Serial No. 16
Regular Cause List

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

LPA No. 254/2026 in HCP No. 21/2026

**Tariq Ahmad Dar**
**S/o. Ghulam Hassan Dar**
**R/o. Raiwattan Asnoor, Mangam**
**Tehsil D.H. Pora, District Kulgam**

**(Through his wife namely Nahida Akhter)**

…Appellant

Through: Mr. Parvaiz Amin Wani, Advocate

**Vs.**

1. **Union Territory of J and K Th. Commissioner Secretary, Home, Civil Secretariat, Srinagar**
2. **District Magistrate, Kulgam**
3. **Senior Superintendent of Police, Kulgam**
4. **Station House Officer, Police Station, Manzgam Kulgam**
5. **Superintendent/Incharge District Jail Udhampur**

...Respondents

Through: Mr. Mohsin S. Qadri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**
**HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE**

**ORDER**

21.10.2026

1. Impugned in this Letters Patent Appeal is the judgment dated 25-09-2026, passed by a learned Single Bench of this Court [hereinafter referred to as the 'Writ Court' for short] in Habeas Corpus Petition No. 21 of 2026, titled *"Tariq Ahmad Dar vs Union Territory of Jammu and Kashmir and others"*, whereby the learned writ court dismissed the same while upholding the detention order bearing No. 07/DMK/PSA/2025, dated 13-12-2025, passed by the respondent No. 2-- District Magistrate, Kulgam, [hereinafter

referred to as the 'Detaining Authority' for short], impugned in the said petition.

2. The appellant came to be detained by the Detaining Authority in exercise of its powers under Section 8(1)(a)(i) of the Jammu and Kashmir Public Safety Act, 1978, (hereinafter referred to as the 'PSA' for short) with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

3. Aggrieved by the detention order bearing No. 07/DMK/PSA/2025, dated 13-12-2025 of the Detaining Authority, the appellant/detenue assailed the same before this Court through HCP No. 21/2026, which, however, came to be dismissed by the Ld. Writ Court vide the impugned judgment.

4. The impugned judgment has been assailed in this Intra-Court Appeal on the grounds, inter alia, that the Ld. Writ Court has not appreciated the settled distinction between **"law and order"** and **"public order"**. That the appellant-detenue came to be detained vide impugned detention order No. 07/DMK/PSA/2025, dated 13-12-2025 passed by the Detaining Authority, in exercise of its powers vested under Section 8(1)(a)(i) of PSA on the ground of his alleged involvement in a series of FIRs registered against him for livestock/cattle theft which does not amount to public disorder as alleged. That the alleged activities of the appellant-detenue can, at the most, be considered as the ordinary law and order breaches to be dealt with under normal criminal law.

That the criminal cases against the appellant-detenue and forming the basis of the impugned detention order were already being dealt with under general criminal laws, as the chargesheets arising out of the said case FIRs had already been filed before the competent courts, with the release of the appellant-detenue on bail in the said cases. That the general criminal law is sufficient to deal with the cases against the appellant-detenue and there was no justification for his detention under the preventive detention law,

under misuse of its powers by the Detaining Authority. That the appellant-detenue was not supplied with the entire detention record, including the bail orders, and the grounds of detention were also not read over and explained to him in his vernacular language.

That the Detaining Authority did not justify in the impugned detention order that the general criminal law was insufficient to tackle with the appellant-detenue. That the learned writ court, while passing the impugned judgment, dismissed the basic petition on the main ground that the repeated involvement of the appellant-detenue in the house trespass and theft of livestock incidents and the consequences thereof was sufficient for the detaining authority to arrive at a satisfaction concerning breach of public order, which observation of the Ld. Writ Court is contrary to the settled legal position. That the learned writ court further observed in the impugned judgment that non-supply of the copies of the bail orders was not fatal because the substance thereof stood reflected in the grounds of detention; and besides such requirement does not constitute the independent foundational material, which is not justified under law.

