

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No. 191/2025

Reserved on: 22.04.2026

Pronounced on: 29.04.2026

Uploaded on: 30.04.2026

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

**Mushtaq Ahmad Beigh,
S/O Lae Habibullah Beigh,
(Through his wife Posha Begum)
R/O Shart Mohalla, Jahama, Kupwara.**

...Petitioner(s)

Through: Adv. Imtiyaz Ahmad Sofi.

Vs.

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

2. District Magistrate, Kupwara.

...Respondent(s)

Through: GA Faheem Nisar Shah.

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

JUDGMENT

- 1.** The Supreme Court of India and various High Courts have consistently described preventive detention as a "draconian" measure, a "necessary evil," and a "jurisdiction of suspicion" that acts as a serious invasion of personal liberty. Judicial observations frequently emphasize that while constitutionally permitted, preventive detention should be used

sparingly, particularly as it often functions as a "curse" to democracy by allowing the State to detain individuals without trial.

2. The petitioner herein has questioned the legality, validity, and propriety of the impugned detention Order No. **03-DMK/PSA of 2025 dated 29.04.2025**, passed by the District Magistrate, Kupwara-respondent No.2, in exercise of powers under Section 8(1)(a)(i) of the J&K Public Safety Act, 1978, with a view to prevent him from acting in any manner prejudicial to the security of the UT of J&K.
3. The Senior Superintendent of Police, P.D Handwara, submitted a dossier to the District Magistrate, Kupwara, regarding the involvement of the petitioner in two FIRs. The details of the FIRs are (i) FIR No. 227/2001 registered under Section 7/25 Arms Act at Police Station Handwara, and (ii) FIR No. 04/2025 under Section 8/20 NDPS Act at Police Station, Qalamabad, thus, the detention of the petitioner was sought as his activities were considered prejudicial to the security of the UT of J&K.
4. The District Magistrate, Kupwara, after considering the relevant material, passed the detention order against the petitioner on the basis that the petitioner is influenced towards subversive and anti national activities and the same will prove detrimental to the security of the UT of J&K; that in case the detenu remains free at this point of time there would be every chance that he would devise a plan with his likeminded people, which in all possibilities would be a threat to the security of the UT of J&K. Furthermore, the previous behavior of the petitioner depicts his inclination towards secessionism, terrorism and anti national activities which have been assessed to pose a serious threat to the

security of the UT of J&K, thus, the detaining authority ordered his detention under the provisions of the J&K Public Safety Act, 1978.

5. The petitioner has challenged the order of detention on the grounds that the detaining authority cannot detain the petitioner either on the grounds on which he was earlier detained or by clubbing the earlier grounds with new ones as per Section 19 of the J&K Public Safety Act, 1978; that the right to personal liberty of an individual is transcendental, sacrosanct, and inviolable, therefore, it is placed on the highest pedestal and cannot be interfered with, in a casual and mechanical manner by resorting to such a draconian legislation as no person can be deprived of this right unreasonably and arbitrarily; and that the grounds of detention lack a live and proximate link to the object of maintaining security of the UT of J&K.
6. In the counter affidavit filed by the respondents, it is submitted that due to the continuous and repeated involvement of the petitioner in subversive activities, which were prejudicial to the security of the UT of J&K, there was strong apprehension that he may again indulge in such activities. It is further submitted that the petitioner is sympathetic towards unlawful elements and ideologies that promote violence and is a constant threat to the security of the UT of J&K, therefore, in order to prevent the petitioner from expanding his criminal activities and disturbing security of the UT of J&K, the detention was deemed necessary.
7. Heard learned counsel for the parties, perused the record and considered the matter.
8. Grounds of detention reveal that the detenu has been influenced towards antinational and subversive activities and in case the detenu

remains free, there would be every apprehension that he would be a threat to the security of the UT of J&K and his involvement in criminal cases depicts his anti-national ideology. With no specific allegations on these counts, his involvement has been shown in the commission of offences in two cases registered vide FIR No. 227/2001 registered under Section 7/25 Arms Act at Police Station Handwara and FIR No. 04/2025 under Section 8/20 NDPS Act at Police Station, Qalamabad, with no details as to his trial or its outcome. Involvement of the detenu in the year 2001 case, is a stale ground to base the detention in the month of April, 2025, after a period of more than twenty four years. The other grounds of detention, as such, are general allegations against the detenu, with no specific instances/incidents. The detention order based on such vague and stale grounds is not sustainable for the reason that the detaining authority before passing the order has not applied its mind to draw subjective satisfaction to order detention of the detenu by curtailing his liberty which is a valuable and cherishable right guaranteed under Article 21 of the Constitution of India.

9. 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 based upon the grounds of detention which came to be referred to two criminal cases against the detenu, involving him in 9 to 14 years old incidents resulting in FIRs held in paragraph 17 which reads as under:-

“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. See G. Reddeiah v. Government of Andhra Pradesh and Anr. (2012) 2 SCC 389, and P.U. Iqbal v. Union of India and Ors. (1992) 1 SCC 434.”

- 10.** On the touchstone of the law laid down above and the submissions made by both the sides, the order of detention, impugned in the present petition, does not sustain for the reason that the detenu, as discussed hereinabove, was ordered to be detained vide impugned detention order on stale grounds with no live and proximate link with the past conduct of the detenu and the imperative need to detain him. The other grounds, without any specific activities with regard to place, time and nature fall just within speculative arena, as such, it cannot be said that the District Magistrate had passed the impugned detention order on due application of mind. The detenu in absence of specific grounds was not able to make an effective representation, either to the detaining authority or to the Government of J&K within statutory period. Therefore, the detenu has been denied the legal, statutory and constitutional safeguards against his detention, rendering his detention unconstitutional.
- 11.** In the afore-stated backdrop, this petition is allowed. Impugned Order of detention No. **03-DMK/PSA of 2025 dated 29.04.2025** passed by District Magistrate, Kupwara is, as such, quashed. The detenu

namely Mushtaq Ahmad Beigh S/O Late Habibullah Beigh R/O Shart Mohalla, Jahama, Kupwara, is ordered to be released from the preventive custody, forthwith, provided he is not required in connection with any other case(s).

12. Scanned copy of the detention record is directed to be returned back to the learned counsel for the respondents.

13. Petition **disposed of**, as above alongwith pending application(s).

Srinagar
29.04.2026
Muzammil. Q

