

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

Reserved on : 07.08.2025

Pronounced on: 11.08.2025

HCP No. 07/2025

Mohd. Hussain, Age 64 years
S/O Shah Mohd.R/O Shahpur,
Tehsil Haveli,District Poonch
Through Son Waqar Younis

.....Petitioner(s)

Through: Mr. Sanchit Verma, Advocate.

Vs

1. **UT of Jammu & Kashmir** through
Commissioner/Secretary, (Home),
Civil Secretariat, Jammu/Srinagar.
2. District Magistrate, Poonch.
3. Senior Superintendent of Police,
Poonch.
4. Superintendent, Central Jail, Jammu.

..... Respondent(s)

Through: Mr. Dewakar Sharma, Dy. AG.

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

JUDGMENT

01. Petitioner-Mohd. Hussain, S/O Shah Mohd. R/O Shahpur, Tehsil Haveli, District Poonch (for short 'the detainee') challenged the detention Order No.DMP/PSA/24 of 2024 dated 13.11.2024 (impugned order), issued by respondent No.2, District Magistrate, Poonch (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 and detrimental to the 'security of the State'.

02. Petitioner contends that the Detaining Authority passed the impugned detention order without there being any compelling circumstances; that the detaining authority has not informed the detainee about his right to file

representation and also the time frame within which such a representation must be filed to the detaining authority as well as government against his detention order, and that whole of the material forming the basis of the grounds of detention was not furnished to the detainee which incapacitated him to file effective representation against his detention order. Lastly, it has been contended that on 30.12.2024, the detainee through his son, had made a representation before respondent no.1, but the same has neither been considered nor the result of the same communicated to the detainee, as reply filed on behalf of the respondents is also conspicuously silent vis-à-vis representation of the detainee.

03. 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 04.11.2024 submitted by SSP Poonch; that the detention order is based on subjective satisfaction of the detaining authority and the grounds of detention clearly reflect the application of mind; that the detaining authority was satisfied that the activities of the detainee were prejudicial to the security of the State and that there was every likelihood of the detainee continuing with such activities even if released on bail; that the respondents have supplied all the material 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 detaining authority; that the representation filed on behalf of the detainee was duly considered and result whereof communicated to the petitioner through jail authorities; that the respondents, in order to lend support to their contentions, have produced the detention record.

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

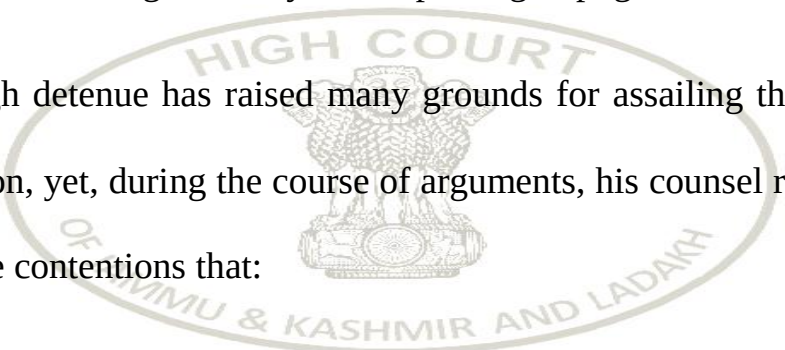
05. The detention record, as produced, reveals that the detainee was involved in following cases registered at Police Station Poonch:-

1) FIR No. 212/1991 U/Sec 2/3 E&IMCO

2) FIR No. 124/1992 U/Sec 2/3 E&IMCO

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

06. Although detainee has raised many grounds for assailing the impugned order of detention, yet, during the course of arguments, his counsel restricted his arguments to the contentions that:

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- i) That detainee 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;
 - ii) Representation of the detainee against the impugned order of detention, though filed, was not considered by the respondents, nor its result conveyed to the detainee, thereby violating his statutory and constitutional rights;
 - iii) That whole of the material, contents of the detention warrant as well as grounds of detention were not provided and explained to the detainee in the language he understands;

iv) That the grounds of detention are replica of police dossier.

07. First ground as argued is, that the detainee was not informed about his right to make representation within stipulated time before the detaining authority as well as government, thereby violating his statutory and constitutional rights. It is translucently clear from perusal of the impugned detention order that the Detaining Authority has not communicated to the detainee the time limit, within which, he could make a representation to it, till approval of the detention order by the Government. 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.”

08. Since the detainee’s right to make a 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 in the detention order, the time limit, within which, he could make a representation to it i.e., till the approval of the detention order by the State Government. There is, therefore, force in the above argument of the detainee. On this count alone, the impugned detention order cannot sustain and is liable to be quashed.

09. The second ground was that representation of the detention was neither considered nor result thereof conveyed to the detainee. The respondent no.2, in his counter affidavit, nothing was stated about representation from the detainee, yet the record produced by the respondents would reveal that vide communication dated 06.02.2025 by the Government addressed to District Magistrate, Poonch with copy to the Superintendent Central Jail, Jammu, detaining authority, with request to inform the detainee about disposal of his representation. The respondents, in order to substantiate their claim that they informed the detainee of the decision of the representation, ought to have filed an affidavit to that effect, since detainee has all along denied any receipt or information about the outcome of the representation, however, the such affidavit is conspicuously absent and, what the respondents have placed on record is communication dated 06.02.2025 (supra) on which it is alleged that detainee has put his signatures. Even if it is assumed that, the representation filed on 30.11.2024 was considered by the government, after 65 days of its filing, there is inordinate and unexplained delay in consideration of the representation which is ought to be considered at the earliest. This slackness on the part of respondents to take a decision on the representation of the detainee also vitiates the impugned order of detention.

