HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on 27.10.2025
Pronounced on 06.11.2025
Uploaded on 06.11.2025

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

CJ Court:

LPA No. 139/2025

Shaista Maqbool …Petitioner(s)/Appellant(s)

Through: Mr. Mukhtar Ahmad Makroo, Adv.

v/s

Union Territory of J&K and another …. Respondent(s)

Through: Mr. Jehangir Ahmad Dar, GA

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.

JUDGMENT

PER OSWAL-J

1. Aggrieved of the order of detention bearing No. 19/DMB/PSA of 2023 dated 04.12.2023 issued by respondent No. 2 in exercise of powers conferred under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter to be referred as "the Act") considering the activities of the appellant to be prejudicial to the security of the Union Territory of Jammu and Kashmir, the appellant preferred a writ petition bearing HCP bearing No. 171/2023, thereby assailing the above mentioned order, but the said writ petition was dismissed by the learned Writ Court vide order dated 23.05.2025.

2. Now, the appellant has come up with this *intra*-court appeal against order dated 23.05.2025, thereby assailing the same on the grounds that the learned Writ Court has not appreciated the fact that there was no live link between the incidents reflected in the order of detention and that the appellant was placed under detention on vague and ambiguous grounds, as no specific date, month or year of the illegal activities attributed to the appellant has been mentioned in the grounds of detention. It is urged by the appellant that the representation submitted by her was not considered by the respondents in accordance with law and despite serious allegations leveled against the appellant, no FIR was registered against her.

3. As Mr. Makroo, learned counsel for the appellant has confined his arguments to two issues: first, that the order of detention was issued by respondent No. 2 on vague and ambiguous grounds, and second that the Detaining Authority has failed to mention why normal laws had failed to contain the appellant's alleged illegal activities, thereby warranting preventive detention, we do not find any necessity to consider the other grounds of challenge mentioned in the memo of appeal. In support of his arguments, learned counsel for the appellant has relied upon the judgment of the Supreme Court in **V. Shantha v. State of Telangana and others, AIR 2017 SC 2625**.

4. On the contrary, Mr. Jehangir Ahmad Dar, learned Government Advocate representing respondents has vehemently argued that the order of detention has been passed in accordance with law after taking into consideration the illegal activities of the appellant, who was having love affair with one

terrorist Musaib Lakhvi, nephew of Zaki-UR-Rehman Lakhvi, a Pakistani terrorist and co-founder of Lashkar-e-Taiba and one of the prime perpetrators of the 2008 Mumbai attacks. He has submitted that all the constitutional and procedural safeguards were duly complied with by the respondents not only while issuing the order of detention, but also at the time of execution of order of detention. He has laid much stress that the learned Writ Court has considered all the arguments raised by the appellant for assailing the order of detention and has passed the judgment impugned in this appeal, in accordance with law.

5. Heard learned counsel for the parties and perused the record including the record of detention produced by the learned counsel for the respondents.

6. The record depicts that a dossier was prepared by the Superintendent of Police, Bandipora for detaining the appellant under the Act. Respondent No. 2 framed the grounds of detention on the basis of averments made in the dossier. In the grounds of detention, the respondent No. 2 has specifically stated that the appellant is an admirer of Lashar-e-Taiba outfit and has acted as an “Overground Worker” of the banned terrorist organization-Lashkar-e-Taiba. It is further recorded that the appellant was in close contact and having love affair with Musaib Lakhvi, the nephew of Zaki-Ur-Rehman Lakhvi, a Pakistani terrorist and co-founder of Lashkar-e-Taiba and one of the prime perpetrators of Mumbai attacks. Prior to his killing, Musaib Lakhvi, remained active during the year 2016 to 2018 and carried out multiple terrorist activities in Hajin/Sumbal areas. Further allegations are levelled in respect of the appellant developing contact with

various local and foreign terrorists operating, particularly in North Kashmir and she being identified by various pseudo names like “CHOTI BEHAN” etc. by the terrorists. The appellant is also running the Facebook on the ID “Lakhvi Musaib” and the terrorists used to contact her through the particular Facebook ID. After the demise of Musaib Lakhvi, the appellant has developed contacts with PAK based handlers namely, Abu Zehran and Abu Hans for providing vital information relating to movement of political leaders and other protected persons to them through various social media encrypted applications. It is further mentioned in the grounds of detention that the use of VPN’s, encrypted message applications has made it extremely difficult to identify the Overground Workers of the terrorists’ organization and with deep and pain staking analytics, the appellant has been identified. It is also stated that discreetly obtained information clearly suggests that the appellant has been taking instructions from the terrorists of Lashkar-i-Toiba for facilitating the job of terrorists in respect of their activities including recent killings, in a covert and clandestine manner so that the law enforcement agencies are not in a position to detect and confront the appellant. The respondent No. 2 has further recorded the activities of the appellant which prompted him to issue the order of detention.

