

**(2025) 09 J&K CK 0501**  
**In the Jammu And Kashmir High Court**  
**Case No : HCP No.55 Of 2025**

Riaz Malik

APPELLANT

Vs

UT of J&K

RESPONDENT

**Date of Decision :** 25-09-2025

**Acts Referred:**

Constitution of India, 1950 — Article 21, 22, 226

Jammu and Kashmir Public Safety Act, 1978 — Section 8, 8(3)

**Citation :** (2025) 09 J&K CK 0501

**Hon'ble Judges :** M A Chowdhary, J

**Bench :** Single Bench

**Advocate :** S H Rather, Dewakar Sharma

**Final Decision :** Dismissed

## Judgement

M A Chowdhary, J

1. Petitioner namely Mohd Riaz Malik S/O Faiz Akbar, R/O Village Azamabad, Tehsil Mandi, District Poonch (for short 'the detenu') has challenged the detention Order No.DMP/PSA/02 of 2025 dated 04.04.2025 (impugned order), issued by respondent No.2, District Magistrate, Poonch (hereinafter to be referred as "the detaining authority"), whereby he has been placed under preventive detention, in order to prevent him from acting in any manner prejudicial and detrimental to the maintenance of 'public order'.

2. Petitioner has raised many grounds to assail the impugned order. It is his contention grounds of detention are replica of police dossier; that the Detaining Authority has relied upon cases FIRs of the year 2013, 2017, 2019, 2020 and 2025 for passing the impugned detention order, in which petitioner stood acquittal in three cases/FIRs by the competent court of law; that neither all the documents were supplied to the petitioner nor the petitioner was informed about his right to make representation to the detaining authority or to the government; that the representation submitted by the petitioner was not considered by the

government. It is also contended that the allegations attributed to the petitioner in the grounds of detention may be a 'law and order' problem but do not qualify within the definition of 'Public Order' under Section 8 of the J&K Public Safety Act 1978. Lastly, it is prayed that the petition be allowed and the impugned detention order be set aside.

3. The respondent No.2, in his counter affidavit, has controverted the averments made in the petition and submitted that the detinue is a trouble monger enlisted as History sheeter, hardcore criminal, desperate character, and involved in serious criminal activities including assault, extortion, intimidation, interference in public duties including damage to the public property; that since petitioner has committed mischief, therefore, he has rightly been detained under preventive detention in terms of clause (b) of sub section (3) of Section 8 of J&K Public Safety Act, 1978; that the criminal activities of the petitioner are prejudicial to the safety and security of the public in general, as a result, maintenance of public order has become very difficult; that the normal law of land has not prevented the detinue from his illegal activities; that subjective satisfaction recorded on perusal of dossier and other material; that the petitioner was involved in serious offences as he cut off the water supply of the area; that the detention warrant along with grounds of detention was properly executed through SI Mohdinder Paul, I/C PP Sathra under proper acknowledgement of the detinue and he was fully made to understand the contents thereon in the language he understands; that the detinue was also informed that he can make representation to the Govt. as well as detaining authority against the detention order, if he so desires; lastly, it is prayed that the petition be dismissed and the impugned detention order be upheld as the same has strictly been passed, in view of mischief committed by him, in terms of the provisions of J&K Public Safety Act. The respondents have produced the detention records in order to lend support to the contentions raised in the counter affidavit.

4. Heard learned counsel for the parties at length, perused the detention record and considered.

5. Insofar as the plea raised by the detinue that the material relied upon by the detaining authority has not been supplied to him is concerned, the respondents disputed the same by asserting that the entire material like detention order, notice of detention, dossier of detention, copies of FIRs, statements of witnesses and other relevant documents was supplied to the detinue. As per record, the detinue received copy of Detention Order, Notice of Detention, Grounds of Detention, Dossier of Detention, Copies of FIRs, Statements of Witnesses and other documents related to detention (total 67 leaves) from executing officer SI Mohinder Paul, I/C PP Sathra in presence of Deputy Superintendent Central Jail, Jammu, which were read over in English and explained to the detinue in Hindi language, which he fully understood and in lieu of which his signatures were obtained on the execution report. In support of assertions made in the counter affidavit, the respondents have filed an affidavit of the Executing Officer on

record in this connection.

