



**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case No: HCP No. 44/2026

Reserved on : 10.09.2026

Pronounced on : 18.09.2026

Uploaded on:18.09.2026

Mohd. Yousuf, age 49 years,
S/O Hakim Din, R/O Salwah, Tehsil
Mendhar, District Poonch through his
wife Farida Bi, age 42 years W/O
Mohd. Yousuf, R/O Salwah, Tehsil
Mendhar, District Poonch.

...Petitioner(s)/Appellant(s)

Through: Mr. C.M.Koul, Sr. Advocate with
Mr. A.R.Bhat, Advocate

Vs.

1. Union Territory of Jammu and Kashmir through Additional Chief Secretary Home, Civil Secretariat, Jammu/Srinagar.
2. District Magistrate Poonch (J&K).
3. Senior Superintendent of Police, Poonch.
4. Screening Committee of District Poonch through Senior Superintendent of Police (Chairman) Poonch.

.... Respondent(s)

Through: Mr. Dewakar Sharma, Dy.AG

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioner, through the medium of the present petition, has challenged the detention order bearing no. DMP/PSA/01 of 2026 dated 27.04.2026 issued by respondent No.2-District Magistrate, Poonch (hereinafter referred to as "the detaining authority") whereby Mohd. Yousuf, S/O Hakim Din, R/O Salwah, Tehsil Mendhar,



District Poonch (hereinafter referred to as “the detenue” has been taken into preventive detention with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

2. The petitioner has challenged the impugned order on the grounds that the allegations made in the grounds of detention, even if taken to be true at their face value, do not amount to a situation that would endanger public order. It has been contended that the activities in which the petitioner is allegedly found to be involved can, at best, be a problem of “law and order”; therefore, it was not open to the detaining authority to pass the impugned order of detention on the basis of the said activities. It has been contended that there has been non-application of mind on the part of the detaining authority, inasmuch as the grounds of detention are identical to the averments made in the dossier submitted by the Senior Superintendent of Police, Poonch, and there has been no independent application of mind by the detaining authority while issuing the impugned order of detention.
3. It has been contended that the petitioner has not been provided with the translated version of the material relied upon by the detaining authority, as a result of which he was unable to make an effective representation against the impugned order of detention. It has been further contended that the representation made by the petitioner against the impugned order of detention has not been considered by the respondents.
4. The respondent-detaining authority has filed its affidavit in opposition to the writ petition. In the affidavit, it has been submitted



that, keeping in view the prejudicial activities of the petitioner, his preventive detention had become imperative so as to deter him from acting or indulging in prejudicial activities. It has been further submitted that all the constitutional and statutory safeguards have been adhered to by the detaining authority while passing and executing the impugned order of detention. It has been submitted that the impugned order of detention has been passed on the basis of the criminal antecedents of the petitioner, which is apparent from the material placed before the detaining authority. According to the respondents, the detention order has been passed after due consideration of the continuing prejudicial activities of the detainee and on the basis of the subjective satisfaction of the detaining authority derived from the material available on record. It has been submitted that the detainee has been supplied with all the material on the basis of which the grounds of detention have been framed and he has also been informed about his right to make a representation. In order to lend support to their contentions, the respondents have produced the detention record.

5. I have heard learned counsel for the parties and I have also gone through the material on record including the detention record.
6. Although learned Senior counsel for the petitioner has raised numerous grounds for assailing the impugned order of detention, his main thrust was on the argument that the activities mentioned in the grounds of detention cannot form a basis for passing order of preventive detention, as the same, even if taken to be true, do not have the potential of disturbing “public order”.



7. In the above context, the grounds of detention bear reference to four FIRs; FIR No. 129/2018 for the offences under Sections 353/382 RPC, registered with Police Station Mendhar; FIR No. 24/2019 under Sections 341/147/336/323/382 RPC, registered with Police Station Mendhar; FIR No. 217/2024 for the offences under Sections 109/191(2), 191(3)/115(2)/307 BNS and 4/25 Arms Act, registered with Police Station Mendhar; and FIR No. 38/2026 for the offences under Sections 126(2)/115(2)/191(2)/307/351(2) BNS, registered with Police Station Mendhar.
8. According to learned Senior counsel appearing for the petitioner, all these FIRs relate to incidents pertaining to personal enmity between the petitioner and the complainant/injured, and these incidents do not have the potential of disturbing “public order”.
9. On the other hand, learned counsel appearing for the respondents has contended that this Court, while exercising its writ jurisdiction, cannot undertake a judicial review of the subjective satisfaction arrived at by the detaining authority on the basis of the material available before it, and that it is not open to this Court to go into the sufficiency or otherwise of the material on the basis of which the order of detention has been passed.
10. The scope and power of the court in deciding the legality of an order of preventive detention has been discussed by the Supreme Court in the case of **Ameena Begum Vs. The State of Telangana and others, 2023 INSC 788**. In the said case, the Supreme Court after surveying its previous judgment on the issue has observed as under :-