That the learned writ court, through the impugned judgment, inter alia observed that the repeated commission of the theft cases subsequent to the release of the appellant/detenue is supposed to have created a fear psychosis among the local population with regard to the safety of their property, which again does not meet the interpretation of the law concerning **public order**. That the preventive detention cannot be invoked on the mere ground that the accused in criminal cases against him has been granted bail. That the respondents did not take any steps to assail the bail orders granted by the competent trial courts in favor of the appellant. That it is not the case of the respondents that bail conditions were violated by the appellant/detenue, that cancellation of bail orders was sought, which was not, however, allowed, that the prosecution

had become ineffective and the general criminal law proved insufficient in his case. That the invocation of PSA was, therefore, disproportionate and legally unsustainable. That the appellant/detenue, despite being a labourer and not conversant with the English language, was furnished the insufficient detention record in English language, which amounts to the infraction of the provisions of Article 22(5) of the Constitution of India, as also of Section 13 of the PSA. That the learned writ court did not appreciate the contention of the appellant/detenue, as agitated by him in the basic petition, to the effect that after receiving the detention order, he, without wasting any time, made representations against his detention to the learned Advisory Board, Government, as well as the detaining authority, demonstrating that his detention under PSA is highly violative of his fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India which were not considered. That the Detaining Authority issued the impugned detention order dated 13/12/2025 solely on the basis of dossier submitted by the respondent No. 3-Senior Superintendent of Police, Kulgam, without any independent application of mind, which was *sine qua non* for passing of such detention order. That the procedural safeguards as envisaged under Article 22(5), as well as Section 13 of the PSA, were observed in breach by the detaining authority. That the allegations basing the grounds of detention do not satisfy any of the requirements under Section 8 of the PSA. That the appellant/detenue, despite being absolutely illiterate, was furnished with some of the copies of the detention record in English language, without also furnishing to him the translated copies of the same in his local vernacular language and also without making him to understand the contents of the same in his own language.

5. We have heard the learned counsel for the parties in respect of the matter.

6. The learned counsel for the appellant/detenue, while reiterating his stand already taken in this Letters Patent Appeal, submitted that the impugned judgment of the learned writ court suffers from illegality, as the well-interpreted and recognized distinction between the **"normal law and order infraction"** and the **"public disorder"** has not been appreciated. He contended that the preventive detention of the appellant-detenu has been ordered by the Detaining Authority on account of his involvement in a series of criminal cases registered with different police stations in District Kulgam, Anantnag and Shopian. He contended that appellant stands bailed out in all the case FIR numbers, and none of the bail orders came to be assailed by the State. He further contended that final reports/chargesheets arising out of the aforesaid criminal cases have already been filed before the competent courts, which are pending disposal and in which, as per the principle of criminal jurisprudence of our country, he is presumed to be innocent till proved guilty at the trial. He further contended that all the case FIR's numbering 11 relate almost to the similar offences punishable under Section 331(4), 305 BNS. That the aforesaid offences constitute **normal law and order infraction**, as opposed to the **social disorder** as defined under Section 8(3) of PSA. He contended that any act or omission to be construed as prejudicial to the maintenance of **public order** should have an effect or tendency of promoting, propagating or attempting to create feelings of enmity, hatred or disharmony on the grounds of religion, race, caste, community or region.

7. The learned counsel further contended that the Detaining Authority has not mentioned in the grounds of detention as to how the normal law and order machinery was insufficient to tackle with the appellant/detenu. He further contended that the Detaining Authority, while ordering the preventive detention of the appellant, observed the mandatory procedural requirements in terms of

provisions of Article 22(5) of the Constitution of India, as also of Section 13 of the PSA, in breach by failing to furnish him with the complete set of detention record and to inform him of the grounds of his detention in the language understandable by him. He further contended that the appellant was prevented from making an effective representation in time, for want of a complete set of detention records. It was further contended by the learned counsel that representation was filed on behalf of the appellant, which was not considered, and the result of the same was not conveyed to him. The learned counsel submitted that the learned Writ Court did not consider the aforementioned facto-legal issues touching the merits of the case, and as such, the impugned judgment deserves to be set aside.

