

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

HCP No.08/2025

Reserved on: 30.06.2025.

Pronounced on: 07.07.2025

Sehran Wani, Age 43 years
Through his wife
Tabassum Ara, Age 32 years,
D/O Mohd. Iqbal Malik,
R/O Village Kaskoot,
Tehsil Banihal District Ramban.

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

V/s

Through :- Mr. N D Qazi, Advocate.

1. The Union Territory of Jammu & Kashmir
Through its Principal Secretary to Govt.,
Home Department, Civil Secretariat, Jammu
2. The Union Territory of Jammu & Kashmir
Through its Financial Commissioner (ACS Home)
to Govt., Civil Secretariat, Jammu
3. The District Magistrate, Ramban
4. Senior Superintendent of Police, Ramban.
5. Superintendent, District Jail, Rajouri.

....Respondent(s)

Through :- Mr. Bhanu Jasrotia, GA

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

JUDGMENT

1. Petitioner namely Sehran Wani, S/O Hafizullah Wani, R/O Ramssoo, A/P Kaskoot Banihal, District Ramban (for short 'the detenue') through the medium of this petition, has challenged the detention Order No.06/PSA of 2024 dated 14.11.2024 (impugned order), issued by respondent No.3, District Magistrate, Ramban (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 contends that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch as the grounds of detention are mere reproduction of the dossier; that the statutory procedural safeguards have not been complied with in the instant case; that the detaining authority has not mentioned a word with regard to satisfaction drawn by it in the detention order as to how it has come to the conclusion of passing of the detention order; that he has not been informed about his right to make representation to the detaining authority; that the reliance placed by the detaining authority on the FIRs of the year 2016, which are stale is misconceived, as also on the DDRs of the year 2024, which are nothing but vague allegations.

3. It is further contended that the petitioner has been shown involved in 3 FIRs by the respondents, however, it is alleged that the petitioner has already been acquitted in some of the FIRs by the Court of law and in other cases, he is on bail facing trial, but the detaining authority has made those very FIRs the basis for passing the order of detention. On this ground alone, the impugned detention order is required to be quashed by this Court as this apparently shows that the detaining authority is oblivious of the whole facts of the cases of the petitioner.

4. The respondents, in their counter affidavit, have controverted the averments made in the petition and submitted that the activities of the detinue are anti-national, anti-social and prejudicial to the security and peaceful atmosphere of Banihal and its adjoining areas, and therefore, there was dire need to prevent the detinue from such activities; that the detinue is involved in three cases registered at Police Station Banihal; that the detention order and grounds of

detention were handed over to the detainee and the same were read over and explained to him in the language he understands; that the grounds raised by the petitioner are factually misconceived and legally untenable. The respondents have also produced the detention record in order to lend support to the contentions raised in the counter affidavit.

5. Mr. Qazi, learned counsel for the petitioner, while reiterating the grounds taken in the petition argued that the petitioner was not supplied whole of the record and also not informed about his right to file representation to the detaining authority. He submits that the detaining authority was under an obligation to provide whole of the record which it had relied upon to base the impugned detention order, however, the dossier submitted by the SSP concerned on the basis of which detention order was passed had not been provided to the detainee; that the detainee had a right to be informed about his right to file representation to the detaining authority to seek review of the detention order. As such, the order impugned is vitiated on these counts and is liable to be set aside.

6. He further argued that the detaining authority had relied upon the cases registered vide different FIRs in the year 2016 and some Daily Dairy Reports recorded in 2024 from July to November at Police Station Banihal; that the FIRs relied upon pertaining to the year 2016 could not have been relied upon in view of the fact that the cases registered in the year 2016 could not have been considered to pass the impugned order in the year 2024, being stale, for lack of live and proximate link, between the alleged activities and the preventive detention order. Also, that the 4 DDRs recorded at P/S Banihal from July to November in the year 2024 were general and vague without enumerating with

regard to any activity being carried out by the detainee; that all the DDRs do not reveal any specific activity carried out by the detainee, so as to warrant his detention. It was finally submitted that the petition be allowed and the impugned detention order be quashed.

7. Mr. Jasrotia, learned State Counsel, *ex adverso*, argued that the contentions made on behalf of the petitioner that whole of the material was not provided to him is misplaced as all the documents relied upon including dossier prepared by the police had been provided to him and also that the receipt at the time of the execution of the warrant is available on the record to substantiate that whole of the record was provided to the detainee and that in such a situation the detainee cannot be stated to have been incapacitated to file an effective and meaningful representation against any detention; that the detainee had also been through the detention order, which was also explained to him at the time of execution of the detention warrant, that he has a right to file representation to the Government, however, the detainee had not chosen to file representation. In such a situation, the grounds agitated seeking quashment of the impugned order are not of any consequence as whole of the material was also provided and the detainee was also informed that he has a right of filing representation against his detention to the Government of Jammu & Kashmir. It was finally prayed that the petition be rejected and the impugned detention order be upheld.

