunity to defend himself and to be acquitted of the charge in case prosecution fails to bring home his guilt. Where such person is convicted of offence, he still has satisfaction of having been given adequate opportunity to contest the charge and also adduce evidence in his defense.
7. Framers of the Constitution, however, have, by incorporating **Article 22(5)** in the Constitution, left room for detention of a person without a

formal charge and trial and without such person being held guilty of an offence and sentenced to imprisonment by a competent court. Its aim and object are to save society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case it would be dangerous, for the people at large, to wait and watch as by the time ordinary law is set into motion, the person, having dangerous designs, would execute his plans, exposing general public to risk and causing colossal damage to life and property. It is, for that reason, necessary to take preventive measures and prevent a person bent upon to perpetrate mischief from translating his ideas into action. **Article 22(5)** of the Constitution of India, therefore, leaves scope for enactment of preventive detention law.

8. Having glance of the grounds of detention, it has been alleged that after passing 12th class examination, the petitioner got himself associated with anti-national activities and was working as close aide/hardcore OGW of killed terrorists Basharat Saleem Sheikh and Ishfaq Ahmad Sofi of 'HM' outfit. It is also found that the detainee came to be apprehended on 03.04.2021 alongwith incriminating material including Letter Pads of 'TRF' terrorist outfit and a case FIR No.82/2021 under sections 13 UAPA, 506 IPC was registered in Police Station, Sopore in this regard. Accordingly, detainee was arrested in the said case. However, after his release on bail, he was alleged not to have desisted himself from indulging in anti-national activities. The detainee was involved in carrying various anti-national activities and as per the inputs, the detainee was working as OGW for active Pak terrorist handler namely Bilal Mir and was receiving all directions from said terrorist through different Dark-Web applications to promote terrorism

in the area of Sopore. The detaining authority after keeping in view the activities of the detainee highly prejudicial to the security of the UT of J&K, detained him under preventive custody, in terms of the impugned order, which is under challenge in the present petition.

9. The record, produced by the State, reveals that the detainee was informed to make a representation to the detaining authority as also to the Government against his detention order if the detainee so desires. In compliance to District Magistrate's detention order, the warrant was executed by ASI Gurjeet Singh of DPL Sopore, by supplying the copy of detention order, notice of detention, grounds of detention, dossier, copies of FIR, statement of witnesses and other related relevant documents against a proper receipt. Further the execution report provided that the detainee can make a representation to the Government. It is also revealed that the detention warrant and grounds of detention were read over and explained to the detainee in Urdu/Kashmiri language which the detainee understood fully and signatures of detainee were also obtained. Thus, the contention of the petitioner for not supplying the material incapacitating him from making an effective and meaningful representation, is not sustainable.

10. Reference to the observations made by the Constitution Bench of the Supreme Court in the case of '**The State of Bombay v. Atma Ram Shridhar Vaidya AIR 1951 SC 157**' in this regard would be advantageous. **Para- 5** of the said judgment lays law on the point, which is profitable to be reproduced hereunder:

"5. It has to be borne in mind that the legislation in question is not an emergency legislation. The powers of preventive detention under this Act of 1950 are in addition to those contained in the Criminal Procedure Code, where preventive detention is followed by an

inquiry or trial. By its very nature, preventive detention is aimed at preventing the commission of an offence or preventing the detained person from achieving a certain end. The authority making the order therefore cannot always be in possession of full detailed information when it passes the order and the information in its possession may fall far short of legal proof of any specific offence, although it may be indicative of a strong probability of the impending commission of a prejudicial act. Section 3 of the Preventive Detention Act therefore requires that the Central Government or the State Government must be satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to (1) the defence of India, the relations of India with foreign powers, or the security of India, or (2) the security of the State or the maintenance of public order, or (3) the maintenance of supplies and services essential to the community it is necessary So to do, make an order directing that such person be detained. According to the wording of section 3, therefore, before the Government can pass an order of preventive detention it must be satisfied with respect to the individual person that his activities are directed against one or other of the three objects mentioned in the section, and that the detaining authority was satisfied that it was necessary to prevent him from acting in such a manner. The wording of the section thus clearly shows that it is the satisfaction of the Central Government or the State Government on the point which alone is necessary to be established. It is significant that while the objects intended to be defeated are mentioned, the different methods, acts or omissions by which that can be done are not mentioned, as it is not humanly possible to give such an exhaustive list. The satisfaction of the Government however must be based on some grounds. There can be no satisfaction if there are no grounds for the same. There may be a divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction required by the section. One person may think one way, another the other way. If, therefore, the grounds on which it is stated that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of mala fides cannot be challenged in a court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government or the State Government, is ruled out by the wording of the section. It is not for the court to sit in the place of the Central Government or the State Government and try to determine if it would have come to the same conclusion as the Central or the State

Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a court of law. Such detention orders are passed on information and materials which may not be strictly admissible as evidence under the Evidence Act in a court, but which the law, taking into consideration the needs and exigencies of administration, has allowed to be considered sufficient for the subjective decision of the Government.”

