



2025:JKLHC-JMU:3009

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

Reserved on: 11.09.2025
Pronounced on: 26.09.2025

HCP No. 44/2025

Imtiaz Ahmed aged 32 years
S/O Late Ali Mohd.
R/O Village Karyote
Tehsil Thanamandi District Rajouri
Through his wife Rabia Kouser

.....Petitioner(s)

Through: Mr. Abdul Qadar Khan, Advocate.

Vs

1. UT of Jammu & Kashmir through
Principal Secretary to Govt., Home
Department, J&K,
Civil Secretariat, Jammu.
2. District Magistrate, Rajouri.
3. Senior Superintendent of Police, Rajouri.
4. Superintendent Central Jail Kathua.



सत्यमेव जयते

..... Respondent(s)

Through: Mr. Dewakar Sharma, Dy. AG.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

01. Petitioner namely **Imtiaz Ahmed** S/O Ali Mohd., R/O Village Karyote, Tehsil Thanamandi, District Rajouri (for short 'the detainee') through his wife, has challenged the detention Order No. **DMR/INDEX/12 of 2024** dated **15.11.2024** (impugned order), issued by respondent No.2, District Magistrate, Rajouri (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 to the maintenance of 'public order'.

02. Detenue has raised many grounds to assail the impugned order. It is his contention that Detaining Authority though referred earlier cases from the years 2013 and 2017, as found in the Grounds of Detention, what was placed before him was only the copies of reports in those matters. Had the Authorities placed the outcome of such matters/orders vis-à-vis enlarged on bail in case FIR No.174/2013 and FIR No. 96/2017, there would have been a different conclusion than the one which is challenged in the present petition; that the sponsoring agency has suppressed a vital fact that earlier also, the petitioner was detained under preventive detention, and now same FIRs are made the basis for detaining the detenue despite the fact that this court had quashed the earlier detention order. It is also contended that the detenue was not informed about his right to make representation to the detaining authority as well as government as early as possible, which prevented him from making effective and meaningful representation; that the impugned detention order has been passed mechanically without application of mind, inasmuch as, there is no live or proximate link between the alleged activities and the detention order; that the detenue was not explained the contents of detention order and grounds of detention in the language he understands, which also prevented him from making meaningful representation to the detaining authority as well as government; that that the FIRs relied upon pertaining to the years 2013 and 2017 could not have been relied upon in view of the fact that the cases registered in the year 2013 and 2017 being stale, for lack of live and proximate link, between the alleged



activities and the preventive detention order, could not have been considered to pass the impugned order in the year 2024. Also complaints were claimed to have been made against the detainee, yet no record pertaining to said action has been provided to the detainee, infringing the fundamental right of the detainee with regard to non-supply of record, therefore, documents on the basis of which detention order was passed have not been provided to the detainee, rendering him unable to make effective representation. Lastly, it is prayed that the petition be allowed and the impugned detention order be set aside.

03. The respondents, in their counter, has controverted the averments made in the petition, submitting that the detainee is a history-sheeter and habitual offender engaged in serious criminal activities including narcotic offences, theft of communication cable from a military establishment and offences against public tranquility. The detainee was found to be supporting terrorist organizations in the capacity of an Over Ground Worker (OGW), by providing logistical assistance such as shelter and, potentially, financial support, as to create an environment of insecurity and terror, severely endangering public peace, tranquility, and communal harmony and therefore it was imperative to prevent him from continuing his criminal/anti social activities and to maintain public peace and order under the preventive detention; that the detention warrant along with grounds of detention was properly executed through PSI Fazal Raja Dev of P/S Thanamandi under proper acknowledgement of the detainee and he was fully made to understand in the language he understands; Lastly, it is prayed that the petition be dismissed and the impugned detention order be upheld as the same has strictly been passed as per 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.

04. Learned counsel for the petitioner, while seeking quashment of the impugned order, reiterated various grounds but his main thrust, during the course of arguments, was on the following grounds:

- I. That the fate of the representation submitted by the petitioner to the respondents was never communicated to him;
- II. That the outcome of case 174/2013 of P/S Surankote as well as FIR No. 96/2017 of P/S Thanamandi was not brought to the notice of the competent authority who passed the order of detention while making the aforesaid FIRs as the foundation for passing the impugned detention order;
- III. That he was not informed about his right to make effective and meaningful representation, as there is no mention of time in the detention order, within which, he can make representation and that he was not informed that he can even make representation to the detaining authority against his detention;
- IV. That the stale cases/FIRs of the year 2013 and 2017 are made basis for passing the detention order which has no proximate link.
- V. That the grounds of detention of the earlier prevention detention should not be taken into consideration either as a whole or in part even along with fresh grounds of detention



for drawing requisite subjective satisfaction to pass a fresh detention order.

