

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

Reserved on : 03.06.2025.

Pronounced on : 21.07.2025.

HCP No. 54/2025

**Anwar Mohd, aged 25 years,
S/o Mohd. Sharief,
R/o Damni, Jhajjar Kotli, Tehsil Dansal,
District Jammu.**

.....Petitioner

Through: Mr. Manpreet Singh Saini, Advocate

Vs

- 1. Union Territory of J&K through Commissioner/Secretary,
Home Department, Civil Secretariat, Jammu.**
- 2. District Magistrate, Jammu.**
- 3. Senior Superintendent of Police, Jammu.**
- 4. Incharge Superintendent, District Jail Rajouri.**

..... 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 for the respondents. Perused the writ pleadings and the documents therewith.

02. The petitioner has come forward with the present writ petition filed on 19.04.2025, thereby calling in question his preventive detention effected by an order of the respondent No. 2 – District Magistrate, Jammu effected under the Jammu & Kashmir Public Safety Act, 1978 in connection with which the petitioner is under the preventive detention custody with effect from 01.01.2025 and which is meant to last for a period of one year subject to outcome of this writ petition.

03. The respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu came to submit a communication No. CRB/Dossier/2024/68/DPOJ dated 28.12.2024 to the respondent No. 2 – District Magistrate, Jammu accompanied with 107 pages compilation in the form of a dossier with respect to the petitioner on the basis whereof the preventive detention of the petitioner was solicited on account of his purported activities read and reckoned by the District Police, Jammu to be prejudicial to the maintenance of Public Order.

04. In said dossier, the petitioner came to be referred as a notorious and hardcore bovine smuggler indulging in repeat of activities of bovine transportation in illegal manner thereby posing a threat to the maintenance of Public Order.

The petitioner is referred to be a desperate character and habitual of indulging in acts of bovine smuggling and even spreading a reign of communal terror.

05. The involvement of the petitioner in the below cited FIRs and Daily Reports came to be highlighted to carry the plea for preventive detention of the petitioner under the Jammu & Kashmir Public Safety Act, 1978:-

- a) FIR No. 20/2022 dated 07.03.2022 registered by the Police Station Majalta Udhampur for alleged commission of offences under section 188-IPC read with section 11 of the Prevention of Cruelty to Animals Act, Svt., 1990 (1934 A.D.) involving illegal transportation of 16 bovine animals without District Magistrate's permission in a vehicle No. JK03D-7019.
- b) FIR No. 81/2022 dated 19.04.2022 registered by the Police Station Raj Bagh Kathua for alleged commission of offences under section 188-IPC read with section 11 of the Prevention of Cruelty to Animals Act, Svt., 1990 (1934 A.D.) for illegally transporting 16 bovine animals in truck No. JK02AT-4957 without requisite permission.
- c) FIR No. 02/2023 dated 01.01.2023 registered by the Police Station Nagrota Jammu for alleged commission of offences under section 188-IPC,

section 11 of the Prevention of Cruelty to Animals Act, Svt., 1990 (1934 A.D.) read with Transport of Animal Rules, 1978 involving illegal transportation of 10 bovine animals in a vehicle No.JK0BT-6357.

- d) FIR No. 162/2023 dated 27.11.2023 registered by the Police Station Batote Ramban for alleged commission of offences under section 188-IPC, section 11 of the Prevention of Cruelty to Animals Act, Svt., 1990 (1934 A.D.) read with Transport of Animal Rules, 1978 involving illegal transportation of 17 bovine animals in truck No. JK02AP-8887.
- e) FIR No. 291/2023 dated 26.12.2023 registered by the Police Station Jhajjar Kotli Jammu for alleged commission of offences under section 188-IPC read with section 11 of the Prevention of Cruelty to Animals Act, Svt., 1990 (1934 A.D.) for illegal transportation of 22 bovine animals without requisite Magisterial permission in truck No. JK01AP-1871.
- f) FIR No.26/2024 dated 09.02.2024 registered by the Police Station Jhajjar Kotli Jammu for alleged commission of offences under section 188-IPC, read with section 11 of the Prevention of Cruelty to Animals Act, Svt., 1990 (1934 A.D.) involving illegal transportation of 9 bovine

animals in truck No. JK14G-6357 without any Magisterial permission.

