

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No. 167/2025

Reserved on: 07.05 2026.

Pronounced on:14.05.2026

Uploaded on:15.05.2026

*Whether operative part or full
judgment has been pronounced: Full*

Tanveer Ahmad Mir (Aged: 32 years)

...Petitioner(s)

S/o Abdul Quyoom Mir

R/o Brath Kalan Tehsil Bomia, District Baramulla Through
wife Namely Posha Begum

*Through: Mr. S.T.Hussain, Sr. Adv. with
Ms. Nida Nazir, Adv.*

Vs.

UT of J&K Through District Magistrate
Baramulla.

...Respondent(s)

Through: Mr. Hakim Aman Ali, Dy.AG

CORAM:

Hon'ble Mr. Justice Wasim Sadiq Nargal, Judge.

JUDGMENT

BRIEF FACTS.

1. Through the medium of the present Habeas Corpus Petition filed under Article 226 of the Constitution of India, the petitioner seeks quashment of Detention Order No. 09/DMB/PSA/2025 dated 29.04.2025 passed by respondent No. 2-District Magistrate, Baramulla under Section 8(a) of the Jammu & Kashmir Public Safety Act, 1978 (for short "PSA"), whereby detinue namely Tanveer Ahmad Mir S/o Abdul Qayoom Mir R/o Brath Kalan, Tehsil Bomai Zaingeer, District Baramulla, has been placed under preventive detention.

2. As per the detention record, the detainee is alleged to be an active Over Ground Worker affiliated with banned terrorist outfit Lashkar-e-Toiba and to have provided logistical support, shelter, transportation and assistance to terrorists operating in the area of Sopore and adjoining localities. It is further alleged that the detainee maintained contact with active terrorists and Pakistan-based handlers through encrypted communication applications and proxy networks.

SUBMISSIONS ON BEHALF OF THE PETITIONER

3. Learned counsel appearing for the petitioner submitted that the impugned detention order is legally unsustainable and liable to be quashed as the same has been passed mechanically and without independent application of mind by the detaining authority.
4. It was contended that the grounds of detention are nothing but a verbatim reproduction of the police dossier submitted by the sponsoring agency with only cosmetic changes in language, thereby clearly demonstrating complete non-application of mind on the part of the detaining authority. Reliance in this regard was placed upon the judgment of the Hon'ble Supreme Court in ***Jai Singh and Ors. v. State of J&K*, AIR 1985 SC 764.**
5. Learned counsel further argued that the detainee has been deprived of his valuable constitutional right guaranteed under Article 22(5) of the Constitution of India as the complete material relied upon by the detaining authority was not supplied to him, thereby disabling him from making an effective representation against the order of detention.

6. It was additionally submitted that the allegations leveled against the detainee are vague, bald and bereft of material particulars. According to the petitioner, the grounds of detention do not disclose specific details regarding the alleged activities, transportation, sheltering of terrorists or use of encrypted applications and, therefore, the grounds are too vague to sustain preventive detention.
7. It was further contended that the detainee was already facing criminal prosecution in FIR No. 203/2018 and, therefore, ordinary criminal law remedies were sufficient to deal with the matter. Learned counsel submitted that preventive detention cannot be used as a substitute for ordinary criminal prosecution.
8. Learned counsel also argued that there exists no live and proximate link between the alleged prejudicial activities and the order of detention and that the detention order has been passed casually and in routine manner.
9. It was additionally contended that the detainee was not supplied all relevant documents including statements recorded during investigation and copies of proceedings under Sections 107/151 Code of criminal procedure and corresponding provisions of BNSS, thereby prejudicing his right to make effective representation.
10. Reliance was also placed upon judgments in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1980 SC 849 and *State of Maharashtra v. Bhaurao Punjabrao Gawande*, (2008) 3 SCC 613 to contend that personal liberty is sacrosanct and preventive detention laws must be strictly construed.