“25. Be that as it may, culling out the principles of law flowing from all the relevant decisions in the field, our understanding of the law for deciding the legality of an order of preventive detention is that even without appropriate pleadings to assail such an order, if circumstances appear therefrom raising a doubt of the detaining authority misconceiving his own powers, the Court ought not to shut its eyes; even not venturing to make any attempt to investigate the sufficiency of the materials, an enquiry can be made by the Court into the authority’s notions of his power. Without being remotely concerned about the sufficiency or otherwise of the materials on which detention has been ordered, the Court would be justified to draw a conclusion, on proof from the order itself, that the detaining authority failed to realize the extent of his own powers. This is quite apart from questioning the action for want of sufficient materials that were before the detaining authority. The authority for the detention is the order of detention itself, which the detenu or the Court can read. Such a reading of the order would disclose the manner in which the activity of the detenu was viewed by the detaining authority to be prejudicial to maintenance of public order and what exactly he intended should not be permitted to happen. Any order of a detaining authority evincing that the same runs beyond his powers, as are actually conferred, would not amount to a valid order made under the governing preventive detention law and be vulnerable on a challenge being laid. 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.*

Should the Court find the exercise of power to be bad and/or to be vitiated applying any of the tests noted above, rendering the detention order vulnerable, detention which undoubtedly visits the person detained with drastic consequences would call for being interdicted for righting the wrong.”

11. From the foregoing analysis of the legal position, it is clear that, while considering the legality of an order of preventive detention, the Court can make an inquiry into the authority's notion of its power, without being concerned about the sufficiency or otherwise of the material on the basis of which the detention order has been passed. If, upon perusing the grounds of detention, it appears to the Court that the detaining authority has acted beyond its power, it would be open to the Court to interfere with the detention order. While testing the legality of the detention order, the Court has to see whether the requisite satisfaction has been arrived at by the detaining authority with some degree of rationality and prudence.

12. As already stated the star ground that has been raised by learned Senior counsel for the petitioner for assailing the impugned order of detention is that the activities mentioned in the grounds of detention, by no stretch of reasoning, can pose a danger to public order. In view



of the legal position discussed hereinbefore, it would be open to this Court to go into the issue as to whether, on the basis of rational consideration of the grounds of detention, the incidents mentioned therein have the potential of disturbing public order or whether the said incidents are only an issue of law and order. Before undertaking such an exercise, it would be necessary to understand the distinction between “public order” and “law and order”. While activities amounting to disturbance of “public order” give power to a detaining authority under the provisions of the J&K Public Safety Act to pass an order of preventive detention, the activities which merely pose a threat to “law and order” cannot form the basis for passing an order of preventive detention.

13. The Supreme Court in the case of **Ram Manohar Lohia Vs. State of Bihar, 1966 (1) SCR 709** has properly explained the difference between “law and order” and “public order” in the following words:-

*“54. ***Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not*



necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are.

55. *It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order' also comprehends disorders of less gravity than those affecting 'public order'. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."*

14. In the same judgment, the Supreme Court has further explained as under:

*"3. *** Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. ... It is always a question of degree of the harm and its affect upon the community. ... This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."*

15. Again in the case of **Kuso Sah Vs. State of Bihar, 1974 (1) SCC 185**

the Supreme Court explained the two concepts in the following manner:-



*“4. *** The two concepts have well defined contours, it being well established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. ****

*6.*** The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised. ***”*

16. From the foregoing analysis of legal position, it becomes clear that if the offending acts relate to disturbance of flow of life of the community, it amounts to an act prejudicial to maintenance of public order, but if the offending acts are merely directed against an individual without disturbing the public order, it may be a case of disturbance of “law and order” warranting no action under the preventive detention laws.

17. Turning to the facts of the case, the incidents pertaining to the four FIRs mentioned above need to be noticed to ascertain whether the said incidents would fall within the category of danger to “public order” or whether the same can be categorized merely as incidents of “law and order” problem.

