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

**HCP No. 113/2025**

*Reserved on:* 04.06.2026  
*Date of pronouncement:* 01.07.2026  
*Date of uploading:* 01.07.2026

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

**Harish Kumar Alias Shally,**

Aged 42 years

S/o Narinder Kumar

R/o Ward No. 6, Billawar

District Kathua

Through Brother

Rahul Sharma, Age 39 years

S/o Narinder Kumar

R/o Ward No. 6, Billawar

District Kathua.

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

Through: Mr. Sachin Gupta, Advocate with  
Ms. Radhika Gupta, Advocate.

**vs**

**01. UT of Jammu and Kashmir** through  
Principal Secretary Home Department,  
Civil Secretariat, Jammu.

..... Respondent(s)

**02. District Magistrate, Kathua.**

**03. Senior Superintendent of Police,**  
Kathua.

**04. Superintendent, District Jail,**  
Rajouri.

Through: Mr. Suneel Malhotra, GA.

**CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

**JUDGMENT**

**01.** Challenge in this petition has been thrown to detention order dated  
22.07.2025 passed by respondent No. 2-District Magistrate, Kathua,

["the detaining authority"] whereby petitioner came to be detained and lodged in District Jail, Rajouri.

**02.** As factual matrix of the case would unfurl, SSP, Kathua ["the recommending officer"] vide his communication dated 07.07.2025, describing the petitioner a hardcore criminal and a history-sheeter of district Kathua, submitted a dossier to the detaining authority, whereby he furnished details of following crimes against him:

- (i) FIR No. 48/2016 under Sections 307/34 RPC, 4/27 Arms Act of P/S Billawar.
- (ii) FIR No. 42/2017 under Sections 307/341/323/34 RPC, 3/25 Arms Act of P/S Hiranagar.
- (iii) FIR No. 63/2017 under Sections 307/458/147/323 RPC, 4/25 Arms Act of P/S Nowabad.
- (iv) FIR No. 71/2025 under Sections 307/115(2)/351(3)/352(2) BNS of P/S Hiranagar.
- (v) Preventive action under Section 39/128 BNSS of P/S Rajbagh dated 15.06.2025.

**03.** According to the recommending officer, since petitioner was continuously involved in organised criminal activities over an extended period and has closed association with hardcore and notorious criminals, his conduct was prejudicial to the maintenance of public order.

**04.** On the basis of aforesaid dossier, the detaining authority has come to conclude that since legal action against the petitioner under substantive laws of the land has not proved fruitful in deterring him from indulging in repeated criminal acts and despite a close surveillance through history sheet, he has failed to mend his criminal activities and has become a threat to the maintenance of the public

order, it was imperative to detain him under the provisions of Public Safety Act, 1978 [“PSA”, for short].

**05.** Petitioner is aggrieved of the impugned order *inter alia* on the ground that his detention apart from being illegal and arbitrary in nature, is legally flawed as the provisions enshrined in Article 22(5) of Constitution of India have been flagrantly violated. It is contention of the petitioner that grounds of detention, those were furnished to his brother were written in English language, he is not well versed with.

**06.** It is urged by the petitioner that the sole basis for detaining him is multiple FIRs registered against him, whereas he has been bailed out in all the FIRs by the competent Courts and investigation in several cases was under progress. In such a scenario, according to the petitioner, his detention is an abuse of the process of law and amounts to curtailment of his liberty, which is intrinsic to Article 21 of the Constitution of India. The grounds of detention, according to the petitioner, are vague, irrelevant and non-existent, based on extraneous considerations.

**07.** Petitioner is aggrieved of the impugned order *inter alia* on the following grounds:

(a) That the impugned order of detention has been passed in a casual manner without application of mind. The grounds of the impugned order does not even remotely suggest that the activities as well as liberty of the petitioner is required to be curtailed or restrained for maintenance of law and order. The sole basis for the detention of the petitioner is that the petitioner has been arrayed as an accused in false and

frivolous FIR's, however, the respondent No. 2 did not accord due consideration to the fact that the FIR's have been lodged only at the behest of certain vested interests and the petitioner has been falsely implicated in the said FIR's. Moreover, the petitioner has already been admitted to bail by competent Court of law time and again, however, the detaining authority has not taken the same into account. The omission on the part of the detaining authority to give due emphasis to the fact that the petitioner has been time and again admitted to bail gives a clear presumption that the detention order has been passed without application of mind and on the basis of official records which are contrary to the grounds of detention.

