



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

Reserved on: 15.04.2026

Pronounced on:08.05.2026

Uploaded on: 08.05.2025

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

HCP No.383/2024

SHAHID AMIN GANIE

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. M. A. Makroo, Advocate.

Vs.

UT OF J&K & ANOTHER

...RESPONDENT(S)

Through: - Mr. Ilyas Laway, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) Through the medium of present petition, the petitioner has challenged detention order bearing No.27/DMA/PSA/DET/2024 dated 24.10.2024, issued by District Magistrate, Anantnag, in exercise of powers conferred by Section 8 of the J&K Public Safety Act, 1978, whereby the detinue, namely, **Shahid Amin Ganai**, has been placed under preventive detention so as to prevent him from indulging in the activities which are prejudicial to the security of the UT.

2) It has been contended that the detaining authority, while passing the impugned order, has not followed the procedural safeguards as provided under Article 22(5) of the Constitution



of India and Section 13 of the J&K Public Safety Act. It has been submitted that impugned detention order has been passed without application of mind as the grounds of detention are vague, equivocal, obscure, indefinite and ambiguous, on which no prudent man can make a representation against such allegations. It has been further contended that whole of the material has not been provided to the petitioner and that the representation submitted by the petitioner against the impugned detention order has not been considered as the result of consideration has not been conveyed to him. It has also been contended that the grounds of detention are verbatim copy of the dossier.

3) The respondents, in their counter affidavit, have contended that the activities of the detenu have been found prejudicial to the security of the State. It is pleaded that the detention order and grounds of detention along with the material relied upon by the detaining authority were handed over to the detenu and the same were read over and explained to him. It has been further contended that the detenu was informed that he can make a representation to the government as well as to the detaining authority against his detention. It is also averred in the reply affidavit that all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority and that the



order has been issued validly and legally. It has also been contended that the detention of the detenu has been ordered strictly in accordance with the provisions of J&K Public Safety Act. The respondents have produced the detention record to lend support to the stand taken in the counter affidavit.

4) I have heard learned counsel for the parties and perused record of the case.

5) Learned counsel for the petitioner, while seeking quashment of the impugned order, projected various grounds but his main thrust during the course of arguments was on the following grounds:

- (I) *That representation of the petitioner against the impugned order of detention has not been considered by the respondents thereby violating his statutory and constitutional rights.*
- (II) *That the grounds of detention are vague and cryptic, which prevented him from making an effective representation against his detention.*

6) So far as the first ground of challenge is concerned, a perusal of the detention record reveals that the representation of the petitioner dated 20.11.2025 has been rejected by the Government and an intimation in this regard has been communicated by the Deputy Secretary to the Government, Home Department, to the District Magistrate, Anantnag, in terms of communication No.Home/PB-V/513/2024/7591382 dated 27.01.2025. In the said communication, the



respondents have admitted receipt of representation of the petitioner. The representation has been received by the respondents on 26.11.2024, which is clear from the communication dated 26.11.2024, vide which the representation of the petitioner had been forwarded by the District Magistrate, Anantnag to Principal Secretary to Government, Home Department, that forms part of the detention record. The question that arises for determination is as to whether consideration of representation after a period of two months from the date of receipt of the same satisfies the requirement of law.

7) The aforesaid question has been answered by the Supreme Court in **Sarajeet Singh Mokha vs. District Magistrate, Jabalpur and others**, (2021) 20 SCC 98. It would be apt to refer to observations made by the Supreme Court in para 47 of the judgment, which are reproduced as under:-

“47. By delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of Section 8(1) of having the representation being considered expeditiously. As we have noted earlier, the communication of the grounds of detention to the detenu “as soon as may be” and the affording to the detenu of the earliest opportunity of making a representation against the order of detention to the appropriate government are intended to ensure that the representation of the detenu is considered by the appropriate government with a sense of immediacy. The State Government failed to do so. The making of a reference to the Advisory Board could not have furnished any justification for the State Government not to deal with the representation independently at the earliest. The delay by the State Government in disposing of the representation and by the Central and State



Governments in communicating such rejection, strikes at the heart of the procedural rights and guarantees granted to the detenu. It is necessary to understand that the law provides for such procedural safeguards to balance the wide powers granted to the executive under the NSA. The State Government cannot expect this Court to uphold its powers of subjective satisfaction to detain a person, while violating the procedural guarantees of the detenu that are fundamental to the laws of preventive detention enshrined in the Constitution.”

8) From the foregoing analysis of law on the subject, it is manifest that delaying of decision on the representation of the detenu amounts to an infringement of a valuable right which is available to a detenu in terms of provisions contained in Section 13 of the Jammu & Kashmir Public Safety Act, which makes it obligatory on the detaining authority to communicate to the detenu the grounds on which the order of detention has been made within a maximum period of ten days from the date of detention and to afford him the earliest opportunity of making representation against the order of detention. The purpose of furnishing the grounds of detention within a maximum period of ten days is to enable a detenu to make a representation against the order of detention at the earliest opportunity. Thus, a duty is cast upon the detaining authority or the government to consider the said representation at the earliest opportunity. Failure to decide the representation of a detenu within a reasonable time in an expeditious manner strikes at the valuable right of a detenu emanating from the provisions of Section 13 of the Jammu & Kashmir Public Safety Act.



9) In the present case, the respondents have received the representation of the petitioner on 26.11.2024 but the same has been decided by them on 27.01.2025. there is no explanation from the side of the respondents with regard to the delay of more than two months in deciding the representation of the petitioner. This unexplained slackness on the part of respondents to take a decision on the representation of the petitioner renders the impugned order of detention illegal.

10) Next it has been contended by learned counsel for the petitioner that the grounds of detention are vague, inasmuch as there is no mention of the particulars of alleged terrorists, to whom the petitioner was allegedly providing the logistic support.

11) On perusal of the detention record produced by learned counsel for the respondents, the ground projected regarding vagueness of the averments made in the grounds of detention, appears to be forceful. In the grounds of detention, there is no mention of the particulars of the places and the identity of the terrorists, to whom the petitioner was allegedly providing logistic support. The particulars of the period when the detenu is alleged to have provided food, shelter and other logistic support to the alleged terrorists are also not mentioned in the grounds of detention. Thus, the grounds, being vague and lacking in material particulars, the detenu could not have



made an effective representation against his detention. Therefore, there has been violation of constitutional guarantees envisaged under Article 22(5) of the Constitution. The detention order, as such, is illegal and unsustainable. In my aforesaid view, I am fortified by the judgments of the Supreme Court in the case of **Jahangirkhan Fazal Khan Pathan vs. Police Commissioner, Ahmadabad, (1989) 3 SCC 590, Abdul Razak Nane khan Pathan v. Police Commissioner, Ahmadabad, AIR 1989 SC 2265, Mohd. Yousuf Rather vs. State of J&K & Ors, 1979 4 SCC 370 and Piyush Kantilal Mehta vs. The Commissioner of Police, Ahmedabad City and Ors. 1989 (1) Crimes 176 (SC).**

12) For the afore-stated reasons, the petition is allowed and the impugned detention order is quashed. The respondents are directed to release the petitioner from the preventive custody forthwith, provided he is not required in connection with any other case.

13) The detention record be returned to learned counsel for the respondents.

**(Sanjay Dhar)
Judge**

Srinagar

08.05.2026

“Bhat Altaf-Szeg”

Whether the **judgment** is reportable: **Yes/No**