18. Subject matter of FIR No. 129/2018 is an incident dated 03.08.2018 relating to one Riaz Ahmed, an employee of the Panchayat, who was attacked by the petitioner. After investigation of the case, it was found that the petitioner had approached the said official in relation to some



Panchayat-related work and there was a verbal altercation between them, which escalated into a physical fight. The offence under Section 353 RPC was found established against the petitioner.

19.The incident which is the subject matter of FIR No. 24/2019 relates to an attack launched by the petitioner upon one Mohd Adrees Khan. After investigation, it was found that there was prior enmity between the petitioner and the injured. The allegations of snatching and theft were not substantiated, and only the offences under Sections 341 and 323 RPC were found established against the petitioner.

20.The subject matter of FIR No. 217/2024 is an incident dated 18.11.2024. It was found, after investigation of the case, that during a wedding event, while the guests were having meals, a verbal altercation took place between the complainant party and the accused persons, including the petitioner, which escalated into a fight between the two parties. Offences under Sections 117(2), 115(2), 125, 228 and 2(5) of the BNS were found established against the petitioner, but the offence of attempt to murder was not found established against him.

21.The subject matter of FIR No. 38 of 2026 relates to an incident dated 11.03.2026. After the investigation, it was found that the petitioner and his associates assaulted the complainant party while they were proceeding towards Jaba carrying their luggage. One of the injured persons received grievous injuries. It is also mentioned in the grounds of detention that the State has already applied for cancellation of bail granted to the petitioner in the aforesaid FIR.

22.Besides this, the detaining authority has relied upon the DSP report, in which it has been reported that the petitioner is repeatedly involving



himself in crimes and that multiple cases have been registered against him. However, no particulars of the repeated activities of the petitioner are mentioned in the DSP report.

23.A perusal of the particulars of the incidents, which form basis of the four FIRs registered against the petitioner, would reveal that these incidents are confined to personal enmity between the petitioner and the complainant party. These incidents are individualistic in nature. While the first incident is of the year 2018, the last one is of the year 2026. These activities of the petitioner affect private individuals. The repetition of similar acts by the petitioner would not, by itself, affect the flow of life of the community. Merely because the detainee has been charged with multiple offences cannot, in isolation, be taken as a basis for passing an order of detention, as these incidents are individualistic in nature and do not have the potential to disturb public order. These incidents, at best, in the inimitable words of Justice Rahul Bharti, are a “pain in the neck” for the authorities responsible for maintaining “law and order”, and do not disturb the flow of public life.

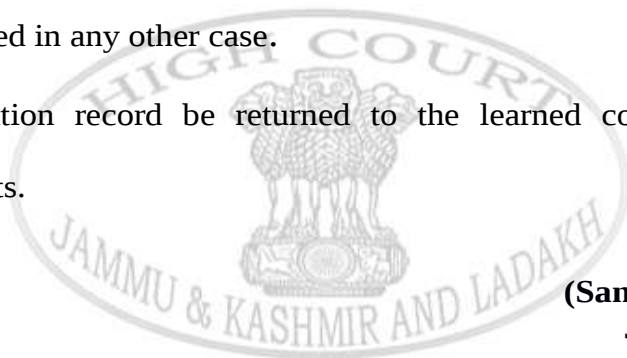
24.On an overall consideration of the circumstances, it appears that the existing legal framework for maintaining “law and order” is sufficient to take care of the offences in which the petitioner is stated to have indulged. The preventive detention is an extraordinary power which can be used only to tackle emergent situation, and it cannot be invoked in a situation which gives rise to a “law and order” problem. It appears that the detaining authority, while passing the impugned order of detention, has failed to appreciate the difference between



“public order” and “law and order”. The power of preventive detention, in the facts and circumstances of the present case, could not have been resorted to when ordinarily criminal law provides sufficient means to address the situation leading to passing of the impugned detention order. In fact, the respondents have already applied for cancellation of bail of the petitioner, but without awaiting the conclusion of the said proceedings, the impugned order of detention has been passed, which, in the facts and circumstances of the case, is indefensible.

25. For what has been discussed hereinbefore, the impugned order of detention bearing No. DMP/PSA/01 of 2026 dated 27.04.2026, issued by respondent No. 2-District Magistrate, Poonch, being unsustainable in law, is quashed. The detinue is directed to be released forthwith, if not involved in any other case.

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



(Sanjay Dhar)
Judge

Jammu
18.09.2026
Madan Verma-Secy

Whether order is speaking?	Yes.
Whether order is reportable?	Yes.