HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 99/2025

Reserved on: 26.02.2026
Date of pronouncement:06.03.2026
Date of uploading:06.03.2026

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

Shabir Shah, age 22 years S/o Bagh Hussain Through his mother Gulzara Begum age 56 W/o Bagh Hussain are resident of chamanvas Banihal District Banihal A/P Malani Rajpura District Samba. ….. Petitioner(s)/Appellant(s)

Through: Mr. Rahoof Khan, Advocate.

vs

01.Union Territory of Jammu and Kashmir, through Commissioner/Secretary to Government Home Department Civil Sect. Jammu. …. Respondent(s)

02.The District Magistrate, Samba.

03.The Senior Superintendent of Police, Samba.

04.The Superintendent of Central Jail, Kot Bhalwal, Jammu.

Through: Mr. Bhanu Jasrotia, GA.

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

JUDGMENT

01. Challenge in this petition has been thrown to a detention order No. 04/PSA of 2025 dated 29.05.2025, passed by respondent No. 2-District Magistrate, Samba, under Section 8 of Public Safety Act, 1978 ["PSA"], vide which petitioner came to be detained.

02. Background facts of the case are that Senior Superintendent of Police, Samba, vide his communication dated 26.05.2025, submitted a dossier regarding illegal activities of the petitioner and recommended his detention under PSA. It was alleged that petitioner being involved in a series of criminal activities was a threat to life and liberty of people.

03. The sponsoring authority recommended detention of the petitioner on the basis of 05 criminal cases registered against him viz; FIR No. 35/2021 under Section 188 IPC and 11 PCA Act of P.S. Ghagwal, FIR No. 73/2021 under Section 188 IPC and 11 PCA Act of P.S. Ghagwal, FIR No. 300/2022 under Section 188 IPC and 11 PCA Act of P.S. Samba, FIR No. 26/2024 under Section 188 IPC, 11 PCA Act, 03 PDPP, 50/52/54 of Animal Transport Act, 1978 of P.S. Ghagwal and FIR No. 24/2025 under Section 223 BNS, 11 PCA Act, 03 PDPP and 50/52/54 Animal Transport Act, 1978 of P.S. Ghagwal.

04. The detaining authority-respondent No. 2 on perusal of the dossier came to the conclusion that involvement of the petitioner in 05 FIRs for the offences mentioned therein itself means that he is not afraid of the legal course of action against him. According to the detaining authority, petitioner is a habitual offender and incorrigible criminal, having no fear of law and it was apprehended that there was every likelihood that activity of the petitioner may lead to disturbance of public order and tranquillity out of communal tension. The detaining authority is of the view that petitioner being a habitual bovine smuggler, his activities tend to hurt religious feelings of a community. According to respondent No. 2, motive of the petitioner is not only to create enmity between communities, but to form a deep rooted nexus, by encouraging criminal minded people of the area to join him in bovine smuggling in an organized manner in the area. On the basis of his subjective satisfaction, impugned order came to be passed by the

detaining authority, whereby petitioner was directed to be detained and lodged in jail under PSA.

05. The petitioner is aggrieved of the impugned order of detention *inter alia* on the following grounds:

(a) That the impugned detention order is bad in the eyes of law.

(b) That, the detention order so passed against the petitioner was not addressed to detune which shows the callousness and non-application of mind on the part of the detaining authority on this ground the detention order is required to be quashed.

(c) That the grounds of detention have not been explained to the petitioner /detenue in the language which he understands, as he cannot read and understand the English language, and he can only understand Urdu language. Hence the impugned order is liable to be set aside.

(d) That the detaining authority has not supplied all the material documents to the petitioner including the dossier, so that he can make effective representative against the order of detention. Hence the impugned order is liable to be set aside.

(e) It is pertinent to mention here that all these FIRs/cases are based on false and frivols allegations, out of which two are still under investigation, further the petitioner is not involved in the above said FIR referred in the detention order. That as for as the allegations levelled against the petitioner in the FIRS referred in the detention order are concerned, the same is mater of trial, which is still pending before the concerned Court of law, and the petitioner shall be presumed innocent until proven guilty. Hence the detention order is liable to be quashed at the earliest.

