

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

...
HCP No. 29/2025

*Reserved on: 11.09.2025
Pronounced on: 22 .09.2025*

Riyaz Ahmad Channa through his wife

.....Petitioner(s)

Through:

Mr. B. A. Bashir, Sr. Advocate with Mr. Rasic, Advocate

Versus

UT of J&K and Ors.

.....Respondent(s)

Through:

Ms. Nadiya Abdullah, AC vice Mr. Mohsin Qadri, Sr. Advocate

CORAM:

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

J U D G M E N T

1. This petition has been preferred by the petitioner, Safiya Riyaz, wife of Reyaz Ahmad Chana S/o Abdul Aziz Chana R/o Chinkral Mohalla, Habakadal, Srinagar, (herein after referred to as “detenue”) thereby, challenging the order No. DIVCOM “K”/221/2024 dated 20.12.2024, for short as impugned order issued by the Divisional Commissioner, Kashmir– respondent No.2 herein, in terms of the provisions of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, for short NDPS.

BRIEF FACTS

2. A detention order dated 8th of August, 2020 is stated to have been issued by the respondents which, upon consideration by this Court, had been stayed vide order dated 24.09.2020, in writ petition WP(Crl) No. 132/2020, pending before this Court. The said detention order is stated to have been issued on the

similar grounds as that of the impugned order. The respondents without withdrawing or cancelling the said earlier detention order have issued a fresh one, challenged herein, the detenue has been taken into custody and lodged in Bhaderwah Sub Jail in pursuance thereof.

3. The challenge to the impugned order is primarily made on the grounds that the grounds of detention are frivolous, imaginary, highly vague, and without any substance, there are no specific particulars which would identify the date, place and time in the grounds mentioned to enable the detenue to make a representation against it; the status of the FIRs mentioned in the detention order have not been stated in the grounds of detention, as such, there is no subjective satisfaction for proposing the detention of the detenue under impugned detention order. There is no evidence or any kind of material to support allegations raised in the grounds of detention. The assertion put forth by the detaining authority that the petitioner has been given multiple chances to reform but has continued his illegal drug trade, contradicts the very records of the FIRs; the material evidence in the present case does not substantiate the claim that the petitioner is a hardcore drug peddler of a kingpin of the drug mafia; the grounds indicate that there are reports, which have not been provided to the detenue and on what basis said alleged reports have been received by the detaining authority; the allegations made in the grounds of detention are substantive and unsupported by any concrete evidence; as far as FIR No. 56/2024, under Sections 8/21, 29 of P/S Rajbagh is concerned, the detenue was asked by the Police to come to Police station for questioning. The detenue visited the Police station concerned and the police registered a false and frivolous case against the detenue; as far as FIR No. 56/2018, under Sections 341, 307 of RPC of P/S Khanyar is concerned, same has been closed at the

stage of investigation itself as not proved; as far as FIR No. 08/2018 under Sections 447 of RPC of P/S Kralkhud is concerned, same also been dismissed as not admitted on 15th of May, 2018 by the police concerned, showing that it could not be proved even at the investigation stage, therefore, came to be closed; as far as FIR No. 22/2019 under Sections 8/18-20-29 NDPS Act of P/S Nowhatta is concerned, the detenue was not charged for more than a year. Now the case is still pending for the evidence of prosecution.

4. *Per contra*, the respondents have filed counter affidavit, wherein it is stated that there is no vagueness or staleness in the grounds coupled with definite indications, as to the impact thereof, which has been precisely stated in the grounds of detention. The incidents clearly substantiate the subjective satisfaction arrived at by the detaining authority. Even grant of bail in criminal offence cannot debar the detaining authority to order preventive detention of an individual, when preventive detention of such individual is found necessitated, as is the case in respect of the detenue. The detention of the detenue was ordered strictly in accordance with the provisions of Prevention of Illicit Traffic Narcotic Drugs and Psychotropic Substance Act, 1988. The order of detention was executed by the concerned Police on 21.12.2024 and the contents of grounds of detention were read over and explained to the detenue in the language which he understood fully. The entire material/documents of the case were provided to the detenue against proper receipt. The detenue was also informed that he has a right to file a representation to the Government against the detention order. The Advisory Board examined the case of the detenue in exercise of powers conferred under Clause (f) of Section 9 read with Section (11) of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988, confirmed the detention of the detenue vide Government

order dated 24.01.2025 and detained the detainee for a period of one year in District Jail, Bhaderwah.

