

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.155/2025

Reserved on: **23.04.2026**

Pronounced on: **29.04.2026**

Uploaded on: **30.04.2026**

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

Sheeraz Ahmad Sheikh
S/O Ali Mohammad Sheikh
Through his brother
Gowher Ahmad Sheikh
R/O Batamurran, Wanpora,
District Shopian.

...Petitioner(s)

Through: Adv. Wajid Mohammad Haseeb.

Vs.

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

2. District Magistrate, Shopian.

3. Sr. Superintendent of Police, Shopian.

...Respondent(s)

Through: Dy.AG Bikramdeep Singh.

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

JUDGMENT

1. Challenge in this petition has been thrown to a Detention Order No. **08/DMS/PSA of 2025** dated **01.05.2025** passed by respondent no. 2- District Magistrate, Shopian vide which petitioner came to be detained under Section 8(1)(a) of The J&K Public Safety Act, 1978 in view of his alleged activities prejudicial to the 'security of U.T of J&K' and lodged in District Jail Udhampur.

2. Background facts of the case are that the Senior Superintendent of Police, Shopian-respondent No.3, describing the petitioner as a desperate character, habitually indulging in illegal activities, which poses great threat to the security, peace and tranquility of UT of J&K, submitted a dossier and connected documents to District Magistrate, Shopian-respondent No.2 for his detention.
3. The dossier elaborated three FIRs against the petitioner viz., FIR No. 25/2019 under sections 3/5 Explosive Substances Act and 15, 16 of UA(P) Act registered at P/S Sherghari; FIR No. 509/2010 under sections 443, 379 RPC registered at P/S Shopian; and FIR No. 121/2010 under sections 379, 413, 467 RPC registered at P/S Pulwama. It was alleged that the petitioner has been found to be an over ground worker (OGW) of the terrorists and is actively involved in providing a variety of logistic support to them who have unleashed a spate of terror in the area, besides the petitioner is involved in sharing the movement of security forces and police and related information with the terrorists in the area. It was also alleged that on the basis of information gathered from discrete surveillance reports the petitioner is found to be an over ground worker(OGW) of different terror outfits and has been constantly engaged in providing all kinds of logistic support to active terrorists which makes him habitual offender. The petitioner is found devising new means and methods with other OGWs to facilitate terrorists at every possible sphere and to ensure disruption of security, peace and stability in the district. It was further 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 peace and communal harmony.

4. The petitioner pleads that the activities attributed to him have allegedly taken place in the year 2019 and thereafter no fresh activity has been attributed to the detenu and the impugned detention order has been passed on 01.05.2025 meaning thereby that there is delay of about six years between the alleged activity and the order of detention and this delay has snapped the proximity of allegations with passing of detention order; that the petitioner has been detained on the basis of false and frivolous FIRs registered against him 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; that the impugned order has been passed on the ground of involvement of the petitioner in FIRs 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; that the detaining authority has not considered 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 that no satisfaction has been recorded by detaining authority that the normal punitive law has failed to prevent the illegal activities of the petitioner which renders necessary issuance of detention order, as such, the order impugned is liable to be quashed.
5. Respondents have filed their counter affidavit, wherein it has been contended 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 Shopian; that the petitioner was continuously and repeatedly involved in criminal activities, particularly his role to strengthen the terrorist infrastructure leading to loss of lives and property which include killing of non-local street vendors, labourers working in orchards, policemen who are off-duty or are unarmed and the aim of these killings is to create terror and a situation of insecurity, which is highly prejudicial to the security of the UT of J&K. Respondents further contend that the material relied upon, including three FIRs, showed a continuous pattern of conduct on the part of the petitioner, thereby threatening law and order.

6. Heard, perused the detention record as has been made available by learned counsel for the respondents and considered the same.
7. Learned counsel for the petitioner while reiterating the grounds pleaded in the petition, argued that the case submits that the petitioner is aggrieved of the impugned order on the ground that all the relevant documents, including copies of FIRs and bail orders were not furnished to him, so as to enable him to make an effective and meaningful representation. He further submits that out of three cases registered against the petitioner, two registered in the year 2010 related to theft etc., as such, these cannot be based to order preventive detention; that the third FIR registered in the year 2019 was though related to alleged unlawful activities, however, same could not have been relied to order preventive detention in the year 2015, after more than five years, the ground being stale having no proximity; that the other grounds being vague with no specific allegations also vitiate the impugned detention order and prayed that the same be quashed.

8. Learned counsel for the respondents, *ex-adverso*, submits that the grounds of detention, detention warrant and all relevant documents, comprising of 41 leaves, were not only supplied to the petitioner but also read over and explained to him in the language he fully understands against a proper receipt duly signed by him. He further pleads that the petitioner was 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; that the District Magistrate, Shopian-respondent no.2 received a representation on behalf of the detenu through his brother namely Gowhar Ahmad Sheikh, which was forwarded to Principal Secretary, Home Department Government of J&K, vide letter dated 13.06.2025. The Home Department, vide order dated 12.08.2025, intimated that representation of the petitioner was considered and was found without any merit. This communication is stated to have been endorsed to Superintendent District Jail, Udhampur, with a direction to inform the detenu regarding disposal of the representation.
9. Learned counsel for the respondents, while arguing the case, submitted that since action taken against the petitioner in the past under substantive laws did not prove fruitful in deterring him from indulging in anti-national activities, therefore, for the maintenance of security of the UT of J&K, it was deemed fit to detain him under the provisions of PSA. It is argued that 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 the 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, Shopian and keeping in view the gravity of the situation, the petitioner came to be detained under Public Safety Act.

10. A perusal of the detention record would also show that upon execution of the impugned order, 41 leaves of relevant documents came to be supplied to the petitioner against proper receipt. They are stated to have been read over and explained to him in Kashmiri/Urdu language, which he understood, and his signatures as a token of acknowledgement have been obtained. The petitioner was 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.

11. 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 had chosen not to file.

12. In these circumstances, categorical 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.

13. Another ground urged by the learned counsel for the petitioner 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](#) of Public Safety Act, and in all the said FIRs, he has already been enlarged on bail and since petitioner was enlarged on bail by the competent court in all the FIRs alleged against him and the 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.

14. 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.

15. A five judge bench of Hon'ble Supreme Court in '[Haradhan Saha vs. State of West Bengal & Ors.](#)' reported in (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.

16. The position of law crystallized in the case of **Haradhan Saha (supra)** 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 portion 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."*

17. The next ground urged by the petitioner is that grounds of detention are verbatim repetition of the dossier of SSP, Shopian and detaining authority failed to record its subjective satisfaction that alleged activities of the petitioner are prejudicial to the maintenance of security of UT of J&K. This contention of the petitioner is found specious and misconceived.
18. 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- District Magistrate, Shopian (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.

19. 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.

20. Another ground urged by the petitioner to assail the impugned order is that detaining authority did not consider his representation. However, a perusal of the record reveals that District Magistrate, Shopian - respondent No. 2 herein received a representation on behalf of the petitioner through his brother namely Gowhar Ahmad Sheikh on 14.05.2025, which was immediately forwarded to the Principal Secretary, Home Department. The Home Department, in turn, intimated that representation preferred by the petitioner was considered and was found without merit. The Superintendent District Jail, Udhampur, vide his communication, intimated the Home Department that disposal of the representation was communicated to the petitioner. 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 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.

21. 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.**', reported as **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.
22. 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.

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

24. Scanned detention record, as produced, be returned to learned counsel or respondents.

(M. A. CHOWDHARY)
JUDGE

Srinagar
29.04.2026
Muzammil. Q