8. The learned counsel in support of his contentions placed reliance on the judgments cited as:

   i. *Ameena Begum vs State of Telangana & Ors 2023 (9) SCC 587.*
   ii. *Ram Manohar Lohia vs. State of Bihar and Another 1966 AIR (SC) 740.*
   iii. *Dhanyam vs. State of Kerala and Ors 2025 SCC Online SC 1315*

9. **Per Contra**, the learned counsel for the respondents/UT submitted that the judgment of the learned Writ Court impugned in this Letters Patent Appeal does not admit of any interference for having been passed in accordance with law. He contended that the learned Writ Court has observed in its judgment that the material placed on record shows that the Detaining Authority has not proceeded merely on the basis of one isolated criminal case, but the grounds of detention refer to eleven FIRs involving similar allegations concerning theft of livestock and indicate repeated involvement of the appellant in such activities. The learned senior AAG further

contended that the learned Writ Court has also observed in the impugned judgment that mere pendency of criminal proceedings against a person does not by itself preclude recourse to preventive detention.

He contended that preventive detention operates in a different field, as the object of the same is to prevent a person from indulging in any manner prejudicial to the **social order** or **security of the State**, but not to punish him. He further contended that this Court, while exercising its limited jurisdiction in a Habeas Corpus Petition, cannot substitute its own assessment of the material for the satisfaction recorded by the competent authority. He contended that the Detaining Authority felt constrained to invoke its powers in terms of Section 8 of PSA to prevent the appellant/detenu, who did not hesitate to indulge in the repeated offences of house trespass and theft despite being bailed out, subject to some terms and conditions, by the competent criminal courts. He further contended that the learned Detaining Authority was conscious of the bail orders having been passed in criminal cases in favor of the appellant/detenu, who violated the terms and conditions of the bail orders by repetition of the crime.

10. The Ld. Sr. AAG further contended that the grounds of detention basing the impugned detention order portray the application of mind on the part of the Detaining Authority. He contended that the grounds of detention inter alia read that, *"Appellant is a labourer by profession but he adopted theft and burglary as a habitual means of earning livelihood. That his activities were creating an atmosphere of serious tension among the local communities and are hugely prejudicial to the maintenance of law and order. That he is a habitual and a notorious cattle lifter, involved in repeated incidents of theft and burglary across the districts of Kulgam, Anantnag and Shopian. That he along with his associates was engaged in stealing cattle and sheep from the sheds of innocent villagers thereby*

*causing panic, fear and insecurity among the public at large particularly in the districts of Kulgam and Shopian. That his activities have not remained confined to a single area but extended across multiple districts which clearly demonstrates his criminal bent of mind and organized manner of committing crime. That the magnitude, frequency and geographical spread of his criminal acts established that his conduct has not merely breached law and order but seriously affects the public order".*

He further contended that the ld. Writ court has rightly observed in the impugned judgment that the distinction between a mere disturbance of law-and-order incident and an activity prejudicial to the public order cannot be determined only by the nomenclature of offences but the nature, frequency, continuity and the impact of the activities upon the community have also to be considered. He further submitted that where the repeated activities of a person affect the even tempo of public life, such activities transcend the ordinary law and order domain. He further contended that the mandatory procedural requirements in terms of Article 22(5) of the Constitution of India and Section 13 of the PSA were fully complied with by the Detaining Authority by furnishing the appellant/detenue with all the copies of documents referred to in the grounds of detention, upon making him to understand the contents of the same in his local vernacular language with further information to him that he has a right to make a representation to the Detaining Authority or to the Government as the said facts are discernible from the perusal of the detention record.

11. We have perused the record of the instant Intra-Court Appeal and have also accorded consideration to the rival contentions advanced on both the sides.