5. Heard learned counsel for the parties and considered the submissions made.

6. Learned senior counsel for the detainee has stated that the detention order is unlawful on the ground that the detaining authority has relied on vague and unsupportive material. Failure to provide evidence like date, place and time by the detaining authority amounts to violation of fundamental rights of the detainee.

7. Perusal of the record reveals that material, which was provided to detainee, includes grounds of detention (04 leaves), PSA warrant (01 leaf), Dossier (06 leaves) along with copies of FIRs and other documents (40 leaves) and the contents of the warrant and grounds of detention read over and explained to him in languages, which he fully understood on 21.12.2024. The representation of the detainee has also been considered and has been found without any merit.

8. Learned senior counsel for the detainee has stated that in the grounds of detention no details with respect to FIR No. 22/2019 and FIR No. 56/2024, have been referred. The detainee was bailed out in FIR No. 56/2024, which is duly reflected in the grounds of detention, however, the detainee was also released on bail in FIR No. 22/2019, the said fact has not been reflected in the grounds of detention. He has further stated that in the grounds of detention, the detaining authority has not referred the details with respect to date place and time. In support of his claim he has referred to and relied upon the Judgment of Apex Court delivered in case Chaju Ram Vs. The State of J&K, reported in AIR 1971 SC 263. Para 13 being relevant is reproduced as under:-

13. Even as to the grounds, we have something to say. The grounds charge him with having conspired with some leaders of Democratic Conference and having incited landless people of R S Pura Tehsil to forcibly occupy the land comprised in Nandpur Mechanised Farm and to have persuaded them to resist violently and attempt to evict them. No details of the leaders of the Conference or of the persons incited or the dates on which he conspired or incited the squatters or the time when such conference took place, are mentioned.

It would be impossible for anybody to make a representation against such grounds. These grounds, on the authorities of this Court, too numerous to be cited here, must be held to be vague. Therefore, on both the twin grounds, namely, that he was deprived of his right to make a representation and also because the grounds in themselves were very vague, we must hold that there was no compliance with the law as laid down in the Jammu & Kashmir Preventive Detention Act. The result, therefore, is that the detention must be declared to be unlawful and Chaju must be declared to be entitled to his liberty. He is ordered to be released. The detenu was questioned by us and he expressed a desire that he may not be released in Delhi, because he has no means of going back. He asked to be released in Jammu. We direct therefore that he shall be taken back to the place where he was in detention in Jammu and released within the shortest possible time.”

9. Learned senior counsel for the petitioner in support of his claim also relied upon the Judgment of the Supreme Court delivered in case titled *Rajinder Arora Vs. Union of India (UOI) and Ors*, reported in AIR 2006 SC 1719. Para 19 being relevant is taken note of:-

“19. A Division Bench of this Court in K. S. Nagamuthu v. State of Tamil Nadu and Ors. MANU/SC/2129/2005, AIR 2006 SC 374 struck down an order of detention on the ground that the relevant material had been withheld from the detaining authority, which in that case was a letter of the detenu retracting from confession made by him.”

10. Learned senior counsel has further stated that the detaining authority has not provided the relevant documents to the detenu, thereby prejudicing the rights of the detenu. In order to strengthen his submission, he has referred to and relied upon the Judgment of Supreme Court in case titled *A. Sowkath Ali Vs. Union of India (UOI) and Ors.*, reported in AIR 2006 SC 2662. Paragraph 7 being relevant is taken note of:-

“7. In [M. Ahamed kutty Vs. Union of India and Anr.](#), 1990 (2) SCC 1, this Court was considering the detention of a detenu also under [COFEPOSA Act, 1974](#). In this case this Court held, bail application and bail orders constitute vital material. Its non-consideration by the detaining authority or non-supply of its copy to the detenu is violative of [Article 22\(5\)](#) of the Constitution of India and hence the detention order was held to be illegal. This Court holds:-

Considering the facts in the instant case, the bail application and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired, and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenus right to make an effective representation and that it resulted in violation of [Article 22\(5\)](#) of the Constitution of India rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case.

