

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

...

HCP No. 183/2025

*Reserved on: 16.10.2025
Pronounced on: 29.10.2025*

Sajad Ahmad Bhat, Aged 27 years
through his father-in-law Mushtaq Ahmad Dar
S/o Abdul Ahad Bhat
R/o Drabgam, Rajpora, Pulwama

.....Petitioner(s)

Through:

Mr. Zameer Abdullah and Mr. Zahir Abdullah, Advocates

Versus

1. UT of Jammu and Kashmir through its Principal Secretary Home Department, Civil Secretariat, Jammu/Srinagar.
2. District Magistrate, Pulwama
3. Superintendent of Police, District Jail, Udhampur.

.....Respondent(s)

Through:

Mr. Furqaan Yaqoob, GA

CORAM:

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

1. Challenge is made in the instant petition to the order No. 07/DMP/PSA/25 dated 30.04.2025, passed by the District Magistrate, Pulwama– respondent No. 2 herein, whereby one *Sajad Ahmad Bhat @ Baaber S/o Abdul Ahad Bhat R/o Drabgam, Tehsil Rajpora, District Pulwama* (herein after referred to as “detenue”) has been placed under preventive detention *inter alia* on the grounds of non-application of mind; representation has not been submitted as the requisite material was not supplied to him.

BRIEF FACTS

- 2.** Precisely, the detainee has been placed under preventive detention after having been found involved in case FIR No. 119 of 2020 of Police Station, Rajpora, for the commission of offence punishable in terms of Section 7/25 I.A Act, 18, 23, 39 ULA (P) Act respectively.
- 3.** It is being pleaded that the detainee after having been arrested in the aforesaid FIR, has been released on bail by the competent Court of jurisdiction on 13.11.2023. The detainee is pleaded to be innocent, having been falsely implicated in the aforesaid FIR.
- 4.** It is also pleaded in the petition that the procedural safeguards have not been followed in the instant case, resulting in infringement of fundamental rights of the detainee. In support of such plea, it is pleaded that the documents on the basis of which the preventive detention was ordered have not been furnished to the detainee, thereby, depriving him from making an effective representation against his detention. It is submitted that the dossier has been sent to the detaining authority by Senior Superintendent of Police concerned on 28.04.2025, while as, the detention order was issued on 30.04.2025, after a period of 02 days, meaning thereby that the activities of the detainee were not judged by the detaining authority to arrive at a conclusion that these are prejudicial to the maintenance of Security of UT warranting his detention.
- 5.** *Per contra*, the respondents, in their counter affidavit, have stated that the detainee had been arrested in case FIR No. 119 of 2020 under Section 7/25 I.A. Act, 18, 23, 39 ULA (P) Act of Police Station,

Rajpora while he was indulging in anti-national activities. Furthermore, the respondents have stated in their counter affidavit that detune reportedly re-activated his contacts as he was found in close touch with active terrorist in the area, thereby, enabling him to escape. The activities of the detainee have been stated to be highly prejudicial to the Security of UT of J&K, therefore, warranted exercise of preventive detention.

6. Heard learned counsel for the parties and considered the submissions made. I have gone through the pleadings and the detention records and have also considered the submissions so made by the learned counsel for the parties.

7. The learned counsel for the petitioner have taken various grounds to challenge and seek quashment of the impugned order which have been rebutted by the other side by the medium of the reply filed by them, however, the ground in respect of the substantive law having been pressed into service by the respondents, being insufficient to deter the detainee from indulging in the alleged activities appears to be carrying weight and does not appear to have been effectively rebutted by the respondents. Furthermore, the learned counsel for the petitioner have successfully shown that the detainee had been found involved in case FIR No. 119/2020 of Police Station, Rajpora, wherein, he had been granted bail by the competent court of law and the impugned order having been based on such FIR is an outcome of stale allegations.

8. The respondents have failed to indicate as to how the substantive law, pressed into service against the detainee by virtue of FIR No. 119/2020 of Police Station Rajpora, wherein, the detention have been granted

bail also, was not sufficient to prevent the detainee from indulging in the activities alleged against his person.