7. The first contention raised by the appellant is that no specifics in respect of date, month or year of illegal activities of the appellant have been mentioned in the grounds of detention and as such, the grounds of detention are vague and on such vague grounds, the appellant could not

have been detained under the Act. The allegations levelled against the appellant as mentioned in the grounds of detention and few of such allegations as extracted above, would reveal that the appellant is, in fact working as an Overground Worker of banned terrorist organization Lashkar-e-Toiba. In the grounds of detention, it is mentioned that the appellant is an admirer of banned terrorist organization, Lashkar-e-Taiba and was having love affair with one Musaib Lakhvi, nephew of co-founder of Lashkar-e-Taiba. Further, the allegations against the appellant are in respect of the providing vital information to her Pakistani handlers named above, through encrypted applications. Respondent No.2 has recorded his satisfaction in respect of activities of the appellant considered prejudicial to the security of Union Territory of J&K and it is settled law that while exercising the power of judicial review, the constitutional courts cannot sit as a court of appeal over the subjective satisfaction derived by the Detaining Authority. Once the Detaining Authority has derived its satisfaction on the basis of material before it, whether the material was sufficient or not, to detain the detenue under preventive detention law, is beyond the scope of judicial scrutiny. In this context, it is proper to take note of the observations made by the Hon'ble Apex Court in **Joyi Kitty Joseph vs. Union of India and ors., 2025 INSC 327**, relevant paragraphs are extracted as under:

> 15. **We are not examining the conditions imposed by the Magistrate since it was for the detaining authority to look into it and enter intoa subjective satisfaction as to whether the same was sufficient to avoid a preventive detention or otherwise, insufficient to restrain him from further involvement in similar smuggling activities**. As has been held in Rameshwar Lal Patwari v. State of Bihar (AIR 1968 SC 1303) :

> "**The formation of the opinion about detention rests with the Government or the officer authorised. Their satisfaction is all that the law speaks of and the courts are not constituted an Appellate Authority. Thus the sufficiency of the grounds cannot be agitated before the court. However, the detention of a person without a trial, merely on the subjective satisfaction of an authority however high, is a serious matter. It must require the closest scrutiny of the material on which the decision is formed, leaving no room for errors or at least avoidable errors. The very reason that the courts do not consider the reasonableness of the opinion formed or the sufficiency of the material on which it is based, indicates the need for the greatest circumspection on the part of those who wield this power over others**.'
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> 16. **If there is a consideration, then the reasonableness of the consideration could not have been scrutinized by us in judicial review, since we are not sitting in appeal and the provision for preventive detention provide for such a subjective satisfaction to be left untouched by the Courts. However, when there is no such consideration then we have to interfere**.
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> **(emphasis added)**

8. Respondent No.2 has specifically named the persons with whom the appellant was in contact with and as such, it cannot be said that the appellant has been detained on vague and ambiguous grounds. As such, this contention of the appellant is found to be misconceived.

9. The next contention of the appellant is that respondent No. 2 has not mentioned in the grounds of detention in respect of the failure of the ordinary criminal law in preventing the appellant from indulging in illegal activities warranting her detention under the Act. A perusal of the grounds of detention would reveal that the Detaining Authority, after taking note of the various illegal activities of the appellant, in the penultimate para of the grounds of detention has mentioned that the ordinary law of the land does not seem to be sufficient to deter the appellant from her nefarious/anti national activities and as such, to maintain the tranquility and integrity of the Union Territory of J&K, it has been become imperative to avail

recourse of law. It needs to be noted that illegal activities attributed to the appellant, as mentioned in the grounds of detention, are not committed in a public gaze but discreetly and furtively and it is not possible to get the concrete evidence to establish the same. It is apt to take note of the judgment of the Hon'ble Supreme Court of India in ***Sasti v. State of W.B.,*** **(1972) 3 SCC 826,** wherein, it has been observed and held as under:

> "**It is argued by Mr Arora that as the act attributed to the petitioner in the grounds of detention constituted an offence under the Penal Code, 1860, the petitioner could only be tried in a Court of law for the offence and no order for his detention on that score could be made.** This contention, in our opinion, is devoid of force. **It is always open to the detaining authority to pass an order for the detention of a person if the grounds of detention are germane to the object for which a detention order can legally be made. The fact that the particular act of the detenu which provides the reason for the making of the detention order constitutes an offence under the Penal Code, 1860 would not prevent the detaining authority from passing the order for detention instead of proceeding against him in a Court of law. The detaining authority might well feel that though there was not sufficient evidence admissible under the Indian Evidence Act for securing a conviction, the activities of the person ordered to be detained were of such a nature as to justify the order of detention. There would be no legal bar to the making of detention order in such a case. It would, however, be imperative that the incident which gives rise to the apprehension in the mind of the detaining authority and induces that authority to pass the order for detention should be relevant and germane to the object for which a detention order can be made under the Act.** Even in cases where a person has been actually prosecuted in a Court of law in respect of an incident and has been discharged by the trying Magistrate, a valid order of his detention can be passed against him in connection with that very incident. It was recently observed by this Court in the case of *Mohd. Salim Khan* v. *C.C. Bose* (Writ Petition No. 435 of 1971, decided on April 25, 1972 that from the mere fact that a detenu was discharged in a criminal case relating to an incident by a Magistrate, it could not be said that the detention order on the basis of that incident was incompetent, nor could it be inferred that it was without basis or mala fide. Reliance in this connection was placed upon the case of *Sahib Singh Duggal* v. *Union of India* [AIR 1966 SC].
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> (emphasis added)

In view of the above, there is no force in this contention of the appellant as well.

10. After perusing the record of the Detaining Authority, we find that the material relied upon by the Detaining Authority was duly provided to the appellant comprising of 30 leaves on 06.12.2023 and she had appended her signatures on the receipt of detaining papers and on receipt of grounds of detention, the appellant also preferred a representation against the detention order. She was also afforded personal hearing by the Advisory Board and the Advisory Board vide its opinion dated 27.12.2023, opined in favour of the detention of the appellant, thereby rejecting the representation of the appellant.

11. We have examined the judgment rendered by the learned Writ Court and the view of the learned writ court is unexceptionable. As such, we do not find any merit in the instant intra-court appeal. Accordingly, the instant appeal is dismissed.

12. Detention Record, as produced by the learned counsel for the respondents, be returned back.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

JAMMU:
06.11.2025
Rakesh PS

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No