

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

HCP No. 37/2025

Reserved on: 14.08.2025
Pronounced on:21.08.2025

Mohd. Abass, Age 30 years
S/O Nazir Ahmed,
R/O Village Barmota,
Tehsil Bani District Kathua

.....Petitioner(s)

Through :- Ms. Rozina Afzal, Advocate
v/s

1. Union Territory of J&K through

.....Respondent(s)

Commissioner/Secretary, Home Department,
Civil Secretariat, Jammu.

2. Additional Director General of Police, CID, Jammu.
3. Inspector General of Police, Jammu Zone, Jammu.
4. Senior Superintendent of Police, Kathua
5. District Magistrate, Kathua.

Through :- Mr. Suneel Malhotra, GA

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

JUDGMENT

1. District Magistrate, Kathua (hereinafter called 'Detaining Authority') in exercise of powers under Section 8 of the Jammu & Kashmir Public Safety Act, 1978, passed the detention Order No.**PSA/131 of 2024 dated 10.12.2024** (for short 'impugned order'), in terms whereof the detainee-**Mohd. Abass** S/O Nazir Ahmed R/O Village Barmota, Tehsil Bani District Kathua (for short 'detenue') has been detained under preventive detention, with a view to prevent him for acting in any manner prejudicial to the maintenance of public order.

2. The impugned detention order has been challenged through the medium of the instant petition, being in breach of the provisions of Article 22(5) of the

Constitution of India read with Section 13(1) of the J&K Public Safety Act, 1978.

3. Petitioner contends that the Detaining Authority passed the impugned detention order without there being due application of mind as the stale cases of the year 2018 and 2023 are made ground for passing the impugned detention order, besides one complaint U/S 126/136 BNSS of P/S Bani which is without reasons; that whole of the material was not supplied to the petitioner, including copies of FIRs and other relevant record, which incapacitated the petitioner in filing an effective and meaningful representation to the detaining authority as well as government; that the petitioner was not informed about his right of making representation to the detaining authority itself, which vitiated the impugned detention order. It has been contended that on 21.12.2024, the detainee through his counsel, had made a representation before respondent No.1 as well as Advisory Board, but the same has neither been considered nor the result of the same communicated to the detainee, as reply filed on behalf of the respondents is also conspicuously silent vis-à-vis representation filed on behalf of the detainee. Lastly, it is stated that the impugned detention order be set aside and the writ petition be allowed.

4. The respondents have contested the writ petition by filing counter affidavit of the detaining authority. In the counter affidavit, it has been submitted that the impugned order of detention has been passed by the detaining authority after carefully analyzing the dossier dated 30.11.2024 submitted by SSP Kathua; that the detainee is a hardcore criminal, desperate character who is involved in the commission of organized crime for the past many years and still continuing, which make it imperative to detain him under preventive detention;

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 maintenance of public order 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 representation filed by the detainee was duly considered and rejected and result whereof was conveyed to the detainee through jail authorities; that the respondents, in order to lend support to their contentions, have produced the detention record.

5. Heard learned counsel for both the sides at length, perused the detention record and considered the record.

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

1) FIR No. 01/2018; U/Secs 457/380/34/201 RPC

2) FIR No. 32/2018; U/Secs 457/380/34/201 RPC

3) FIR No.12/2023; U/Secs 457/380/201 IPC

Besides above FIRs, following complaint is also registered against the petitioner at P/S Bani:

i) Complaint U/S 126/136 BNSS

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

7. Although detainee has raised many grounds 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;
- ii) That representation filed by the petitioner to the government was not considered nor outcome conveyed to the petitioner;
- iii) that the entire material forming the basis of the grounds of detention was neither supplied nor explained to him in the language he understands;
- iv) that the grounds of detention are replica of the police dossier.

8. Perusal of the grounds of detention would show that in all the cases/FIRs lodged against the petitioner, he has been granted bail by the competent court of law, which is admitted by the respondents in the grounds of detention. This Court fails to understand as to what prevented the respondents to seek cancellation of bail, rather they base these cases for passing the impugned detention order.

9. First ground as argued is that the detainee was not informed about his right to make representation before the detaining authority thereby violating his statutory and constitutional rights. It is translucently clear from a perusal of the impugned detention order that the Detaining Authority has not communicated to the detainee that he can make representation to the detaining authority against the impugned detention order for its revocation. The above fact of not communicating the detainee of his right to approach the detaining authority itself

for revocation of the impugned detention order is conspicuously missing, on a bare reading of the communication No.DMU/JC/2024-25/3412-16 dated 10.12.2024 issued by the District Magistrate, Kathua to the detainee, which shows that *‘the detainee may make representation to the Govt. against the order within stipulated time period, if he so desires’*.

