

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

HCP No. 111/2025

Reserved on: 26.02.2026
Pronounced on: 05.03.2026
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*Whether the operative part or full
judgment is pronounced-**Full***

**Shokat Ali Aged-21 Yrs.
S/O Nazir Din
R/O Ghatti Tehsil and District Kathua**

.....Appellant/petitioner(s)

Through :- Mr. Gagan Oswal, Advocate.
v/s

1. **UT of J&K** through
Principal Secretary, Department of Home,
J&K Government, Civil Secretariat/Jammu.
2. **District Magistrate, Kathua**
3. **Senior Superintendent of Police, Kathua**
4. **Superintendent, Central Jail, Kot
Bhalwal, Jammu.**

.....Respondent(s)

Through :- Mr. Suneel Malhotra, GA.

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

01. Challenge in this petition has been thrown to a detention order No. PSA 168 of 2025, dated 25.06.2025, issued by respondent no. 2-District Magistrate Kathua, vide which petitioner came to be detained, under Section 8 of J&K Public Safety Act, 1978 ["PSA"] and lodged in Central Jail Kot Bhalwal, Jammu.

02. Background facts of the case are that Senior Superintendent of Police, Kathua, describing the petitioner as a desperate character, habitually indulging

in the smuggling of bovine animals, submitted a dossier and connected documents to District Magistrate Kahtua [“the detaining authority”] for his detention.

03. The dossier elaborated four FIRs against the petitioner viz., FIR No. 163/2022 U/S 188 IPC, 11 PC Act of P.S Ghagwal, FIR No. 12/2023 u/s 188 IPC, 11 PC Act of P/S Lakhanpur, FIR No. 27/2023 u/s 188 IPC, 11 PC Act of P/S Rajbagh & FIR No. 53/2025 u/s 331(4) 305 BNS P/S Rajbagh. It was also alleged that on 27.04.2025, Sh. Karan Singh, Lamberdar and Sh. Prithpaul Singh, Sarpanch of Halqa Panchayat had confirmed that petitioner was repeatedly involved in bovine smuggling and theft cases. It was alleged that petitioner was not only involved in organized crime but he also had close association/links with hardcore/notorious criminals and his activities created a sense of insecurity and terror in the area, with potential to disturb public order and communal harmony.

04. Petitioner is aggrieved of the impugned order *inter alia* on the following grounds:-

- (a) *Because the petitioner is an illiterate as already stated in the dossier and the grounds of detention were neither read over to the petitioner nor the petitioner was made to understand the same in the language which he understands as the petitioner understands only "Gojri" and further no copy of these documents were provided to the petitioner in the language which petitioner understands.*
- (b) *Because no copy of FIR and other documents including the Bail orders have been served upon the petitioner because only detention order has been served, therefore, in absence of the documents as relied upon by the detaining authority, the applicant has been deprived of making effective representation, therefore, the order impugned is illegal and deserves to be revoked.*
- (c) *Because the petitioner has been detained on the basis of false and frivolous FIRs registered against the petitioner but the offences mentioned above are not covered under Section 8 of J&K Public Safety Act 1978 and in the absence of the same the*

impugned detention order is bad in eyes of law and is required to be revoked.

- (d) Because impugned order has been passed the on the ground of involvement of the petitioner in FIR'S with respect to which the petitioner has already been enlarged on bail which have no foundation and as such, the order impugned is bad in law and deserves to be revoked.*
- e) Because the detaining authority has refused to consider the representation of the petitioner and further no time limit has been communicated to the petitioner within which he was supposed to make a representation to the detaining authority and on this ground also the detention order is required to be quashed.*
- (e) Because the petitioner has been detained on the basis of false and frivolous FIRs registered against the petitioner and that the grounds of detention are verbatim repeat of dossier of SSP, Jammu without adding something in the dossier and therefore on this ground also the detention order is required to quashed.*
- (f) Because no satisfaction has been recorded by your goodself that the normal punitive law has failed to prevent the illegal activities of the applicant which renders necessary the issuance of detention order, as such, the order impugned is bad in law.*
- (g) Because the detaining authority by virtue of the detention order dated 25.06.2025 bearing PSA No. 168 has detained the petitioner but as per the order one Kamal @ Kaka S/o Manohar Lal R/o Khanpur Tehsil and District Pathankot was required to be detained and therefore order impugned is bad in law and is therefore required to be quashed.*

05. It is contention of the petitioner that he made a representation to the respondents for revocation of the impugned order of his detention, but respondents refused to consider his representation.