11. Learned counsel for the petitioner argued that the Jammu & Kashmir Public Safety Act, 1978 was originally enacted under the constitutional framework applicable to the erstwhile State of Jammu & Kashmir and, therefore, after enactment of the Jammu & Kashmir Reorganization Act, 2019, the expression “Security of the State” could not have been substituted with “Security of the Union Territory” except by Parliamentary legislation. It was further argued that the Lieutenant Governor is not competent authority to amend or modify the PSA.

12. Learned counsel submits that the approval granted by the Government to the detention order was legally unsustainable as the same was allegedly not issued in accordance with the Transaction of Government Business Rules and was not issued in the name of the President. It was additionally contended that the detinue was neither supplied copy of the approval order nor informed about his right to make representation before the Government.

13. Further it was submitted that the detention order was based upon unverified material and dossier and that neither in-camera statements were recorded nor the material was independently verified by the detaining authority. It was argued that the dossier constituted confidential official correspondence and could not legally form basis for preventive detention.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

14. Per contra, learned counsel appearing for the respondents submitted that the impugned detention order has been passed strictly in accordance with law after due application of mind and upon careful examination of the dossier and material placed before the detaining authority.

- 15.It was argued that the detainee is a radicalised and hardened Over Ground Worker affiliated with banned terrorist organisation Lashkar-e-Taiba and had been continuously involved in activities prejudicial to the Security of the Union Territory of Jammu & Kashmir by providing logistical support, transportation, shelter and assistance to terrorists.
- 16.Learned counsel submitted that the detainee has maintained active contacts with Pakistan-based handlers and militants through encrypted communication applications and proxy networks and posed a serious threat to peace and security in the region, particularly in light of recent terrorist incidents and security concerns in the Valley.
- 17.It was further submitted that despite earlier criminal prosecution and preventive measures, the detainee did not abandon anti-national activities and continued to remain involved in unlawful activities prejudicial to security of the Union Territory.
- 18.Learned counsel contended that all constitutional and statutory safeguards stood fully complied with. The detainee was supplied all relevant material relied upon by the detaining authority and was informed of his right to make representation before the Government and the detaining authority.
- 19.It was additionally submitted that the detainee in fact availed such right by submitting representation which came to be duly considered and rejected by the competent authority.
- 20.The respondents further argued that preventive detention and punitive detention operate in separate fields and pendency of criminal proceedings or

grant of bail does not preclude the competent authority from invoking preventive detention laws where circumstances so warrant.

21. Reliance in this regard was placed upon *Haradhan Saha v. State of West Bengal*, AIR 1974 SC 2154; *Union of India v. Dimple Happy Dhakad*, (2019) 20 SCC 609 and *State of Maharashtra v. Bhaurao Punjabrao Gawande*, (2008) 3 SCC 613.

22. Learned counsel appearing for the respondents submitted that the challenge to constitutional validity of adaptation/modification of the PSA is wholly misconceived and contrary to the statutory scheme of the Jammu & Kashmir Reorganization Act, 2019.

23. It was submitted that Sections 95 and 96 of the Jammu & Kashmir Reorganization Act expressly preserved applicability of laws mentioned in the Fifth Schedule and conferred power upon the Central Government to make adaptations and modifications necessary for facilitating their application to the successor Union Territories.

24. Reliance was placed upon S.O. 1229(E) dated 31.03.2020 issued by the Ministry of Home Affairs in exercise of powers under Section 96 of the Reorganization Act, whereby adaptations and modifications in the PSA were carried out including substitution of the expression “State” with “Union Territory”.

25. It was argued that the adaptation neither altered the basic character of the enactment nor rendered it unconstitutional and, therefore, the challenge raised by the petitioner deserves to be rejected.

26. Learned counsel for the respondents further submitted that the detention order dated 29.04.2025 was duly approved under Section 8(4) of the PSA by the Government and the approval order specifically records that the same was issued “By order of the Government of Jammu and Kashmir.”

27. It was further submitted that governmental business is conducted institutionally through authorised officers and once the order is issued in the name of the Government and authenticated by competent officer, the same acquires full legal sanctity.