(b) That the involvement of the petitioner in various FIR's does not in any manner establish a live link with the detention order passed by respondent No. 2. It is submitted that the FIR's wherein challan has been presented before competent Court of law were lodged in the year, 2016, 2017 and the same does not have any nexus of proximity with the grounds of detention. Moreover, the FIR registered in the year, 2025, it is to be stated here that the petitioner was admitted to bail and the investigation of the said case is still going on and there is nothing material on record so as to conclusively establish the alleged guilt of the petitioner. Therefore, the detention authority has gravely erred in curtailing the liberty of the petitioner which as per the Apex Court is not only precious but cannot be infringed upon in a casual manner as done in the instant case at hand. The activities of the petitioner as relied upon by the respondent No. 2 does not in any manner endanger the life and liberty of fellow citizens. Moreover, the alleged activities of which the petitioner has falsely been accused of does not in any manner create any

nuisance or threat to law and order and it is not in any manner disturb the public order at large, therefore, the detention order is liable to be set aside outrightly.

(c) That the detention order is vitiated and also suffers from non-application of mind as it does not specify the period of detention of the petitioner. The grounds of detention only states that the detention is for the maximum period which is impermissible under the law governing the preventive detention. The detaining authority cannot be permitted to fix the period of detention at its own whims and fancies, discretion as if to detain the detenu for some ulterior motives. In the present case, the detention order reeks of ulterior motives actuated with malafides at the behest of political elements. The impugned order of detention as such is contrary to the Public Safety Act and is liable to be quashed.

(d) That the preventive order and the grounds of detention have not been served upon the petitioner in the due course of time and there was a substantial delay in providing the same to the brother of the petitioner. The brother of the petitioner has collected the present detention order and the grounds from the concerned police station with great efforts. The non-communication of the grounds of the detention order and serving upon the detention order to the petitioner has rendered the passing of the detention order and consequent proceedings nullity, illegal and as such liable to be quashed. That due to the inordinate delay on the part of the official respondents in serving the impugned detention order, the representation could not be made by the petitioner to Government against the order of detention and the same tantamount to violation of the fundamental rights of the petitioner, nor the petitioner was made aware in the local

language, Hindi/Dogri to make representation to the Advisory Board. *The copy of the impugned detention order is enclosed herewith and marked as Annexure-I*, which though, has been addressed to the petitioner but the same has been forwarded to the brother of the petitioner which clearly substantiate the submission of the petitioner that neither the detention order has been properly executed nor any reasonable opportunity has been provided to the petitioner to make the requisite representation in this behalf.

- (e) That the impugned detention order has not been approved by the Advisory Board under the Public Safety Act (PSA) as such the detention is liable to be quashed.
- (f) That the respondent no.2 in its order as exercised the powers under Section 8 of the Act and directed the petitioner to be detained in the District Jail, Rajouri and purport reason in the detention order is that alleged activities in which the petitioner is alleged to be involved are highly prejudicial to maintenance to the public order. The petitioner is astonished to see that respondent no.2 failed to appreciate that the FIRs mentioned in the detention order do not fit within the ambit of the section 8 of the Act. The public order as per the book Supreme Court on words & Phrases by Justice R P Sethi is asfollows:

... **“Public order”**.

*Public order is synonymous with public safety and tranquillity it is the absence of disorder involving which is of local significance in contradistinction to national upheavals which as revolution, civil strife, war, affecting the security of the state. Public order is disturbed, must lad to public disorder. They can be dealt with under the pouters to maintain law but not public disorder. This order is no doubt prevented by the maintenance of law and order also but disorder is a broad*

*spectrum, which include at one end small disturbance and at the other the most serious and cataclysmic happenings. Dr. Ram Manohar Lohia V/s State of Bihar and Ors (1966) 1 SCR 709.*

*Public order" is what the French call order public and is something more than ordinary maintenance of law and order. The test to be adopted is determining whether an act affects law and order of public order, is: Does it lead to disturbance of the public order or it does affect merely an individual living the tranquillity of the society undisturbed. Kanu Biswas V/s State of W.B AIR 1972 Sc 1656.*

