HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

HCP No. 33/2026
CM No. 3958/2026
CM No. 2924/2026

Reserved on: **11.08.2026**
Pronounced on: **20.08.2026**
Uploaded on: **20.08.2026**

Operative part or full judgment: **Full**

Mohd. Asgar @ Tola, …Petitioner(s)
S/O Bashir Ahmed,
Through his wife, Naseem Choudhary,
R/O Ward No. 3, Der Chowadi,
Tehsil Bahu, District Jammu.

Through: Mr. Pranav Kohli, Sr. Adv. with
Mr. Aftab Malik, Adv.

Vs.

1. **UT of Jammu & Kashmir through**
Principal Secretary to Govt., Home Deptt.
Civil Secretariat, Jammu.
2. District Magistrate, Jammu.
3. Senior Superintendent of Police, Jammu.

Respondent(s)

Through: Mr. Pawan Dev Singh, Dy. AG

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

JUDGMENT

01. Petitioner-Mohd. Asgar @ Tola earlier challenged his detention order No. PSA 32 of 2023 dated 24.11.2023 issued by respondent No. 2-District Magistrate, Jammu, at pre-execution stage, by filing a petition HCP No. 130/2024, which was dismissed by this Court vide order dated

07.03.2025. Against the said dismissal order, the petitioner preferred LPA before the Division Bench of this Court which, vide order dated 20.05.2026, also dismissed the appeal for non-prosecution.

02. Through the medium of the instant Habeas Corpus Petition, filed through his wife Naseem Choudhary, the petitioner-Mohd. Asgar @ Tola (hereinafter called **'detenue'**) seeks quashment of Order No. PSA 32 of 2023 dated 24.11.2023 (hereinafter called **'detention order'**) passed by the respondent No. 2-District Magistrate, Jammu (hereinafter called **'detaining authority'**) whereby and whereunder in terms of Section 8(1)(a) of the Jammu and Kashmir Public Safety Act (for short, PSA), he had been ordered to be detained under preventive detention, in order to prevent him from acting in any manner, prejudicial to the 'maintenance of public order'.

03. The impugned detention order has been challenged mainly on the grounds, firstly that the grounds of detention are vague, mechanical and based merely upon registration of FIRs which do not disclose any activity prejudicial to the maintenance of public order; secondly that there is no proximate link between the prejudicial activities and the detention order and the same was based on stale reference of FIRs, thirdly that the detenue has not been informed

about his right to make effective representation to the Government as well as to the detaining authority.

04. Pursuant to notice, the respondents have filed the counter affidavit, asserting therein that upon receipt of the dossier and the relevant material, the detaining authority, after examining the record and being satisfied that the activities were prejudicial to the maintenance of public order, passed the impugned detention order; that as many as eight criminal cases have been registered against the petitioner, which clearly belie and negate the claim of the petitioner, enjoying a good reputation in society; that the impugned detention order has been passed strictly in accordance with the provisions of the Jammu and Kashmir Public Safety Act, 1978; that all the constitutional and statutory safeguards have been observed in letter and spirit; that the detenue was a threat to the maintenance of public order due to his involvement in various cases, enumerated in the Police dossier, which have been based as grounds for his detention. Lastly, it is prayed that the impugned detention order be upheld and the petition filed by the detenue, being devoid of any merit and substance, be rejected.

05. Learned counsel for the petitioner argued that the impugned detention order was issued on 24.11.2023 and the same was executed on 23.04.2026, as such, the

impugned detention is liable to be quashed; that four FIRs registered before 2014 wherein detenue was also one of the accused being stale having no proximate link with the detention order and the three FIRs registered in the year 2021, 2022 and 2023 regarding property disputes within the family /close relatives where the complainants were the cousins of the detenue have also been quashed on the basis of the compromise settled between the parties outside the court and the said fact has not been taken into consideration by the detaining authority while issuing the detention order, which shows non-application of mind on the part of the detaining authority; that the representation filed by the petitioner on 23.04.2026 has been rejected by the authorities without application of mind. Lastly, it is prayed that the impugned detention order be quashed.

06. Learned counsel for the respondents ex adverso argued that the detention order, which was challenged by the detenue at pre-execution stage, has been rejected by this court vide order dated 07.03.2025; that against the said dismissal order, the petitioner preferred LPA before the Division Bench of this Court which, vide order dated 20.05.2026, also dismissed the appeal for non-prosecution; that the detenue had been absconding and evading arrest, as such, proceedings under the relevant provisions of law were

initiated against the detenue and only after his arrest, detention warrant was executed on the detenue, therefore, the delay in the execution of the detention order was solely attributable to the conduct of the petitioner in absconding and evading arrest and not to any inaction or lapse on the part of the respondents; that no safeguards have been violated while issuing the detention order; that the detaining authority after drawing subjective satisfaction that the detenue poses a serious threat to society and is prejudicial to the maintenance of public order, detention order was passed. Lastly, it is prayed that the petition be dismissed.