28. The respondents additionally contended that the detainee was supplied relevant material comprising twenty-five leaves and the contents of detention warrant and grounds of detention were read over and explained to him in languages understood by him. It was also submitted that the detainee was specifically informed about his right to make representation before the Government and the detaining authority and, in fact, had availed such right by submitting representation which was duly considered and rejected.

29. With regard to alleged non-verification of material, learned counsel submitted that preventive detention proceedings are distinct from criminal trials and same does not preclude the competent authority from invoking preventive detention.

30. It was argued that the dossier and connected material furnished by the sponsoring agency constituted relevant material capable of being considered by the detaining authority for arriving at subjective satisfaction and that sufficiency or adequacy of such material ordinarily falls outside scope of judicial review.

LEGAL ANALYSIS

31. Having heard learned counsel for the parties, perused the detention record.

32. At the outset, it requires to be observed that preventive detention, though constitutionally recognized, constitutes a serious encroachment upon personal liberty guaranteed under Article 21 of the Constitution of India. The constitutional safeguards incorporated under Article 22(5) are therefore required to be strictly adhered to and any infraction thereof would vitiate the detention order.

33. At the same time, the constitutional scheme itself recognizes preventive detention as a necessary measure in exceptional situations concerning security of the State, maintenance of public order and sovereignty of the nation. The Court while exercising jurisdiction in matters of preventive detention does not sit in appeal over the subjective satisfaction recorded by the detaining authority. The scope of judicial review is confined to examining whether procedural safeguards have been complied with, whether the detention is founded upon relevant material and whether the subjective satisfaction is vitiated by arbitrariness, mala fides or total non-application of mind.

34. The constitutional validity of preventive detention laws having already been upheld by the Hon'ble Supreme Court, the scope of interference by a Constitutional Court while exercising jurisdiction under Article 226 of the Constitution remains narrow, limited and well circumscribed. This Court does not sit in appeal over the subjective satisfaction arrived at by the detaining authority, nor is it expected to reassess or re-appreciate the

sufficiency or adequacy of the material while passing the order of detention. Judicial review in preventive detention matters is confined to examining whether the detention order suffers from procedural illegality, mala fides, non-application of mind, absence of relevant material, or violation of constitutional and statutory safeguards guaranteed to the detainee. So long as the subjective satisfaction recorded by the detaining authority is founded upon relevant material having a rational nexus with the object sought to be achieved, this Court would refrain from substituting its own opinion for that of the competent authority merely because another view may also be possible.

35. The principal contention raised by learned counsel for the petitioner is that the Jammu & Kashmir Public Safety Act, 1978 could not have been adapted after enactment of the Jammu & Kashmir Reorganisation Act, 2019 and that the substitution of the expression “*security of the State*” with “*security of the Union Territory*” dehors the constitutional and statutory framework, thereby rendering the impugned detention order legally unsustainable.

36. A careful reading of Sections 95 and 96 of the Jammu & Kashmir Reorganisation Act, 2019 makes it abundantly clear that Parliament itself, while enacting the Reorganisation Act, consciously provided a complete statutory mechanism not only for continuation of the existing laws applicable to the erstwhile State of Jammu & Kashmir, but also for their adaptation and modification so as to facilitate their applicability to the successor Union Territories.

37. Section 95 specifically preserves the operation of laws enumerated in the Fifth Schedule and declares that such laws shall continue to apply to the

Union Territory of Jammu & Kashmir in the manner provided therein. Thus, the continuance of the Jammu & Kashmir Public Safety Act, 1978 after reorganisation does not arise from any executive action, but directly from Parliamentary mandate embodied in the Reorganisation Act itself. The continuance of the Jammu & Kashmir Public Safety Act, 1978 after reorganisation is not the result of any executive exercise of power, but the Parliament itself, through the Reorganisation Act, allowed it to remain in force. For facility of reference same is reproduced as under:

“ 95. Territorial extent of laws.— (1) All Central laws in Table-1 of the Fifth Schedule to this Act, on and from the appointed day, shall apply in the manner as provided therein, to the Union territory of Jammu and Kashmir and Union territory of Ladakh. (2) All other laws in Fifth Schedule, applicable to existing State of Jammu and Kashmir immediately before the appointed day, shall apply in the manner as provided therein, to the Union territory of Jammu and Kashmir and Union territory of Ladakh.”

