Serial No. 9
Regular Cause list

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

HCP 272/2025

Reserved on : 23.07.2026
Pronounced on : 05.08.2026
Uploaded on : 05.08.2026
Whether the operative part or full judgment is pronounced: Full

Suhail Ahmad Bhat **…Appellant(s)/Petitioner(s)**
alias Sahil Peer Aged 21 Years
S/O Late Ab. Majeed Bhat
R/O Khalpora, Marhama, Bijbehara, Anantnag
Through his mother
Shameema Banoo, Aged 57 Years
W/O Late Abdul Majeed Bhat
R/O Khalpora, Marhama, Bijbehara, Anantnag

Through: Mr. Mohammad Ashraf Malik, Adv

Vs.

1. **Union Territory of J&K through Commissioner/Secretary to Govt., Home Department Civil Secretariat Srinagar/Jammu** **...Respondent(s)**
2. **District Magistrate, Anantnag**
3. **Senior Superintendent of Police, Anantnag**

Through: Mr. Ilyas Nazir Laway, GA

CORAM:
HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE.

JUDGMENT

1. By this petition, the petitioner, Ms. Shameema Banoo- the mother of the detenue, is assailing the order No. 17/DMA/PSA/DET/2025 dated 29.04.2025 [hereinafter for short to be referred as "impugned order"], passed by respondent No. 2-District Magistrate Anantnag, whereby, Suhail Ahmad Bhat @ Sahil Peer S/O Ab Majeed Bhat R/O

Khalpora Marhama Bijbehara, District Anantnag [hereinafter for short to be referred as "detenue"] has been detained under and in terms of the provisions of Jammu and Kashmir Public Safety Act 1978, for acting in a manner prejudicial to Security of the State/UT and lodged in District Jail, Udhampur.

2. Before the grounds taken in support of the petition are summarized, it would be advantageous to refer to the facts, briefly, in the first instance.

Brief Facts:

3. A reliable source information was received by Police Station Bijbehara in the year 2022 to the effect that the detenue, along with his associates is working as an Over Ground Worker (OGW) for militant organizations by providing logistical support, including food, shelter and transportation to terrorists, and by preparing hideouts in the orchards of Marhama for their use. On the basis of the said information, FIR No. 94/2022 under Sections 18, 19 and 39 of the ULAP Act, came to be registered at Police Station Bijbehara against the detenue. During the investigation, the detenue was arrested on 12.06.2022 and was lodged in the Juvenile Home, Srinagar, being minor, subsequently released on bail by Juvenile Justice Board, Anantnag, in terms of the order dated 22.08.2022.

4. The detaining authority has recorded that, after his release from the Juvenile Home, the detenue remained under surveillance of the security agencies and, according to the reports received, he continued to maintain links with terrorists and extend support to them. It has further been alleged that the ordinary criminal law had failed to deter him from indulging in activities prejudicial to the security of the State/Union Territory and that his continued activities posed a threat to public order and security.

5. The dossier further states that the detenue had developed an anti-national ideology and was capable of influencing and motivating local youth against the Union Territory of Jammu and Kashmir and the Union of India. It was also opined that there existed a real likelihood of his reverting to similar activities if allowed to remain at liberty, thereby necessitating his preventive detention.

6. Taking into consideration the police dossier, intelligence reports, field inputs, the report of the Screening Committee, and the recommendation of the Senior Superintendent of Police, Anantnag, the detaining authority arrived at the subjective satisfaction that the activities of the detenue were highly prejudicial to the security of the Union Territory of Jammu and Kashmir and that his preventive detention under the Jammu and Kashmir Public Safety Act, 1978, was necessary to prevent him from acting in any manner prejudicial to the security of the State/Union Territory.

7. The petitioner has averred that the detenue was illegally arrested by the police authorities on 29.04.2025 and was thereafter taken to District Jail, Udhampur, where he was informed that he had been detained under the provisions of the Jammu and Kashmir Public Safety Act, 1978.

8. Per contra, respondents appeared and filed the counter affidavit resisting the claim of the petitioner. It is stated in the counter affidavit that the respondents while issuing the impugned order have adhered to all the statutory and constitutional requirements; the impugned order has been passed after deriving subjective satisfaction; the grounds of the detention and the other allied detention material has been furnished to the detenu in lieu whereof the signature of the detenu has been obtained; the detenue is an anti-national element, is figuring adversely in police records; the impugned order has been confirmed by the advisory board also, the activities of the detenu were found to be prejudicial to the security of the state and as such the detenu was detained under the preventive detention in terms of the impugned order; the representation filed by the mother of the detenu has also been considered by the competent authority and rejected being without merit.

