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

Reserved on: 21.10.2026
Pronounced on: 30.10.2026
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Whether the operative part or full judgment is pronounced: ***Full***

HCP No.204/2025

UMER HAMID SHEIKH

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. Tuba Manzoor, Advocate.

Vs.

UT OF J&K & ORS.

...RESPONDENT(S)

Through: - Mr. M. Younis Assisting Counsel.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) This petition has been filed by the petitioner through his mother for quashing the order of detention bearing No.DMS/PSA/24/2025 dated 02.06.2025 issued by respondent No.2-District Magistrate, Srinagar, whereby the petitioner has been detained under section 8 of the J&K Public Safety Act.

2) The order of detention has been impugned on the following grounds:

(a) That the detenue is totally an innocent person and has not committed any offence and has not behaved or

acted himself in any such way or manner which could be construed to be an activity against the security of the state.

(b) That detenue was provided with order of detention, copy of dossier and copy of grounds of detention, but the same were not explained to him, which has deprived him from making an effective representation against the impugned order.

(c) That there has been non-application of mind on the part of the detaining authority while passing the impugned order as there was absolutely nothing against the petitioner in the dossier produced by the respondent No.3.

(d) That the same allegations have been reproduced in the grounds of detention have already been dealt with by this Court while quashing the earlier detention order dated 23.02.2021 passed against the petitioner.

3) The respondents have filed the response stating therein that the detenue was deeply influenced by radical ideology and came into contact with active terrorists and OGWs of Jem outfit who motivated him to work as an OGW for providing logistic support. It has been contended that in view of his involvement in illegal/unlawful activities and in order to curtail his activities, the petitioner was detained under the provisions of the Public Safety Act vide order dated 22.02.2021, which order was, however, quashed by this

Court. It has been contended that, after his release, the detenue again indulged in anti-national activities and did not mend his ways and with a view to prevent him from acting in any manner prejudicial to the security of the state, he was detained in terms of the impugned order after following all requisite formalities. It has also been averred that the material relied upon by the detaining authority has been furnished to the petitioner and he was informed that he has a right to file a representation to the government against the impugned order of detention.

4) In terms of order dated 21.09.2026, after taking note of the submission made by learned counsel for the petitioner, the petitioner was permitted to file affidavit, which came to be filed by the petitioner through the medium of CM No.6858/2026. In the affidavit filed by the mother of the petitioner, through whom this writ petition has been filed by him, it is stated that she had submitted a representation for revoking the order of detention issued against the petitioner, but she was never informed by the concerned authority with regard to decision, if any, taken upon the said representation.

5) Learned counsel for the petitioner has submitted that the request for detaining the petitioner was made by the

sponsoring agency in the month of May 2025, whereas the order of detention came to be passed after one month and the delay in passing the order of detention on the dossier submitted in the month of May 2025 by the sponsoring agency, in itself, is indicative of the fact that there was no urgency to detain the petitioner and on this ground only, the order of detention is required to be quashed. He has further argued that the representation submitted by mother of the petitioner was never decided by the respondents and further the complete material relied upon by the detaining authority was not provided to the petitioner.

6) *Per contra*, learned counsel for the respondents submits that after the quashing of the earlier detention order, the petitioner did not mend his behavior and again indulged in anti-national activities which is duly substantiated by the Patrol Book reports dated 27.09.2024 and 01.03.2025, and Beat Book report dated 30.04.2025, and, accordingly, the petitioner was detained so as to prevent him from indulging in the activities prejudicial to the security of the State. He has further submitted that the representation was decided and the petitioner was duly informed.

7) Heard and perused the record.

8) The perusal of the record reveals that the sponsoring agency, i.e. respondent No. 3, through the medium of communication dated 07.05.2025, requested the detaining authority to detain the petitioner, whereas the detention order has been passed on 02.06.2025. Thus, there is a gap of more than 25 days between the communication addressed by respondent No. 3 and the order of detention and this delay has not been explained by the respondents. Had they explained the delay, the position would have been different, but the absence of plausible explanation by the respondents for the delay of 25 days between the proposal for detaining the petitioner and the order of detention, is indicative of the fact that there was no urgency to detain the petitioner. Had there been any such urgency, respondent No. 2 would have acted upon the sponsoring agency's communication immediately.