38. Further, Section 96 expressly authorises the Central Government to make “adaptations and modifications” in the existing laws, including by way of “repeal or amendment”, for the purpose of facilitating their application to the successor Union Territories. The statute itself delegates limited adaptation powers to the Central Government to remove inconsistencies and align pre-existing laws with the altered constitutional and administrative framework brought about by reorganisation. For facility of reference same is reproduced as under:

“96. Power to adapt laws.—For the purpose of facilitating the application in relation to the successor Union territories, of any law made before the appointed day, as detailed in Fifth Schedule to this Act, the Central Government may, before the

expiration of one year from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.”

39. It is in exercise of this statutory authority that S.O. 1229(E) dated 31.03.2020 came to be issued, whereby references to “State” in the Public Safety Act were substituted with “Union Territory of Jammu & Kashmir”. The argument that only Parliament could carry out such substitution overlooks the fact that Parliament itself, by virtue of Section 96 of the Reorganisation Act, delegated such limited power of adaptation to the Central Government. Once the parent law itself gives such power, the action taken under it cannot be said to be outside the statute or unconstitutional.

40. This Court also finds that the adaptation does not change the basic nature, object or policy of the Jammu & Kashmir Public Safety Act, 1978. The replacement of the word “*State*” with “*Union Territory*” is only a consequential change made because of the reorganization of 2019. The purpose and operation of the law remain the same.

41. The contention raised by learned counsel for the petitioner, if accepted, would render every adaptation and modification carried out pursuant to the Reorganisation Act vulnerable, despite Parliament having expressly sanctioned such exercise under Section 96. Such interpretation would defeat the very scheme and object of the Reorganisation Act.

42. This Court is therefore of the considered opinion that the adaptation of the Jammu & Kashmir Public Safety Act, 1978 was carried out strictly within the four corners of the statutory authority conferred by Parliament under the Jammu & Kashmir Reorganisation Act, 2019 and does not suffer from any infirmity.

43. Accordingly, the challenge laid by the petitioner to the constitutional validity of the provisions of the Public Safety Act is devoid of any merit and therefore, rejected.

44. Learned counsel for the petitioner has challenged the validity of the approval accorded to the impugned detention order under Section 8(4) of the Jammu & Kashmir Public Safety Act, 1978 by contending that the same was not issued in conformity with Rule 33 of the Transaction of Government Business Rules framed for the Union Territory of Jammu & Kashmir and was also not expressed in the name of the President. It has been argued that under Rule 33, the matter ought to have been routed through the Chief Secretary and thereafter placed before the competent authority in the manner prescribed under the Rules and failure to do so renders the approval void.

45. Section 8(4) of the Jammu & Kashmir Public Safety Act, 1978 itself contemplates that where a detention order is passed by an officer authorized under the Act, such order shall not remain in force beyond the prescribed period unless approved by the Government. Thus, the statutory requirement under the Act is approval by the Government within the stipulated period.

46. In the present case, the detention order dated 29.04.2025 passed by the District Magistrate, Baramulla admittedly came to be approved by the Government within the statutory period vide order dated 05.05.2025. A

perusal of the approval order reveals that the Government examined the grounds of detention and the material relied upon by the detaining authority and thereafter accorded approval in exercise of powers under Section 8(4) of the Act. The approval order has been issued “By order of the Government of Jammu & Kashmir,” thereby clearly indicating that the approval was granted in the name and authority of the Government itself through duly authorized mode of transaction of business

47.The challenge raised upon Rule 33 of the Transaction of Government Business Rules proceeds on an erroneous assumption that every alleged deviation in internal governmental procedure would automatically invalidate substantive statutory action. Rule 33 essentially regulates the transaction and disposal of governmental business and allocation of functions amongst officers and departments.