6. The grounds of detention clearly show that the detainee was involved in cases with serious offences of mischief and disturbing public order, registered at Police Station, Mandi, inasmuch as five FIRs viz. FIR No.65/2013; u/s 341/323 RPC, for assault on lady; FIR No.31/2019; u/s 458/147/148/427/382/323/342 RPC for trespass and assault; FIR No.4/2025; u/s 324(4), 3(5) BNS, 3 Public Property (Prevention of Damage) Act, 1958 for damaging the Azamabad Irrigation Khul (water channel); FIR No.69/2020; u/s 341/147/323 IPC for assault; and FIR No.56/2017 u/s 353/323/504 RPC for obstruction in performing the public duties to public officials.

7. Section 8(3) of Public Safety Act enumerates various prejudicial activities that would fall within the mischief of "acting in any manner prejudicial to the maintenance of public order". It includes within its fold prejudicial activities in the nature of promoting, propagating or attempting to create, feelings of enmity or hatred or disharmony on the ground of religion, race, community or region or the activities of making preparations for using or attempting to use or using or instigating, inciting, provoking or otherwise abetting the use of force where such preparation, using, attempting, instigating, inciting, provoking or abetting, disturbs or is likely to disturb public order. 'Acting in any manner, which is prejudicial to maintenance to public order', also consists of attempting to commit or committing or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment of a term extending to seven years or more where the commission of such offence disturbs, or is likely to disturb public order.

8. It is also shown in the grounds of detention that the impugned detention order is passed by the detaining authority, on the basis of dossier submitted by the SSP concerned, wherein 05 FIRs registered against the detainee at Mandi Police Station, showing the detainee's continuous involvement in criminal/anti-social activities without any respect of substantive law, thus, disturbing the peace and tranquility of the area and maintenance of law and order in District Poonch as the detainee has committed mischief by damaging the public utilities i.e. Irrigation Khul (water channel), thereby putting the tranquility of the area in jeopardy. Keeping in view the activities of the detainee, the Detaining Authority after due application of mind, by arriving at subjective satisfaction that detainee was required to be placed under preventive detention in order to prevent him from his prejudicial activities, issued the impugned order of detention, which cannot be found fault with.

9. It is settled proposition of law that this Court while exercising jurisdiction under Article 226 of the Constitution has a limited scope to scrutinize whether detention order has been passed on the material placed before it, and it cannot go further and examine the sufficiency of material. This Court does not sit in appeal over the decision of the Detaining Authority and cannot substitute its opinion over that of detaining authority when the grounds of detention are

precise, pertinent, proximate and relevant [See *State of Punjab v. Sukhpal Singh*, (1990) 1 SCC 35]. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. The order of preventive detention may be made before or during prosecution and the pendency of the prosecution is not a bar to an order of preventive detention and is also not a bar to prosecution. The power of preventive detention is different from punitive detention. In a prosecution, the accused is sought to be punished for his past acts, however, in preventive detention the past act is merely a material for drawing inference about future conduct of the detainee.

10. The aim of the preventive detention is not to punish a person for having done something but to intercept and prevent him from doing so. Hon'ble the Supreme Court in the case of *Naresh Kumar Goyal v. Union of India & Ors* [(2005) 8 SCC 276] and *Union of India & Anr v. Dimple Happy Dhakad* [AIR 2019 SC 3428] has held that "an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being, to prevent anti-social and subversive elements from imperiling welfare of the country or security of the nation from disturbing public tranquility or from indulging in illegal activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. 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." The law of preventive detention has direct bearing on the subjective satisfaction of the Detaining Authority. The subjective satisfaction of a Detaining Authority, whether to detain a person or not, is not open to the objective assessment by a Court. The Court while exercising power under Article 226 is not to act as an appellate forum to scrutinize the merits of the administrative decision to detain a person. The Court cannot substitute its own satisfaction for that of the authority concerned and decide whether its satisfaction was reasonable or proper, or whether in the circumstances of the matter, the person concerned should have been detained or not.

