

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
HCP No. 14/2025**

Reserved on: 14.08.2025
Pronounced on: 25.09.2025

**Abdul Rashid Naik S/O Ali Mohd Naik
R/O Lablutha Shagan Teh. Khari District Ramban**

.....Petitioner(s)

Through: Mr. M. A.Bhat, Advocate

Versus

**1.Union Territory of Jammu and Kashmir through
Additional Chief Secretary to Govt. Home Department, Civil Secretariat
Jammu/Srinagar**

2. District Magistrate, Ramban.

3. Senior Superintendent of Police Ramban

4. In-charge / Superintendent District Jail Udhampur.

.....Respondent(s)

Through: Mr. Bhanu Jasrotia, GA

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. The petitioner through the medium of the instant Habeas Corpus petition filed under Article 226 of Constitution of India prays for quashing of detention of the detenu, namely, Abdul Rashid Naik, ordered by the Respondent No.2 vide his Order No. 05/PSA of 2024 dated 14.11.2024 communicated to the petitioner on 16.11.2024 vide communication No. DMR/192-94 dated 14.11.2024.
2. The petitioner challenges the order of detention passed by the respondent no.2 on the ground that same is against law and is violative of the personal liberty of the petitioner as guaranteed under Article 21 and

safeguards provided under Article 22 of the Constitution. It is stated that the order of detention has been passed by the District Magistrate without considering the material before him which was stale, irrelevant and insufficient to reach a conclusion of entrenching upon the liberty of the petitioner by detaining him under Public Safety Act. As per the dossier, the detention order was communicated to the petitioner on 14-11-2024 through Senior Superintendent of Police Ramban in police station Ramsoo, Ramban bearing No. DMR/192-94 dated 14/11/2024.

3. Learned counsel for the petitioner submits that detenu is currently lodged in District Jail. He had never any connection with antinational or antisocial elements and has never indulged in such activities. However, the District Police, Ramban, has falsely implicated the detenu in a baseless case with the allegation that on 08.10.2010, at about 20:30 hours, during a search operation, the petitioner, along with another accused, opened indiscriminate firing with the criminal intention of killing members of the search party. It is further alleged that the petitioner was apprehended by the search party along with arms and ammunition and was booked in FIR No. 51 /2010 under relevant Sections of the law. The charge sheet was presented before the Court of Principal Sessions Judge, Ramban, where charges were framed, and the detenu faced trial. The trial was concluded, and the detenu was acquitted on 31.12.2013 by the learned trial Court, Ramban. The acquittal was based on contradictions in the statements of prosecution witnesses, which created serious doubt about the prosecution's story.

4. Detention of the detenu/petitioner is based on one FIR of 2010 in which he has already been acquitted. It is stated that the Police cannot be allowed to snatch the liberty of a citizen on flimsy grounds under J&K

Public Safety Act and District Magistrate Ramban has been made to pass an order of detention thereunder, apprehending and placing detenu under preventive detention for an unspecified period and lodged in Distt Jail, Udhampur.

5. The dates on which different complaints (Istagasas) and Daily Diary reports have been entered will show that these complaints/DD reports have been managed in last 4/5 months. It is stated that the dossier has been prepared by the Senior Superintendent of Police Ramban based on FIR and fabricated and manufactured Daily Dairy reports and based on apprehension and forwarded to the Detaining Authority (District Magistrate Ramban) for issuance of detention order against the detenu without applying his mind to the dossier or the documents in support of the dossier.

6. It is further stated that the detention order is based on the dossier prepared by the police and submitted by SSP Ramban to District Magistrate Ramban on 13.11.2024. None of the allegations levelled against the detenu are factually correct. Grounds of the detention refer to involvement of the detenu in one FIR of 2010 which is more than 14 years old, already acquitted and some recent daily dairy reports about apprehended movement of militants and strict vigil upon the detenu to avoid his contact with the militants and the detention order has been passed by the District Magistrate Ramban on the basis of these allegations which nowhere meet the requirement of Section 8 of the Public Safety Act.