11. In accordance with the legal position, afore-stated, settled by the **Six-Judge Constitution Bench** way back in the year 1951, the scope of looking into the manner in which the subjective satisfaction is arrived at by the detaining authority, is limited. This Court, while examining the material, which is made basis of subjective satisfaction of the detaining authority, would not act as a court of appeal and find fault with the satisfaction on the ground that on the basis of the material before detaining authority another view was possible.
12. The courts do not even go into the questions as to whether the facts mentioned in the grounds of detention are correct or false. The reason for the rule is that to decide this, evidence may have to be taken by the courts and that it is not the policy of the law of preventive detention. This matter lies within the competence of the Advisory Board, constituted under the Public Safety Act.
13. Those who are responsible for national security or for maintenance of public order must be the sole judges of what the national security, public order or security of the State requires. Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing. Justification for such detention is suspicion or reasonable probability and not criminal conviction, which can only be warranted by legal evidence. Thus, any preventive measures, even if

they involve some restraint or hardship upon individuals, as held by the Supreme Court in the case '**Ashok Kumar v. Delhi Administration & Ors., AIR 1982 SC 1143**', do not contribute in any way of the nature of punishment.

14. Observing that the object of preventive detention is not to punish a man for having done something but to intercept and to prevent him from doing so, the Supreme Court held in the case '**Naresh Kumar Goyal v. Union of India & Ors., 2005 (8) SCC 276**', and reiterated in the judgment in a case titled '**Union of India and another v. Dimple Happy Dhakad**' (AIR 2019 SC 3428) that an order of detention is not a curative or reformatory or punitive, but a preventive action, acknowledged object of which being to prevent anti-social and subversive elements from endangering the welfare of the country or security of the nation or from disturbing public tranquility or from indulging in anti-national activities or smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances, etc. Preventive detention is devised to afford protection to society. Rulings on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing so.

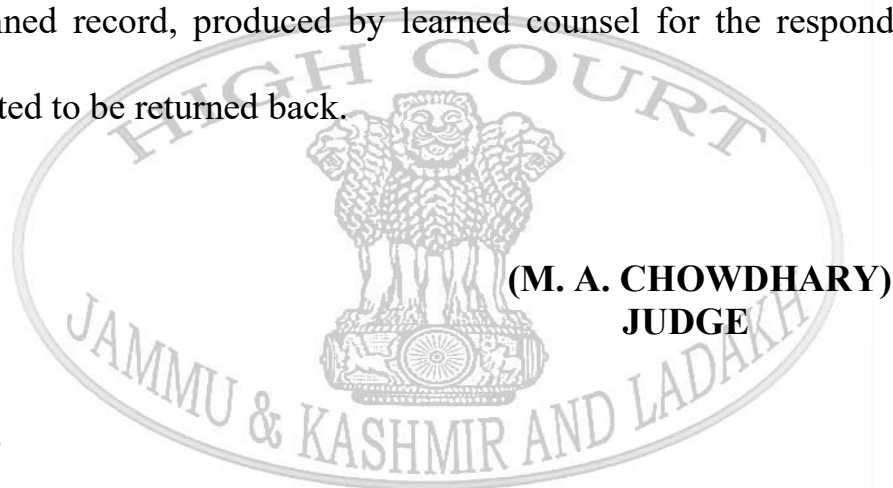
15. Petitioner besides being involved in five cases registered at Police Station, Sopore in terrorism related case from the year 2009 to 2021 and was also detained earlier in the year 2019 under PSA. It was alleged that despite of the above measures, petitioner continued to work for terrorists and Resistance Front, which were prejudicial to the maintenance of security of J&K, particularly being in touch with PaK

terrorist handler Bilal Mir through Dark-Web Applications to promote terrorism in the general area of Sopore. The contention of stale grounds is, thus, not tenable and is liable to be rejected.

16. Viewed from any angle, I do not find any illegality or impropriety in the impugned detention order. Hence, the present petition, being devoid of any merit, is, **dismissed** along-with pending application(s) and the impugned detention order is upheld.

17. Scanned record, produced by learned counsel for the respondents, is directed to be returned back.

Srinagar
22.04.2026
Muzammil. Q



(M. A. CHOWDHARY)
JUDGE

Whether the order is reportable: Yes / No