11. It is apt to mention that our Constitution undoubtedly guarantees various freedoms and personal liberty to citizens in our Republic, however, such freedoms guaranteed by the Constitutional mandate are not meant to be abused and misused so as to endanger and threaten the very foundation of our society. The larger interests of our nation as a whole and the cause of preserving for every person the guaranteed freedoms demands reasonable restrictions on the prejudicial activities of individuals who jeopardize the rightful freedoms of the rest of the society. The main object of preventive detention is the security of the State, maintenance of public order and of supplies and services essential to the community. Detention order, which has been issued by the detaining authority after arriving at subjective satisfaction, does not suffer from any legal infirmity as the grounds of detention are definite, proximate and free from any ambiguity. Furthermore, the detainee was duly informed of what weighed with the detaining

authority while passing the order of detention. The Detaining Authority has recorded its subjective satisfaction after considering all the material available, thus, none of the constitutional or statutory provision has been violated.

12. The contention on behalf of petitioner as advanced by his counsel that the representation dated 15.04.2025 filed by the detainee's brother on his behalf was not considered is concerned. The detainee has placed on record a copy of the representation sent by his brother through postal services on 15.04.2025 to Advisory Board constituted under the Public Safety Act. The representation, in the considered opinion of this Court, is either to be made to the District Magistrate who had passed the detention order or to the Government of Jammu and Kashmir in the Home Department who has to confirm the order passed by the District Magistrate concerned. The Detainee, instead of making representation to the concerned authorities, have chosen to send the same to the Advisory Board. The Advisory Board in the order passed by it which is part of the detention record produced by the respondents has remarked 'no representation seems to have been made by the detainee as no such representation is lying on the material before us'. Had the detainee moved the representation either to the District Magistrate or to the Home Secretary of the Government of Jammu and Kashmir, they would have either considered the representation at their own or to have forwarded the same along with reference to the Advisory Board. In such a situation, it can be said that the detainee has not preferred the representation to the concerned competent authority and has, thus, not availed the statutory/constitutional remedy despite being informed of his right of filing the representation either to the detaining authority or to the Government of Jammu and Kashmir.

13. As regards the contention that the documents supplied to the detainee were not read over and explained in the language he understands is concerned, the respondents have placed on record the execution report of the executing officer PSI Mohinder Paul, I/C PP Sathra and the receipt of grounds of detention, a perusal whereof would show that the above requirement of supplying the whole documents to the petitioner and their explanation in the language the petitioner understands has duly been complied with. Thus, contention of the petitioner that he was unable to file representation in view of non supply of whole material and also that executing officer has not explained the contents of the detention warrant and grounds of detention in the language he had no knowledge as also being oblivious about the contents of the so called material supplied, pales into insignificance.

14. The challenge to the detention order, in the considered opinion of the court by taking into account the above facts as emerged from the record, fails on all fours. The above conspectus of things would goad this court to the only inescapable conclusion that the respondents have rightly detained the detainee under the Public Safety Act, in view of serious allegations, of which he was charged.

