

Serial No.93

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

**HCP No. 48/2025**

Reserved on 07.08.2025  
Pronounced on 11.08.2025

**Hafeez Mohammad**, Age 30 years  
S/O Shareef Mohamad  
R/O Dubbli Gali Mongari  
District Udhampur Through his wife **Shatti**.

.....Petitioner

Through: Mr. Mohd. Akram, Advocate.

**Vs**

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

..... Respondents

Through: Mr. Sumeet Bhatia, GA.

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

**JUDGMENT**

**01.** Petitioner has challenged the **Detention Order No.01-PSA-2025** dated **18.01.2025** (impugned order), issued by respondent No.2, District Magistrate, Udhampur ("the detaining authority"), whereby petitioner namely, **Hafeez Mohammad S/O Shareef Mohammad R/O Village Dubigali Tehsil Mounгри District Udhampur** ('the detenue') has been placed under preventive

detention, in order to prevent him from acting in any manner prejudicial to the maintenance of 'public peace and order'.

**02.** The petitioner has contended that the detaining authority has passed the impugned order mechanically without application of mind; that the detainee was not explained the contents of the detention warrant and grounds of detention in the language he understands; that the detaining authority has supplied the detention order to the father of the detainee, who is an old age person; that the detainee has not been supplied the copies of FIRs and detention record in stipulated time, due to this reason, he submitted his representation to the government on 05.03.2025; that there is delay in considering the representation and also the outcome of the representation was not conveyed to the petitioner; that detaining authority detained the petitioner on the basis of alleged bovine smuggling cases which are not covered under the Public Safety Act as the respondents have not alleged any specific incident against the petitioner which has led to the disturbance of the public order; that the petitioner was shown involved in 03 cases for the allegedly petty offences in which the petitioner himself pleaded guilty and was convicted and the aforesaid cases were disposed of with sentence of fine only, therefore there was absolutely no need to pass the impugned detention order on the basis of FIRs against the detainee.

**03.** Pursuant to the notice, the respondents filed counter affidavit through the respondent No.2, asserting therein that keeping in view the prejudicial activities of the detainee, the preventive detention has been ordered so as to deter him from acting and/or indulging in the activities prejudicial to 'public order'; that the detention order does not suffer from any malice or legal infirmity; that the detainee was duly informed of his right to make representation; as a result

whereof he filed representation through his wife, which was duly considered by the competent authority and outcome thereof conveyed to the detainee; that the detainee has raised disputed questions of facts which cannot be adjudicated upon in a writ petition; that the detaining authority has observed all the safeguards enshrined in Article 22 (5) of the Constitution of India as well as the provisions of the Jammu and Kashmir Public Safety Act, 1978 while directing his detention; that the liberty of the detainee is subservient to the welfare, safety and interest of society at large, as such, the detention order has been passed by the detaining authority within the ambit of law observing all the safeguards. It has been further asserted that the detainee was involved in the commission of several offences punishable under the Indian Penal Code and Prevention of Cruelty to Animals Act, registered at different police stations and the detaining authority had drawn its satisfaction on the basis of cogent, credible and incriminating material against the detainee to prevent him from the activities prejudicial to the maintenance of public order and finally it was prayed that the petition be dismissed and the impugned order be upheld.

**04.** Mr. Mohd Akram, learned counsel for the petitioner while making reference to the grounds urged, has argued that detaining authority has shown involvement of the detainee in the several cases of the commission of offences punishable under the Indian Penal Code and Prevention of Cruelty to Animals Act, registered at Police Station Panchari and on this basis, it has drawn satisfaction to detain the detainee under preventive detention, which cannot be done in view of various judgments passed by this court on the subject. In support of his submissions, he has relied upon the law laid down by this Court in three earlier cases **“Zaffar Ahmad vs. UT of J&K & Ors.”** (HCP

**No.66/2024), Hamid Mohd Vs UT of J&K & Ors” (HCP No. 4/2024) and “Muskan Ali Vs. UT of J&K & ors” (HCP No. 72/2024) in similar facts and circumstances, holding that the involvement of a person in cases of bovine smuggling or cruelty to animals there being no instance of creating communal disharmony resulting into “public disorder”, the preventive detention cannot be ordered in terms of J&K Public Safety Act. It is also argued that the detainee had submitted representation on 05.03.2025 as the impugned detention order and its execution report did not specifically state the time limit within which the detainee can make representation, which has severely prejudiced the detainee and has made inroads in his fundamental rights enshrined in the Constitution of India. He has also taken this court to the various other grounds, enumerated in the petition and argued extensively in support thereof. Lastly, it is prayed that the writ petition be allowed and impugned detention order quashed.**

**05.** Mr. Sumeet Bhatia, GA, on the other hand, argued that smuggling of bovines and subjecting them to cruelty while transporting, is a sensitive issue, as such activities do hurt religious feelings of a particular community which reveres the cow as sacred animal. He further submits that on religious feelings being hurt, there is always an apprehension in the minds of law enforcement agencies that it can result into communal disharmony and consequently to law and order problem. It was finally prayed that the petitioner being a potential threat, to the ‘public order’ was rightly placed under preventive detention, in view of his continuous involvement in such activities. The learned counsel for the respondents also produced the detention record to lend support to the stand taken in the counter affidavit.

06. Heard learned counsel for the parties, perused the detention record and considered.

07. The detention record, as produced, reveals that the detune was involved in following 03 FIRs/Istgasa cases registered at Police Station Panchari:-

01. FIR No.24/2020; U/S 188 IPC, 11 PCA Act.
02. FIR No. 33/2021; U/S 188 IPC, 11 PCA Act.
03. FIR No.67/2024; U/S 223/BNS, 11 PCA Act.
04. Complaint/Istgasa No.89/6-10PSP U/S 126/129/170 BNSS  
Dated 13.12.2024.

