

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

Reserved on : 21.08.2025

Pronounced on: 30.08.2025

HCP No. 32/2025

**Mohd. Abdullah Gujjar
@ Dullah @ Sher Khan,**
S/O Haji Nabi Baksh Gujjar
R/O Village Sigdi Bhata,
Tehsil Mughal Maidan , District Kishtwar
Through brother Noor Din

...Petitioner

Through: Mr. A. A. Hamal, Advocate.

Vs

- 1. UT of Jammu & Kashmir** through
Principal Secretary to Govt., (Home),
Civil Secretariat,
Jammu.
2. District Magistrate, Kishtwar.
3. Senior Superintendent of Police, Kishtwar.
4. Superintendent, District Jail, Kathua.

..... Respondent(s)

Through: Mr. Eishaan Dadhichi, GA.

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

JUDGMENT

1. Petitioner-**Mohd. Abdullah Gujjar @ Dullah @ Sher Khan**, S/O Haji Nabi Baksh Gujjar R/O Village Sigdi Bhata, Tehsil Mughal Maidan, District Kishtwar (for short 'the detainee') challenged the detention **Order No.3rd/DM/K/PSA of 2024** dated **07.11.2024** ('impugned order'), issued by respondent No.2, District Magistrate, Kishtwar (hereinafter to be referred as 'the detaining authority'), whereby detainee has been placed under preventive

detention, in order to prevent him from acting in any manner prejudicial to the maintenance of 'security of State'.

2. Petitioner contends that the Detaining Authority passed the impugned detention order without there being due application of mind; that the detaining authority has not informed the detainee about his right to file representation to the detaining authority and also the time frame within which such a representation must be filed to the detaining authority against his detention order, which incapacitated him to file effective and meaningful representation against his detention order; that allegations against the detainee are false and the sponsoring agency suppressed the vital fact that earlier also, the detainee was detained under preventive detention, and now same FIRs are made the basis of detaining the detainee despite the fact that this court had quashed the earlier detention order; that some vague DDRs are allegedly recorded against the detainee in order to put detainee under preventive detention and not a single FIR has been registered against the material after quashment of earlier detention order; that whole of the material was not supplied to the detainee which incapacitated the detainee in filing the effective and meaningful representation against his detention order. Lastly, it is prayed that the impugned detention order be quashed by allowing the present petition.

3. The respondents have contested the writ petition by filing counter affidavit, wherein, it has been submitted that the impugned order of detention has been passed by the detaining authority after carefully analyzing the dossier dated 18.10.2024 submitted by SSP Kishtwar; 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 if he be let free; 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 respondents, in order to lend support to their contentions, have produced the detention record.

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

5. The detention record, as produced, reveals that the detainee was involved in following cases registered at Chatroo and Kishtwar Police Stations:-

- 1) FIR No. 03/2003: U/S 366/302 RPC, 7/274 IA Act;
- 2) FIR No. 31/2004: U/S 395/120/121-A RPC, 7/27 IA Act;
- 3) FIR No. 08/2006: U/S 302 RPC, 7/27 IA Act;
- 4) FIR No. 11/2006: U/S 302 RPC, 7/27 IA Act;
- 5) FIR No. 101/2006: U/S 302 RPC, 3/25 IA Act;
- 6) FIR No. 41/2006: U/S 364 RPC, 7/27 IA Act;
- 7) FIR No. 198/2006: U/S 302/307 RPC, 7/27 IA Act;
- 8) FIR No. 27/2007: U/S 302 RPC; and
- 9) FIR No. 161/2007: U/S 302/212/109 RPC, 7/27 IA Act.

Besides the above nine FIRs, the following six DDRs have been recorded against the petitioner at Chatroo Police Station and Mughalmaidan Police Post:

- i) DD No.19 dated 11.05.2024;
- ii) DD No. 11 dated 28.06.2024;
- iii) DD No. 13 dated 29.06.2024;
- iv) DD No. 11 dated 30.06.2024;

v) DD No. 14 dated 08.07.2024; and

vi) DD No. 10 dated 12.07.2024

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

6. Though many grounds on behalf of the detainee have been raised, for assailing the impugned order of detention, yet, during the course of arguments, his counsel restricted his arguments to the contentions that:

- i) That the detainee was not informed about his right to make representation to the detaining authority, as also no mention of time limit in the detention order within which detainee can make his representation to the detaining authority as well as the Government;
- ii) That the cases/FIRs of the year 2003, 2004, 2006 and 2007 are made basis for passing the detention order, in which the petitioner has already been acquitted;
- iii) That insufficient material, no compelling circumstances and vague DDRs were made basis for passing the impugned detention order, as no new FIR has been registered against the petitioner;
- iv) That the grounds of detention do not clearly mention the charge and the material on the basis of which the grounds of detention find support for each of the charge;
- v) That there is non-application of mind on the part of respondents vis-à-vis no cognizance taken of the previous detention of the petitioner ordered

vide No.01/PSA of 2018 on 03.05.2018 and quashed by this court vide order dated 06.09.2018 vitiates the impugned detention order; and

vi) That the grounds of detention of the earlier prevention detention order should not be taken into consideration either as a whole or in part even along with fresh grounds of detention for drawing requisite subjective satisfaction to pass a fresh detention order.