48.The petitioner has failed to place any material on record to establish that the officer authenticating the approval order lacked competence under the applicable Rules of Business or that the approval itself was not accorded by the Government. Merely because the approval order has been authenticated by an officer of the Home Department does not invalidate the same.

49.Preventive detention under the Jammu & Kashmir Public Safety Act is a statutory exercise undertaken by the Government of the Union Territory under the scheme of the Act itself.

50.Further, no prejudice whatsoever has been shown to have been caused to the detainee on account of the alleged violation of Rule 33. On the contrary, the record reveals that the detainee was informed of his right to make representation and, in fact, exercised such right which came to be duly considered by the competent authority.

51.It is well settled that procedural provisions regulating internal governmental functioning cannot be interpreted in a hyper-technical manner so as to defeat substantive action validly taken under a statutory enactment, particularly in matters concerning preventive detention and security of the Union Territory.

52.Accordingly, this Court finds no merit in the challenge laid either to the approval accorded under Section 8(4) of the Jammu & Kashmir Public Safety Act, 1978 or to the alleged infraction of Rule 33 of the Transaction of Government Business Rules, and the same deserves to be rejected.

53.The principal grievance projected by learned counsel for the petitioner is that the grounds of detention are merely a verbatim reproduction of the police dossier and, therefore, the impugned detention order stands vitiated for want of independent application of mind by the detaining authority. In support of the said contention, reliance has been placed upon the judgment of the Hon'ble Supreme Court in *Jai Singh v. State of J&K*.

54.There can be no disagreement with the proposition laid down in the aforesaid judgment by the Hon'ble Supreme court that if the detaining authority acts mechanically and reproduces the police dossier without independently examining the material placed before it, such exercise would strike at the very root of the subjective satisfaction required under preventive detention law. Preventive detention being a serious encroachment upon personal liberty guaranteed under Article 21 of the Constitution, the satisfaction recorded by the detaining authority must be real, conscious and based upon independent consideration of the material available on record.

55.However, at the same time, it is equally well settled that every similarity between the police dossier and the grounds of detention cannot automatically lead to an inference of non-application of mind. The sponsoring agency

necessarily supplies the factual material to the detaining authority and reference to such material in the grounds of detention is both natural and expected. What the Court is required to examine is whether the detaining authority merely as a conduit of the police or whether it independently evaluated the material before arriving at the requisite subjective satisfaction.

56. This Court also finds that the petitioner has neither impleaded the Senior Superintendent of Police, who is the author of the dossier forming basis of the impugned detention order, nor the Home Department which accorded approval to the detention under the provisions of the Jammu & Kashmir Public Safety Act and their presence was necessary for complete, proper and effective adjudication of the matter. In absence of such necessary parties, against whom specific allegations have been levelled, the present petition suffers from non-joinder of necessary parties and is, therefore, not maintainable.

57. This Court in the case titled as **Waseem Ahmad Dar Versus UT of J&K and Others** reported as 2025 SCC Online J&K 1213 has held that:

“8. Regarding second ground that has been urged by the petitioner, it is to be noted that while formulating the grounds of detention, the detaining authority has narrated the background of the petitioner by incorporating the facts narrated in the police dossier. However, after narrating the background facts, the detaining authority has clearly framed its opinion that the activities of the petitioner are highly prejudicial to the security of the Union Territory of the Jammu and Kashmir. So, it is not a case where the detaining authority has mechanically copied the contents of the police dossier while formulating the grounds of detention but it is a case where the detaining authority has applied its mind to the police dossier and the material annexed thereto, whereafter it has framed its opinion that it is imperative to detain the petitioner under the provisions of the J&K Public Safety Act. The contention of the

petitioner that the detaining authority has acted in a mechanical manner is, therefore, misconceived”

58. Applying the aforesaid principle to the facts of the present case, this Court has carefully examined the detention record as well as the grounds of detention. The material considered by the detaining authority was not confined only to FIR No. 203/2018 under section 7/25 of UA (P) Act registered against the detainee. The record further reveals consideration of the antecedents of the detainee, earlier criminal proceedings initiated under Sections 107/151 Cr.P.C. and Sections 126/170 BNSS, intelligence inputs regarding his continuing association with operatives of the banned terror outfit Lashkar-e-Taiba, his alleged use of encrypted communication applications and Virtual Proxy Networks, as well as his contacts with Pakistan-based handlers. This Court is of the considered view that the detaining authority has not acted mechanically .