**12. In the facts and circumstances of the case, we are of the opinion that although the criminal acts of the appellant/detenue which have lead to the registration of a series of case FIRs with their**

**subsequent culmination into final reports/chargesheets in terms of the provisions of Section 193 BNSS, no doubt amount to infraction of law and order by falling within the definitions of the offences punishable under Sections 331(4), 305 BNS, yet the same have not the implication of disturbing the "social order"**

13. It is apt to reproduce the provisions of Section 8(3)(b) of the PSA which defines the social order for the purposes of Section 8(1)(a)(i) of the said Act.

> **—8. Detention of certain persons**
>
> (3) For the purposes of sub-section (1)
>
> (b) —acting in any manner prejudicial to the maintenance of public order‖ means –
>
> (i) promoting, propagating or attempting to create, feelings of enmity or hatred or disharmony on ground of religion, race, caste, community, or region;
>
> (ii) 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;
>
> (iii) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of, mischief within the meaning of section 425 of the Ranbir Penal Code where the commission of such mischief disturbs, or is likely to disturb public order;
>
> (iv) 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;

14. There is a market difference between disturbance relatable to **"law and order"** and disturbances caused to **"public order"**. It is well settled that breach of law in all cases does not lead to public disorder.

15. In **Ram Manohar Lohia Vs. State of Bihar (1966) 1 SCR 709**, it was held by the Hon'ble Apex Court at para 54 of the judgment as under: -

> (v) —54. *** Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are."

16. In **Arun Ghosh Vs. State of West Bengal (1970) 1 SCC 98,** the Hon'ble Supreme Court observed that it is not every case of a general disturbance to public tranquility which can be termed as public disorder and the test to be applied in such cases is whether the alleged act leads to the disturbance of the current of life of the community so as to amount to disturbance of the public order. That if the alleged act affects some individual or individuals leaving tranquility of the society undisturbed, the act cannot be termed as amounting to public disorder.

In that case the petitioner/detenu was detained by an order of a district magistrate since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioner/detenu

could be reprehensible, it was further held that it does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order‖.

The observations made by the Hon'ble Apex Court in the said case at para 3 are reproduced as under: -

> 3.*** Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country 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 tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. … It is always a question of degree of the harm and its effect upon the community.…This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another. ‖

17. In **Kuso Sah Vs. The State of Bihar (1974) 1 SCC 195,** the Hon'ble Apex Court held at paras 4 & 6 of the judgment as under: -

> —4. *** The two concepts have well defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. ***
>
> 6. *** The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised. ***‖

18. In **Rekha Vs. State of Tamil Nadu, (2011) 5 SCC 244**, the observations made by the Hon'ble Apex Court at its paras 21 & 30 deserve a needful mention: -

—21. It is all very well to say that preventive detention is preventive not punitive. The truth of the matter, though, is that in substance a detention order of one year (or any other period) is a punishment of one year 's imprisonment. What difference is it to the detenu whether his imprisonment is called preventive or punitive?

—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. ‖

19. In **Vijay Narain Singh Vs. State of Bihar, (1984) 3 SCC 14**, the Hon'ble Apex Court has held at para 32 of the judgment as under: -

—32 It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardized unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an Accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorizing such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinizing the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court. ‖

20. In **A.K. Roy Vs. Union of India, (1982) 1 SCC 271** it was held at para 70 of the judgment as under: -

70. *** We have the authority of the decisions in … for saying that the fundamental rights conferred by the different articles of Part III of the Constitution are not mutually exclusive and that therefore, a law of preventive detention which falls within Article 22 must also meet the requirements of Articles 14, 19 and 21.‖

21. This Court is also fortified in its opinion with the authoritative judgment of the Hon'ble Apex Court cited as **"Ameena Begum Vs. The State of Telangana & Ors** *2023 (9) SCC 587* **decided on 04.09.2023"** also referred to by the learned counsel for the petitioner in which it has been held at para 40 of the judgment as under: -

