

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No.83/2025

Reserved on: 04.09.2025
Pronounced on: 22.09.2025

Ghulam Haider, Age 72 years
S/O Sh. Abdullah,
R/O Village Thal Lohai
Tehsil Lohai Malhar, District Kathua,

....Petitioner

Through :- Mr. V. Bhushan Gupta, Advocate.
Mr. Rahul Aggarwal, Advocate.

V/S

1. Union Territory of Jammu and Kashmir
Through Principal Secretary to Govt.,
Home Department, Civil Secretariat, Jammu.
2. District Magistrate, Kathua.
3. Senior Superintendent of Police, Kathua.

....Respondents

Through :- Mr. Suneel Malhotra, GA.

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

JUDGMENT

1. Petitioner namely Ghulam Haider S/O Abdullah R/O Village Lohai, Tehsil Lohai Malhar, District Kathua, 72 years old retired Lecturer from School Education Department of Jammu & Kashmir Government, (for short 'the detinue') has challenged the detention Order No.PSA/149 dated 13.03.2025 (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 'security of the State'.

2. The detainee, has assailed the impugned order, on the grounds that whole of the material relied upon by the detaining authority to pass the detention order was not supplied; that the detainee made a representation against his detention, however, he has not been informed about the outcome of the representation; that the detention order has been passed on the basis of two complaints lodged against him under Section 126 BNSS and four Daily Diary Reports (DDRs); that he was not informed of his right to file representation to the detaining authority, also no time period was mentioned in the Communication dated 13.03.2025 by the District Magistrate, Kathua to the petitioner, within which he can approach the competent authority, by way of filing representation; and lastly, it is prayed that the petition be allowed and the impugned detention order be set aside.

3. The respondents have contested the writ petition by filing counter affidavit of the detaining authority. In the counter affidavit, it has been submitted that the impugned order of detention has been passed by the detaining authority after carefully analyzing the dossier dated 22.01.2025 submitted by the Senior Superintendent of Police, Kathua; that the petitioner is an Over Ground Worker (OGW) of terrorist organizations, who was previously detained under preventive detention in March 2022, in view of his activities prejudicial to the Security of the State; that the petitioner was found instigating and radicalizing the local youth of the area to join terrorist ranks, coordinating the movements of terrorists in general area of Lohai Malhar for attack on the security forces; that because of his destructive behaviour he was made to execute bond under Section 107 CrPC;

that the ordinary criminal law had failed to deter the detainee, from indulging in criminal activities, as such, the detaining authority was compelled to pass the impugned order of detention; that the respondents have supplied all the documents to the detainee and have also read out and explained the contents thereof in the language he understands; that he was also informed about his right to make a representation to the Government as well as to the detaining authority; that the respondents in order to lend support to their contentions, have produced the detention record. Lastly, it is prayed that the petition be dismissed and the impugned detention order be upheld as the same has been strictly passed, following constitutional and statutory provisions.

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

5. The detention record, as produced, reveals that the detainee was involved in following complaints and DDRs lodged/recorded against him at Police Station Malhar:-

- 1) Complaint; U/S 107 CrPC;
- 2) Complaint; U/S 126 BNSS;
- 3) DDR No.06 dated 29.10.2024;
- 4) DDR No.05 dated 05.11.2024;
- 5) DDR No.1 dated 08.11.2024;
- 6) DDR No. 11 dated 21.11.2024

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

6. 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 he was not informed that he has right to move representation seeking reconsideration of the impugned detention order to the detaining authority and no specific time period is mentioned in the communication dated 13.03.2025 sent by the District Magistrate, Kathua to the petitioner, within which he can file his representation;
- (II) That the representation filed by the petitioner was neither considered nor outcome thereof communicated to the petitioner;
- (III) That whole of the material relied by the detaining authority for passing detention order was not supplied to the petitioner. Also contents of the material relied upon by the detaining authority to pass detention order was neither read over nor explained to the detainee in the language he understands; and
- (IV) That the impugned order was passed after an inordinate and gargantuan delay, from the receipt of the dossier, supplicating to invoke preventive detention in order to prevent petitioner from committing the activities prejudicial to the national security.