9) It is borne out from the record that the petitioner was earlier detained in terms of order of detention dated 22.02.2021, which was quashed in terms of the judgment dated 04.08.2023. Thereafter, the detaining authority, while preparing the grounds of detention, after taking note of the quashing of the order of detention in terms of judgment supra, placed reliance upon the Patrol Book reports and Beat Book report, and recorded its satisfaction that it was

necessary to detain the petitioner. Perusal of the Patrol Book reports and the Beat report reveal that they are vague and contradictory in itself. Once the Beat report and Patrol Book reports are vague and contradictory in itself, the same could not have been relied upon by the detaining authority to detain the petitioner. Accordingly, this Court is of the considered view that on this ground only, the order of detention is not sustainable, as there was, in fact, no material before the detaining authority to record its satisfaction that the petitioner has indulged in activities prejudicial to the maintenance of the security of the State.

10) The perusal of record further reveals that the representation was made by mother of the petitioner to the Government and the District Magistrate during public hearing held on 16.07.2025, and in terms of communication dated 22.07.2025, comments were sought from Additional DGP, CID. Thereafter, in terms of order dated 15.09.2025, the said representation came to be rejected by the Government, and the same was served upon the petitioner on 17.09.2025. There is delay of nearly two months in deciding the representation which has not been explained by the respondents. The question that arises for determination

is as to whether delayed consideration of representation satisfies the requirement of law.

11) The aforesaid question has been answered by the Hon'ble Supreme Court of India in **Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur and others** (2021) 20 SCC 98. It would be apt to refer to observations made by the Supreme Court in para 47 of the judgment, which are reproduced as under:-

> *"47. By delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of Section 8(1) of having the representation being considered expeditiously. As we have noted earlier, the communication of the grounds of detention to the detenu "as soon as may be" and the affording to the detenu of the earliest opportunity of making a representation against the order of detention to the appropriate government are intended to ensure that the representation of the detenu is considered by the appropriate government with a sense of immediacy. The State Government failed to do so. The making of a reference to the Advisory Board could not have furnished any justification for the State Government not to deal with the representation independently at the earliest. The delay by the State Government in disposing of the representation and by the Central and State Governments in communicating such rejection, strikes at the heart of the procedural rights and guarantees granted to the detenu. It is necessary to understand that the law provides for such procedural safeguards*

> *to balance the wide powers granted to the executive under the NSA. The State Government cannot expect this Court to uphold its powers of subjective satisfaction to detain a person, while violating the procedural guarantees of the detenu that are fundamental to the laws of preventive detention enshrined in the Constitution."*

12) From the aforesaid law laid down by the Hon'ble Apex Court, it is manifest that delaying of decision on the representation of the detenue amounts to an infringement of a valuable right which is available to a detenue in terms of provisions contained in Section 13 of the Jammu & Kashmir Public Safety Act, which makes it obligatory for the detaining authority to communicate to the detenue the grounds on which the order of detention has been made within a maximum period of ten days from the date of detention and to afford him the earliest opportunity of making representation against the order of detention. The purpose of furnishing the grounds of detention within a maximum period of ten days is to enable a detenue to make a representation against the order of detention at the earliest opportunity. Thus, a duty is cast upon the detaining authority or the government to consider the said representation at the earliest opportunity. Failure to decide the representation of a detenue within a reasonable time in an expeditious manner strikes at the valuable right of a

detenue emanating from the provisions of Section 13 of the Jammu & Kashmir Public Safety Act. In the present case, there is no explanation from the side of the respondents with regard to the delay of about two months in deciding the representation of the petitioner. This unexplained slackness on the part of respondents to take a decision on the representation of the petitioner renders the impugned order of detention illegal.

13) For the afore-stated reasons, the petition is allowed and the impugned detention order is quashed. The respondents are directed to release the petitioner from the preventive custody forthwith, provided he is not required in connection with any other case.

14) The detention record be returned to learned counsel for the respondents.

(Rajnesh Oswal)
Judge

Srinagar,
30.10.2026
"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **YES/NO**