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

08. First ground as argued is that the detainee was not informed about his right to make representation within a stipulated time before the detaining authority as well as government, thereby violating his statutory and constitutional rights. It is translucently clear from perusal of the impugned detention order that the Detaining Authority has not communicated to the detainee the time limit, within which, he could make a representation to it, till approval of the detention order by the Government. In a case of National Security Act, titled “**Jitendra Vs. Distt. 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.”*

09. 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 grounds of detention 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. There is, therefore, force in the above argument advanced on behalf of the detainee. On this count alone, the impugned detention order cannot sustain and is liable to be quashed.

10. Second ground argued, referring judgment of a Coordinate Bench of this Court while deciding a petition titled “**Hamid Mohd Vs. UT of J&K & Ors**” (HCP No. 4/2024) on 06.08.2024 is that on record there is not even a single incident referred or reported that by alleged involvements of the petitioner in anyone of the said FIRs registered for bovine smuggling, the so called communal tension or disharmony took place on such and such occasion which led to the law and order enforcement agency suffering a difficult time in bringing under control the disturbed public order so as to showcase the petitioner to be a threat to maintenance of public order. Para 14 of the judgment titled “Hamid Mohd Vs. UT of J&K & Ors” (HCP No. 4/2024) decided on 06.08.2024 is reproduced for convenience as under:

*“In the grounds of detention, the very fact that in almost in all the cases related to the FIRs registered against the*

*petitioner, it is the offences under section 188 Indian Penal Code read with offence under the Prevention of Cruelty to Animals Act, 1969 which are involved and that is a pointer to the fact that the same are not relatable in any manner to maintenance of public order. On record there is not even a single incident referred or reported that by alleged involvements of the petitioner in anyone of the said FIRs, the so called communal tension or disharmony came to take place on such and such occasion which led to the law and order enforcement agency suffering a difficult time in bringing under control the disturbed public order so as to showcase the petitioner to be a threat to maintenance of public order.”*

The aforesaid view taken was followed by this court in judgments titled as “**Muskan Ali Vs. UT of J&K & Ors**” (HCP No. 72/2024) decided on 29.08.2024 and “**Zaffar Ahmad Vs. UT of J&K & Ors.**” (HCP No.66/2024), decided on 15.10.2024.

11. On a perusal of the grounds of detention, it is apparent that the petitioner has been accused of being involved in the commission of offences of bovine smuggling regarding which 03 FIRs had been registered at Police Station Panchari in the years 2020, 2021 and 2024, viz FIR No.24/2020 U/S 188 IPC, 11 PCA Act, FIR No. 33/2021 U/S 188 IPC, 11 PCA Act and FIR No.67/2024 U/S 223/BNS, 11 PCA Act. Besides above FIRs, complaint/Istgasa No.89/6-10 PSP U/S 126/129/170 BNSS Dated 13.12.2024 at P/S Panchari was also taken into consideration. The petitioner has been ordered to be detained in preventive custody, preventing him from indulging into the activities prejudicial to the maintenance of the “public order.”

12. Perusal of the detention record would show that all the three cases, in which petitioner was shown allegedly involved, stood disposed of on confession and the detenue was sentenced to fines. The detention order, however, is conspicuously silent with regard to any development based on the cases relating to the maintenance of public order. Though the detaining authority has apprehended the public order based on the FIRs (supra), however, the detaining authority has failed to record as to what was the “law and order problem” much less as that of “public order” in the year 2020, 2021 or in the year 2024 or immediately after registration of the last FIR in the year 2024. Communal disharmony erupts at the spur of the moment and cannot be expected at a later stage. Since the registration of all the cases which has been made basis for the passing of the detention order has neither evoked any communal tension nor problem of “law and order” is shown to have erupted, which is even far away from “public order.”

13. Learned counsel for the detenue argued that the detenue belonged to the peasantry class and rearing of cattles/bovines were part of their vocation/economy. It is apparent from the record of the cases registered against the detenue that he was taking the cattles to some other places within the jurisdiction of the same district, as such, even the commission of penal offence U/S 188 was not made out, as the order issued by the District Magistrate was alleged to have been violated by transporting the cattles without permission from the territorial jurisdiction of the district Udhampur, whereas, fact of the matter is that cattles were being herded to upper reaches of Panchari area, within the district, that too on foot. Even story of cruelty to the animals seems to be

remote, so as to offend the sentiments of any particular community was also being villagers and farmers, is into the same vocation.

14. This court, in view of the aforesaid opinion of the Coordinate Benches and the discussion made hereinabove, has no reason to take a different view in this regard and is persuaded to agree with the view expressed by the Coordinate Benches in the aforesaid cases.

15. The other grounds urged by the learned counsel for the petitioner need not be deliberated upon by this court in view of succeeding of the writ petition on the grounds in the preceding paragraphs.

16. For the aforesaid reasons, the petition is allowed and impugned **Detention Order No.01-PSA-2025 dated 18.01.2025** issued by respondent No.2, District Magistrate, Udhampur is quashed. The petitioner-**Hafeez Mohammad S/O Shareef Mohammad R/O Village Dubigali Tehsil Mounгри District Udhampur**, is directed to be released forthwith, in case he is not required in any other case(s). No order as to costs.

17. The detention record produced by the counsel for the respondents be returned to the respondents through their counsel.

**(M A CHOWDHARY)**  
**JUDGE**

JAMMU  
11.08.2025  
*Surinder*

|                                  |   |         |
|----------------------------------|---|---------|
| Whether the order is speaking?   | : | Yes/No  |
| Whether the order is reportable? | : | Yes/ No |