*" Public order: is the even tempo of the life of the community taking the county 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. The French distinguish law and order and public order by designating the latter as order public. The latter expression has been recognized as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in writ petition no 179 of 1968 drew a line of demarcation between the serious and aggravated forms of breaches of public order, which affect the community or endanger the public interest at large from minor breaches of peace, which do not affect the public at the large. The analogy is useful but not to be pushed too far. A large number of acts directed against the person or individuals may total up in to a breach of public order. It is always a question to ask is: Does it lead to disturbance of the current of life of the community so as to*

*amount disturbance of the public order or does it affect merely and individual leaving the tranquillity of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another. Arun Gosh V/s State of W. B. (1970) 1 SCC 98.*

- (g) That in all the FIRs, petitioner is either bailed out or the matters are still under investigation. It is really strange that how the respondent no.2 has recorded satisfaction in the present case, if at all the petitioner has violated various provision of Panel Code and attracts the punishment under the Ranbir Penal Code, Indian Penal Code or Bharatiya Nyaya Sanhita only, taking recourse the preventive detention laws would not be warranted and cannot be substituted for ordinary law, hence the detention order being violative of Article 21 and Article 19 and liable to be set-aside.
- (h) That the respondent no.2 has relied upon the FIRs registered in the year 2016, 2017. It is submitted that the cases registered are at their fag end and in the case registered on the basis of FIR 42/2017 under Sections 307 /341 /323 /34 RPC, 3/25 Arms Act, at Police Station Hiranagar, the charge stands altered and the misleading fact was brought before the respondent no.2 by respondent no.3 to arrive at a wrong conclusion, similarly the respondent no.2 did not even bother to find out the stage of trial and to have a report from the Public Prosecutor about the pace of prosecution and also the likelihood of conviction. It is further submitted that the respondent no.2 did not even bother to examine the statement of the witnesses deposed in the court to have an overall view of the matter, the perusal of the detention order dated 22.07.2025 would reflect that the respondent no.2 has acted in a mechanical manner and has only stamped the

recommendation of the respondent no.3 without application of mind and without seeking clarification of the above-said position stated hereinabove.

- (i) That the petitioner has not been supplied with the copies of the FIRs, chargesheets till date despite the fact that the impugned detaining order has been passed by the official respondent no.2 in reference to those FIRs and chargesheets, however, the respondent no.2 did not bother to serve the copies of the said FIRs and Chargesheets on the petitioner.
- (j) That it is further submitted that the petitioner was never supplied with the documents relied by the detaining authority nor has been the detention order read over to the petitioner, the petitioner is only in possession of the documents annexed with the petition and neither the copies of the FIRs nor chargesheets have been provided to the petitioner . The petitioner is not able to understand what has become the basis for passing the present detention order merely on the FIR numbers and no substantial material is relied upon by the detaining authority, this is the case of sheer non application of mind on the part of detaining authority and due to non-compliance of the procedure on the part of the official authorities, the petitioner could not make representation before the official authorities in the due course of time.
- (k) That the petitioner till date has not been made understand why he has been detained, moreover, it is relevant to note that the service of the documents upon the brother of the petitioner in English was no sufficient compliance with the requirement contained in Article 22(5) as neither the brother of the petitioner nor the detenu understands the grounds as the same are in a language which neither the petitioner nor his brother understands.

- (l) That it has been held in *Surjeet Singh versus Union of India* that service of grounds in English was not sufficient compliance with the requirement contained in Article 22(5). Moreover, if the grounds are explained verbally to the detenu and nothing in writing is left with him in a language he understands, it has been held that the purpose of Article 22(5) is not served. However, in the instant case, the official respondents have not even bothered to explain the grounds of detention to the detenu in the language he understands and the due procedure stipulated in law has not been complied with.
- (m) That in *Lallubhai Jogibhai Patel Versus Union of India*, the detenu did not know English but the grounds were drawn in English and the detaining authority stated that the Police Inspector, while serving the grounds of detention to the detenu, fully explained the grounds in Gujarati, which he could follow, but no translation of the grounds in Gujarati was given to him, it was held that there is no sufficient compliance of Article 22(5). The detenu in the instant case has not been made to understand the detaining order as well as the grounds of detention in the language the detenu comprehends.
- (n) That the impugned FIRs which have formed the basis for the respondent no.2 to detain the petitioner were registered way back in the year 2016, 2017 and the petitioner has been bailed out by the competent court of law. It is relevant to note that the petitioner has never absconded and has also never violated the bail conditions. Moreover, the official authorities have never sought for the cancellation of the bail of the petitioner before the competent court of law and therefore, one fails to understand as to what formed the basis for the respondent no.2 to pass the impugned detaining order. Also,

it is relevant to note that the alleged preventive action against the petitioner cannot form the basis to detain the petitioner and curtail the liberty of the petitioner, therefore, in the present facts and circumstances of the case, the detaining order suffers from serious recons of law and is liable to be quashed.