(f) That petitioner/detenue has been admitted to bail in FIR No.26/2024 vide order dated 04-03-2024 passed by the Court of Ld. Additional Special Mobile Magistrate Samba and in FIR

No.24/2025 vide order dated 15-02-2025 passed by the Court of Ld. CJM Samba, but the detaining authority has not shown any awareness of this material fact.

(g) That the fact that the detenue/petitioner is already facing trial and complying with the bail conditions makes his preventive detention under the PSA wholly unjustified and unlawful. The Supreme Court has consistently held that detention under preventive detention laws cannot be used to subvert the ordinary law of the land. Once the competent court has granted bail and the detenue is facing trial, the PSA cannot be invoked to curtail his personal liberty based on the same set of allegations. This amounts to a gross violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

(h) That the detaining authority has passed the detention order without mentioning any compelling reason for the preventive detention of the petitioner, when the petitioner was admitted to bail by the competent Court as aforesaid. The respondents have not moved any application for cancellation of the bail orders, in case the petitioner was misusing the concession of the bail, but straightway the detaining authority has invoked the extraordinary law to detain the petitioner, when the remedy under ordinary law is available and despite the fact that the petitioner has not violated any condition of bail and has fully cooperated with the investigation agency, still the detaining authority has passed the detention order in a mechanical manner, which is against the well-established principal of law.

The Hon'ble apex Court in case titled CRIMINAL APPEAL NO. 2706 OF 2023 [ARISING OUT OF SLP (CRIMINAL) NO. 8510 OF 2023] AMEENA BEGUM versus THE STATE OF TELANGANA & ORS. Held in para 51 as under:-

We are of the opinion that the aforesaid excerpts from the Detention Order lay bare the Commissioner's attempt to transgress his jurisdiction and to pass an order of detention, which cannot be construed as an order validly made under the Act. The quoted observations are reflective of the intention to detain the Detenu at any cost without resorting to due procedure. **It is neither the case of the respondents that the Detenu had not complied with the terms of the notice issued under section 41-A of the Cr. PC, nor has it been alleged that the conditions of bail had been violated by the Detenu. It is pertinent to note that in the three criminal proceedings where the Detenu had been released on bail, no applications for cancellation of bail had been moved by the State. In the light of the same, the provisions of the Act, which is an extraordinary statute, should not have been resorted to when ordinary criminal law provided sufficient means to address the apprehensions leading to the impugned Detention Order. There may have existed sufficient grounds to appeal against the bail orders, but the circumstances did not warrant the circumvention of ordinary criminal procedure to resort to an extraordinary measure of the law of preventive detention.**

(i).That there is no specific allegation against the petitioner in the impugned order of detention, even the detaining authority has not drawn any subjectively satisfaction as aforementioned, and the impugned detention order has been passed in a very casual and mechanical manner, without caring about the constitutional as well as statutory safeguards provided for the protection of rights of the detenue/petitioner in the Constitution of India as well as in the **PSA**, thus it vitiates the detention order in the eyes of law.

(j) That Article 22(5) of the Constitution mandates that the detenue must be informed of the grounds of detention as soon as possible and must be afforded the earliest opportunity to make a representation against the detention. That in the present case: The grounds of detention were furnished to the detenue in a vague and generalized manner, lacking the specific material facts that justify his detention. The detenue was not provided with adequate opportunity to make an effective representation before the detaining authority. The failure to furnish specific grounds with clear particulars has severely prejudiced the detenue's ability to contest the detention. The Supreme Court has held that non-communication of the relevant facts and failure to provide a reasonable opportunity to represent against the detention vitiates the detention order, rendering it unconstitutional and liable to be quashed.

(k) Preventive detention under the PSA is intended to be an exceptional measure, employed only when there is a direct and immediate threat to public order. In the case petitioner/detenue, the allegations in the FIRs relate to a criminal offense that is already under trial. The detenue’s actions, if proven, relate to law and order rather than public order as required by the PSA.

(l) The distinction between public order and law and order has been clarified in several judicial pronouncements, including Ram Manohar Lohia v. State of Bihar. The Supreme Court has emphasized that mere involvement in a criminal case does not justify preventive detention unless it is established that the individual’s actions have a serious and immediate impact on public safety or public order. In the present case, the state has failed to demonstrate such a direct nexus.