7. First ground, as argued is that the detainee was not informed that he has right to file representation to the detaining authority against the impugned detention order for its revocation as also the time period within which he can make representation before it as well as the government is not mentioned, thereby, violating his statutory and constitutional rights. Bare reading of the communication No.DMK/JC/2025/4056-60 dated 13.03.2025, addressed by the District Magistrate, Kathua to the detainee, would show that as '*you may make representation to the Govt. against the order within stipulated time period, if you so desire*'. It is evident from a perusal of the afore-stated communication, that

the Detaining Authority has not, at all, informed the detainee that he can file representation to the detaining authority itself against the impugned detention order, seeking its reconsideration. Conspicuously missing is the intimation to the detainee of the time period within which he can approach the Government for revocation of the impugned detention order.

8. In a case of National Security Act, titled “**Jitendra Vs. Dist. Magistrate, Barabanki & Ors.**”, reported as **2004 Cri.L.J 2967**, the Division Bench of Hon’ble Allahabad High Court, has held:-

“10. We make no bones in observing that a partial communication of a right (in the grounds of detention) of the type in the instant case, wherein the time limit for making a representation is of essence and is not communicated in the grounds of detention, would vitiate the right fundamental right guaranteed to the detainee under Article 22(5) of the Constitution of India, namely, of being communicated, as soon as may be the grounds of detention.”

9. Since the detainee’s right to make representation to the detaining authority was only available to him till approval of detention order by the Government, it follows as a logical imperative that the detaining authority should have communicated to the detainee, at the first hand, that he has right to file representation before the detaining authority as well and secondly, the detaining authority should have informed the detainee the time limit, within which, he could make representation to it i.e., till the approval of the detention order by the State Government. It is settled law that once the Government passes an order approving the order of detention, the Detaining Authority becomes *functus officio*, thereafter, cannot review its order. Therefore, the Detaining Authority

ought to inform the detenue about his right, at the very outset, so that the detenue can make representation for reconsideration by the Detaining Authority expeditiously. Since the petitioner, time and again, alleges that he has not been informed of his right to make representation to the detaining authority against the impugned order as also no mention of time within which he can file the representation, the respondents ought to have filed an affidavit of the executing officer to refute the allegations, which admittedly has not been done in the present case. There is, therefore, force in the above argument of the detenue. On this count alone, the impugned detention order cannot sustain and is liable to be quashed.

10. The second ground to assail the impugned order is that representation of the detenue was neither considered nor result thereof conveyed to the detenue. In the Counter affidavit filed on behalf of respondent no. 2, there is no whisper with regard to receipt of any representation of the detenue, yet the record produced by the respondents would reveal that vide communication dated 19.06.2025 addressed by the Government to District Magistrate, Kathua, with copy to the Superintendent District Jail, Udhampur, with request to inform the detenue regarding the disposal of his representation and to solicit receipt/acknowledgement in this regard from the detenue. The respondents, have failed to show any receipt/acknowledgement in this regard nor there is any affidavit on record to prove that information regarding disposal of representation was duly communicated to the detenue. Since detenue has all along denied any receipt or information about the outcome of the representation, and the record is completely silent qua intimation to the petitioner of disposal of the representation. This inaction and slackness on the part of respondents in not

conveying the outcome of the representation to the petitioner vitiates the impugned order of detention.

11. The third ground urged by the learned counsel for the detainee that the entire material forming the basis of the grounds of detention was neither supplied nor explained to him in the language he understands, has been contradicted by respondent No.2 in its affidavit. The detention record produced by the respondents contains report of execution as also receipt executed by the detainee. According to the receipt, the detainee has received a total of 37 leaves comprising copy of warrant, grounds of detention along with letter in English, Police dossier and other documents. It appears that the detainee has been supplied whole of the material/documents which was relied upon to draw satisfaction to pass the impugned detention order. The detainee's contention in this behalf, thus fails and is rejected.

12. So far as the above complaints filed are concerned, it has been recorded that during the year 2023 when the anti-national elements and their masters across were bent upon to destabilise the peace and harmony by reviving the terrorist activities through their sleeper cells, the situation in Jammu zone, particularly, the Districts of Jammu and Udhampur, sticky bombs recovered from OGWs/released militants in jurisdiction of Police Station Malhar of District Kathua and there were apprehensions that the detainee may involve himself in terrorists activities by way of providing aid and help ANEs, and that it was necessary to bind down the detainee who had already been marked as OGW in view of his past harboring activities. In both the complaints, same thing has been recorded. So far as DDRs are concerned recorded on various dates such as 29.10.2024, 05.11.2024, 08.11.2024 and 21.11.2024 at P/S Malhar, repeatedly

recording that the detainee was an over ground worker who often remains active during night hours, so much so in one of the DDRs dated 21.11.2024, the petitioner had been shown as a '*surrendered militants*' and suspected to be involved in providing the logistics support to ANEs along with one Liaqat Ali Bhat who was also stated to be a criminal minded person. The police in its dossier had shown the detainee as a hard-core facilitator of terrorists activities and a perpetual concern for the security agencies as a notorious terrorist. In all the complaints or the DDRs, no specific allegations/accusations have been made as to how, when and in what manner detainee has provided logistic support to which of the terrorist outfits or their ranks.

