

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through Virtual Mode)

Reserved on: 13.08.2026
Pronounced on: 02.09.2026
Uploaded on: 03.09.2026
Whether the operative part or full
judgment is pronounced: Full

HCP No. 312/2025

Shafat Maqbool Wani through his paternal uncle

....Petitioner

Through: Mr Zahid Hussain Dar, Advocate

v.

UT of J&K and others

...Respondents

Through: Mr Faheem Nisar Shah, Government Advocate

CORAM:

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

- 01) Through the medium of present petition, the petitioner has challenged detention order bearing No. 27-DMK/PSA of 2025 dated 13.09.2025, for short to be referred as impugned order, issued by District Magistrate, Kupwara, for short detaining authority, whereby Sh. Shafat Maqbool Wani @ Shaf S/o Mohammad Maqbool Wani R/o Kukroosa Vilgam A/p Khanbal-B Handwara District, Kupwara, for short to be referred as detenue, has been placed under preventive detention so as to prevent him from indulging in the activities which are detrimental to the security of the State.
- 02) It has been contended that there has been non application of mind on the part of the detaining authority as the said authority has acted mechanically while issuing the impugned order of detention by relying solely upon FIR No. 69/2025, u/s 7/25 Arms Act, 13, 17, & 18, of the UAP Act, of Police Station Handwara, in which the detenue was already bailed out by the competent

court of law (Special Judge, NIA, Jammu) in terms of order dated 13.09.2025 after rejecting the application of NIA seeking extension of remand beyond 155 days in terms of order dated 08.09.2025. It has been averred that the allegations mentioned in the grounds of detention have no nexus with the detainee and that the same have been fabricated by the police in order to justify its illegal action of detaining the detainee. It has been contended that grounds of detention are vague and non-existent, on the basis of which no prudent man can make an effective representation. It has been further contended that there were no compelling reasons for the detaining authority to issue the impugned order of detention.

- 03) The respondents, in their counter affidavit, have contended that the impugned detention order has been passed after proper application of mind. It has been further contended that none of the rights of the petitioner has been violated by the respondents. It has been averred that the petitioner was involved in the activities which are detrimental to the security of the State and the same has been confirmed and verified by the detaining authority before passing the impugned order of detention. It has been averred that entire material, relied upon by the detaining authority while passing the impugned detention order, has been furnished to the detainee and the contents of the same were read over and explained to him.
- 04) It has been further contended that the detainee was informed that he can make a representation to the government as well as to the detaining authority against his detention. It has been averred in the reply affidavit that all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority and that the order has been issued

validly and legally. It has also been contended that the detention of the detainee has been ordered strictly in accordance with the provisions of J&K Public Safety Act. The respondents have produced the detention record to lend support to the stand taken in the counter affidavit.

- 05) I have heard learned counsel for the parties and perused record of the case.
- 06) In the grounds of detention, the respondents have stated *inter alia* that the detainee has been brought up in a family having separatist ideology and as such, the anti-India and separatist feelings have got inculcated in the detainee since childhood, his father was an ex-militant affiliated with terrorist organization Al-Barq who has surrendered in the year 1990. It is also stated in the grounds of detention that the detainee had received many invitations for attending international conferences, viz. Middle Eastern South Asian and African Studies Graduate Students Conference at Columbia University and Eighth Annual South Asia Conference at Dublin City University. The petitioner/ detainee has also been shown to be involved in case FIR No. 69/2025 for the offences punishable in terms of Sections 13, 17, 18 UAP Act of Police Station Handwara. It is also reflected in the grounds that anti national literature was seized from the possession of the petitioner included a book authored by the petitioner namely “***Construction of an Islamic Order in Hindutva reimagination***”; “***The saffronization of occupied Kashmir, Demystifying Hindutva Settlers, Colonial Designers***”.
- 07) Although the petitioner has urged a number of grounds in the writ petition, for assailing the impugned order of detention, however, during the course of arguments, learned counsel for the petitioner has laid emphasis on

i) Non-application of mind on the part of detaining authority for having failed to mention any specific activity of the detainee anywhere in the grounds that may demonstrate such activities to be prejudicial to the maintenance of security of state; ii) Except for his involvement in case FIR no. 69/2025 of Police Station, Handwara, no prejudicial activity even for namesake has been attributed to the petitioner; iii) That there were no compelling reasons for the detaining authority to pass the impugned order of detention.

08) Although, the respondents have reflected in the counter affidavit as also in the grounds of detention that the detainee had been granted bail, therefore, they have not been oblivious to this fact, however, at the same time, it can very safely be said that the detaining authority does not appear to have made any effort to derive satisfaction as regards the prejudicial activity of the petitioner/ detainee warranting his preventive detention. Thus, the contention of the learned counsel for the petitioner that there has been non-application of mind on the part of the detaining authority in detaining the detainee, carries substance. The Apex Court in case titled *Ameena Begum v. State of Telangana* reported as (2023) 9 SCC 587 has laid down certain principles where the order of detention would be declared bad in law. Paragraph no. 28, being relevant is taken note of herein, thus:

“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.”

- 09) The only thing that emerges from the perusal of the grounds of detention, and the counter affidavit, filed against the petition in hand, is that the detenu has inculcated a separatist ideology since his childhood, for, his father has been an ex militant having surrendered in the year 1990. The said

assertion is delusory and the preventive detention, ordered so conveniently on such imaginary belief, is nothing but an unmindful exercise of power.

- 09) It also needs to be emphasized here that the respondents have not shown any subversive activity against the name of petitioner/ detenue which compelled them to take recourse to preventive detention. The alleged anti-national literature shown to have been seized from the detenue has also presumably weighed with the respondents to brand the detenue as an anti-national, however, the said literature has wrongly been attributed to the detenue having been authored by him. The learned counsel for the petitioner is quite justified in submitting that the petitioner, being an academic scholar, is expected to be in possession of variety of literary means, therefore, a mere possession of the books with dispiriting titles does not *ipso facto* make the petitioner/ detenue a criminal against whom the preventive detention was required to be invoked.
- 10) In view of above, the petition succeeds and is allowed as such, in consequence whereof, the impugned detention order bearing No. 27-DMK/PSA of 2025 dated 13.09.2025, issued by respondent no. 2 is quashed. The detenue Shafat Maqbool Wani S/o Mohammad Maqbool Wani R/o Kukroosa, Tehsil Vilgam, District Kupwara, A/P Khunbal, Handwara is directed to be released from preventive custody forthwith.
- 11) The detention record be returned to learned counsel for the respondents.

(Moksha Khajuria Kazmi)
Judge

Srinagar
02.09.2026
Mohammad Yaseen Dar, PS

Whether the judgment is reportable: Yes/No