- g) DDR No. 23 dated 12.11.2024 of Police Station Jhajjar Kotli.
- h) DDR No. 16 dated 26.12.2024 of Police Post Manwal.
- i) DDR No. 17 dated 27.12.2024 of Police Post Sidhra.
- j) DDR No. 18 dated 28.12.2024 of Police Station Jhajjar Kotli.

06. With the aforesaid criminal antecedents of the petitioner, his preventive detention was solicited so as to prevent any prejudice to the maintenance of Public Order taking place on account of illegal activities of the petitioner.

07. The respondent No. 2 – District Magistrate, Jammu in exercise of power under section 8(2)(ii) of the J&K Public Safety Act, 1978 came to formulate the grounds of detention therefrom drawing subjective satisfaction that the case presented before him relatable to the petitioner by the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu warrants preventive detention of the petitioner under section 8(1)(a) of the Jammu & Kashmir Public Safety Act, 1978 and, accordingly, passed Order No. PSA 33 of 2024

dated 30.12.2024 ordering the preventive detention of the petitioner so as to prevent him from acting in any manner prejudicial to the maintenance of Public Order and ordered his detention and confinement in the Central Jail Kot Bhalwal, Jammu.

08. Pursuant to the detention order so passed by the respondent No. 2 – District Magistrate, Jammu, the detention of the petitioner came to take place when PSI Ahsan Khan, PID No. EXJ-196263 came to detain the petitioner on 01.01.2025 and handed over to him the detention order and the grounds of detention (14 leaves), comprising of one leaf of detention order, three leaves of notice of detention and ten leaves of grounds of detention against receipt taken from the petitioner.

09. The petitioner has challenged his preventive detention on the grounds as set out in the writ petition stating therein that without copies of FIRs, challans, statements of witnesses in relation to the FIRs mentioned in the dossier as well as in the grounds of detention, the petitioner was served only with the detention order which seriously prejudiced the right of the petitioner to make an effective representation against his preventive detention

without being possessed of the essential documents on the basis of which he is meaning to be pleaded that not only he was on bail in each and every FIR referred to him.

10. In addition, the petitioner also pleaded that even if the criminal cases relatable to FIRs as mentioned in the dossier as well as in the grounds of detention were obtaining against the petitioner still the petitioner was facing ordinary criminal law and by that reference was not to be subjected to punitive punishment under the Public Safety Act, 1978 and that is where the petitioner is pleading that the indulgence of a person in commission of offences under section 188-IPC read with section 11 of the Prevention of Cruelty to Animals Act, Svt., 1990 (1934 A.D.) do not fall within the scope and mischief of section 8(1)(a) of the Public Safety Act, 1978.

11. In response to the averments made in the writ petition, the respondent No. 2 – District Magistrate, Jammu came forward with a counter affidavit asserting that all the procedural parameters and safeguards were complied with in carrying out and subjecting the petitioner to preventive detention custody and that the petitioner's activities are of the nature which rendered him to be booked under the Jammu & Kashmir Public Safety Act, 1978.

12. It has been asserted in the counter affidavit from the end of the respondent No. 2 – District Magistrate, Jammu that the latest booking of the petitioner in an alleged commission of offences under section 188-IPC read with section 11 of the Prevention of Cruelty to Animals Act, Svt., 1990 (1934 A.D.) was on 09.02.2024 whereafter the petitioner was repeatedly tagged with four DDRs by the respective Police Stations and that provided a live basis for the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu and also for the respondent No. 2 – District Magistrate, Jammu to reckon the petitioner to be indulging in activities prejudicial to the maintenance of public order.

13. In support of his contention that the petitioner was not to be booked under the Jammu & Kashmir Public Safety Act, 1978 for his alleged involvement in commission of offences under section 188-IPC read with section 11 of the Prevention of Cruelty to Animals Act, Svt., 1990 (1934 A.D.), the petitioner has referred to a distinction between maintenance of Public Order and the Law and Order problem being well settled by the Hon'ble Supreme Court of India in the matter of imposing preventive detention upon a detainee by reference to maintenance of Public Order.