9. The Apex Court in case titled ***Rekha v. State of Tamil Nadu*** reported as (2011) 5 SCC 244 has held that if the authorities responsible for detaining the detainee in preventive custody have failed to justify as to how the substantive law, having been pressed into service prior to issuance of the detention order, was insufficient to prevent the detainee from indulging in the nefarious activities alleged against his person, the detention order cannot sustain. It will be profitable to reproduce paragraph Nos. 30 to 34 of the *Rekha* Judgment (*supra*) herein:-

- “30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal.*
- 31. In this connection, it may be noted that it is true that the decision of the two-Judge Bench of this Court in Biram Chand v. State of U.P. [(1974) 4 SCC 573 : 1974 SCC (Cri) 609] was overruled by the Constitution Bench decision in Haradhan Saha case [(1975) 3 SCC 198 : 1974 SCC (Cri) 816] (vide para 34). However, we should carefully analyse these decisions to correctly understand the legal position.*
- 32. In Biram Chand case [(1974) 4 SCC 573 : 1974 SCC (Cri) 609] this Court held that the authorities cannot take recourse to criminal proceedings as well as pass a preventive detention order on the same facts (vide para 15 of the said decision). It is this view which was reversed by the Constitution Bench decision in Haradhan Saha case [(1975) 3 SCC 198 : 1974 SCC (Cri) 816] . This does not mean that the Constitution Bench laid down that in all cases the authorities can take recourse to both criminal proceedings as well as a preventive detention order even though in the view of the Court the former is sufficient to deal with the situation. This point which we are emphasising is of extreme importance, but seems to have been overlooked in the decisions of this Court.*
- 33. No doubt it has been held in the Constitution Bench decision in Haradhan Saha case [(1975) 3 SCC 198 : 1974 SCC (Cri) 816] that even if a person is liable to be tried in a criminal court*

for commission of a criminal offence, or is actually being so tried, that does not debar the authorities from passing a detention order under a preventive detention law. This observation, to be understood correctly, must, however, be construed in the background of the constitutional scheme in Articles 21 and 22 of the Constitution (which we have already explained). Article 22(3)(b) is only an exception to Article 21 and it is not itself a fundamental right. It is Article 21 which is central to the whole chapter on fundamental rights in our Constitution. The right to liberty means that before sending a person to prison a trial must ordinarily be held giving him an opportunity of placing his defence through his lawyer. It follows that if a person is liable to be tried, or is actually being tried, for a criminal offence, but the ordinary criminal law (the Penal Code or other penal statutes) will not be able to deal with the situation, then, and only then, can the preventive detention law be taken recourse to.

34. Hence, the observation in SCC para 34 in *Haradhan Saha* case [(1975) 3 SCC 198 : 1974 SCC (Cri) 816] cannot be regarded as an unqualified statement that in every case where a person is liable to be tried, or is actually being tried, for a crime in a criminal court a detention order can also be passed under a preventive detention law.”

10. The impugned order has been issued in the year 2025 against the detainee for his involvement in a case registered in the year 2020, the same therefore, is based on the stale grounds as the impugned order of detention has been passed five years later the date of the registration of the FIR. This fact goes on to suggest that there is no proximate link to the alleged actions of the detainee that were deemed to be prejudicial to the maintenance of security of the State.

11. The Apex Court in various pronouncements has held that the detention order cannot sustain if there is no proximate link between the detainee and the alleged subversive actions of the detainee. Reference in this connection is made to the judgment of the Apex Court delivered in case titled *Malada Sriram v. State of Telangana* reported as (2023) 13 SCC 537. It will be profitable to reproduce paragraph Nos. 13 & 14 of the said judgment herein:-

“13. In Banka Sneha Sheela v. State of Telangana [Banka Sneha Sheela v. State of Telangana, (2021) 9 SCC 415 : (2021) 3 SCC (Cri) 446] , a two-Judge Bench of this Court examined a similar factual situation of an alleged offence of cheating gullible persons as a ground for preventive detention under the Telangana Act of 1986. The Court held that while such an apprehension may be a ground for considering the cancellation of bail to an accused, it cannot meet the standards prescribed for preventive detention unless there is a demonstrable threat to the maintenance of public order. The Court held : (SCC pp. 423-25, 427 & 438, paras 9, 12, 15 & 32)