05. Learned State Counsel, *ex adverso*, making reference to the grounds of detention, argued that the activities of the detainee were not only criminal but also in the direction of causing disturbance to the public order; that detention ordered vide impugned order was in the public interest, passed with due consideration and application of mind; that there is no necessity to give in detail the activities of the detainee as the order is preventive in nature; that whole of the material relied upon had been supplied to the detainee by the executing officer at the time of execution of the detention warrant and contents thereof were explained to the detainee in the language understandable to him; that all the constitutional or statutory safeguards were observed in letter and spirit and the petitioner had also been informed of his right to move representation against his detention, in terms of impugned order. It was urged, finally, that the same be upheld and petition be rejected.

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

07. District Magistrate, Rajouri has detailed the following cases/FIRs & complaints registered against the petitioner at Surankote and Thanamandi Police Stations:

- i) FIR No. 96/2017 u/s 8/20 NDPS Act;
- ii) FIR No. 174/2013 u/s 379 RPC;
- iii) Complainant dated 11.05.2023 u/s 42/109 CrPC;
- iv) Complaint dated 18.03.2024 u/s 186/504/506 IPC; and
- v) Complaint dated 01.09.2024 u/s 126/129/136/170 BNSS.



Involvement of the detinue in the aforementioned cases appears to have, heavily weighed with the detaining authority, while passing the detention order.

08. The first ground projected by learned counsel for the petitioner is that the representation of the detinue, against the impugned order of detention, has not been considered by the respondents, thereby, violating his statutory and constitutional rights. Even, the outcome of the said representation was not informed to the petitioner. In support of his contention, the detinue has placed on record a receipt of the representation dated 11.12.2024 of the Additional District Magistrate, Rajouri (Annexure-IV). A perusal of the detention record reveals that the respondents have not whispered a single word regarding representation received on behalf of the petitioner.

09. The Supreme Court in the case of “*Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur & others*” (2021) 20 SCC 98, while dealing with the effect of failure to communicate the result of the representation, held that failure in timely communication of the rejection of the representation is a relevant factor for determining the delay that the detinue is protected under Article 22(5). It has been further held that failure of the government to communicate rejection of detinue's representation in a time bound manner is sufficient to vitiate the detention order. In the said case, the Supreme Court has further held that the delay in decision on the representation of the detinue amounts to an infringement of a valuable right. This right is available to a detinue in terms of provisions contained in Section 13 of the Jammu & Kashmir Public Safety Act, which makes it obligatory on the detaining authority to communicate to the detinue 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 detainee 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 detainee within a reasonable time in an expeditious manner, strikes at the valuable right of a detainee emanating from the provisions of Section 13 of the Jammu & Kashmir Public Safety Act.

10. In the present case, the Additional District Magistrate, Rajouri received the representation on 11.12.2024, the respondents was, thus, duty bound to forward the same to the competent authority for its consideration and disposal in accordance with law. But, there is deafening silence in respect to fate of representation, which shows the breach of constitutional safeguards with impunity. This slackness and lackadaisical approach, on the part of the respondents, vitiates the impugned detention order.

11. The second ground of detention is that the respondents have referred two FIRs i.e., FIR No. 174/2013 u/s 379 RPC of P/S Thanamandi and FIR No. 96/2017 u/s 8/20 NDPS Act of P/S Surankote. The petitioner has already been granted bail and the respondents, instead of moving the application seeking cancelation of bail, invoked preventive detention, vide the impugned order. A perusal of the objections filed on behalf of the respondent No. 2 would tend to show that the respondents have not stated anything regarding outcome of the aforesaid FIRs and not disclosed whether they had challenged the bail orders in the aforesaid cases.

12. So far as the complaints (supra) are concerned, it would show that the detainee has been given copy of detention warrant, grounds of detention and other



documents (total 118 leaves). However, the execution report is silent with regard to the furnishing of documents related to the complaints (supra). Since the petitioner has all along denied that the complaints, have not been furnished to him, therefore, the respondents in order to controvert this allegation should have filed an affidavit of the Executing Officer in this regard which affidavit is not found on record.