06. Countervailing the stand of the petitioner, *ex adverso*, respondents are affront with the contention that none of the legal, constitutional and statutory right of the petitioner has been violated and impugned order came to be passed by the detaining authority after due consideration of the dossier submitted by SSP Kathua, because petitioner was continuously and repeatedly involved in criminal activities, particularly smuggling of bovine animals over the past

several years, which is highly prejudicial to the maintenance of public order and tranquility. According to the respondents, the material relied upon, including four FIRs, showed a continuous pattern of conduct on the part of the petitioner, thereby threatening law and order.

07. It is contention of the respondents that grounds of detention, detention warrant and all relevant documents, comprising of 47 leaves, were not only supplied to the petitioner but also read over and explained to him in his language against a proper receipt duly signed by him. The petitioner and his father were informed by the detaining authority about the detention order and grounds on which it was issued. He was also informed about his right to make representation to the Government against the detention order, if he so desired. Respondent no. 2 received a representation on behalf of the detenu through his mother, namely Kali Begum, on 13.08.2025, which was forwarded to Principle Secretary, Home Department, vide letter dated 14.08.2025, with a copy to SSP Kathua for intimation. The Home Department, vide order dated 01.09.2025, has intimated that representation of the petitioner was considered and was found without merit. This communication is stated to have been endorsed to Superintendent Central Jail, Kot Bhalwal, Jammu, with a direction to inform the detenu regarding disposal of the representation and Senior Superintendent, Central Jail, Jammu, vide his communication dated 11.09.2025 addressed to the Home, intimated that disposal of the representation had been communicated to the detenu on 01.09.2025.

08. It is the contention of the respondents that since action taken against the petitioner in the past under substantive laws did not prove fruitful in deterring him from indulging in anti-social activities, therefore, for the maintenance of public order, it was deemed fit to detain him under the provisions of PSA.

According to the respondents, on the basis of objective and dispassionate assessment of a clear and consistent pattern in the criminal activities carried out by the petitioner, the detaining authority has come to an inescapable conclusion that there was no likelihood of the detenu being dissuaded from indulging in similar activities. Therefore, it is contended that detention of the petitioner has been ordered after due consideration of the dossier received from the sponsoring authority-SSP Kathua and, keeping in view the gravity of the situation, the petitioner came to be detained under PSA. The respondents have prayed for dismissal of the petition.

09. Heard arguments and perused the detention record.

10. Mr. Oswal, learned counsel for the petitioner, has relied upon a host of pronouncements of this Court including **Muskan Ali vs. UT of J&K & Ors. (HCP No. 72/2024)**, **Zaffar Ahmed vs. UT of J&K & Ors. (HCP No. 66/2024)**, **Hamid Mohd. Vs. UT of J&K & Ors. (HCP No. 04/2024)**, **Tanveer Hamed @ Jimmy vs. UT of J&K & Ors. (WP (CrI) 87/2022)** and **Yaqoob Hussain vs. UT of J&K & Ors. (HCP No. 112/2025)** to reiterate the grounds urged in the memo of petition.

11. At the foremost, petitioner is aggrieved of the impugned order on the ground that neither all the relevant documents, including copies of FIRs and bail orders, were furnished to him so as to enable him to make an effective representation, nor the dossier and grounds of detention were read over and explained to him in Gojri language which he understands.

12. The respondents, in their counter affidavit, have taken a clear stand that not only relevant documents/material were provided to the petitioner against proper receipt, but documents were also read over and explained to him in his language which he fully understood, and he was informed about his right to

make a representation, with respect to which he put his signatures in acknowledgement.

13. A perusal of the detention record would also show that upon execution of the impugned order, 47 leaves of documents came to be supplied to the petitioner against proper receipt. They are stated to have been read over and explained to him in Hindi/Urdu language, which he understood, and his signatures as a token of acknowledgement have been obtained. The petitioner and his father were informed about the detention order and the grounds on which it came to be issued against him. He was also informed about his right to make representation to the Government against the detention order, if he so desired. Pertinently, the petitioner has not filed any rejoinder to refute the stand of the respondents that entire relevant material was furnished to him, relevant documents were read over and explained to him in his language and he was informed about his constitutional right to make his representation.

14. Since respondents, in their counter affidavit, have denied allegations of the petitioner that entire relevant material was not supplied to him, same was not read over and explained to him in his language and he was informed about his right to make an effective representation, it was incumbent upon the petitioner to rebut the stand of the respondents/detaining authority by filing a rejoinder affidavit, which he not chosen to do. In these circumstances, categoric stand of the respondents that not only relevant documents were provided to him, but same were read over and explained to the petitioner in his language, remains un rebutted. It thus implies that detaining authority and the executing officer, in this respect have scrupulously adhered to the statutory requirements and constitutional obligations on their part.