7. Another ground taken for the detention is that real brother of the person, namely, Nazir Ahmed @ Anas Shakeel real uncle namely Mohd Ashraf S/O Ahmdu Naik presently settled in PAK/POK but no evidence has been provided to establish that the petitioner has any current connection or

involvement with the activities of these persons. The order is shown to have been passed on 14.11.2024, but the detenu had been taken in custody on 16.11.2024 i.e. about 2 days after the passing of the detention order and there is no explanation on the part of the executing agency for late execution of the detention order which makes it clear that the Detaining Authority had no clarity on the sufficiency of the grounds of detention. Further, the documents referred to in the dossier and the detention order have not been supplied to the detenu. The grounds of detention and dossier have not been read over to him in the language which he understands but he has simply been given copy of detention order, grounds of detention, copy of chargesheet and some documents in case FIR no.51/2010 of Police Station Gool and copy of dossier and his signatures were taken on 4/5 blank pages.

8. Further contention of learned counsel for the petitioner is that the allegations in the grounds of detention do not come within the ambit of Section 8 of the Public safety Act and the activities alleged against petitioner which could warrant his detention. The detention of detenu/petitioner is uncalled for because the activities and the offences alleged against the detenu are not threat to the security of the State or maintenance of public order. The activities alleged against the detenu do not come within the definition of the violation of Public Order or threat to the Security of State hence the detention is illegal. It is stated that the Detaining Authority in his detention order has nowhere informed the detenu as to the authority to whom the representation has to be made. It has only mentioned that the detenu can make a representation to Government.

9. The order of detention is being challenged precisely on the following grounds:-

- (i) That the detention order has been passed by the respondent no.2 without considering the material placed before him and passed in a mechanically manner. The grounds of detention are verbatim repetitions of the police dossier prepared by SSP Doda. The dossier has been submitted to him on 13-11-2024 and the detention order passed on 14.11.2024. The District Magistrate relied solely on the dossier prepared by the police, which was based on outdated and fabricated reports.
- (ii) That the detention order is based on an FIR from 2010 in which the petitioner was acquitted by the trial court on 31.12.2013 due to serious contradictions in the prosecution's evidence. It includes the petitioner's association with family members allegedly involved in terrorism, but no evidence has been provided to establish any current connection or involvement of the petitioner with such activities.
- (iii) That neither petitioner nor his next of kin were informed about the appropriate authority to which the representation against the detention order could be made.
- (iv) That the order of detention does not substantiate the compelling reasons which have prompted the respondent no.2 to pass the order. It is a non-speaking order and only talks of being satisfied, with a view to prevent the petitioner from acting in a manner prejudicial to the maintenance of public order. That the documents forming the basis of detention, including the dossier, reports, and evidence, were not properly supplied to the petitioner. The petitioner was not informed of the grounds of detention in a language he understands and his signatures were taken on blank pages.
- (v) That Article 20(2) of the Constitution of India, which prohibits double jeopardy and he has already been acquitted of the charges related to FIR No 51/2010. order was passed on 14-11-2024, but the petitioner was detained only on 16-12-2024. That the PSA mandates that detention orders are issued based on recent actions that are deemed prejudicial to public order or state security. There

is no substantive new evidence presented in the dossier to justify petitioner's detention in 2024;

- (vi) that this High Court in Kewal Kirshan Vs U.T. of J&K (2023 SCC Online J&K 940) has reiterated the decision in Krishan Lal v. State (UT of J&K), 2023 SCC Online J&K 204 wherein it was held that, “The daily diary reports being vague and bereft of details of the activities of the petitioner which necessitated the issuance of the detention order, could not have been relied upon by the detaining authority. The issuance of the order of detention on vague grounds deprives the detenu of his right to make effective representation against the order of the detention and if the detention order is passed on vague grounds then the constitutional right of making representation against the detention order, as envisaged by article 22(5) of the Constitution of India would become a Mirage.

10. Upon hearing learned counsel for the parties and perusal of the record, this Court finds that the detention order dated 14.11.2024 passed by the District Magistrate, Ramban, is unsustainable in law.

11. The order is based primarily on an FIR of 2010, in which the petitioner has been acquitted by a Competent Court, and on vague and absurd grounds lacking particularity and credible evidence. It is contention of learned counsel for petitioner that there is no proximate and live link between allegations levelled against detenu in terms of FIR of 2010 and grounds of detention.