11. Learned senior counsel for the detenu has stated that the detenu has not been provided with the bail order and the satisfaction of the detaining authority has not been reflected with respect to the order passed in the bail application, which is in violation of the Judgment supra. He has further stated that it was incumbent upon the detaining authority to supply the material, which has been considered by the detaining authority.

12. The detaining authority has specifically stated in the grounds of detention that the conditions mentioned in the bail order, includes that the detenu will not indulge in such activities, however, despite that condition, the detenu had discreetly involved in such activities and the same cannot be agitated before the Court for cancellation of the bail of the detenu, leaving no other option for Police to sponsor and recommend the detention order under PIT NDPS. It is stated that the grounds of detention provided by the sponsoring

Agency squarely outweigh the bail conditions imposed by the Court, however, it is not stated why ordinary course of law was not sufficient to restrain the detainee from indulging in such activities.

13. Learned senior counsel has referred to and relied upon the Judgment of Supreme Court in case titled Chowdarapu Raghunandan Vs. State of Tamil Nadu and Ors., reported in AIR 2002 SC 1460. Paragraphs 6, 7 and 14 being relevant are taken note of:-

“ 6. In Mohd. Subrati alias [Mohd. Karim v. State of West Bengal](#) [(1973) 3 SCC 250, 256] this Court observed thus:

"It must be remembered that the personal liberty of an individual has been given an honoured place in the fundamental rights which our Constitution has jealously protected against illegal and arbitrary deprivation, and that this Court has been entrusted with a duty and invested with a power to enforce that fundamental right."

7. Dealing with solitary act in a preventive detention matter, Krishna Iyer J. in [Anil Dey v. State of West Bengal](#) [(1974) 4 SCC 514] observed as under: -

"A swallow cannot make a summer ordinarily, and a solitary fugitive act of criminality may not normally form the foundation for subjective satisfaction about the futuristic judgment that the delinquent was likely to repeat his offence and thereby prejudicially affect the maintenance of supplies and services essential to community."

14. The Court further observed thus:-

"Preventive detention admittedly is an 'invasion of personal liberty' and it is a duty cast on the law Courts to satisfy itself in regard to the circumstances under which such a preventive detention has been ordered in the event, however, the same does not conform to the requirements of the concept of justice as is available in the justice delivery system of the country, the law Courts would not shirk of its responsibility to provide relief to the person concerned. The guardian-angel of the Constitution stands poised with a responsibility to zealously act as a watchdog so that injustice does not occur :

Let us not be understood to mean however that there ought to be any over zealousness since the same may lend assistance to a situation which is otherwise not compatible with social good and benefit."

14. Learned senior counsel has stated that the detainee has been deprived of making an effective and purposeful representation as envisaged under Article 22(5) of the Constitution of India, as no particulars/details have been providing for the documents referred in the detention order with respect to alleged activities of the detainee. He has further stated that the detaining authority has not applied its mind and has relied upon the vague and substantive grounds, moreover, the bail order has also not been provided to the detainee. There is a complete non-application of mind on part of the detaining authority on the ground that in the bail order, there was a condition laid down that if the detainee violates the conditions mentioned in the order, ordinarily law could have been availed for cancellation of bail of the detainee.

15. The Supreme Court in case titled “*Ameena Begum Vs. State of Telenganna*” reported as (1987) 4 SCC 58, has held the detention order must be based on a reasonable prognosis of the further behaviour of a person based his past conduct in light of the surrounding circumstances and requisite satisfaction. It would be profitable to reproduce paragraphs 19,20, 28 and 29 of the said judgment herein:

19. *In holding that the order of detention therein was grounded on stale grounds, the Court held that:*

“17. The detention order must be based on a reasonable prognosis of the future behaviour 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.”

20. *This was further affirmed by this Court in Khaja Bilal Ahmed vs. State of Telangana , where the detention order dated 2nd November, 2018 issued under the Act had delved into the history of cases involving the appellant-detenu from the years 2007 - 2016, despite the subjective satisfaction of the Officer not being based on such cases. In quashing such an order, Hon’ble Dr. D.Y. Chandrachud, J. (as the Chief Justice then was) observed:*

“23. ... If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place 12 (2020) 13 SCC 632 978 [2023] 11 S.C.R. SUPREME COURT REPORT: DIGITAL in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. 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.”