15. The Detaining Authority has applied its mind by going through all the material, past conduct of the detainee against whom 05 FIRs, three DDRs, one Adverse Report and one complaint u/s 126/136 BNSS stand registered and accordingly, arrived at subjective satisfaction that the activities of the detainee were prejudicial to the interest of the State and issued the order of detention, which cannot be found fault with. Since the activities of the detainee were directed against the object mentioned in the Act and the Detaining Authority has arrived at subjective satisfaction that it was necessary to prevent the detainee from acting in such manner and consequently, order of detention came to be issued. Thus, it clearly shows that it is satisfaction of the Government on the point, which alone is necessary to be established. The plea that there was no live and proximate link between the activities of the detainee and the imperative need to detain him is also misplaced for the facts that last activity allegedly committed by him at the start of the year 2025, whereas he was ordered to be detained within two months. Therefore, this period cannot be said not to be proximate.

16. Liberty of an individual has to be curtailed, within reasonable bounds, for the good of the society at large. The framers of the Constitution were conscious of the practical need of preventive detention with a view to strike a just and delicate balance between need and necessity to preserve individual liberty on one hand, and security of the country as well as the interest of society on the other hand. Security of State, maintenance of public order, prevention of drug trafficking and other criminal activities demand effective safeguards in the larger interest of the sustenance of a peaceful and democratic way of life. The personal liberty may be curtailed, where a person faces a criminal charge or is convicted of an offence and sentenced to imprisonment. Where a person is facing the trial on a criminal charge and is temporarily deprived of his personal liberty because of the criminal charge framed against him, he has an opportunity to defend himself and to be acquitted of the charge in case the prosecution fails to bring home his guilt. Where such an accused is convicted of offence, he still has satisfaction of having been given the adequate opportunity to contest the charge and also adduce the evidence in his defence.

17. The incorporation of Article 22 in the Constitution left room for detention of person without a formal charge and trial and without such person held guilty of an offence and sentenced to imprisonment by a competent Court. Its aims and objects are to save the society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case, it would be dangerous for the people at large, to wait and watch, by the time ordinary law is set into motion, the person having dangerous designs, would execute his plans, exposing the general public to risk, causing colossal damage to life and property. It is for that reason necessary to take preventive measures and subsequently, prevent the person bent upon to perpetuate mischief from translating his ideas into actions. Therefore, where individual liberty comes into conflict with an interest of the security of the State or public order, then the liberty of individual must give way to the larger interest of the nation, as has

been laid by the Hon'ble Supreme Court in *Sunil Fulchand v. Union of India* (2003) 3 SCC 409.

18. Hon'ble the Supreme Court in the case of *Mohd. Subrati alias Mohd. Karim v. State of West Bengal* (1973)3 SCC 250, has held as under:-

"7. No doubt, the right to personal liberty of an individual is zealously protected by our Constitution but this liberty is not absolute and is not to be understood to amount to licence to indulge in activities which wrongfully and unjustly deprive the community or the society of essential services and supplies. The right of the society as a whole is, from its very nature, of much greater importance than that of an individual. In case of conflict between the two rights, the individual's right is subjected by our Constitution to reasonable restrictions in the larger interest of the society."

19. Personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. It was for this reason that the framers of the Constitution included the safeguards in Article 22 in the Constitution so as to limit the power of the State to detain a person without trial, which may otherwise pass the test of Article 21, by humanizing the harsh authority over individual liberty. In a democracy governed by the rule of law, the drastic power to detain a person without trial for security of the State and/or maintenance of public order, must be strictly construed. However, where individual liberty comes into conflict with an interest of the security of the State or public order, then the liberty of the individual must give way to the larger interest of the nation.

20. For what has been discussed above, it is found that grounds of detention, in the present case, are not only definite and proximate but free from any ambiguity. The detainee, in the present case, has been informed with sufficient clarity in the language which he fully understands. What weighed, while passing detention order, with the detaining authority are the narrated facts and figures in detail which made it to exercise its jurisdiction in terms of Section- 8 of PSA and it recorded subjective satisfaction that detainee was required to be placed under preventive detention in order to prevent him from his prejudicial activities.

21. Viewed thus, there is no ground to interfere in the impugned order of detention. The petition lacks merit and is dismissed, as such.

22. The detention record be returned to the respondents through their counsel.