13. There is not a single FIR registered against the petitioner. The complaints and the DDRs recorded were general and vague conjectures without enumerating any specific activity being carried out by the detainee, so as to warrant his detention. It is surprising that if the acts mentioned in the DDR entries are criminal acts and are cognizable in nature, then why the State has not filed any FIR. Law provides that if cognizable offence is committed and is brought to the knowledge of any authority, First Information Report should be lodged. If at all those acts mentioned in DDRs make out any criminal offence, what prevented the State to file a First Information Report is shrouded in mystery.

14. The last ground is regarding inordinate delay in passing the impugned detention order. The SSP, Kathua has submitted his dossier along with the record to be relied upon to the detaining authority on 26.01.2025 whereas the detention order was passed on as late as on 13.03.2025 by the detaining authority after a period of 46 days. While discussing the effect of delay in executing the warrant of detention from the date of submission of dossiers, hon'ble the Supreme Court

in the case ‘**A. Mohd. Farook v. Joint Secretary to Govt. of India**’, reported as **(2000) 2 SCC 360**, observed that unexplained delay in execution of warrant of detention vitiates the subjective satisfaction of the detaining authority in issuing the detention order. Relevant paragraphs of the judgment (supra) are extracted as under:

“11. There is catena of judgments on this topic rendered by this Court wherein this Court emphasised that the detaining authority must explain satisfactorily the inordinate delay in executing the detention order otherwise the subjective satisfaction gets vitiated. Since the law is well settled in this behalf we do not propose to refer to other judgments which were brought to our notice.

12. As indicated earlier the only explanation given by the detaining authority as regards the delay of 40 days in executing the detention order is that despite their efforts the petitioner could not be located at his residence or in his office and therefore the order could not be executed immediately. No report from the executing agency was filed before us to indicate as to what steps were taken by the executing agency to serve the detention order. In the absence of any satisfactory explanation explaining the delay of 40 days, we are of the opinion that the detention order must stand vitiated by reason of non execution thereof within a reasonable time. From Annexure P.2 (the proceeding sheet of the M.M. Court Madras) it appears that the petitioner (accused) was present in the court of Additional Chief Metropolitan Magistrate on 25.2.1999 as well on 25.3.1999. Despite such opportunities neither the detaining authority nor the executing agency as well as sponsoring authority were diligent to serve the detention order on the petitioner at the earliest. In this view of the matter, we are of the opinion that the subjective satisfaction of the detaining authority in issuing detention order dated February 25, 1999 is vitiated It is in these

circumstances it is not possible for us to sustain the detention order.”

Applying the analogy discussed hereinabove in the case of *A. Mohammad Farook (supra)*, passed by the Apex Court, it is discernable that the delay in passing the detention order after the receipt of dossier from the SSP concerned depicts no urgency so as to detain the detainee, therefore, the order itself is vitiated to have been passed on account of delay in passing the impugned order of detention.

15. 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.”

16. Having regard to the facts, firstly, that not informing the detainee that he can make representation to the detaining authority, against the detention order besides time frame not specified in the detention order, within which detainee can file representation against the detention order and secondly, non communication of the result of the representation to the detainee; thirdly, non supply of whole of the material which incapacitated the petitioner to file effective and meaningful representation to the detaining authority as well as government; fourthly, non application of mind by the detaining authority, in as much as the grounds of detention are almost xerox copy of the police dossier, 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 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 render it unsustainable and liable to be quashed.

17. For the foregoing reasons and observations made hereinabove, in view of the facts of the instant case and the law laid down by the hon'ble Apex Court on the subject, the order of detention, impugned herein, does not sustain and is found liable to be quashed on all fours. Accordingly, this petition is allowed and

the impugned order of detention bearing No.PSA/149 dated 13.03.2025, passed by respondent No. 2, District Magistrate, Kathua, is hereby quashed. The detenue-**Ghulam Haider** is directed to be released from the preventive custody forthwith, if not required in any other case(s). No costs.

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

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

Jammu:
22.09.2025
Raj Kumar