59. The grounds of detention further reveal that the detaining authority was conscious of the fact that the detainee had already been enlarged on bail in the substantive criminal case and yet, according to the intelligence inputs received, continued to remain involved in activities prejudicial to the security of the Union Territory. The detention order also reflects consideration of the prevailing security situation in the Valley, particularly in the aftermath of the Pahalgam terror attack involving killing of tourists, and the apprehension that the detainee could be reactivated for furthering terrorist objectives.

60. The Hon’ble Supreme Court in case titled as *Pebam Ningol Mikoi Devi vs State Of Manipur* reported as (2010) 9 SCC 618 has observed as under:

“What emerges from these rulings is that, there must be a reasonable basis for the detention order, and there must be material to support the same. The Court is entitled to scrutinize the material relied upon by the Authority in coming to its conclusion, and accordingly determine if there is an objective basis for the subjective satisfaction. The subjective satisfaction must be two fold. The detaining authority must be satisfied that the person to be detained is likely to act in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of the public order and the authority must be further satisfied that it is necessary to detain the said person in order to prevent from so acting.”

61. Applying the aforesaid principle to the facts of the present case, this Court finds that the subjective satisfaction recorded by the detaining authority is based upon relevant and tangible material. The detention order reflects awareness regarding the criminal antecedents of the detainee, the threat perception assessed by the security agencies, and the necessity felt by the authority to prevent the detainee from acting in a manner prejudicial to the security of the Union Territory.

62. Merely because certain factual recitals occurring in the grounds of detention resemble portions of the police dossier would not, by itself, be sufficient to invalidate the detention order. Similarity in language cannot be elevated to a conclusive proof of non-application of mind unless the Court arrives at a finding that the detaining authority mechanically reproduced the dossier without independent consideration of the material. No such inference, in the facts of the present case, can reasonably be drawn.

63. This Court is satisfied that the impugned detention order cannot be termed as a mere mechanical reproduction of the police dossier. The detention record

discloses existence of relevant material which was consciously considered by the detaining authority while arriving at the subjective satisfaction that preventive detention of the detainee had become necessary in the interest of maintenance of security of the Union Territory of Jammu & Kashmir.

64. Accordingly, the contention raised by the petitioner regarding alleged non-application of mind is found to be without merit and is rejected.

65. Another contention urged by learned counsel for the petitioner is that the constitutional safeguard guaranteed under Article 22(5) of the Constitution stood violated on account of alleged non-supply of relevant material relied upon by the detaining authority while passing the impugned detention order.

66. This Court has examined the detention record keeping in view the settled principle that procedural safeguards in preventive detention matters are sacrosanct and must receive strict adherence.

67. The execution report placed on record reveals that the detainee was furnished the detention order, grounds of detention, copy of dossier, FIR and other connected material relied upon by the detaining authority comprising twenty-five leaves in total. The execution report further records that the contents of the detention order and grounds of detention were read over and explained to the detainee in Urdu and Kashmiri languages fully understood by him.

68. The record additionally reflects that the detainee was specifically informed of his valuable constitutional and statutory right to make a representation against the detention order before the Government as well as the detaining authority.

69. Most importantly, the factual position emerging from the record shows that the detainee, in fact, exercised such right by submitting a representation

challenging the detention order, which subsequently came to be considered and rejected by the competent authority.

70. Once the detainee had knowledge of the grounds of detention, was supplied the material relied upon, was informed of his right to representation and actually exercised such right, the plea regarding denial of effective representation loses much of its force.

