

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

HCP No.12/2025

Reserved on: 31.07.2025.

Pronounced on: 01.08.2025

Jamil Ahmed, Age 44 years
S/O Mohd Ishaq, R/O Kamlari,
Tehsil and District Kathua
through brother Mirza

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

Through :- Mr. M. Tariq Mughal, Advocate.

V/s

1. The Union Territory of Jammu & Kashmir
Through its Commissioner/Secretary (Home),
Civil Secretariat, Srinagar/Jammu
2. Director General of Police, J&K, Jammu.
3. The District Magistrate, Kathua
4. Senior Superintendent of Police, District Kathua.
5. Station Houses Officer, Lakhanpur, Kathua.

....Respondent(s)

Through :- Mr. Suneel Malhotra, GA

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

JUDGMENT

1. Petitioner namely **Jamil Ahmed**, S/O Mohd Ishaq, R/O Village Kamlari Panchayat Domar, Tehsil and District Kathua (for short 'the detenué') has challenged the detention Order No.PSA/129 dated **10.12.2024** (impugned order), issued by respondent No.3, 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. It has been contended 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 detainee has not been provided with the material on the basis of which the grounds of detention have been formulated; that no FIR has been registered against the petitioner and merely registration of criminal complaints having vague allegations against the detainee cannot be a ground to pass the impugned order of detention; that the detainee is an illiterate person and grounds of detention and relevant documents were neither explained to him in the language he understood nor the translated version of the said document was furnished to him; and that the detainee was not informed about his right of making representation to the detaining authority.

3. Counter affidavit has been filed by respondent no.3 i.e. the Detaining Authority. In its counter affidavit, respondent no.3 has contended that the detainee is a hardcore criminal, who is involved in a number of anti national activities, against whom as many as 03 complaints U/S 126/135 BNSS and one DDR entry stand registered/recorded and his activities are highly prejudicial to the maintenance of public order; that all the procedural safeguards have been followed while passing the impugned order of detention against the detainee and that the grounds of detention and material in support thereof have been furnished and explained to him in the language he understands. It has also been contended that none of the legal, statutory or fundamental rights of the detainee has been violated and that the impugned order of detention has been passed after proper application of mind.

4. Heard learned counsel for the parties and perused the record of the case including the record of detention.

5. The first and foremost ground which has been urged by the learned counsel for the petitioner 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 & Ors 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 & Ors [(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.

6. In the face of the aforesaid 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.

7. The next ground urged by the learned counsel for the detainee is that the entire material forming the basis of the grounds of detention was neither supplied nor explained to him in the language he understands. This has been contradicted by respondent No.3 in its affidavit. The detention record produced before this Court contains report of execution and receipt executed by the detainee.

According to the receipt, the detenue has received a total of 29 leaves comprising copy of detention order, notice of detention, grounds of detention, Police dossier, along with relevant documents. Since the petitioner has denied that entire material has been supplied and explained to him in the language he understands, the respondents ought to have filed affidavit of execution officer in this regard, which on the perusal of the record would show that same has not been done, thus vitiating the impugned detention order.

8. As regards the complaints U/S of BNSS are concerned, perusal of the record would show that the above complaints were not forming part of the detention record produced by the respondents. As the petitioner has all along denied that he has been supplied all the relevant material, in that view of the matter, the respondents ought to have filed an affidavit of the executing officer to controvert the above allegations, which has ostensibly not been done by the respondents in the instant case. It can thus safely be assumed that all the material was not supplied to the petitioner on the basis of which detention order is passed.

9. So far as the DDR entry (supra) is concerned, it is an admitted case that this has not culminated in any criminal case. Merely recording DDR alleging some acts cannot be the ground to detain a person. It is surprising that if the acts mentioned in the DDR entry are criminal acts and are cognizable in nature, then why the State has not filed any First Information Report. 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 DDR make out any criminal offence, what prevented the State to file a First Information Report is a mystery.

10. The next ground urged by the detainee is that mere filing of criminal complaints against him could not be a ground to pass the impugned order of detention without any compelling reasons, particularly when there is no FIR registered against him. It is well settled law that in normal course, criminal activities of a person should be tackled by having resort to the substantive provisions of the criminal law. Preventive detention is an exception to the general rule and it has to be resorted to only in exceptional circumstances. When a person has already been booked under substantive penal provisions in respect of his criminal activities and is facing trial in regard to the said offences, there must be compelling reasons with the Detaining Authority for taking resort to the preventive detention laws, however in the instant case, no such compelling reasons are shown to warrant preventive detention, without any right to defend him as available during trial of criminal cases/complaints. Thus, on this count also, the impugned order is vitiated. 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.

11. 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.DMK/JC/2024-25/3431-35 dated 10.12.2024 had informed the detainee that he may make 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 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.

12. 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 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.

13. The cumulative effect of the aforesaid discussion leads to the only conclusion that in the instant case, the respondents have not adhered to the legal

and constitutional safeguards while passing the impugned order of detention against the detainee and that the said order has been passed mechanically and without application of mind.

14. Having regard to the preceding analysis and the law discussed hereinabove, this Court reaches to this inescapable conclusion that the impugned order was passed against the detainee/petitioner arbitrarily and mechanically, without application of mind by the detaining authority and the constitutional and statutory safeguards available to the detainee were also observed in breach and trampled, vitiating the same, which renders it unsustainable and liable to be quashed.

15. Viewed thus, the petition is allowed and the impugned detention Order No. **PSA/129 dated 10.12.2024**, passed by respondent No. 3, District Magistrate, Kathua, is hereby quashed. The detainee-Mohd. Jamil, S/O Mohd. Ishaq, R/O Kamlari, Panchayat Domar, Tehsil & District Kathua is directed to be released from the preventive custody forthwith, if not required in any other case(s).

16. The record of detention be returned to the learned counsel for the respondents.

(MA CHOWDHARY)
JUDGE

Jammu:
01.08.2025
Raj Kumar

Whether the order is speaking? Yes

Whether the order is reportable? Yes