(m) Even assuming without admitting that there were any concerns related to public safety, the continued detention of detenue is wholly disproportionate to any potential threat he may pose. Given that the detenue is already facing trial and subject to judicial oversight, preventive detention is an extreme and unnecessary measure. The courts have repeatedly held that preventive detention cannot be used as a substitute for the regular criminal process when less restrictive means is available.

(n) That there is total non-application of mind on the part of detaining authority, while passing the order of detention.

(o) That the order of detention has been passed in a mechanical manner and did not meet the requirement of **the Public Safety Act 1978.**

(p) The detention order infringes upon the fundamental rights of the detenue as guaranteed under Article 21 and Article 22 of the Constitution of India. The preventive detention is based on grounds that are irrelevant to the object and purpose of the PSA 1978 leading to an arbitrary restriction on the detenue's personal liberty without sufficient legal backing.

(q) That the detaining authority has merely acted as a post office which is unknown to law. In catena of judgments of this Hon'ble Court and the judgments passed by the Hon'ble Supreme Court, the detaining authority is required to draw the satisfaction for passing the detention order and the detention order cannot be a replica/verbatim of the dossier.

(r) That, the imposition of what is in effect a substantial term of imprisonment by the exercise of executive discretion without trial has to be imposed very cautiously.

(s) That the object of detention is not punitive but preventive. The law of detention is to be strictly construed. Any deviation

from the laws hampers the rights of the detenue and is violative of the safeguards provided under Article 22 of the Constitution of India.

(t) That the petitioner has not created any fear amongst the locals and is not involved in any activities which can be highly considered as prejudicial to the maintenance of peace and public order.

06. The respondents, *per contra* has opposed the present petition *inter alia* on the ground that none of the fundamental, legal or statutory right of the petitioner has been violated or infringed. The detaining authority derived subjective satisfaction on the basis of the dossier submitted by SSP, Samba that petitioner was involved in a number of criminal cases and his activities were prejudicial to the safety and security of the public and he was threat to the maintenance of public order. The petitioner and his father were informed by the detaining authority about his detention and the grounds on which impugned detention order was passed.

07. It is also contended that petitioner was provided with the entire material comprised of total 50 pages including the order of detention and copy of the dossier against a proper receipt. The contents of the order and grounds of detention and related documents were read over and explained to the petitioner in the language which he understood fully and his signatures as a token of acknowledgement were received. All the documents were handed over to the petitioner to enable him to make representation to the government, if he so desired. It is contention of the respondents that impugned order has been passed in compliance with the provisions of PSA. The Home Department, vide communication dated 01.08.2025, has intimated the detaining authority that after considering the representation dated 28.06.2025 received on behalf of the petitioner, the same was found

devoid of merit. A copy of the same was endorsed to Superintendent, Central Jail, Kot Bhalwal, Jammu, to inform the petitioner regarding disposal of representation.

08. It is contention of the respondents that on perusal of the material record submitted by SSP, Samba, and application of mind and having regard to the requirements of law, the detaining authority felt necessary to detain the petitioner under PSA because he was involved in repeated criminal activities prejudicial to the safety and security of the people and threat to the maintenance of public order. Impugned detention order came to be approved by the Home Department, vide government order dated 02.06.2025 and was confirmed by it on 27.06.2025. The detenue initially came to be detained for a period of three months, which was extended from time to time. Respondents have prayed for dismissal of the petition.

09. Heard arguments and perused the detention record.

10. The petitioner, at the foremost has assailed the impugned order on the ground that detention order was not addressed to him, the grounds of detention were not explained to him in the language which he understands and the detaining authority did not supplied all the material documents to him including the dossier, so that he could make an effective representation against his detention.

11. It is categoric stand of the respondents in the counter affidavit that petitioner was provided with the entire material comprised of total 50 leaves, including the order of detention and copy of the dossier against a proper receipt. It is also stand of the respondents that detention order and grounds of detention and related documents were read over and explained to the petitioner in the language which he fully understood and his signatures in this respect were obtained. It is also stand of the respondents that all the documents were handed over to the petitioner, so as to enable him to make representation to the

government, if he so desired. A perusal of the detention record bears testimony to the contention of the respondents that upon execution of the impugned order, 50 leaves of documents came to be furnished to the petitioner against proper receipt. The contents of the order and grounds of detention and related documents are stated to have been read over and explained to him in the language which he understood fully and in this respect his signatures were also obtained. The detention record also reveals that petitioner was informed about his right to make representation.