“9. ... learned counsel appearing on behalf of the petitioner has raised three points before us. First and foremost, he said there is no proximate or live connection between the acts complained of and the date of the detention order, as the last act that was complained of, which is discernible from the first 3 FIRs (FIRs dated 12-12-2019, 12-12-2019 and 14-12-2019), was in December 2019 whereas the detention order was passed 9 months later on 28-9-2020. He then argued, without conceding, that at best only a “law and order” problem if at all would arise on the facts of these cases and not a “public order” problem, and referred to certain judgments of this Court to buttress the same. He also argued that the detention order was totally perverse in that it was passed only because anticipatory bail/bail applications were granted. The correct course of action would have been for the State to move to cancel the bail that has been granted if any further untoward incident were to take place.

12. While it cannot seriously be disputed that the detenu may be a “white collar offender” as defined under Section 2(x) of the Telangana Prevention of Dangerous Activities Act, yet a preventive detention order can only be passed if his activities adversely affect or are likely to adversely affect the maintenance of public order. “Public order” is defined in the Explanation to Section 2(a) of the Telangana Prevention of Dangerous Activities Act to be a harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave widespread danger to life or public health.

15. There can be no doubt that what is alleged in the five FIRs pertain to the realm of “law and order” in that various acts of cheating are ascribed to the detenu which are punishable under the three sections of the Penal Code set out in the five FIRs. A close reading of the detention order would make it clear that the reason for the said order is not any apprehension of widespread public harm, danger or alarm but is only because the detenu was successful in obtaining

anticipatory bail/bail from the courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the detenu, there can be no doubt that the harm, danger or alarm or feeling of insecurity among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is make-believe and totally absent in the facts of the present case.

32. On the facts of this case, as has been pointed out by us, it is clear that at the highest, a possible apprehension of breach of law and order can be said to be made out if it is apprehended that the detenu, if set free, will continue to cheat gullible persons. This may be a good ground to appeal against the bail orders granted and/or to cancel bail but certainly cannot provide the springboard to move under a preventive detention statute. We, therefore, quash the detention order on this ground.

14. In *Sama Aruna v. State of Telangana* [*Sama Aruna v. State of Telangana*, (2018) 12 SCC 150 : (2018) 3 SCC (Cri) 441], a two-Judge Bench of this Court examined a case where stale materials were relied upon by the detaining authority under the Telangana Act of 1986. The order of detention pertained to incidents which had occurred between nine and fourteen years earlier in relation to offences involving a criminal conspiracy, cheating, kidnapping and extortion. This Court held that a preventive detention order that is passed without examining a live and proximate link between the event and the detention is tantamount to punishment without trial. The Court held: (SCC p. 158, para 17)

“17. We are, therefore, satisfied that the aforesaid detention order was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. 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. See *G. Reddeiah v. State of A.P.* [*G. Reddeiah v. State of A.P.*, (2012) 2 SCC 389: (2012) 1 SCC (Cri) 881] and *P.U.*

*Iqbal v. Union of India [P.U. Iqbal v. Union of India, (1992)
1 SCC 434: 1992 SCC (Cri) 184] .”*

- 12.** Having regard to what has been said hereinbefore and taking into consideration the ratio laid down by the judgments of the Supreme Court referred to hereinabove, this Court is satisfied that the petitioner has succeeded in proving his case as a result whereof the impugned order of detention, being not in consonance with the statute and the law on the subject, deserves to be quashed.
- 13.** Viewed thus, the petition is allowed and detention order No. 07/DMP/PSA/25 dated 30.04.2025, District Magistrate, Pulwama—respondent No. 2 herein, whereby, one *Sajad Ahmad Bhat @ Baaber S/o Abdul Ahad Bhat R/o Drabgam, Tehsil Rajpora, District Pulwama, was detained*, is quashed and the respondents are directed to release the detainee forthwith, if not required in any other case.
- 14.** **Disposed of.**
- 15.** Record produced by learned counsel for the respondents be returned to him against receipt.

(MOKSHA KHAJURIA KAZMI)
JUDGE

Srinagar

29.10.2025

“Mohammad Yasin Dar”

*Whether the Judgment is reportable: Yes/No.
Whether the Judgment is speaking: Yes/No.*