10. 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.”

11. 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, at the first hand, that he has right to file representation before the detaining authority as well and secondly, the detaining authority should have informed the detainee 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. It is 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

detenue can make a representation for reconsideration by the Detaining Authority. There is, therefore, force in the above argument of the detenue. On this count alone, the impugned detention order cannot sustain and is liable to be quashed.

12. The second ground was that representation of the detenue was neither considered nor result whereof conveyed to the detenue. In the Counter affidavit filed on behalf of respondent no. 5, nothing was whispered that any representation was received from the detenue, yet the record produced by the respondents would reveal that vide communication dated 16.01.2025 by the Government addressed to District Magistrate, Kathua with copy to the Superintendent Central Jail, Jammu, detaining authority, was requested to communicate the detenue about the disposal of his representation. The respondents, in order to substantiate their claim that they duly informed the detenue of the decision taken on the representation, ought to have filed an affidavit to that effect, since detenue has all along denied any receipt or information about the outcome of the representation, however, such affidavit is conspicuously absent and, what the respondents have placed on record is copy of the same communication dated 16.01.2025 (supra) on which it is alleged that detenue has put his signatures. Even if it is assumed that, the representation filed on 21.12.2024 was considered by the government, after 26 days of its filing, there is, thus, inordinate and unexplained delay in according consideration to the representation, which was ought to be considered at the earliest. This slackness on the part of respondents to take a decision on the representation of the detenue also vitiates the impugned order of detention.

13. The ground urged by the learned counsel for the detenue that the entire material forming the basis of the grounds of detention was neither supplied nor

explained to him in the language he understands, has been contradicted by respondent No.5 in its affidavit. The detention record produced by the respondents contains report of execution as also receipt executed by the detainee. According to the receipt, the detainee has received a total of 39 leaves comprising copy of detention order, notice of detention, grounds of detention, Police dossier, Copies of FIRs, Statements of Witnesses and other related documents including complaint U/S 126 BNSS. 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 executing 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. It can, thus, safely be assumed that all the material, including complaint U/S 126/136 BNSS, was not supplied to the petitioner on the basis of which detention order is passed.

14. Hon'ble the Supreme Court of India in a case titled '**State of Maharashtra & Ors. v. Santosh Shanker Acharya**' reported as **AIR 2000 SC 2504** quashed the detention order on the ground, that the detainee was not supplied the copies of material from which detention order was made, which amounted to denial of representation to the detainee and infraction of a valuable constitutional right guaranteed to the detainee under [Article 22 \(5\)](#) of the Constitution of India. A Co-ordinate Bench of this Court at Srinagar in a case titled "**Hilal Ahmad Khuroo Vs. Union Territory of J&K & Ors. [WP (Crl.) No. 80/2022**, decided on 10.08.2022] has held, that respondents are duty bound to provide to the petitioner/detainee the material as regards the proceedings [u/s 107](#) of the Cr.P.C (*which is Section 126 BNSS*) and non-supply thereof renders the detention order illegal and unsustainable. Ratio of the judgments (*supra*) and the principle of law deduced there from are squarely applicable to the facts of

the case in hand. In the instant case, on perusal of the detention record, it is discernable, that the essential material/record as regards to the proceedings u/s 107 of Cr.P.C against petitioner forming the edifice for issuance of impugned detention order has not been supplied to the detainee, therefore, the petitioner/detainee's constitutional right guaranteed to him under Article 22(5) Constitution of India r/w Section 13 of J&K PSA 1978 has been infringed/violated, which renders the impugned detention order illegal and legally unsustainable.

15. The last ground, which has been urged by the learned counsel for the detainee 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 photo-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 and others 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 and others, (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.

16. 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.”

17. 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, non communication of the result of the representation to the detainee; thirdly, non supply of whole of the material which incapacitated the petitioner to file effective and meaningful representation to the detaining authority as well as

government; thirdly, non application of mind by the detaining authority, in as much as the grounds of detention are almost xerox copy of the police dossier, 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 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.

18. Viewed thus, the petition is allowed and the impugned detention **Order No.PSA/131 of 2024** dated **10.12.2024**, passed by respondent No. 5, District Magistrate, Kathua, is hereby quashed. The detainee- **Mohd. Abass S/O Nazir Ahmed R/O Barmota, Tehsil Bani, District Kathua**, is directed to be released from the preventive custody forthwith, if not required in any other case(s). No costs.

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

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

(M.A.Chowdhary)
Judge

JAMMU
21.08.2025
Raj Kumar

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No.