12. The petitioner has not filed any rejoinder to refute the clear stand taken by the respondents in the counter affidavit that entire relevant material was furnished to him and the detention order and grounds of detention and related documents were read over and explained to him in his language, which he fully understood and put his signatures as a token of acknowledgement. Since respondents in the counter affidavit have denied allegations of the petitioner that detention order was not addressed to him, all the material documents including the dossier were not supplied to him and the grounds of detention were not explained to him in his language, the petitioner, in the circumstances was obliged to rebut the stand of the respondents by filing rejoinder affidavit, but he has not chosen to do so. Therefore, categoric stand of the respondents that not only the entire material comprised of 50 leaves was provided to the petitioner, but detention order and grounds of detention and related documents were read over and explained to him in the language which he understood so as to enable him to make an effective representation against his detention, remains unrebutted on the part of the petitioner, which implies that the detaining authority and the executing officer, in this respect, have complied with the statutory requirements and obligations on their part.

13. The next ground urged by the petitioner is that FIRs came to be registered against him on the basis of false and frivolous allegations. He was not involved in the said FIRs. He has been admitted to bail in all the FIRs. According to the petitioner, the very fact that he is facing trial and complied with the bail conditions makes his preventive detention under PSA wholly unjustified and unlawful. It is also contention of the petitioner that preventive detention laws cannot be used to subvert the ordinary law of the land and detaining authority has not spelt out any compelling reason for his preventive detention.

14. It is by far a settled proposition of law that preventive detention is a precautionary measure and this power can be exercised on reasonable apprehension. It may or may not relate to an offence. The basis of detention order is the satisfaction of the detaining authority with respect to reasonable probability of the detenue indulging in activities similar to his past conduct. In the present case, the sponsoring authority recommended detention of the petitioner on the basis of 05 criminal cases registered against him. It was alleged in the dossier submitted by SSP, Samba that petitioner being a habitual bovine smuggler, his activities tend to hurt religious feeling of a particular community. The detaining authority, on the perusal of the dossier has come to the conclusion that involvement of the petitioner in 5 FIRs, itself means that he is not afraid of the legal course of action against him and his motive is not only to create enmity between the communities but to form a deep rooted nexus by encouraging criminal minded people of the area to join him in bovine smuggling in an organised manner. Therefore, taking a wholesome view of repeated anti-social activities of the petitioner, the detaining authority found it imperative to detain him, with a view to prevent him from indulging in similar activities.

15. It needs a specific mention here that out of 5 criminal cases registered against the petitioner, he confessed his guilt in 3 cases, whereby he came to be convicted and fined by the competent Courts. Therefore, contention of the petitioner that he was involved in the FIRs on the basis of false and frivolous allegations is misconceived.

16. A five judge bench of Hon'ble Supreme Court in **Haradhan Saha vs. State of West Bengal & Ors; (1975) 3 SCC 198**, in a similar fact situation, has held that preventive detention has nothing to do with the commission of an offence by the detenu or any prosecution against him. It is clearly ruled by the Apex Court that preventive detention can be ordered before or during the prosecution and even with or without prosecution of a criminal case against the detenu. It can be made in anticipation. Preventive detention can be ordered even after discharge or acquittal of an accused. The position of law crystallized in **Haradhan Saha** is that pendency of a criminal case is no bar to order preventive detention and Article 14, in such cases, is inapplicable because preventive detention and prosecution are not synonymous.

Relevant excerpt captured in Paras 32 to 34 of the judgment for the ease of reference is extracted below:-

> ***"32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be, made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.***
>
> ***33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In***

preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.

34. The recent decisions of this Court on this subject are many. The decisions in Borjahan Gorey v. State of W. B., Ashim Kumar Ray V. State of W. B.; Abdul Aziz V. District Magistrate, Burdwan and Debu Mahato V. State of W. B. correctly lay down the principles to be followed as to whether a detention order is valid or not. The decision in Biram Chand v. State of U. P. which is a Division Bench decision of two learned Judges is contrary to the other Bench decisions consisting in each case of three learned Judges. The principles which can be broadly stated are these. First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances."