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

(28.1) 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;

28.2 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;

28.3 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;

28.4 the detaining authority has acted independently or under the dictation of another body;

28.5 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;

28.6 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;

28.7 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;

28.8 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;

28.9 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 28.10 the timelines, as provided under the law, have been strictly adhered to.”

29. Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the Rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3) (b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.

16. The Senior Superintendent of Police, Srinagar in his dossier has stated at paragraph No. 4 as under:

“that the subject has been given several chances to mend his ways but all in vain as information received from field clearly depicts that the subject has continued his illegal trade of drugs, besides after being bailed out from the afore mentioned case FIRs/stay order. Granted bail by the Court of against detention warrant issued by DIV COM for his drug peddling activities. **Whenever, subject has been arrested in substantive laws/preventive detention he managed bail as well as challenged detention orders before Hon’ble Court by way of using influence and power, as the subject is a kingpin of drug mafia in the Kashmir Valley for which subject took this high position in a very short period of time and became hardcore drug peddler as well as social evil in his area.”** (emphasis added)

SSP, Srinagar has stated that the detenu has been able to manage bail as well as to challenge the detention orders before this Court only because of his influence and power, being a Kingpin in the Kashmir Valley. This is not expected of SSP, Srinagar to reflect his mind set in

such a casual and cavalier manner in the dossier. He has not only expressed his opinion against the detainee but has raised aspersions/allegations against the judiciary, which is uncalled for. The Court has been informed by Ms. Nadiya Abdullah, learned assisting counsel that Mr. Imtiyaz Hussain, the then SSP, Srinagar has prepared dossier in question. Mr Imtiyaz Hussain, SSP is holding a very important role in Home department, as such, he is expected to perform his duties with highly immense responsibility.

17. Learned senior counsel for the detainee has highlighted that there is non application of mind on the part of SSP, Srinagar, in preparing the dossier. He has also stated that what has been stated by the SSP, Srinagar, in the dossier is not only objectionable but contemptuous also, as it implies that the decisions of this Court are made under the influence or power of the detainee, which is not only baseless but also a direct challenge to the authority and integrity of this Court. Such language questions the independence and impartiality of the judicial process.

18. The averments taken in the dossier prepared by the then SSP, Srinagar Mr. Imtiyaz Hussain, inasmuch as the same pertains to the judicial process and judiciary are not only objectionable but highly lamentable too. The said officer was neither entrusted with the authority nor was obliged under law to demean this Institution and to act beyond his limits. The disrespectful language made use of by the officer in the dossier, as rightly pointed by the learned senior counsel for the petitioner, is contemptuous to say the least. This type of practice cannot be allowed to be nurtured lest that may destabilize the entire democratic setup. In that background, this Court feels constrained to seriously take note of paragraph No. 4 of the dossier, prepared by the SSP, Srinagar. The Director

General of Police is directed to seek explanation from the then SSP, Srinagar, Mr Imtiyaz Hussain, with respect to the averments, as taken note of hereinbefore, made in the dossier and initiate action against him for trying to demean the stature and integrity of judiciary and its judicial process.

Registry shall furnish a copy of this judgment to the Director General of Police, J&K for compliance. The action taken pursuant to the direction by the Director General of Police shall be submitted to the Registry of this Court without fail.

19. Viewed thus, the petition is allowed and detention order No. DIVCOM “K”/221/2024 dated 20.12.2024 of Divisional Commissioner, Kashmir–respondent No.2 herein, whereby *Reyaz Ahmad Chana Son of Ab. Aziz Chana Resident of Chinkral Mohalla Habbakadal District, Srinagar was detained*, is quashed and the respondents are directed to release the detainee forthwith, if not required in any other case.

20. Detention record be returned to the learned counsel for the respondents against receipt.

21. Disposed of.

(MOKSHA KHAJURIA KAZMI)
JUDGE

Srinagar

22.09.2025

“Mohammad Yasin Dar”

Whether the Judgment is reportable: Yes/No.

Whether the Judgment is speaking: Yes/No.