

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

(through virtual mode)

Reserved on : 05.06.2025

Pronounced on : 04.08.2025

HCP No. 23/2025

**Zakir Hussain, Age 29 years,
S/o Abdul Karim,
R/o Khanpur,
Tehsil Nagrota, District Jammu.**

.....Petitioner

Through: Mr. Masood Chowdhary, Advocate

Vs

- 1. Union Territory of Jammu & Kashmir,
Through Commissioner/Secretary,
Home Department, Civil Secretariat, Jammu / Srinagar.**
- 2. District Magistrate, Jammu.**
- 3. Senior Superintendent of Police, Jammu.**
- 4. Superintendent District Jail, Udhampur.**

..... Respondents

Through: Mr. Pawan Dev Singh, Dy. AG

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

01. Heard learned counsel for the petitioner as well as Mr. Pawan Dev Singh, learned Dy. AG for the respondents.

02. Perused the pleadings and the documents therewith. Also gone through the detention record as produced from the end of Mr. Pawan Dev Singh, learned Dy. AG.

03. The petitioner is a detenu suffering preventive detention custody in terms of the Jammu & Kashmir Public Safety Act, 1978 and has, thus, petitioned this Court through the medium of the present writ petition filed on 24.01.2025 seeking a writ of habeas corpus to regain and retrieve his personal liberty.

04. The respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu came forward with submission of a dossier to the respondent No. 2–District Magistrate, Jammu vide communication No.CRB/Dossier/2024/60/DPOJ dated 26.12.2024 thereby putting forth the adverse antecedents of the petitioner on the basis whereof the petitioner's preventive detention was solicited in order to prevent him from acting and indulging in activities prejudicial to the maintenance of public order.

05. In said dossier by the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu, the petitioner came to be referred as a habitual criminal and desperate character repeatedly engaging himself in acts of cattle lifting, smuggling of bovine having no respect for law of the land, believing in breaking of law and already implicated in number of FIRs in different Police Stations of Jammu & Samba districts.

06. Following criminal cases came to be cited in the dossiers to support the recommendation for preventive detention of the petitioner :-

1. FIR No.200/2017 dated 25.09.2017 registered by the Police Station Nagrota for alleged commission of offence/s under section/s 188 Ranbir Penal Code read with 3/5 Prevention of Cruelty to Animals Act, 1960.
2. FIR No.263/2017 dated 06.12.2017 again registered by the Police Station Nagrota for alleged commission of offence/s under section/s 188 Ranbir Penal Code read with 3/5 Prevention of Cruelty to Animals Act, 1960.
3. FIR No. 18/2023 dated 14.02.2023 registered by the Police Station Jhajjar Kotli for alleged commission of offence/s under section/s 188 Indian Penal Code read with 11 Prevention of Cruelty to Animals Act, 1960.
4. FIR No. 141/2023 dated 05.04.2023 registered by the Police Station Kathua for alleged commission of offence/s under section/s 188 Indian Penal Code read with 11 Prevention of Cruelty to Animals Act, 1960.
5. FIR No. 163/2023 dated 17.06.2023 registered by the Police Station Rajbagh for alleged commission of offence/s under section/s 279/336/188 Indian Penal Code read with 11

Prevention of Cruelty to Animals Act, 1960 and 50/52/54/56 Transport of Animals Rules, 1978.

6. FIR No. 100/2024 dated 15.04.2024 registered by the Police Station Samba for alleged commission of offence/s under section/s 188 Indian Penal Code read with 11 Prevention of Cruelty to Animals Act, 1960.

07. In addition to the involvement of the petitioner in the aforesaid FIRs, the Daily-Diary Reports of the Police Stations (Police Post Sidhra) & Police Station Nagrota came to be referred to highlight ongoing objectionable activities of the petitioner in the matter of bovine smuggling.

08. Acting on the basis of the dossier and the materials submitted therewith, the respondent No. 2– District Magistrate, Jammu came to address a communication No.DMJ/Judicial/2024-25/1758 dated 28.12.2024 to the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu citing therein that in the dossier as against the FIRs mentioned, the conviction of the petitioner in two FIRs, being the last ones, is said to have taken place with fine and, therefore, whether any latest FIR/criminal case stood registered against the petitioner to be considered for the purpose of his preventive detention.

09. This communication from the respondent No. 2 – District Magistrate, Jammu to the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu is an exhibit of the fact that the respondent No. 2 – District Magistrate, Jammu otherwise was not convinced, on the basis of dossier served, to reckon a case made out for preventive detention of the petitioner without there being any latest FIR/criminal case reported against the petitioner.

10. Despite the aforesaid communication No. DMJ/Judicial/2024-25/1758 dated 28.12.2024 from his end to the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu, the respondent No. 2 – District Magistrate, Jammu still proceeded to pass detention Order No. PSA 32 of 2024 dated 28.12.2024 on the same very day of issuance of communication No. DMJ/Judicial/2024-25/1758 dated 28.12.2024 to the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu seeking input about any latest FIR/case against the petitioner.

11. Thus, by a verbatim reproduction of the entire dossier, the respondent No. 2 – District Magistrate, Jammu came to formulate the grounds of detention to draw purported subjective satisfaction therefrom and ordered the preventive

detention of the petitioner directing his detention and custody firstly in the Central Jail Kot Bhalwal, Jammu and then by virtue of a Corrigendum No. DMJ/Judicial/2024-25/1812-16 dated 31.12.2024 in the District Jail, Udhampur.