> ―40. On an overall consideration of the circumstances, it does appear to us that the existing legal framework for maintaining law and order is insufficient to address like offences under consideration, which the Commissioner anticipates could be repeated by the Detenu if not detained. We are also constrained to observe that preventive detention laws—an exceptional measure reserved for tackling emergent situations—ought not to have been invoked in this case as a tool for enforcement of ―law and order‖. Thus, for the reason that, the Commissioner despite being aware of the earlier judgment and order of the High Court dated 16th August, 2021 passed the Detention Order ostensibly to maintain ―public order‖ without once more appreciating the difference between maintenance of ―law and order‖ and maintenance of ―public order‖. The order of detention is, thus, indefensible. ‖

22. In the above referred case of Ameena Begum, the allegation against the detenu was that he was **―habitually committing the offences including outraging the modesty of women, cheating, extortion, obstructing the public servants from discharging their legitimate duties, robbery and criminal intimidation along with his associates in an organized manner in the limits of** … and he is a 'Goonda' as defined in clause (g) of Section 2‖ of the relevant statute invoked by the Commissioner. The Commissioner, with a view to prevent the Detenu from acting in a manner prejudicial to maintenance of public order, recorded not only his satisfaction for invoking the provisions of the Act but also recorded a satisfaction that ―the ordinary law under which he was booked is not sufficient to deal with the illegal activities of such an offender who has no

regard for the society. Hence, unless he is detained under the detention laws, his unlawful activities cannot be curbed‖.

23. The Hon'ble Apex Court in a landmark judgment cited as **"Sushanta Goswami, In Re ([1968} Supreme Court of India)"** addressed the critical issue of preventive detention under Article 32 of the Indian Constitution. The said case involved a collective petition by Sushanta Goswami and 46 others challenging their detention under Section 3 (2) of the Prevention of Detention Act, 1950. The central question revolved around was whether the grounds for detention genuinely pertained to maintaining public order or was merely related to general law and order? The Hon'ble Supreme Court meticulously examined each petitioner's grounds for detention, categorizing them based on their relevance to 'public order'. The Court invalidated detention orders where the activities alleged did not directly threaten public order but were instead typical criminal offences such as theft, assault and property damage. Conversely, detention was upheld only where the activities posed a significant threat to the community's overall peace and satiability.

A pivotal aspect of the judgment was the Court's insistence that detention under the guise of preventing actions prejudicial to public order must be substantiated by concrete evidence showing a direct impact on societal harmony. The Court emphasized the necessity of a clear and direct correlation between the detainee's actions and the maintenance of public order

The Court referenced two significant cases to support its stance:

**Dwarka Das Bhatia Vs. State of Jammu & Kashmir (1956 SCR 945):** This case underscored the importance of relevance in grounds for preventive detention, rejecting arbitrary detentions based on vague or unrelated reasons.

**Pushkar Mukherjee Vs. State of West Bengal:** A more recent decision at the time, this case further clarified the judiciary's view on maintaining the balance between State security and individual liberties, reinforcing stringent checks on detention orders.

The Court 's legal reasoning hinged on interpreting ―public order‖ with precision. It delineated between general disturbances of law and order and actions that genuinely threaten societal peace. The judgment clarified that not every act disrupting law and order qualifies as being

―prejudicial to public order. For instance, petty thefts or assaults without broader societal implications do not meet the threshold for preventive detention under the Act.

Furthermore, the court critiqued the authorities 'tendency to conflate individual criminal acts with threats to public order, thereby undermining the very essence of preventive detention. By setting aside detention orders lacking direct relevance, the court reinforced the principle that such extreme measures must be reserved for genuine threats to societal harmony. ‖

24. So. the material brought before the detaining authority by the District Superintenmdent of Police, Kulgam was not of such a nature which could have been understood and apprehended as prejudicial to the "public order". The alleged actions of the appellant/detenue no doubt amount to infraction of laws for which legal mechanism in place was already pressed into service. The invocation of the provisions of the PSA to detain the appellant rather than to pursue the prosecution against him appears to be an unjustified exercise and abuse of process of law. Under these circumstances the non-application of mind on the part of the detaining authority becomes explicit. It is settled position that a detention order suffering from non-application of mind by the detaining authority cannot sustain under law.