71. The Hon'ble Supreme Court in *Abdul Latif Abdul Wahab Sheikh v. B. K. Jha reported in (1987) 2 SCC 22*, the Apex Court has held that

“the procedural requirements are the only safeguards available to a detainee since the court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural requirements are, therefore, to be strictly complied with, if any, value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard”

72. Tested on the touchstone of the aforesaid principle, this Court is satisfied that the constitutional and statutory safeguards envisaged under Article 22(5) of the Constitution and the provisions of the Jammu & Kashmir Public Safety Act stand duly complied with in the present case.

73. Accordingly, the contention regarding alleged non-supply of material and denial of right of representation is found to be without merit.

74. The petitioner has lastly argued that the detention order is founded upon unverified intelligence inputs and confidential police dossier and, therefore, lacks legal foundation..

75. Preventive detention jurisprudence operates in a field distinct from ordinary criminal prosecution. The object of preventive detention is not to punish an individual for a past offence but to prevent him from indulging in activities prejudicial to public order or security in future.

76.The distinction between punitive detention and preventive detention has been authoritatively explained by the Hon'ble Supreme Court in ***Haradhan Saha v. State of West Bengal, (1975) 3 SCC 618***, wherein it has been held that:

“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”

77.The Hon'ble Supreme Court observed that pendency of prosecution or even grant of bail does not debar the competent authority from invoking preventive detention laws if the authority is satisfied that detention is necessary to prevent possible future prejudicial acts.

78.Similarly, the Hon'ble Supreme Court in case titled ***Naresh Kumar Goyal v. Union of India and others (2005) 8 SCC 276***, it was held as under:-

“8. It is trite law that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent the antisocial and subversive elements from imperiling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities

or from engaging in illicit traffic in narcotic drugs and psychotropic substances, etc. Preventive detention is devised to afford protection to society. The authorities 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”

79. Keeping in view the aforesaid legal position, this Court finds that the detaining authority was justified in taking into consideration the antecedents of the detainee, intelligence inputs, preventive proceedings, alleged continuing association with operatives of Lashkar-e-Taiba and the prevailing security scenario while arriving at the subjective satisfaction that preventive detention had become necessary to prevent the detainee from acting in a manner prejudicial to the security of the Union Territory of Jammu & Kashmir.

80. The adequacy or sufficiency of the material forming basis of subjective satisfaction cannot ordinarily be subjected to objective judicial scrutiny by the Court once it is shown that relevant material existed before the detaining authority.

81. In the present case, the detention order is founded not merely upon vague allegations or isolated suspicion, but upon a combination of factors including FIR No. 203/2018, alleged recovery of arms and ammunition, criminal proceedings initiated under Cr.P.C./BNSS, intelligence reports regarding continued association of the detainee with operatives of Lashkar-e-Taiba, alleged use of encrypted communication applications, contacts with Pakistan-based handlers and the prevailing security situation in the Valley.

82.The material placed before the detaining authority, thus, cannot be said to be wholly irrelevant or extraneous to the object sought to be achieved under the preventive detention law.

83.This Court is conscious of the fact that matters concerning national security, terrorism and activities prejudicial to the security of the Union Territory stand on a distinct footing. While personal liberty is of paramount constitutional importance, the same must at times yield to larger considerations of security and public safety where the competent authority, on the basis of relevant material, forms a bona fide subjective satisfaction regarding necessity of preventive detention.

84.This Court, while exercising jurisdiction under Article 226 of the Constitution, cannot substitute its own opinion for that of the detaining authority merely because another view may also be possible on the material available on record.

85. This Court is, therefore, satisfied that the subjective satisfaction recorded by the detaining authority is founded upon relevant material having rational nexus with the object sought to be achieved and does not suffer from any perversity, mala fide or legal infirmity warranting interference in writ jurisdiction.

86.This Court also cannot lose sight of the fact that certain contentions sought to be urged during the course of oral submissions travel substantially beyond the grounds specifically pleaded in the writ petition. The petition, as originally framed, primarily assails the impugned detention order on grounds relating to alleged non-application of mind, reproduction of dossier, non-supply of material and violation of procedural safeguards. However, during the course of arguments, additional constitutional and technical challenges

relating to validity of the adaptation of the Jammu & Kashmir Public Safety Act and applicability of the Transaction of Government Business Rules were sought to be projected.

