

Sr. No. 61

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

HCP No.50/2025

Reserved on: 25.09.2025

Pronounced on: 09.10.2025

Mohd Waqar Bhatti, 40 years
S/O Mohd Bashir Bhatti,
R/O Village Saaj,
Tehsil Thanamandi, District Rajouri,
Through brother, **Ghulam Mustafa Bhatti**

....Petitioner(s)

Through :- Mr. Mazher Ali Khan, Advocate.

V/S

1. The Union Territory of Jammu & Kashmir
Through Principal Secretary (Home),
Civil Secretariat, Jammu
2. The District Magistrate, Rajouri
3. Senior Superintendent of Police, Rajouri.
4. The Superintendent, District Jail, Kathua.

....Respondent(s)

Through :- Mr. Dewakar Sharma, Dy. AG

CORAM: HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

JUDGMENT

1. Petitioner namely **Mohd Waqar @ Waqar H Bhatti** S/O Mohd Bashir, R/O Saaj, Tehsil Thannamandi, District Rajouri (for short 'the detenue') through the medium of this Habeas Corpus Petition, has challenged the detention Order No.**DMR/PSA/01 of 2025 dated 21.02.2025** (impugned order), issued by respondent No.2, District Magistrate, Rajouri (hereinafter to be referred as "the detaining authority"), whereby he has been placed under preventive detention, in

order to prevent him from acting in any manner which is highly prejudicial to the maintenance of 'public order'.

2. Petitioner has raised many grounds to assail the impugned order. It is his contention that Detaining Authority has passed the detention order mechanically without due application of mind; that the fate of the representation submitted by the petitioner was never made known to the petitioner; that FIRs of the year 2018, 2020, 2022, 2024 and 2025 were made the basis for passing the detention order, besides vague DDR; that the sponsoring agency has suppressed the vital fact that in one of the FIRs, the petitioner stood acquitted and the said FIR has also been made the basis for passing the impugned detention order; that the petitioner was not informed about his right to file representation to the detaining authority as also the time frame within which the said representation must be filed; that whole of the material on which the detention order was passed was neither supplied to the detainee nor explained to him in the language he understands; that the grounds of detention are replica of the police dossier. Lastly, it is prayed that the petition be allowed and the impugned detention order be set aside.

3. The respondents, in their counter affidavit, has repudiated the averments made in the petition and submitted that the detainee is a hard-core criminal, who has created terror and law and order problem in the area and has been causing grave threat to the maintenance of public order in the whole District in general and Tehsil Thannamandi in particular, which made it imperative for detaining authority to detain him under preventive detention; that the detention warrant along with grounds of detention was properly executed through PSI Gurjot Singh of P/S Thannamandi under proper acknowledgement of the detainee and he was

fully made to understand in the language he understands; that the detenue was also informed that he can make representation to the Govt. as well as detaining authority against the detention order, if he so desires; that the representation filed on behalf of the petitioner was duly considered and rejected and result whereof was duly conveyed to the petitioner through the jail authorities; that all the constitutional or statutory safeguards were observed in letter and spirit and the petitioner had also been informed of his right to move representation against his detention, in terms of impugned order. Lastly, it is prayed that the petition be dismissed and the impugned detention order be upheld as the same has strictly been passed as per the provisions of J&K Public Safety Act. The respondents have produced the detention records in order to lend support to the contentions raised in the counter affidavit.

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

5. The detention record, as produced, reveals that the detenue was involved in following cases registered at Bahu Fort, Jammu, Sunderbani and Rajouri Police Stations :-

- 1) FIR No. 303/2018; U/S 124-A RPC, PS Bahu Fort, Jammu;
- 2) FIR No. 84/2020; U/Ss 153-A/153-B/504/506 RPC, PS Sunderbani;
- 3) FIR No.140/2022; U/Ss 295-A/153-A IPC, PS Bahu Fort, Jammu;
- 4) FIR No.162/2024; U/Ss 299/196/353 BNS, PS Bahu Fort, Jammu and
- 5) FIR No. 91/2025; U/Ss 196/299/351(2)/352 BNS, PS Rajouri.

Besides above FIRs, DDR No.14 dated 16.02.2025 is also recorded against the petitioner at P/S Thannamandi. Involvement of the detenue in the

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

6. Learned counsel for the petitioner, while seeking quashment of the impugned order, restricted his arguments on the following grounds:

- (I) That the petitioner was not informed that he has a right to file representation to the detaining authority and also time frame is not specified in the detention order, within which, he can approach the detaining authority;
- (II) that the entire material forming the basis of the grounds of detention was neither supplied nor explained to him in the language he understands;
- (III) That grounds of detention are replica of police dossier;

7. The detenue, in his petition, more specifically in Ground (vi) has averred that in case FIR No.3023/2018, under Sections 124-A RPC, registered at Police Station Bahu Fort, Jammu, he stands acquitted by the competent court of law. The respondent no.2, in his counter affidavit, while giving pointwise reply to ground (vi) has not said a word regarding his acquittal in case FIR (supra), which shows that this vital fact has been suppressed. Had the outcome of the aforesaid FIR been brought to the notice of the detaining authority, the position would have been different than the one which has been challenged in the present petition.

8. So far as the DDR entry (supra) recorded at Police Station Thannamandi is concerned, it is an admitted case that those has not culminated in any criminal case. Merely recording DDR alleging some acts without specifying any activity

allegedly carried out, 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 First Information Report. 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 DDR make out any criminal offence, what prevented the State to file a First Information Report is a mystery.

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.DMR/JC/2024-25/5029 of December, 2024, issued by the District Magistrate, Rajouri to the detainee, which reads that *'the detainee may make a representation against the detention order mentioned above issued by the undersigned to the Government, if so desired.'*

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* and thereafter cannot review its order. Therefore, the Detaining Authority had to inform the detainee about his right at the very outset so that the detainee can make a representation for reconsideration by the Detaining Authority. 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.

12. The second ground urged by the learned counsel for the detainee 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.2 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 84 leaves comprising copy of detention order, and other documents. 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. It can, thus, safely be assumed that all the material, was not supplied to the petitioner on the basis of which impugned detention order is passed. For not supplying the detainee whole of the record, which was based to pass the order, amounted to denial of fair opportunity to represent against the same. The impugned detention order is, thus, vitiated for infraction of a valuable constitutional right as guaranteed to a citizen in terms of Article 22(5) of the Indian Constitution.

13. 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, based on which detention order was passed, 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.

14. 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.

15. 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.”

16. 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; fourthly, 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.

17. Viewed thus, the petition is allowed and the impugned detention Order No. **DMR/PSA/01 of 2025 dated 21.02.2025**, passed by respondent No. 2, District Magistrate, Rajouri, is hereby quashed. The detenue- **Mohd Waqar @ Waqar H Bhatti** S/O Mohd Bashir, R/O Saaj, Tehsil Thannamandi, District Rajouri is directed to be released from the preventive custody forthwith, if not required in any other case(s). No costs.

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

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

Jammu:
09.10.2025
Raj Kumar

(MA CHOWDHARY)
JUDGE

Whether the order is speaking?

Yes

Whether the order is reportable?

Yes

I pronounce this judgment today, in terms of Rule 138(3) of the J&K

High Court Rules, 1999.

Jammu:
09.10.2025

(VINOD CHATTERJI KOUL)
JUDGE