17. Pertinently, a similar view was expressed earlier by another constitutional Bench of Hon'ble Supreme Court in the **State of Bombay vs. Atma Ram Shridhar Vaidya; AIR 1951 SC 157.**

18. An identical view has been taken by Supreme Court in **Naresh Kumar Goyal vs. Union of India; (2005) 8 SCC 276:-**

> ***"It is trite law that an order of detention is not a curative or reformative or punitive action, but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperiling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. Preventive Detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so."***

19. The aforesaid enunciation came to be reiterated with approval by the Apex Court in **Union of India vs. Dimply Happy Dhakad; AIR 2019 SC 3248.**

20. It is evident from the afore-quoted observations of Hon'ble Supreme Court that pendency of prosecution against a detenu is no bar for the detaining authority to pass an order of preventive detention, and even discharge or acquittal of the detenu in a criminal case against him does not preclude the detaining authority from invoking precautionary jurisdiction under preventive detention laws. Therefore, contention of learned counsel for the petitioner that criminal prosecution could not be circumvented or subverted by resort to preventive detention is legally flawed for the simple reason that purpose of preventive detention is different from criminal prosecution. Discharge or acquittal or grant of bail to a detenu operates in a different fields. In a criminal prosecution, it is proof beyond reasonable doubt which is a paramount consideration, whereas in cases of preventive detention, what is necessary is subjective satisfaction of the detaining authority

that ordinary law of the land had failed to prevent and deter the detenu from indulging in similar activities. In preventive detention cases, the past act of the detenu serves as a material for drawing an inference about the future course of his probable conduct, as held by the Apex Court in **Haradhan Saha**. Therefore, preventive detention of a detenu cannot be held illegal merely because detenu has been bailed out in criminal cases against him and prosecution failed to move the concerned court for cancellation of his bail. If the object of detention is to prevent a habitual offender from re-offending in future, which may tend to create a law and order problem or disturb the public order and communal harmony, resort to preventive detention is perfectly justified.

21. The next ground urged by the petitioner is that the detaining authority has merely acted as a post office, which is unknown to law and it has not drawn subjective satisfaction. According to the petitioner, the impugned detention order being passed by the detaining authority in a casual and mechanical manner, without caring about his constitutional and subjective safeguards, is liable to be revoked.

22. The reference to 5 FIRs registered against the petitioner, out of which he has been convicted in 3 FIRs, with a clear detail to his past activities in the dossier as also in the ground of detention, infact reflects manifest awareness and application of mind on the part of the detaining authority before it proceeded to pass the impugned order. It

is apparent from the detention record and a perusal of the grounds of detention that detaining authority embarked upon to issue the impugned order on reasonable prognosis of the future behaviour of the petitioner based on his past conduct and attending circumstances.

23. Be that as it may, it is trite that high Court has a very limited scope to examine the grounds of detention and the sufficiency of material, relied by the detaining authority, in exercise of its writ jurisdiction. The high Court cannot sit in appeal and find fault with the subjective satisfaction derived by the detaining authority or substitute its own opinion when the grounds of detention are found precise, pertinent and proximate.

24. It is exclusive domain of the administration to ensure the maintenance of public order, peace and tranquility. Therefore, subjective satisfaction drawn by the detaining authority that ordinary law of the land has not proved sufficient to deter the detenue from indulging in anti-social activities time and again is not open to objective scrutiny by the high Court in exercise of its writ jurisdiction.

25. The next ground urged by the petitioner in the petition is that he was not provided with adequate opportunity to make an effective representation before the detaining authority. A perusal of the record, however reveals that petitioner has filed a representation dated 28.06.2025, which was duly considered by the Department of Home and it was found devoid of merit. The Home Department vide

communication dated 01.08.2025, intimated to the detaining authority with a copy to the superintendent of the concerned jail to inform the petitioner in this respect.

26. For the foregoing reasons, I do not find any illegality or infirmity in the impugned order. The grounds of detention, on the basis of which detention order came to be passed, are found unambiguous. The petitioner has been informed about the grounds of detention in the language which he fully understood. What weighed with the detaining authority while passing the impugned order was past activities of the petitioner and, his conviction in three cases on the basis of which the detaining authority came to the conclusion that petitioner was required to be placed under preventive detention in order to prevent him from indulging in similar activities.

27. For the foregoing reasons, present petition is **dismissed** and impugned order is upheld.

(Rajesh Sekhri)
Judge

Jammu
06.03.2026
Sushant

Whether the judgment is speaking? **Yes**
Whether the judgment is reportable? **Yes**