87. It is a settled principle of law that a party cannot be permitted to travel beyond its pleadings and set up an altogether new case during the course of arguments. Pleadings constitute the foundation of litigation and the opposite party must know the case against it. Without proper pleadings, such arguments cannot ordinarily be considered.

88. The Hon'ble Supreme Court in case titled as ***Rani Laxmibai Kshetriya Gramin Bank v. Chand Behari Kapoor*** reported as (1998) 7 SCC 469 has observed as under:

“It is too well settled that the petitioner who approaches the court invoking the extraordinary jurisdiction of the court under Article 226 must fully aver and establish his rights flowing from the bundle of facts thereby requiring the respondent to indicate its stand either by denial or by positive assertions. But in the absence of any averments in the writ petition or even in the rejoinder-affidavit, it is not permissible for a court to arrive at a conclusion on a factual position merely on the basis of submissions made in the course of hearing.”

89. Pleadings are not mere matters of formality but constitute the very foundation upon which judicial adjudication rests. A writ Court exercising extraordinary jurisdiction under Article 226 of the Constitution proceeds on the basis of the case specifically pleaded and supported by material placed on record. A party cannot be permitted to gradually expand the scope of challenge during oral submissions by introducing altogether new grounds which neither find mention in the pleadings nor afford the opposite side a fair

opportunity to meet the case sought to be projected. Permitting such course would not only prejudice the responding party but would also run contrary to the settled principles governing judicial review, which require certainty, fairness and procedural discipline in presentation of claims before the Court.

90. In the considered opinion of this Court, permitting the petitioner to raise altogether fresh grounds during the course of oral arguments, without any foundational pleadings in the writ petition, cannot be countenanced in law.

CONCLUSION

91. In view of the foregoing discussion, this Court is of the considered opinion that the impugned order of detention has been passed upon due application of mind and on the basis of relevant material having rational nexus with the object sought to be achieved under the preventive detention law. The constitutional and statutory safeguards available to the detainee have been duly complied with and no procedural illegality, mala fide, perversity or violation of constitutional mandate has been demonstrated so as to warrant interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

92. This Court is conscious of the fact that personal liberty occupies a cherished position within the constitutional scheme and any restriction thereof must be strictly examined. At the same time, the Constitution recognises that in exceptional circumstances involving security of the State, sovereignty of the nation and maintenance of public order, preventive detention may become necessary in the larger interest of society. The Court is required to maintain a balance between individual liberty and public security within the framework of law.

93. In the present case, the detention record reveals existence of relevant, live and proximate material forming the basis of the subjective satisfaction recorded by the detaining authority. The apprehension of the competent authority cannot be said to be imaginary, extraneous or devoid of rational basis. This Court, while exercising jurisdiction under Article 226 of the Constitution, does not sit as an appellate forum to reassess the sufficiency of the material or substitute its own opinion merely because another view may also be possible

94. The challenge raised by the petitioner regarding the validity of the adapted provisions of the Jammu & Kashmir Public Safety Act, alleged violation of Rule 33 of the Transaction of Government Business Rules, non-application of mind, non-supply of material and lack of relevant material for detention has been found to be without merit. None of the grounds raised by the petitioner are sufficient to invalidate the impugned detention order.

95. This Court is, therefore, of the considered view that the impugned order of detention does not suffer from any constitutional infirmity, procedural illegality, mala fide, perversity or jurisdictional error warranting interference in exercise of writ jurisdiction.

96. Consequently, the writ petition being devoid of any merit, is dismissed along with all connected applications, if any.

97. Registry is directed to return the detention record to learned counsel for the respondents Mr. Hakeem Aman Ali against proper receipt.

(Wasim Sadiq Nargal)
Judge

SRINAGAR:

15.05.2026

“Mubashir”

Whether Judgment is Speaking? Yes
Whether Judgment is Reportable? Yes