(o) That Right to liberty as guaranteed under Article 21 of the constitution is an intrinsic right. The said exception granted to the concerned authorities to pass preventive detention but while passing such orders, the authority concerned is required of a person and such power shall be exercised in a manner which may have the trappings of depriving a person of the guaranteed liberty. In short an exceptional case has to be made out for passing the preventive order but while doing so procedural safeguards are to be respected. Breach in observing the procedural safeguards gives right to the detenu to claim that he has been prejudiced as his liberty has been curtailed de hors the law. In the present case the procedural safeguards have been flouted by the authority, the petitioner was never supplied with the material relied by the District Magistrate for invoking PSA against the petitioner. Moreover, the detention order and grounds were never read over and explained to the petitioner neither by the District Magistrate nor by the Superintendent.

(p) That in the case in hand the respondent no.2 has recorded the satisfaction for passing the detention order. The question whether the pre-judicial activities of the petitioner necessitating to pass the order of the detention is approximate to the time when the detention order is made or live link between the pre-judicial activities. In the present case, there is an undue and long delay between the pre-judicial activities and passing of order of detention. The bare

scrutiny of order impugned reflects that the respondent No. 2 has not satisfactorily explained such delay nor any explanation is given as to why such delay has occasioned. As such the impugned order is liable to be set-aside.

- 08.** The plea has been opposed on the other side by the respondents, primarily on the ground that none of the legal, constitutional or statutory right of the petitioner has been violated. According to the respondents, detention of the petitioner was ordered after due consideration of the dossier received from SSP, Kathua, whereby he was continuously and repeatedly found involved in criminal activities such as attempt to murder, illegal possession of weapons, etc. for the past several years, which was prejudicial to the maintenance of public order and tranquillity. It is contended that the material submitted by the sponsoring authority showed a continuous pattern of conduct on the part of the petitioner to threaten law and order.
- 09.** It is contended by the respondents that the grounds of detention, the detention order and all the relevant documents, comprising of total 85 leaves, were not only read over and explained to the detenu in the language which he understood, but his signatures as a token of receipt were also obtained from him. The petitioner and his father namely Narinder Kumar were informed about his detention and the grounds on which he came to be detained. The detention of the petitioner was ordered after due consideration of the dossier received from SSP, Kathua. All the norms were followed by the detaining authority while

detaining him under PSA. It is contended that despite registration of multiple FIRs against him, petitioner did not mend his ways and rather continued in repeated anti-social activities those were highly prejudicial to the maintenance of public order. Detention was carried out in compliance with the provisions of PSA. He was informed about his right to make representation to the Government against his detention and the Home Department vide its communication dated 18.08.2025 has intimated the detaining authority that after considering representation received on behalf of the detenu, same was found without merits. The said decision was endorsed to Superintendent District Jail, Rajouri, who vide his communication dated 19.08.2025 has informed the detenu about disposal of his representation. The Home Department vide Government order dated 25.07.2025 has approved the impugned detention order dated 22.07.2025 and thereafter confirmed the same vide order dated 18.08.2025, whereby petitioner was directed to be detained for a period of three months in the first instance from the date of detention i.e., 25.07.2025, which period came to be extended under law from time to time.

10. Respondents have prayed for dismissal of the petition.
11. The petitioner after filing of counter affidavit by the respondents has come forward with the rejoinder stating *inter alia* that he is suffering from mental ailments and was diagnosed with depression. He was admitted in hospital for a brief period and was receiving medical

treatment prior to his detention on 22.07.2025. His medical condition worsened during the period of his detention; he was provided alternative medicines, which are having severe impact to his mental health and Superintendent of concerned jail was even directed by this Court vide order dated 19.01.2026, to ensure proper medical treatment to him and submit a report. Apart from the health ground urged by the petitioner, the rejoinder submitted by the petitioner is nothing but a copy paste of the grounds urged in the memo of petition.