15. Another ground urged by the petitioner and his counsel is that he came to be detained on the basis of false and frivolous FIRs for offences which, according to him, are not covered under Section 8 PSA, and in all the said FIRs, he has already been enlarged on bail.

16. Learned counsel for the petitioner, has vehemently argued that since petitioner was enlarged on bail by the competent court in all the FIRs alleged against him and, prosecution never filed any application for cancellation of bail extended in his favour by the concerned courts from time to time, recourse to PSA by the detaining authority is illegal.

17. It is a settled proposition of law that power of preventive detention is precautionary in nature and can be exercised on reasonable apprehension and it may or may not relate to an offence. It is also trite that basis of a detention order is the satisfaction of the detaining authority regarding reasonable probability of the detenu indulging in activities similar to his past conduct and to prevent him from reoffending.

18. The allegation against the petitioner is that he is habitually indulging in criminal activities of bovine smuggling. Four FIRs registered against him for similar offences relating to bovine smuggling failed to deter him. He was not only involved in organized crime but he also had close association/links with hardcore and notorious criminals. Therefore, taking into account his past activities, the detaining authority found it imperative to detain the petitioner with a view to prevent him from indulging in similar activities.

19. A five judge bench of Hon'ble Supreme Court in **Haradhan Saha vs. State of West Bengal & Ors; (1975) 3 SCC 198**, in a similar fact situation, has held that preventive detention has nothing to do with the commission of an offence by the detenu or any prosecution against him. It is clearly ruled by the

Apex Court that preventive detention can be ordered before or during the prosecution and even with or without prosecution of a criminal case against the detenu. It can be made in anticipation. Preventive detention can be ordered even after discharge or acquittal of an accused. The position of law crystallized in **Haradhan Saha** is that pendency of a criminal case is no bar to order preventive detention and Article 14, in such cases, takes a back seat because preventive detention and prosecution are not synonymous.

Relevant excerpt captured in Paras 32 to 34 of the judgment for the ease of reference is extracted below:-

“32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be, made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.

*34. The recent decisions of this Court on this subject are many. The decisions in **Borjahan Gorey v. State of W. B.**, **Ashim Kumar Ray V. State of W. B.**; **Abdul Aziz V. District Magistrate, Burdwan** and **Debu Mahato V. State of W. B.** correctly lay down the principles to be followed as to whether a detention order is valid or not. The decision in **Biram Chand v. State of U. P.** which is a Division Bench decision of two learned Judges is contrary to the other Bench decisions consisting in each case of three learned Judges. The principles which can be broadly stated are these. First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no*

satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.”

20. Pertinently, a similar view was expressed earlier by another constitutional Bench of Hon’ble Supreme Court in the **State of Bombay vs. Atma Ram Shridhar Vaidya**; AIR 1951 SC 157.

21. An identical view has been taken by Supreme Court in **Naresh Kumar Goyal vs. Union of India**; (2005) 8 SCC 276:-

“It is trite law that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperiling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. Preventive Detention is devised to afford protection to society. The authorities 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.”

22. The aforesaid enunciation further came to be reiterated with approval by the Apex Court in **Union of India vs. Dimple Happy Dhakad**; AIR 2019 SC 3248.

23. In view of aforesaid observations of Hon’ble Supreme Court, the case law relied by learned counsel for the petitioner, having regard to the facts and circumstances of the present case, is not attracted.

24. It is manifest from the observations of Hon’ble Supreme Court that pendency of prosecution against a detenu is no bar for the detaining authority to pass an order of preventive detention, and even discharge or acquittal of the detenu in a criminal case against him does not preclude the detaining authority from invoking precautionary jurisdiction under the preventive detention laws. Therefore, contention of learned counsel for the petitioner that criminal

prosecution could not be circumvented or subverted by resort to preventive detention is legally flawed for the simple reason that purpose of preventive detention is different from criminal prosecution. Discharge or acquittal or grant of bail to a detenu operates in different fields. In a criminal prosecution, it is proof beyond reasonable doubt which is a paramount consideration, whereas in cases of preventive detention what is necessary is subjective satisfaction of the detaining authority that ordinary law of the land had failed to prevent and deter the detenu from indulging in similar activities. In preventive detention cases, the past act of the detenu serves as a material for drawing an inference about the future course of his probable conduct, as held by the Apex Court in **Haradhan Saha**. Therefore, preventive detention of a detenu cannot be held illegal merely because detenu has been bailed out in criminal cases against him and prosecution failed to move the concerned court for cancellation of his bail. If the object of detention is to prevent a habitual offender from re-offending in future, which may tend to create a law and order problem or disturb the public order and communal harmony, resort to preventive detention is perfectly justified.