14. In this regard, learned counsel for the petitioner has referred to the judgments of the Hon'ble Supreme Court of India in the cases of "Arun Ghosh Vs State of West Bengal," (1970)1 SCC 1998 & "Sama Aruna Vs State of Telangana and another," (2018)12 SCC 150.

15. When this Court examines the present case, there is no doubt about the fact that the petitioner seems to be a repeat offender in exploit of his occupation as being a driver and that is the reason that in all the FIRs the petitioner is being referred to be driving different vehicles at different points of time alleging carrying the bovine animals without magisterial permission but to whom said vehicles belonged in terms of its ownership has not been spelled out in the dossier submitted by the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu and so is same missing in the grounds of detention of the respondent No. 2 – District Magistrate, Jammu.

16. Be that as it may, the fact which needs to be examined is whether the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu had supported and supplemented his dossier with the accompanying documents relatable to the criminal cases mentioned in the dossier. The

observation which comes rushing to this Court is that while SDPO Nagrota had provided to the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu with 89 leaves of dossier with respect to the petitioner, the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu from his end while submitting his dossier to the respondent No. 2 – District Magistrate, Jammu seems to have withheld the placement of said 89 leaves of dossier information so served by the SDPO Nagrota.

17. This Court, when coming with the observation on the fact that if the dossier submitted by the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu to the respondent No. 2 – District Magistrate, Jammu would have been accompanied with 89 leaves of dossier information so served by the SDPO Nagrota, then at the time of execution of detention warrant against the petitioner by PSI Ahsan Khan, the petitioner would not have been delivered/handed over with 14 leaves compilation related to his detention comprising of 01 leaf of detention warrant, 03 leaves of notice of detention and 10 leaves of grounds of detention.

18. This is where the petitioner has come up with the plea of being subjected to prejudice that the deficient dossier

and deficient grounds of detention were supplied to him seriously prejudicing the right of making an effective representation on the basis of which he could have been afforded to plead to the Govt. or the respondent No. 2 – District Magistrate, Jammu that no case was made out for effecting the preventive detention.

19. The respondent No. 2 – District Magistrate, Jammu and the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu cannot escape from the burden of being derelict on this aspect of the case and the reasons are best known to them as to why they acted in a haste without exercising due diligence and indulgence that in case if the petitioner was being contemplated to be subjected to preventive detention then whatsoever material was being pressed into consideration for soliciting and ordering the preventive detention then the same should have been supplied to him so as to confront him point-blank that on the basis of the material so served to him his preventive detention custody has come visiting him. At the best, this court can only read a sense of casualness and mechanical mindset approach at the end of the respondent No. 3 – Sr. Superintendent of Police (SSP), Jammu and the respondent No. 2 – District Magistrate, Jammu that even in a case which

essentially is of a good nature in booking a person for preventive detention under the Jammu & Kashmir Public Safety Act, 1978, crucial procedural lapses invite the failing of decision/order of subjecting a detainee to preventive detention.

20. In the light of the aforesaid, the writ petition deserves to be allowed and for that the order of detention No. PSA 33 of 2024 dated 30.12.2024 read with consequent approval/order passed by the Govt. of UT of Jammu & Kashmir through its Home Department are hereby quashed.

21. The petitioner is directed to be restored to his personal liberty by his release from the concerned Jail detaining him and to that effect the concerned Jail Superintendent is directed to release the petitioner subject to the condition that the petitioner would furnish personal as well as surety bond of Rs. 5 lacs each to the effect that the petitioner shall not be indulging in repeat of offences for which he has been booked in the FIRs as mentioned in the dossier as well as in the grounds of detention for a period of next three years.

22. Surety bond to be furnished to the District Magistrate, Jammu, whereas the personal bond to be

furnished to Superintendent of the concerned Jail who shall thereupon forward the personal bond to the District Magistrate, Jammu for the purpose of reference relatable to the petitioner. In the event of breach of personal bond furnished by the petitioner as directed, proceedings for forfeiture of bond, personal as well as surety, to be initiated by the District Magistrate, Jammu.

23. ***Disposed of.***

JAMMU
21.07.2025
Muneesh

(RAHUL BHARTI)
JUDGE

Whether the judgment is speaking :

Yes