10. The next ground that whole of the material, contents of the detention warrant as well as grounds of detention were neither provided nor explained to the detainee in the language he understands is concerned, the respondents, in order to vindicate their claim that they have duly supplied the whole material including detention warrant and grounds of detention to the detainee and explained the same in the language he understands, has drawn attention of this

court to record, more particularly, execution report of the executing officer, **PSI Suman Sharma** of P/S Poonch executing detention order No. DMP/PSA/24 of 2024 dated **13.11.2024**, receipt of grounds of detention. In order to substantiate their claim, an affidavit is also placed on record. The said affidavit is reproduced hereinbelow for ready reference:

“Affidavit

I, Insp. **Kunal Singh Jamwal**, SHO PS Poonch PID No.EXJ.109574 presently posted at Station House Office Poonch, District Poonch, do hereby solemnly affirm and declare as under:-

1. In compliance to **District Mobile Magistrate Poonch**, Order No.DMP/PSA/24 of 2024 dated **18.11.2024** **has been taken into the custody of detenu** Namely Mohd. Hussain S/O Shah Mohd R/O Shahpur Tehsil Haveli District Poonch on 18.11.2024 for execution of detention warrant at District Jail Poonch today on 18.11.2024. The contents of the detention warrant as well as grounds of detention has been read over in English and explained to him in Urdu languages which he understood fully in token of which his signatures has been obtained below at mark “A”. Moreover a copy of detention warrant 01 leaf, and other grounds of detention 04 leaves, Dossier 04 leaves, notice of detention 01 leaf and other relevant record 14 leaves, total 24 leaves has been handed over to him and also informed to him that he can make representation to the Govt. as well as detaining authority against the detention order, if he so desire.
2. That the averment made herein above is true to the knowledge and belief of the deponent and that nothing has been concealed there from.

Sd/-
Deponent.

Verification:-

Verified at Poonch today on 21.11.2024 that the contents of the affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed as therein.”

11. The execution of the warrant of detention is also doubtful, as to who has executed the same- whether by PSI Suman Sharma whose execution note states that warranted was executed by him at Central Jail, Jammu or whether by Inspector Kunal Sharma who deposed on affidavit that he executed the warrant on 18.11.2024, at District Jail Poonch, on the day when impugned order was passed by the District Magistrate. The contradictory claims of the execution of

the warrant by two Police officers, further compounds the veracity of the service of the material to the detainee, affecting his constitutional/legal rights. This aspect of the matter also vitiates the impugned order.

12. The last ground, which has been urged by the learned counsel for the detainee is that the Detaining Authority while formulating the grounds of detention has failed to apply its mind, inasmuch as the grounds of detention are almost xerox copy of the police dossier. A perusal of grounds of detention and the police dossier reveals that the language and expressions used in both the documents are almost similar to each other with intermixing of words here and there. This clearly shows that the detaining authority has acted in a mechanical manner. The Supreme Court has, in the case of **Jai Singh and others vs. State of Jammu and Kashmir, (1985) 1 Supreme Court Cases 561** clearly stated that where the grounds of detention are verbatim reproduction of the dossier submitted by the police, it goes on to show that there is non-application of mind on the part of the detaining authority. In **Rajesh Vashdev Adnani vs. State of Maharashtra and others, (2005) 8 SCC 390**, the Supreme Court again reiterated that where the detention order is verbatim reproduction of the police dossier, the said order suffers from non-application of mind on the part of the Detaining Authority.

13. 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 Poonch in the years 1991 and 1992, with regard to crossing of the LoC, in which he was convicted by the court of learned Chief Judicial Magistrate, taking a lenient view, having consideration of the facts and circumstances. The reliance on the 35 years old cases in the year 2024 to pass

impugned order is not permissible being stale, snapping proximate and live link.
(See: **Sama Aruna v. State of Telangana & Ors (2018) 12 SCC 150**).

14. In the face of the aforestated legal position, it can safely be stated that the detaining authority in the instant case has acted in a mechanical manner while passing the impugned order of detention rendering it unsustainable in law.

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 to the extent that time frame is not specified in the detention order; within which detainee can file representation against the detention order and secondly, decision of the representation, though filed, not intimated to the detainee; thirdly, non application of mind by the detaining authority, in as much as the grounds of detention are almost xerox copy of the police dossier, and fourthly, contradictory report with regard to the execution of the detention warrant inasmuch as execution report would show that **PSI Suman Sharma**, P/S Poonch executed the detention order dated 13.11.2024 upon detainee at **Central Jail, Jammu on 18.11.2024**, whereas affidavit sworn in this behalf by Inspector **Kunal Singh Jamwal**, SHO P/S Poonch, deposed that the detention order dated 18.11.2024 was executed by him on the detainee at **District Jail Poonch on 18.11.2024** itself, 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. Viewed thus, the petition is allowed and the impugned detention Order No.DMP/PSA24 of 2024 dated 13.11.2024, passed by respondent No. 2, District Magistrate, Poonch, is hereby quashed. The detainee-**Mohd Hussain** S/O Shah Mohd, R/O Shahpur, Tehsil Haveli, District Poonch, 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).

(M A CHOWDHARY)
JUDGE

JAMMU
11.08.2025
Raj Kumar

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