25. The next ground urged by the petitioner is that grounds of detention are verbatim repetition of the dossier of SSP Jammu and detaining authority failed to record its subjective satisfaction that alleged activities of the petitioner are prejudicial to the maintenance of public order. This contention of the petitioner is found specious and misconceived.

26. The details of multiple FIRs against the petitioner, with clear reference to his past activities in the dossier as also in the grounds of detention, in fact reflects manifest awareness and application of mind on the part of the detaining authority before it embarked to pass the impugned order. It is apparent from the grounds of detention that respondent no. 2-the detaining authority passed the

impugned order on reasonable prognosis of the future behaviour of the petitioner based on his past conduct and in the light of attending circumstances of the case.

27. High Court, in exercise of its writ jurisdiction, has a very limited scope to examine the grounds of detention and sufficiency of the material relied by the detaining authority. It cannot sit in appeal and final fault with the subjective satisfaction derived by the detaining authority and substitute its own opinion when the grounds of detention are precise, pertinent and proximate. It is exclusive domain of the administration to ensure the maintenance of public peace and tranquility. The subjective satisfaction drawn by the detaining authority that ordinary law of the land has not proved sufficient to deter the detenu from indulging in repeated anti-social activities is not open to objective scrutiny by the High Court in exercise of writ jurisdiction.

28. Another ground urged by the petitioner to assail the impugned order is that detaining authority refused to consider his representation. However, a perusal of the record reveals that respondent No. 2 received a representation on behalf of the petitioner through his mother, namely, Kali Begum on 13.08.2025, which was immediately forwarded to the Principal Secretary, Home, on the next day, i.e., 14.08.2025. The Home Department, vide order dated 01.09.2025, intimated that representation preferred by the petitioner was considered and was found without merit. The Senior Superintendent, Central Jail, Jammu, vide his communication dated 11.09.2025, intimated the Home Department that disposal of the representation was communicated to the petitioner on 01.09.2025 itself. The respondents, in their counter affidavit, have not only denied the allegation of the petitioner that they refused to consider his representation but placed on record sufficient material to assert that representation filed on behalf of the

petitioner was duly considered and decision was conveyed to him by the Senior Superintendent of the concerned jail. The detention record belies the allegation of the petitioner that respondents refused to consider his representation. The record, rather bears testimony to the fact that representation, preferred on behalf of the petitioner has been duly considered.

29. At last but not the least, learned counsel for the petitioner has drawn attention of this Court to the impugned order, by virtue of which, though one Kamal @ Kaka S/o Manohar Lal, R/o Khanpur, Tehsil and District Pathankot, has been directed to be detained in Central Jail, Kot Bhalwal, Jammu, but petitioner, Shokat Ali has been taken into detention. According to learned counsel for the petitioner, this is a case of non-application of mind on the part of the detaining authority.

30. If the impugned order of detention is carefully gone through, as a whole it is evident that detaining authority has recorded the satisfaction that petitioner is a hardcore criminal who has indulged in a number of criminal activities, such as smuggling of bovine animals from District Kathua, and that his remaining at large involves a greater risk to the maintenance of public order, therefore, it was, considered necessary to detain him on the basis of grounds enclosed as Annexure-I. However, in the concluding para of the order, one Kamal @ Kaka has been directed to be detained. There appears to be a typographical mistake. A perusal of the detention record reveals that the detaining authority has issued a corrigendum on 30.06.2025 that “name of the subject being detained may kindly be read as Shokat Ali S/o Nazir Din R/o Ghatti Tehsil and District Kathua in Para 3rd, line 3rd”. The impugned order, therefore, cannot be quashed on this technical ground alone.

31. Viewed from any angle, I do not find any illegality or infirmity in the impugned order of detention. The grounds of detention, on the basis of which impugned order came to be passed, are found definite and unambiguous. The petitioner was informed about the grounds of detention with sufficient clarity in the language which he fully understood. What weighed with the detaining authority while passing the impugned order were the past activities and the facts and figures detailed therein, on the basis of which the detaining authority came to the conclusion that petitioner was required to be placed under preventive detention in order to prevent him from indulging in similar activities.

32. For the foregoing reasons, present petition is dismissed and impugned order is upheld.

(Rajesh Sekhri)
Judge

JAMMU
05.03.2026.
Abinash

Whether the judgment is speaking? Yes
Whether the judgment is reportable? Yes