

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

HCP No.63/2025

Reserved on: 11.09.2025.

Pronounced on: 22.09.2025

Ravinder Kumar @ Shanu, Age 24 years
S/O Sudesh Kumar,
R/O Dadwara,
Tehsil Billawar, District Kathua
through his mother Sunita Devi.

....Petitioner(s)/Appellant(s)

Through :- Mr. Ajay Singh Kotwal, Advocate &
Mr. S. K. Rao, Advocate.

V/S

1. The Union Territory of Jammu & Kashmir
through Additional Chief Secretary to
Government, Home Department,
Civil Secretariat, Srinagar/Jammu
....Respondent(s)
2. The District Magistrate, Kathua
3. Senior Superintendent of Police, Kathua.
4. Incharge/Superintendent, District Jail, Rajouri.

Through :- Mr. Suneel Malhotra, GA

CORAM: HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

JUDGMENT

1. Petitioner namely **Ravinder Kumar @ Shanu**, S/O Sudesh Kumar, R/O Dadwara, Tehsil Billawar, District Kathua (for short 'the detenué') has challenged the detention Order No.**PSA/141 dated 30.01.2025** (impugned order), issued by respondent No.2, District Magistrate, Kathua (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'.

2. Petitioner has raised many grounds to assail the impugned order. It is his contention that Detaining Authority though referred earlier cases from the years

2022, 2023, and 2024, 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 vis-à-vis fate of the cases/FIRs i.e. FIR No.5/2022 under Sections 341/323/147 RPC being compounded before Lok Adalat vide order dated 17.09.2022; FIR No. 37/2023 u/s 382/341/323/34 RPC and FIR No.118/2023 u/s 382/323/341/147 RPC, in which after investigation, detainee u/s 382 RPC was not charged and case FIR No.104/2024 u/s 132/351(2)/352 BNS is under investigation; that vague entries in the shape of 2 DDRs have been recorded at Police Station Billawar; that the criminal antecedents relied upon for the purpose of passing the order of detention do not have the direct nexus to immediately detain the petitioner; that whole record was not supplied to the petitioner, as such, he was prevented from making an effective and meaningful representation to the respondents, in view of insufficient material provided to him; that he was not informed about his right to make representation to the detaining authority as well as government; that the representation made by the petitioner on 13.02.2025 to the competent authority was not considered and if considered, it was not informed to the petitioner. 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 respondents in their counter affidavit, controverted the averments made in the petition, submitting that the detainee is a hardcore criminal, desperate character and history sheeter and has been involved in the commission of

organized crime for the past many years and was still continuing which is leading to eruption of terror among the general public, therefore, keeping in view the criminal/anti-social activities of the detenue, detention order was passed by the District Magistrate as his remaining at large involves a greater risk to the maintenance of Public Order; that the detention warrant along with grounds of detention was properly executed through PSI Rahul Sharma of P/S Billawar under proper acknowledgement of the detenue and he was fully made to understand in the language he understands; that the detenue was also informed that he can make representation to the Govt. against the detention order, if he so desires; that the representation filed by the detenue was duly considered and disposed of and result thereof was conveyed and a receipt in this regard has been placed on the record; 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 support 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 detenue that the material relied upon by the detaining authority has not been supplied to him is concerned, more particularly, the detention order, the respondents disputed the same by asserting that the executing officer who executed the detention warrants has filed an affidavit averring specifically therein that the petitioner was handed over a copy of the detention order. As per record, the detenue received copy of detention Warrant, Grounds of detention, dossiers and copies of FIRs along with other

documents related to detention (total 45 leaves) from executing officer PSI Rahul Sharma of P/S Billawar in presence of Assistant Superintendent District Jail, Rajouri, which were read over in English language and explained to the detainee in the language he understands, and in lieu of which his signatures were obtained on the execution report. Additionally, there is an affidavit of the Executing Officer PSI Rahul Sharma, P/S Billawar in the detention record, to the aforesaid extent.

6. Perusal of the record would show that there is a receipt of disposal of representation in which the petitioner has put his signatures and left hand thumb impression, and the said document is duly attested by the Superintendent District Jail Rajouri. This shows that the representation filed by the petitioner was duly considered and result thereof was effectively communicated to the petitioner.

7. The grounds of detention clearly show that the detainee was involved in cases with serious offences; that there is every apprehension that the detainee would indulge in more such criminal activities and pose a grave threat to the maintenance of public order, therefore, he cannot be let off scot-free; that four FIRs and two DDRs containing offences of serious nature are registered/recorded against the detainee; that the impugned detention order has been passed by the detaining authority, on the basis of dossier submitted by the SSP concerned based on 04 FIRs and two DDRs registered against the detainee at Billawar 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 Kathua. Keeping in view the activities of the detainee, the Detaining

Authority after due application of mind, by arriving at subjective satisfaction, issued the impugned order of detention, which cannot be found fault with.

8. 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 which 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.

9. 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.

10. It is apt to mention that Indian 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 detenue 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.

11. So far as the contention of the detenue that the representation filed by the petitioner was neither considered nor result thereof conveyed to the petitioner, as also he was not provided the copy of the detention order is concerned, the said contentions have been effectively addressed by this court in the preceding paragraphs and need not be reiterated here again. Thus, contention of the detenue that he was incapacitated in view of non supply of whole documents more particularly, the detention order, for the aforesaid reasons pales into insignificance.

12. 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 detenue under the J&K Public Safety Act, in view of serious allegations, of which he was charged.

13. The Detaining Authority has applied its mind by going through all the documents, past conduct of the detenue against whom 04 FIRs/DDRs stand registered/recorded and accordingly, arrived at subjective satisfaction that the activities of the detenue 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 detenue 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.

14. 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.

15. 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*' reported as **(2003) 3 SCC 409**.

16. Hon'ble the Supreme Court in the case of '*Mohd. Subrati alias Mohd. Karim v. State of West Bengal*' reported as **(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.”

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 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.

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

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

Jammu:
22.09.2025
Raj Kumar

(MA CHOWDHARY)
JUDGE

Whether the order is speaking?	Yes/No.
Whether the order is reportable?	Yes/No.