12. The question whether prejudicial activities of a person requiring to pass a detention order is proximate to time when an order is made or live-link between prejudicial activities and the purpose of detention is snapped, depends on the facts and circumstances of each case. Nonetheless, when there is an undue and long delay between prejudicial activities and passing of detention order, the court has to scrutinize whether detaining

authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the casual connection has been broken in the circumstances of each case. Certainly, in the present case, there is no cogent explanation coming to fore from perusal of grounds of detention with reference to live-link between prejudicial activities and purpose of detention and resultantly the impugned detention order is liable to be quashed. In this respect, reference is made to law laid down in ***T. A. Abdul Rahman v. State of Kerala (1989) 4 SCC 741*** and ***Rajinder Arora v. Union of India and others (2006) 4 SCC 796***].

13. Preventive detention must be supported by existence of a ‘live and proximate link’ between past conduct and present imperative need to detain a person. It has been very often held that order of preventive detention must be passed by due application of mind and taking note of relevant factors. If order of detention is passed on the basis of incidents which are stale, it is often stated that incident not being of relevance to establish imperativeness in passing an order of detention and such order passed must be treated as being based on extraneous factors. The observations made by the Supreme Court in ***Sama Aruna v. State of Telangana and another, (2018) 12 SCC 150***, is relevant to be 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. In such cases, question would also arise regarding validity of an order of detention where after the last of such incidents there is a lull and after a

substantial time lag, an order of detention is sought to be passed. The detaining authority must establish habituality of commission of offences which could be directly linked to a pattern of behaviour. In order to establish such pattern of behaviour that would reasonably indicate continuing commission of offences, the detaining authority must establish intermittent commission of offences which would indicate a regular pattern.

15. In plethora of judgments, the Supreme Court has held that the order detention must not be based on stale events. Pertinent observations made by the Supreme Court in ***Ameena Begum v. State of Telangana and others, (2023) 9 SCC 587***, are advantageous to be reproduced hereunder: -

“17. In a different context, we may take note of the decision in *Sama Aruna vs. State of Telangana*”, 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. In ***Khaja Bilal Ahmed v. State of Telangana, (2020) 13 SCC 632***, the 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.”

17. The satisfaction to be arrived at by detaining authority must not be based on irrelevant or invalid grounds and it must be arrived at on the basis of relevant material. The material which is not stale and has a live-link with the satisfaction of detaining authority. Detention order may refer to 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 a person could indicate his tendency or inclination to prejudicial activities, then it may have a bearing on the subjective satisfaction of detaining authority. However, in absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for requirements of passing order of detention. It is not open to 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.

18. I may also refer to the decision of a Constitution Bench of the Supreme Court in ***Sunil Fulchand Shah v. Union of India, (2000) 3 SCC 409***, wherein the need to strictly adhere to the timelines, provided as procedural safeguards, was stressed upon. It was held thus:

“11.....The safeguards available to a person against whom an order of detention has been passed are limited and, therefore, the courts have always held that all the procedural safeguards provided by the law should be strictly complied with. Any default in maintaining the time-limit has been regarded as having the effect of rendering the detention order or the continued detention, as the case may be, illegal. The justification for preventive detention being necessity a person can be detained only so long as it is found necessary to detain him. If his detention is found unnecessary, even during the maximum period permissible under the law then he has to be released from detention forthwith. It is really in this context that Section 10 and particularly the words ‘may be detained’ shall have to be interpreted.”

19. Insofar as case in hand is concerned, detaining authority has made reference to FIR of 2010, in which detenu has been acquitted by court of law. The said FIR lacks in to demonstrate a live and proximate link. It is interesting that detaining authority has made use of this FIR to show his subjective satisfaction derived therefrom for placing detenu under the preventive detention, oblivious of the fact that allegations contained therein will not prejudice the maintenance of “public order. The activities alleged in aforementioned FIR, *per se*, do not attract or entail the provisions of the J&K Public Safety Act.

20. The requirement of ‘proximity/live link’ is required to demonstrate imperativeness in invoking the power of preventive detention more so where the criminal prosecution is pending which proceedings may culminate in imposition of a punitive sentence. It is a settled position of law that the power of passing an order of preventive detention cannot be a punitive measure on the

apprehension, howsoever reasonable it may be that detenu is going to go scot-free in pending trials due to lack of support to prosecution by crucial witnesses or otherwise.