8. Heard learned counsel for the parties and perused the detention record.

9. The detention record, as produced, reveals that the detainee was involved in following 03 cases registered at Police Station, Banihal:-

- 1) *FIR No.90/2016 U/Sec. 147/148/120B/121-A RPC.*

- 2) *FIR No.102/2016 U/Sec.147/149/120B/121-A RPC.*
- 3) *FIR No.107/2016 U/Sec 147/148/149/120B/121-A RPC.*

Besides the afore-stated cases registered against the detainee, following four Daily Diary Reports (DDRs) also came to be recorded against him:

- 1) *DDR No.12 dated 19.07.2024.*
- 2) *DDR No.25 dated 29.10.2024.*
- 3) *DDR No. 13 dated 03.11.2024.*
- 4) *DDR No. 19 dated 10.11.2024.*

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

10. Both the grounds agitated on behalf of the petitioner that he was not provided whole of the material, which was based by the detaining authority to pass the impugned order and that he was not informed about his right to file representation to the detaining authority to seek reconsideration, can be traced from the record. The respondents, while filing the counter affidavit, had filed the **Receipt of Detention Warrant** indicating therein that the detainee was supplied with copies of detention warrant(one leaf), notice of detention (one leaf) and grounds of detention (three leaves) through executing officer PSI Rohit Kumar, in presence of Assistant Superintendent District Jail, Rajouri which means that no other document except the detention warrant, notice of detention and grounds of detention were shared with the detainee by the detaining authority through the executing officer. On perusal of the record produced by the learned State Counsel, there are two receipts; one is that they had annexed with the counter affidavit and another is hand written document styled as '**Receipt of Grounds of Detention**' indicating that the detainee was supplied besides the aforesaid

detention order, notice of detention, and grounds of detention, dossier of detention (02 leaves) and copies of FIRs, statements of witnesses and other relevant documents (52 leaves) through the same executing officer PSI Rohit Kumar. However, this document was not attested by any officer of the Jail which makes its veracity doubtful. Otherwise also, there could be no reason that two receipts were prepared differently at the time of execution of the warrant. It appears that this hand written receipt had been later on manipulated to be placed on record. This Court, thus, is of the opinion that the detainee had been provided only five (05) leaves at the time of execution of warrant in presence of Assistant Superintendent District Jail Rajouri on 17.11.2024 and no dossier as stated was provided to the detainee which can be said to have incapacitated the detainee from filing a meaningful and effective representation.

11. 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 detainee 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 detainee 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."

12. In view of law laid down by the various courts including the Hon'ble Apex Court, the law in this aspect is well settled and is no longer *Res Integra*

that the detainee 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 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* thereafter cannot review its order. Therefore, the Detaining Authority had to inform the detainee about his right at the very outset so that the detainee can make a representation for reconsideration by the Detaining Authority.

13. The criminal cases registered in the year 2016 could not have been made the basis to invoke preventive detention as the cases registered in the year 2016, after a period of eight years, had no live and proximate link with the detention order, as has been held by the Apex Court in [Sama Aruna v. State of Telangana and another](#), (2018) 12 SCC 150, relevant paragraph whereof is reproduced herein below:

"22. We are of the view, that the detention order in this case is vitiated by taking into account incidents so far back in the past as would have no bearing on the immediate need to detain him without a trial. The satisfaction of the authority is not in respect of the thing in regard to which it is required to be satisfied. Incidents which are stale, cease to have relevance to the subject-matter of the enquiry and must be treated as extraneous to the scope and purpose of the statute."

14. This was further affirmed by the Supreme Court in [Khaja Bilal Ahmed v. State of Telangana](#), (2020) 13 SCC 632, in which order of detention was issued on 2nd November 2018 and detaining authority had delved into the history of cases involving the appellant-detenu therein from the years 2007-

2016, despite the subjective satisfaction of the Officer not being based on such cases. In quashing such an order, it was observed:

"23..... If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the Appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future."

15. The Supreme Court has again held that the order of detention must not be based upon stale events and the relevant observations made by the Supreme

Court in [Ameena Begum v. State of Telangana and others](#), (2023) 9 SCC 587, are as under:-

"17. In a different context, we may take note of the decision in [Sama Aruna vs. State of Telangana](#)¹¹, where, S.A. Bobde, J. (as the Chief Justice then was) while construing the provisions of the Act, held:

"16. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account." In holding that the order of detention therein was grounded on stale grounds, the Court held that:

"The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it."

16. The other 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 its No.DMR/213-15 dated 14.11.2024 had informed the detainee that he may take a representation before the Government against detention order if he so desires, meaning thereby that the Detaining Authority had not informed the detainee that he could file a representation before the Detaining Authority as well. Therefore, the contention made on behalf of petitioner 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.

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 interest of the security of the State or public order, then the liberty of the individual must give way to the larger interests of the nation.

18. 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.”

19. Having regard to the facts that firstly whole of the record particularly copy of dossier was not provided to the detainee, secondly, he was not informed about his right to file representation to the detaining authority and thirdly the absence of live and proximate link to the activities attributed to the detainee in the year 2016 and the impugned detention order passed, after a period of more than eight years in the year 2024, 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 impugned detention order was not permissible to be passed on references to the State cases, after a period of eight years and no specific activities attributed to the detainee in the DDRs relied upon; that in this backdrop, it is established that the detaining authority has passed the impugned detention order arbitrarily without application of mind and is vitiated.

20. 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 as referred above, the order of detention, impugned herein, does not sustain and is found liable to be quashed. Accordingly, Petition is allowed and the impugned order of detention bearing No. **06/PSA of 2024 dated 14.11.2024**, passed by

respondent No. 3, District Magistrate, Ramban, is hereby quashed. The detenue is directed to be released from the preventive custody forthwith, if not involved in any other case(s).

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

22. **Disposed of**, accordingly.

Jammu:
07.07.2025
Raj Kumar

(MA CHOWDHARY)
JUDGE

Whether the order is speaking?	Yes
Whether the order is reportable?	Yes