9. I have heard learned counsel for the parties, considered their submissions and perused the detention record made available.

10. Learned counsel for the petitioner vehemently submits that the order impugned is bad in law having been passed without proper application of mind as the detenu has not been linked with any of the alleged prejudicial activities after his release on bail by the Juvenile Justice Board. He also submits that the involvement of the detenu in case FIR 94/2022 on the basis whereof impugned detention order has been passed is of the year 2022 and the impugned order has been passed in the year 2025 much later in time. He submits that the impugned order in this way has been passed on stale grounds, the practice that is deprecated by the Hon'ble Supreme court of India.

11. On the contrary, the learned counsel for the respondents, while defending the impugned order, submits that the concerned agency after noticing the prejudicial activities of the petitioner found it imperative to detain the detenu under preventive law.

12. It appears that the respondents have in fact based their opinion on the contents of the FIR No. 94/2022 and detained the detenu under preventive detention. Therefore, the plea taken by the learned counsel for the petitioner that the detention order in question has been passed on the basis of stale grounds is well-founded. It also transpires from the records that the detenu after his arrest has been bailed out by the Juvenile Justice Board on 22.08.2022, the fact taken note of by the respondents in their reply affidavit also and

subsequent to his release as such, no specific subversive activity has been attributed to the detenu anywhere in the records or in the reply affidavit. The submission of the learned counsel for the petitioner that no subjective satisfaction has been derived by the detaining authority as regards the prejudicial activities of the detenu subsequent to his release on bail carries substance.

13. The Apex Court, in case titled *"Ameena Begum vs. State of Telangana" reported as (2023) 9 SCC 587*, has held that the detention order cannot sustain if the same appears to have been issued without deriving subjective satisfaction by the detaining authority. It would be profitable to reproduce paragraph No. 28 of the said judgment hereinbelow:

> *"28. In the circumstances of a given case, a Constitutional Court when called upon to test the legality of orders of preventive detention would be entitled to examine whether*
>
> *(i) the order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;*
>
> *(ii) in reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;*
>
> *(iii) power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;*

(iv) the detaining authority has acted independently or under the dictation of another body;

(v) the detaining authority, by reason of self-created rules of policy or in any other manner not authorized by the governing statute, has disabled itself from applying its mind to the facts of each individual case;

(vi) the satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;

(vii) the satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;

(viii) the ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;

(ix) the grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and

(x) the timelines, as provided under the law, have been strictly adhered to."

14. The Apex Court has come down heavily on the functionaries of the State for issuing the detention orders on stale grounds in case titled *"Khaja Bilal Ahmad vs. State of Telangana", reported as (2020) 13 SCC 632,* and has held as under:

"If the pending cases were not considered for passing the order of detention, it defies logic as to

why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the Appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future." (bold in original) (underlining ours, for emphasis) (2020) 13 SCC 632."

15. The Division Bench of this court in a judgment delivered in case titled *"Suraj Masih vs. U.T. of J&K and Ors."* reported as *2026:JKLHC-JMU:58-DB* while relying on the judgment of the Apex court in case titled *"Saeed Zakir Hussain Malik*

vs. State of Maharashtra" reported as *(2012) 8 SCC 233*, has laid down the same ratio.

16. In view of above, the other grounds raised in the writ petition or urged by the learned counsel for the petitioner need not be adverted to as the petition has succeeded on the above two cardinal principles of law already.

17. The instant petition, in the above background, succeeds and is allowed as such. The impugned order bearing No. 17/DMA/PSA/DET/2025 dated 29.04.2025, passed by respondent No. 2- District Magistrate Anantnag, is held to be not in consonance in law, therefore quashed. The detenue, Suhail Ahmad Bhat @ Sahil Peer S/O Ab Majeed Bhat R/O Khalpora Marhama Bijbehara, District Anantnag, shall be released from preventive custody forthwith.

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

HIGH COURT JAMMU & KASHMIR AND LADAKH

(MOKSHA KHAJURIA KAZMI)
JUDGE

SRINAGAR:
05.08.2026
"Misba Sajad"

- Whether the Judgment is Reportable? Yes/No
- Whether the Judgment is Speaking? Yes/No