25. The Court, however, at the same time is also of the firm opinion that preventive detention cannot under all circumstances be considered as violative of the fundamental right to personal liberty of an individual. The personal liberty is to be balanced against the collective liberty of the citizens who have an equal fundamental right to live peacefully in the society. Admittedly the object of the preventive detention is not punitive but preventive meant to be invoked as a quick measure in good faith.

26. In the opinion of the court, the ordinary criminal law and order machinery was sufficient to deal with the appellant/detenue. The character of the accused and his antecedents is of predominant consideration while considering the bail application on his behalf in a criminal case. It is expected that criminal courts before which the cases against the appellant/detenue are pending trial will consider such governing principles while considering any application for bail or cancellation of bail.

27. The grounds of detention show that the appellant/detenue has committed as many as eleven (11) consecutive incidents of lurking house trespass/house breaking after sunset and before sunrise for the purpose of cattle/sheep stealing mostly during the year 2025 in the districts of Kulgam, Anantnag and Shopian. The appellant/detenue is reported to have been bailed out in almost all the said case FIRs and the final reports/ chargesheets arising out of the same are also reported to be pending trial in the competent courts of law. It is obvious that all the bail orders passed in favour of the appellant/detenue should be subject to some terms and conditions inter alia including a condition that he shall not repeat the commission of the crime. It appears that the repetition of crime by the appellant/detenue after being enlarged in earlier case FIRs has either not been brought to the knowledge of criminal courts seized of subsequent bail petitions or if brought to the knowledge of the court, underestimated.

28. However, the contentions of the learned counsel for the appellant/detenue to the effect that the copy of the detention record in full was not provided to the detenue and he was not made to understand the grounds of detention in his local vernacular language do not appear to be borne out from the perusal of the detention record.

29. We have no reason to disbelieve that the repeated incidents of night house trespass and cattle stealing by the appellant/detenue would have sent a shocking message to the concerned habitations. The cattle/sheep are generally being reared by the common villagers who depend for their livelihood on such cattle and, as such, the worries of victims of the said incidents cannot be lost sight of. The prosecution wing of the Police Department entrusted with prosecution of the criminal cases in the Courts of Law are expected to shoulder their responsibility of bringing the repeated criminal activities of an accused before the Court during the hearing of bail matters.

30. The preventive detentions need to be passed with great care and caution keeping in mind that a citizens most valuable and inherent human right is being curtailed. The arrests in general and the preventive detentions in particular are an exception to the most cherished fundamental right guaranteed under Article 21 of the Constitution of India. The preventive detentions are made on the basis of subjective satisfaction of the detaining authority in relation to an apprehended conduct of the detenu by considering his past activities without being backed by an immediate complaint as in the case of the registration of the FIR and, as such, is a valuable trust in the hands of the trustees. The provisions of Clauses (1) and (2) of Article 22 of our Constitution are not applicable in the case of preventive detentions. So, the provisions of Clause (5) of the Article 22 of our Constitution, with just exception as mentioned in Clause (6), together with the relevant provisions of the Section 8 of PSA

requiring for application of mind, subjective satisfaction, inevitability of the detention order, proper and prompt communication of the grounds of detention and the information of liberty to make a representation against the detention order, are the imperative and inevitable conditions rather mandatory requirements for passing of a detention order.

31. For the foregoing discussion, the impugned judgment dated 25.09.2026 of the ld. Writ Court appears to be suffering from illegality and accordingly admits of interference.

32. The impugned judgment is accordingly set-aside. Consequently, the detention order bearing No. 07/DMK/PSA/2025, dated 13-12-2025, passed by the respondent No. 2-District Magistrate, Kulgam also impugned in this LPA is quashed with the direction to the respondents to release the appellant/detenue forthwith form his detention in this case.

33. Disposed of.

**(MOHD YOUSUF WANI)**
**JUDGE**

**(DR. PUSHPENDRA SINGH BHATI)**
**CHIEF JUSTICE**

**SRINAGAR**
21.10.2026
*Shahid Manzoor*

Whether the order is speaking? Yes

Whether approved for reporting? Yes