

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

Reserved on: 26.02.2026
Pronounced on: 09.03.2026
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Whether operative part or full
judgment is pronounced: **Full**

CJ Court

LPA No.62/2025 in [HCP 152/2024]

Shakir Nazir Malla, aged 24 years
S/o Nazir Ahmad Malla
R/o Narwani Tehsil Barbugh District Shopian,
Jammu & Kashmir, through his father, namely:
Nazir Ahmad Malla S/o Wali Mohammad Malla
R/o Narwani Barbugh, Shopian.

...APPELLANTS(S)

Through: - Mr. Tariq M. Shah, Advocate.

Vs.

1. UT of J&K through Commissioner Secretary, Home Department, Civil Secretariat, Srinagar/Jammu.
2. District Magistrate/Deputy Commissioner, Shopian.
3. Senior Superintendent of Police, Shopian.

...RESPONDENT(S)

Through: - Mr. Bikramdeep Singh, Dy. AG

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

JUDGMENT

OSWAL 'J'

1) Impugned in this appeal is the judgment/order dated 06.03.2025 passed by the learned Writ Court in HCP No.152/2024, whereby the writ petition preferred by the appellant against the order of detention bearing No.184-

DMS/PSA/2024 dated 04.04.2024, issued by respondent No.2, has been dismissed.

2) Aggrieved of the judgment/order dated 06.03.2025 (supra), the appellant has assailed the same through the medium of instant appeal on the following grounds:

- (I) That no sufficient material was provided to the appellant but to his father by the Superintendent District Jail, Baramulla, and only the detention order, warrant of execution and interrogation report, which the appellant had annexed with the writ petition, were provided to him and the dossier, confirmation order of Government, receipt of detention papers along with the report/declaration of executing officer allegedly comprising of 13 leaves of documents, did not include the dossier, as such, the judgment/order impugned is not sustainable in the eyes of law.
- (II) That the learned Writ Court has failed to appreciate the fact that the appellant was already in custody of police prior to the passing and execution of the detention order dated 04.04.2024, which is evident from the applications placed on record along with the appeal in the form of Annexure-IV.
- (III) That the detaining authority has issued the order of detention without applying its mind independently and without furnishing reasons

which is evident from the grounds of detention which have been framed by the detaining authority by solely placing reliance upon the dossier placed before the detaining authority by the SSP, Shopian.

(IV) That the learned Writ Court did not return any finding in respect of the contention of the appellant that he was forced to make confession against himself at the hands of police which was later on reduced into writing in the form of 'interrogation report' which ultimately formed the basis of the dossier prepared by the SSP, Shopian, on the basis of which the respondent No.2 issued the order of detention.

(V) That the representation submitted by the appellant through his father was not considered by the respondents, as such, the impugned order is not sustainable in the eyes of law.

3) Learned counsel for the appellant has reiterated the grounds of challenge as recorded above.

4) *Per contra*, Mr. Bikramdeep Singh, learned Dy. AG, has submitted that all the documents relied upon by the detaining authority were provided to the appellant against proper receipt and all the procedural safeguards were adhered to while issuing the detention order.

5) Heard and perused the record.

6) Firstly, it was contended that the dossier was not provided to the appellant, as such, the order of detention is not sustainable in the eyes of law.

7) The perusal of the ground (iv) of the writ petition preferred by the appellant reveals that it was pleaded by him that he was not provided with the copy of the detention order including the dossier/grounds of detention on the basis of which he had been ordered to be detained but because of his efforts, he had been able to manage and obtain the copy of the same. Thus, in the writ petition it was admitted by the appellant that he was in receipt of the detention order, dossier and the grounds of detention. In para 2(c) of the appeal, it has been pleaded by the appellant that it was his father who had obtained the material pertaining to detention of the appellant from Superintendent District Jail, Baramulla, which included the detention order, warrant of execution and the interrogation report and further that after the dictation of the impugned judgment/order was over, the appellant managed the copy of the dossier, confirmation order of the Government, receipt of detention papers along with the report/declaration of the executing officer. This is true that in the report/declaration of the executing officer, it is not stated that 13 leaves of documents/material provided to the

appellant included the dossier, but the appellant has taken contradictory and inconsistent stands in the writ petition as well as the appeal. In the writ petition it was admitted by the appellant that he had managed to obtain the dossier whereas in the appeal, it is pleaded by him that after the dictation of the impugned judgment/order was over, he managed the documents including the dossier. It is quite strange that when the appellant was in custody and the impugned judgment/order was rendered by the learned Writ Court, then how he managed to get the documents.

8) Be that as it may, once there was admission on the part of the appellant in his writ petition with regard to the fact that he was in receipt of the dossier, he cannot deviate from this stand to his advantage by submitting that he managed to obtain the dossier only after the dictation of the impugned judgment/order. It appears that the appellant is trying to derive benefit from the report/declaration of the executing officer wherein reference has been made to 13 leaves of documents provided to the appellant. In view of the pleadings and the stand taken by the appellant before the learned Writ Court as well as before this Court, we do not find any force in the contention regarding non-furnishing of dossier to the appellant, as such, the same is rejected.

9) Secondly, it was contended that the representation submitted against the detention order was not considered by the respondents. After examining the detention record, we find that a representation was submitted by the father of the appellant to the Chairman of the Advisory Board which was considered and rejected by the Advisory Board on 15.05.2024. The perusal of the detention record also reveals that the representation was also submitted to the Home Department as well, and the same was forwarded to CID vide communication dated 03.05.2024 but rejected on 30.05.2024. Thus, it becomes clear that it was received by the Home Department before 03.05.2024. The information of rejection was communicated to the appellant only on 10.07.2024, thus there is delay in considering the representation and communication of decision to the appellant. On this ground only, the detention of the appellant cannot sustain. In this context, it would be apposite to take note of the judgment of the Hon'ble Apex Court in **“Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur and others”**, (2021) 20 SCC 98, wherein the Supreme Court has addressed the legal impact of a delay in considering a detenu's representation, as well as the failure to communicate the decision to the detenu, on the overall validity of the detention. The governing principle is laid

down in **paragraph 47** of the judgment. The relevant extract reads 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.”

10) We have examined the judgment rendered by the learned Writ Court and we are of the considered view that the learned Writ Court has not examined the issue, as discussed above by us, as such, the judgment dated 06.03.2025 passed by the Writ Court cannot sustain and the same is required to be set aside.

11. Accordingly, the instant appeal is allowed and the judgment dated 06.03.2025 passed by the learned Writ Court is set aside. Resultantly, the order of detention bearing No. No.184-DMS/PSA/2024 dated 04.04.2024 is quashed. The appellant is directed to be released from custody forthwith, provided he is not required in any other case.

12. The record be returned to learned counsel for the respondents.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Srinagar
09.03.2026
N Ahmad

Whether the **Judgment** is speaking: **Yes**
Whether the **judgment** is reportable: **No**