07. Heard learned counsel for the parties, perused the detention record and considered.

08. Detenue was ordered to be detained in preventive custody vide impugned order, conveyed to him vide communication dated 24.11.2023, informing him that he can make a representation against the detention order to the Government, if he so desired.

09. The impugned detention order was passed by District Magistrate to prevent the detenue from acting in any manner prejudicial to the maintenance of public order, while making reference to his earlier involvement in as many as eight criminal cases registered vide FIR No.

259/2002, FIR No. 119/2011, FIR No. 105/2012, FIR No. 39/2014, FIR No. 45/2021, FIR No. 182/2021, FIR No. 120/2022, FIR No. 174/2023, at Police Stations Trikuta Nagar, and Channi Himmat from the year 2002 to 2022.

10. So far as the first ground of challenge that the grounds of detention are vague, mechanical and based merely upon registration of the FIRs, which do not disclose any activity prejudicial to the maintenance of public order is concerned, in this regard, it is to be noted that in the grounds of detention, reference is made to as many as eight FIRs viz., FIR No. 259/2002, FIR No. 119/2011, FIR No. 105/2012, FIR No. 39/2014, FIR No. 45/2021, FIR No. 182/2021, FIR No. 120/2022, FIR No. 174/2023 with the accusation that the activities of the petitioner are prejudicial to the maintenance of public order.

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11. It has been contended by learned counsel for the respondents that the petitioner poses a serious threat and he has no respect for the law and his continuous criminal/anti-social activities are prejudicial to the maintenance of public order in the area and his repeated involvement in such offences clearly demonstrates his criminal propensity and disregard for the law.

12. It would be useful to refer all the cases alleged to have been registered against the detenue over a period of two decades

from the year 2002 to 2022. First FIR No. 259/2002 related to a murder of one Noor Ahmad, wherein he alongwith some other accused was named as accused. This case resulted into acquittal vide judgment dated 31.10.2007 of all the seven accused including detenue by Sessions Court, Jammu. Second FIR No. 119/2011 related to theft etc. and finding no substance during investigation, his name was cleared, as was evident from its Final Report No. 16/2014 against sole accused Mohd. Aziz. Third FIR No. 105/2012 related to attempt of murder by an unlawful assembly and again his name was cleared during investigation, finding his no involvement. In fourth FIR No. 39/2014, the detenue was named as an accused for the commission of offences punishable under Sections 429/342/382/147/148/506 RPC, however, investigation of the case was stayed by this Court vide order dated 12.05.2014. Fifth case was registered vide FIR No. 45/2021 at Police Station Channi Himmat regarding a land dispute on a complaint by his cousin against the detenue and his close relatives of the family. Sixth case was registered at the same Police Station vide FIR No. 182/2021 for missing Latha and Masavi of the revenue record, whose investigation was transferred to Crime Branch of Police, however, petitioner had no role in it, as he was not a revenue official, having custody of record; that all the FIR Nos. 45/2021, 120/2022 and

174/2023 filed by the cousin of the detenue were settled amicably and quashed by this Court vide orders dated 01.07.2025, 19.11.2025 and 22.07.2025 respectively.

13. Though all the FIRs registered from the year 2002 to 2022, over a period of twenty years can't be made basis to order preventive detention, as all the cases even do not disclose any instance of laws and order, much short of public order. Detention on the apprehension of 'public order' can be ordered, in view of the past track record of the detenue, but in last twenty years, there was not a single instance of throwing the tempo of public life out of gear to attract such a stringent order.