7. The first ground as argued is, that the detainee was not informed about his right to make representation within stipulated time before the detaining authority, thereby violating his statutory and constitutional rights. It is translucently clear from perusal of the impugned detention order that the Detaining Authority has neither communicated to the detainee his right to make representation to the detaining authority as also the time limit, within which, he could make such representation to it, till approval of the detention order by the Government. On a perusal of the record it is found that the execution report as well as the Receipt of Grounds of Detention, nowhere mention that the detainee can make a representation to the detaining authority. Also, there is no mention of time period within which the petitioner can make representation to the detaining authority as well as Government against his order of detention, thus, vitiating the impugned detention order. 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.”

8. 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. Since the petitioner has all along denied that he was informed of his right to make representation to the detaining authority also the time period within which he can make representation, the respondents ought to have filed an affidavit of the Executing Officer in this regard. Though the Executing Officer has filed an affidavit, which is placed on record, but it is conspicuously silent regarding the above. 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.

9. So far as the second ground that 9 FIRs/cases are shown for passing detention order against the detainee is concerned, the respondents have themselves admitted in the grounds of detention that the detainee got acquitted in all the FIRs. So far as DDR entries recorded against the detainee are concerned, a perusal of the ground of detention would show that those have not culminated in any criminal cases. Merely recording DDRs alleging no specific acts cannot be the ground to detain a person. It is surprising that if the acts mentioned in the DDR entries are criminal acts and are cognizable in nature, then why the State has not filed any FIR. 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 DDRs make out any criminal offence, what prevented the State to file a First Information Report is shrouded in mystery.

10. The third and fourth grounds, which have been urged by the learned counsel for the detainee is that the grounds of detention do not clearly mention the charge and the material on the basis of which the grounds of detention find support for each of the charge. A Division Bench of this Court in a case titled **‘Showkat Ali V. UT of J&K & Ors’** decided on 26.07.2024 in para 19 held as follows:

“19. It is essential for the grounds of detention to clearly mention the charge and the material on the basis of which the grounds of detention find support for each of the charge. The State cannot level bald allegations on the detainee and hand over a bunch of documents and take the stand that all material considered by the detaining authority has been handed over the detainee. It would also be necessary for the detaining authority to mention in the grounds of detention the material/evidence/documents on the basis of which it is levelling a specific charge against the appellant in the grounds of detention in order to accord a viable opportunity to the appellant to give a representation to the detaining authority or to the advisory board, as the case may be.”

11. In so far as the fifth ground raised by the counsel for the petitioner is concerned, it is an admitted fact as emerges from the record that the detainee herein have had been previously detained by the respondents in terms of the Detention Order No. 01/PSA of 2018 on 03.05.2018 which came to be quashed by this court in terms of the judgment dated 06.09.2018. Perusal of the record

available on the file as also the detention record produced by counsel for the respondents would manifestly demonstrate that the respondents in general and the detaining authority in particular has remained oblivious to the said fact, thus, rendering the impugned order legally un-sustainable more so, in view of the judgment of the Apex Court passed in case titled as "**C. B. Kahar vs. N. L. Kalna**" reported in **AIR 1989 SC 1234**, wherein at para 12 following has been laid down:-

"12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the court strikes down an earlier order by issuing rule it nullifies the entire order."

12. So far as the last ground is concerned, which is that the detaining authority did not make mention of previous preventive detention order issued against the detainee so as to take into consideration the grounds of detention and the FIRs/Cases of the years 2003, 2004, 2006 and 2007, on the basis of which, he was taken into preventive detention vide Order No.01/PSA of 2018 dated 03.05.2018, is a plausible ground. In the considered opinion of this court, when a detention order is quashed by the court, issuing a high prerogative writ, like habeas corpus or certiorari, the grounds of said detention order should not be taken into consideration, either as a whole or in part, even along with fresh

grounds of detention for drawing subjective satisfaction to pass a fresh detention order. A perusal of the record would show that there is no single case/FIR registered against the petitioner after quashment of earlier detention order except the alleged six DDRs recorded against the petitioner, which point this court has dealt with in the preceding paragraphs. In the present case, the respondents have not referred to the earlier detention order passed against the petitioner, nor its quashment, so as to use the same cases/FIRs to form basis and to pass the impugned detention order. In that view of the matter, the impugned detention order is vitiated and cannot sustain in the eye of law.

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

14. 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.”

15. Having regard to the facts, firstly, that not informing the detainee that he can make representation to the detaining authority, against the detention order besides time frame not specified in the detention order; within which detainee can file representation against the detention order and secondly, shown involvement in stale, remote and with no live link cases/FIRs of the year 2003, 2004, 2006 and 2007, in which, petitioner was admittedly acquitted; thirdly, vague FIRs made basis for passing the impugned detention order as not a single FIR was registered against the petitioner after quashment of earlier detention order in the year 2018; fourthly, absence of charge, only allegations that too vague allegations; fifthly non application of mind on the part of the detaining authority vis-à-vis no mention of earlier detention order and its quashment by this court; and lastly, no new grounds urged for passing the impugned detention order, it can safely be held that the detainee was disabled to exercise his right to file a meaningful and effective 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.

16. Viewed thus, the petition is allowed and the impugned detention **Order No.3rd/DM/K/PSA of 2024** dated **07.11.2024**, passed by respondent No. 2, District Magistrate, Kishtwar, is hereby quashed. The detainee- **Mohd. Abdullah Gujjar @ Dullah @ Sher Khan**, is directed to be released from the preventive custody forthwith, if not required in any other case(s). No costs.

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

18. **Disposed of**, accordingly, along with connected application(s).

(M A CHOWDHARY)
JUDGE

JAMMU
30.08.2025
Raj Kumar

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