13. In so far as third ground is concerned, the law is well settled and is no longer *res integra* that the detenue must be informed of his right to make representation to the Detaining Authority as this is one additional avenue for his detention order to be reconsidered in addition to the representation to be made to the Government. It is also settled law that once the Government passes an order approving the order of detention, the Detaining Authority becomes *functus officio* and thereafter cannot review its order. Therefore, the Detaining Authority had to inform the detenue about his right at the very outset so that the detenue can make a representation for reconsideration by the Detaining Authority. The Hon'ble Apex Court in a judgment titled "**Sophia Gulam Mohd. Bham v. State of Maharashtra & Ors. (AIR 1999 SC 3051)**", has held as under:

"The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenue to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenue and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language."



14. In the case on hand, the ground that the detainee was not informed about his right to file a representation to the Detaining Authority can also be ascertained from the detention order. The Detaining Authority as per record, vide his No. DMR/JC/2024-25/2358-61 dated 15.11.2024 had informed the detainee that he may make a representation against the detention order to the Government, if he so desires. Therefore, the contention made on behalf of detainee that the detention order is vitiated on this count has also force as a valuable right of filing representation before the Detaining Authority to reconsider its decision, was not afforded to the detainee.

15. So far as the fourth ground that stale cases have been based to pass detention order against the detainee is concerned, the material placed before the detaining authority by the Police was his alleged involvement in two criminal cases, registered against the detainee at Police Station Thanamandi in the year 2013 and at Police Station Surankote in the year 2017. The reliance on the old cases of 2013 and 2017, in which the detainee was already exonerated being stale, irrelevant, snapping any proximate and live link. (See: **Sama Aruna v. State of Telangana & Ors (2018) 12 SCC 150**).

16. So far as the last ground is concerned, that the detaining authority did not make mention of previous preventive detention order issued against the detainee so as to take into consideration the grounds of detention and the FIRs/Cases of the years 2013 and 2017, on the basis of which, he was taken into preventive detention vide Order No. **PITNDPS 1 of 2019** dated **12.02.2019**, is a plausible ground. In the considered opinion of this court, when a detention order is quashed by the court, issuing a high prerogative writ, like habeas corpus or



certiorari, the grounds of said detention order should not be taken into consideration, either as a whole or in part, even along with fresh grounds of detention for drawing subjective satisfaction to pass a fresh detention order. In the present case, the respondents have not referred to the earlier detention order passed against the petitioner, nor its quashment, so as to use the same cases/FIRs to form basis and to pass the impugned detention order. In that view of the matter, the impugned detention order is vitiated and cannot sustain in the eyes of law.

17. 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 Founding Fathers enacted 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 the 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. The Hon'ble Apex Court in **Smt. Icchu Devi Choraria v. Union of India & Ors. (AIR 1980 SC 1983)** held as under:

"The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade."



This is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detainee even though the detention may have been valid till the breach occurred.”

18. Having regard to the facts, firstly, whole reliance of the detaining authority on the stale cases of the year 2013 and 2017, in which the detainee stood released on bail, secondly, not informing the detainee about the outcome of the representation so filed by him before the detaining authority against the detention order, thirdly time frame is not specified in the detention order within which detainee can file representation against the detention order and fourthly non application of mind by the detaining authority, it can safely be held that the detainee was disabled to exercise his right to file a representation against his detention, in terms of Article 22(5) of the Constitution of India; that in this backdrop, it is established that the detaining authority has passed the impugned detention order arbitrarily and mechanically, without application of mind and the constitutional and statutory safeguards available to the detainee were also observed in breach and trampled, vitiating the impugned detention order, which renders it unsustainable and liable to be *quashed*.

19. Viewed thus, the petition is **allowed** and the impugned detention Order No. **DMR/INDEX/12 of 2024** dated **15.11.2024**, passed by respondent No. 2, District Magistrate, Rajouri, is hereby quashed. The detainee-**Imtiaz Ahmed S/O Ali Mohd.**, R/O Village Karyote Tehsil Thanamandi District Rajouri is directed



to be released from the preventive custody forthwith, if not required in any other case(s). No costs.

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

21. **Disposed of**, accordingly, along with connected application(s).

(M A CHOWDHARY)
JUDGE

JAMMU
26.09.2025
Bunty

Whether the judgment is speaking: Yes/No

Whether the judgment is reportable: Yes/No