21. Perusal of communication no.DMR/192-194 dated 14.11.2024 (Annexure-II to petition), issued by respondent no.2 to detenu, intimating him that he has been vide order impugned detained in District Jail Udhampur for the acts which are prejudicial to maintenance of public order and that detenu can make/take a representation to the Government against detention order, if he so desired and that grounds of detention have been sent to him through SSP Ramban and Superintendent Jail, Udhampur. It is, thus, evident from aforesaid communications that detenu has not been informed about the right to make representation to detaining authority and time for making such a representation has also not been given. It is imperative upon detaining authority to inform detenu that he has a right to make a representation to detaining authority as well as to the Government and not only that he is to be informed about the time within which such representation is to be made. This right of detenu is guaranteed under Article 22(5) of the Constitution of India.

22. Prior to Government's approval of detention order, which is to be done within 12 days of detention order, in terms of Section 8 (4) of the J&K Public Safety Act, 1978 (for short "*Act of 1978*") detaining authority also has power to revoke detention order. This power is clearly relatable to Section 21 of the General Clauses Act, Samvat, 1977, which has been saved by virtue of Section 19 of the Act of 1978. Till the Government's approval to detention order is granted, since the detaining authority had the power to revoke the detention order, a representation could have been made to detaining authority for revoking detention order. It was incumbent upon detaining authority to have informed detenu that he could also make a representation to detaining authority,

if he so desired. Since detaining authority did not communicate to detenu and his mother that such a representation could be made to detaining authority, this in itself amounts to infraction of provisions of Section 13 of the Act of 1978 read with Article 22(5) of the Constitution of India. Reliance in this regard is placed on ***State of Maharashtra and others v. Santosh Shankar Acharya, (2000) 7 SCC 463***. In the present case detaining authority did not inform the detenu that the detenu, independent of his right to make a representation against his detention to the Government, has also right to submit a representation to detaining authority till detention was considered by the Government and accorded approval thereto. Detaining authority has, in essence, violated Constitutional and Statutory rights of detenu, guaranteed under Article 22(5) of the Constitution of India and Section 13 of the Act of 1978 and resultantly vitiates impugned detention.

23. The Division Bench of this Court, while considering a similar issue in ***Tariq Ahmad Dar vs. State of J&K and others, 2017 (II) SLJ, 665 (HC)*** and relying on the judgment of the Supreme Court in ***Kamlesh Kumar Ishwardas Patel vs. Union of India, (1995) 4 SCC 51***, has held as under:

“..... This being the position, it goes without saying that even under the Maharashtra Act, a detenu will have a right to make a representation to the detaining authority so long as the order of detention has not been approved by the State Government and consequently non-communication of the fact to the detenu that he has a right to make representation to the detaining authority would constitute an infraction of the valuable constitution right guaranteed to the detenu under Article 22 (5) of the Constitution and such failure would make the order of detention invalid. We, therefore, see no infirmity with the impugned judgement of the Full Bench of the Bombay High Court to be interfered with by this Court. These appeals accordingly fail and stand dismissed.

From a reading of the said decision, it is abundantly clear that non-communication of the fact that the detenu can make a representation to the detaining authority, till the detention order is not approved by the government, would constitute an infraction of a valuable Constitutional right guaranteed under article 22 (5) of the Constitution of India as also of the right under Section 13 of the Jammu and Kashmir Public Safety Act, 1978. Failure of such non communication would invalidate the order of detention”.

24. The detenu had a right to move a representation to the detaining authority till the detention order was approved by the Government. In the present case, detaining authority has failed to inform detenu and his mother about the right of making representation before it. This has resulted in infraction of a statutory and constitutional rights guaranteed to detenu, thereby vitiating order impugned.

25. In view of the above, the detention Order No. 05/PSA of 2024 dated 14.11.2024 is hereby quashed and set aside. The respondents are directed to release the petitioner forthwith, if not required in any other custody.

(Vinod Chatterji Koul)
Judge

JamMU
25.09.2025
(Bir)

Whether approved for reporting? Yes/No