12. The detention warrant issued pursuant to the said detention Order No. PSA 32 of 2024 dated 28.12.2024 came to be executed on 02.01.2025 by PSI Neeraj Parihar of Police Station Nagrota who handed over the petitioner to the Superintendent District Jail, Udhampur with an exercise of handing over of 105 leaves compilation, comprising of warrant of detention, notice of detention, grounds of detention, dossier and the documents in support thereof to the petitioner who is said to have been read over and explained the contents of the detention order.

13. At the end of the respondent No. 2- District Magistrate, Jammu, a Corrigendum No. DMJ/Judicial/2024-25/1827-31 dated 02.01.2025 came to be issued by mentioning place of detention of the petitioner to be District Jail, Udhampur instead of Central Jail Kot Bhalwal, Jammu.

14. Thus, with effect from 02.01.2025, the petitioner is under preventive detention custody which is meant for a period of one year of which seven months have passed by.

15. The petitioner came forward with the institution of the present writ petition, assailing his preventive detention on the basis of the grounds as mentioned in para 5(i) to (ix).

16. In the grounds, the petitioner has come forward saying that he has been subjected to preventive detention custody as a matter of punitive punishment so as to over-reach the criminal courts seized of the criminal cases so obtaining against the petitioner in the context of the FIRs mentioned in the grounds of detention out of which for good number of FIRs the petitioner came to be convicted with fine.

17. It is stated in the grounds of challenge that trial in FIR No. 200/2017 of the Police Station Nagrota and FIR No. 141/2023 of the Police Station Kathua are pending before the respective criminal courts, whereas the criminal cases related to FIR No. 63/2017, FIR No. 136/2023, FIR No. 100/2024 and FIR No. 18/2023, all stood disposed of by the respective criminal courts.

18. It is in the aforesaid factual scenario that the petitioner assails his preventive detention to be unwarranted, misconceived and illegal.

19. When this Court examines the impugned order read with its grounds of detention in juxtaposition with

communication No. DMJ/Judicial/2024-25/1758 dated 28.12.2024 of the respondent No. 2 – District Magistrate, Jammu to the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu asking for something latest to be the basis for seeking and serving preventive detention upon the petitioner, it is the respondent No. 2 – District Magistrate, Jammu himself who actually delivered a judgment that otherwise the dossier as served by the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu against the petitioner as it is was not bearing any live basis for enabling the respondent No. 2 – District Magistrate, Jammu to exercise jurisdiction of depriving the petitioner of his fundamental right to personal liberty otherwise reserved and protected under Article 21 of the Constitution of India.

20. Since the petitioner was and is not privy to said communication No. DMJ/Judicial/2024-25/1758 dated 28.12.2024 of the respondent No.2, but nevertheless the grounds of challenge to the preventive detention posed by the petitioner are almost on the same page.

21. The petitioner was having a handicap in not knowing about said internal communication of the respondent No. 2 – District Magistrate, Jammu to the respondent No. 3 – Sr.

Superintendent of Police (SSP), Jammu, but since this Court is having an access to the original file relating to the preventive detention of the petitioner, as such, this Court is getting an insight into the application of mind of the respondent No. 2 – District Magistrate, Jammu himself not convinced by the text and context of the dossier to subject the petitioner to preventive detention under the Jammu & Kashmir Public Safety Act, 1978.

22. There is no doubt to the fact that the petitioner seems to be a habitual offender as is borne out from his repeat implications in the criminal cases of identical nature which although are on the side of the law and order problem but on any given occasion can cross over to become a public order disturbance problem and for that the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu or for that matter the respondent No. 2 – District Magistrate, Jammu himself on the basis of a dossier ought to have subjected the petitioner to security proceedings under sections 127 and 128 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 in order to keep a check on the petitioner's relapse in criminal activities of the nature as attending his antecedents.

23. Infact, the security proceedings under sections 127 and 128 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 could have proved more effective in keeping a check on the petitioner but it appears that the respondent No.2 – District Magistrate, Jammu acted with a mechanical mindset to oblige the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu with preventive detention order of the petitioner under the Jammu & Kashmir Public Safety Act, 1978 thereby rendering it illegal and liable to be quashed as being without any live basis.

24. Accordingly, this Court quashes the preventive detention Order No. PSA 32 of 2024 dated 28.12.2024 passed by the respondent No. 2 – District Magistrate, Jammu against the petitioner read with consequent confirmation/approval orders whatsoever passed and directs release of the petitioner from preventive detention custody subject to the petitioner's furnishing personal as well surety bonds rupees five lac each to be valid for a period of three years from the date of furnishing of the said two bonds during the course of which if the petitioner is booked and challaned for repeat occurrence of offences of the nature for which the petitioner came to be previously booked then, the petitioner shall be suffering forfeiture of the bonds, personal as well as surety.

25. Personal as well as surety bonds to be furnished before the Superintendent, District Jail, Udhampur who shall thereupon forward the same to the respondent No. 2 – District Magistrate, Jammu for being taken on record to be referred to at any appropriate point of time in future in case the petitioner is found or gets to be booked in an identical criminal case.

26. Superintendent District Jail, Udhampur is directed to release the petitioner upon securing the two bonds as directed above.

27. Scanned copy of the detention record to be retained and the original record to be returned back against proper receipt.

28. ***Disposed of.***

सत्यमेव जयते

(RAHUL BHARTI)
JUDGE

SRINAGAR

04.08.2025

Muneesh

Whether the judgment is speaking : Yes