12. Having heard rival contentions of the parties, I have given my thoughtful consideration to the facts and circumstances obtaining the case and the legal position attending the field.
13. A perusal of the record reveals that detention of the petitioner is fundamentally flawed for the simple reason that detaining authority hastened to pass the impugned order without waiting for the outcome of the preventive measures initiated against him.
14. A perusal of the record reveals that preventive action came to be initiated against the petitioner with respect to an incident of 15.06.2025 and impugned order of detention came to be passed against him on 22.07.2025 i.e., within 38 days from the preventive measure initiated in Police Station, Rajbagh.
15. Chapter-IX BNSS deals with security for keeping peace and for good behaviour and an Executive Magistrate in terms of Section 129 BNSS, on receipt of information within his local jurisdiction, has

been vested with the power to require habitual offenders, such as, robbers, thieves or those involved in kidnapping, extortion, forgery or protecting thieves or breaching public peace and those who habitually commit or abet offences related to Drugs and Cosmetics Act, Foreigners Act, Customs Act and laws relating to hoarding, profiteering or corruption or the persons deemed so “desperate and dangerous” that there being at large without security is hazardous to the community, to show cause as to why he/they should not be ordered to execute a bail bond for good behaviour up to 03 years. Pertinently, if immediate measures pending inquiry are imperative, Magistrate has also been vested with the jurisdiction to require an individual to execute an interim bond under sub-Section 3 of Section 135.

16. The preventive measures within the criminal justice framework came to be inserted by the legislature in its wisdom to prevent recurring criminal conduct of the offenders with an avowed object to protect public order by requiring the repeat offenders to show-cause as to why they be not asked to execute a bond for good behaviour. The preventive detention, on the other hand under PSA is a separate administrative measure and the fact that an individual is facing security proceedings under BNSS does not legally prevent the executive from invoking provisions of PSA. In other words, both the measures can co-exist.

17. Nobody can take an exception to the settled proposition of law that security of the state and maintenance of public order is absolute domain of the administration and subjective satisfaction of the detaining authority to detain a person under PSA is not subject to objective assessment of the writ Court. However, when a person is facing preventive measures and has been required to execute a bond for good behaviour under BNSS, the detaining authorities under PSA are obliged to independently apply mind and demonstrate as to why security proceedings were not sufficient to deter the offender from engaging in the activities prejudicial to the public order because conduct of the authority, exercising such a vast jurisdiction is required to be in consonance with the concept of justice and fairness and in tune with the concept of fundamental right of life and liberty captured in Article 21 of the Constitution of India.

18. Hon'ble Supreme Court in **Ameena Begum vs. The State of Telangana and Ors; 2023(4) Crimes 292** observed that any order of a detaining authority evincing that it runs beyond his powers, as are actually conferred, would not amount to a valid order made under the preventive detention laws. It was held that when constitutional courts are called upon to test the legality of detention orders they must examine the following 10 points:

- (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 authorized 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.”

**19.** If present case is approached with the aforesaid principle of law, what manifests is that impugned order is not only mechanical in nature but contains arbitrary reasoning and ignores material facts on the record.

Neither detaining authority has demonstrated any “compelling reason” to invoke PSA against the petitioner nor reflected an independent application of mind as to why security proceedings initiated under BNSS were proved insufficient to prevent him from engaging in activities prejudicial to the maintenance of public peace, tranquillity and public order. The grounds of detention after a passing reference to the security proceedings against the petitioner is ominously silent about further details as to whether petitioner at any point of time was served upon a notice by the Executive Magistrate to show cause why he should not be ordered to execute a bail bond for his good behaviour not exceeding 03 years. There is also nothing in the record to suggest that petitioner was required by the Magistrate to execute an interim bond as an immediate measure under sub-Section 3 of Section 135 BNSS and if he executed any such bond whether he violated the conditions thereof. It needs a specific mention that detention of an individual follows non-compliance of the final bond executed under Section 136 BNSS and ordinarily it happens only after a final order is passed following a complete inquiry. Preventive detention under PSA cannot be invoked unless there is emergency based justification which ordinary law of the land cannot address.

- 20.** For the foregoing reasons, since impugned order is found fundamentally flawed and does not sustain on this ground alone, rest of the grounds urged in the memo of petition are not required to be evaluated. Hence, present petition is allowed and impugned order is

set aside. Respondents are directed to immediately release the petitioner from detention provided he is not required in any other case.

21. Disposed of.

**(Rajesh Sekhri)**  
**Judge**

**Jammu**  
01.07.2026  
*Sushant*

Whether the judgment is speaking? **Yes/No**  
Whether the judgment is reportable? **Yes/No**