14. The Hon'ble Supreme Court, in *K.K. Saravana Babu v. State of Tamil Nadu & Anr.*, **(2008) 9 SCC 89**, while delineating the distinction between "law and order" and "public order", observed in paragraph 31 as under:

> **"31. We have tried to deal with the important cases dealing with the question of "law and order" and "public order" right from the case of Romesh Thappar (supra) to the latest case of R. Kalavathi (supra). This court has been consistent in its approach while deciding the distinction between `law and order' and `public order'. According to the crystallized legal position, cases affecting the public order are those which have great potentiality to disturb peace and tranquillity of a particular locality or in the words of Hidayatullah, J. disturb the even tempo of the life of the community of that specified locality."**

15. So far as second ground of challenge that there is no proximate link between the prejudicial activities and the detention order and the same was based on stale reference of FIRs of 2002, 2011, 2012, 2014, 2021, 2022 and 2023 is concerned, the detaining authority, ought to have considered this aspect of the matter, while passing the impugned detention order, inasmuch as, the detenue's involvement has been shown in the aforesaid FIRs, which ex facie shows that out of these FIRs registered upto the year 2014, by all stretch of reference, are too remote to be a live link to consider a case of preventive detention of a person to be passed in the year 2023, and stale reference to have any nexus with the grounds of detention, forming basis for subjecting the detenue to preventive detention custody.

16. In the case of *"Sama Aruna Vs State of Telangana & Ors.,"* ***reported in (2018) 12 SCC 150*** against a detention order dated 23.11.2016 upheld by the High Court, the Hon'ble Supreme Court of India in an appeal came to consider the relevance of 9 to 14 years' old incidents resulting in FIRs, through a grossly belated order of detention. Paragraphs No. 16 & 17, being relevant are extracted as under:-

"16. Obviously, therefore, the power to detain, under the Act of 1986, can be exercised only for preventing a person from engaging in, or pursuing or taking some action which adversely affects or is likely to affect adversely the maintenance of public order; or for preventing him from making preparations for engaging in such activities. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account. In *Golam Hussain alias Gama v. Commissioner of Police, Calcutta and Ors. (1974)4 SCC 530*, this Court observed as follows:

> **"5. No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil To Rule otherwise is to sanction a simulacrum of a statutory requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case.**

Suffice it to say that in any case, incidents which are said to have taken place nine to fourteen years earlier, cannot form the basis for being satisfied in the present that the detenu is going to engage in, or make preparation for engaging in such activities.

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***."

17. In the case of *"Khaja Bilal Ahmed Vs State of Telangana & Ors.,"* ***(2020) 13 SCC 632*** the Hon'ble Supreme Court of India again came up dealing with the case of preventive detention based upon stale grounds. In this case, the Hon'ble Supreme Court of India making reference to its judgment in the case of ***Sama Aruna Vs State of Telangana & Ors.*** *(supra)*, held in paragraph No. 23, which is beneficially extracted as follows:-

> **".....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."

18. So far as third ground of challenge that the detenue has not been informed about his right to make effective representation to the Government as well as to the detaining authority, it is established from the perusal of record that detaining authority vide communication dated 24.11.2023, had informed the detenue that he may make representation to the detaining authority, and such a representation can be made to the Government. The same does not constitute a violation of Article 22(5) of the Constitution. The constitutional guarantee of making a representation is meaningful only when the detenue is clearly informed of the authorities before whom such representation can be made and the earliest opportunity to exercise that right. Non-communication of this valuable constitutional right deprives the detenue of an effective opportunity to challenge the detention at the earliest stage, thereby vitiating the detention order. Since the procedural safeguards governing preventive detention are mandatory and must be strictly complied with, such observance does not vitiate the detention order illegal. Therefore, this ground taken by the petitioner fails and is rejected.

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19. From the foregoing analysis of legal position, it is clear that merely because the petitioner is alleged to be involved in as many as eight FIRs is not a sufficient ground to invoke the remedy of preventive detention, particularly, in a case where the detaining authority has not recorded any subjective satisfaction that such activities of the detenue have either resulted or have the potential to lead to public outrage. The four FIRs registered before 2014 wherein detenue was also one of the accused being stale having no proximate link with the detention order and the three FIRs registered in the year 2021, 2022 and 2023 regarding property disputes within the family /close relatives where the complainants were the cousins of the detenue and those case emanated from the civil property dispute within the family which have also been quashed on the basis of the compromise settled between the parties outside the court and there being no propensity of all the cases wherein detenue was one of the accused to cause any public order, the impugned order of detention is, therefore, unsustainable in law on these grounds.

20. As a sequel to the aforementioned discussion and observations made hereinabove, the present petition is **allowed**. Consequently, impugned detention order is quashed. The detenue is directed to be released forthwith

if not required in any other case(s). The detention record be returned to the learned counsel for the respondents.

21. Disposed of, accordingly.

(M A CHOWDHARY)
JUDGE

JAMMU
20.08.2026
Naresh/Secy.

Whether order is speaking: Yes
Whether order is reportable: Yes

HIGH COURT
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OF JAMMU & KASHMIR AND LADAKH