

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

HCP No.56/2025

Reserved on : 17.07.2025

Pronounced on: 22.07.2025

Mohd. Mansha @ Gunnu, Age 35 years
S/O Mohd. Yousuf, R/O Raipur Jaggir,
Tehsil Marh, District Jammu
At present lodged at Central Jail, Kot Bhalwal
through mother
Banoo Bibi, age 60 years
W/O Mohd. Yousuf R/O Raipur Jaggir,
Bhad-Rode, Jammu

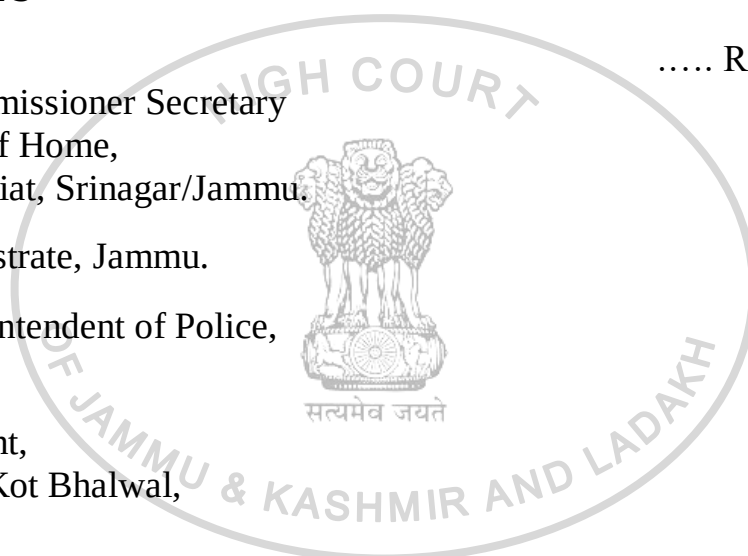
..... Petitioner(s)

Through: Mr. Gagan Oswal, Advocate.

Vs

1. UT of J&K
through Commissioner Secretary
Department of Home,
Civil Secretariat, Srinagar/Jammu.
2. District Magistrate, Jammu.
3. Senior Superintendent of Police,
Jammu.
4. Superintendent,
Central Jail, Kot Bhalwal,
Jammu.

..... Respondent(s)



Through: Mr. Pawan Dev Singh, Dy. AG.

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

JUDGMENT

01. Petitioner challenged the **Detention Order No. PSA-31 of 2024 dated 28.12.2024** (impugned order), issued by respondent No.2, District Magistrate, Jammu (“the detaining authority”), whereby petitioner namely **Mohd. Mansha @ Gunnu S/O Mohd. Yousuf R/O Raipur Jaggir, Tehsil Marh, District Jammu** (for short ‘the detenue’) has been placed under preventive detention, in order to prevent him from acting in any manner prejudicial to the maintenance of ‘public order’.

02. The petitioner has contended that the detaining authority has passed the impugned order mechanically without application of mind; that the petitioner was not explained the contents of the detention warrant and grounds of detention in the language he understands; that the detaining authority has not informed the petitioner of his right to file representation and that too, within stipulated timeframe to the government, which prevented the petitioner in making effective and meaningful representation to the government; 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 in 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 whole of the material was not provided to the petitioner; that no satisfaction is recorded in the grounds of detention that normal law is not sufficient to deal with the alleged activities of the petitioner; that the petitioner though on bail, the detaining authority has not discussed the conditions of bail in the grounds of detention; that grounds of detention is the Xerox copy of the dossier; and that for the aforesaid reasons, impugned order is liable to be quashed.

03. Pursuant to the notice, the respondents filed a 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 those activities; that the detention order does not suffer from any malice or legal infirmity; that the representation of the petitioner was duly considered by the competent authority and the outcome thereof was also duly conveyed to the petitioner; that the petitioner 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 petitioner was involved in the cases of 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 petitioner 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. Gagan Oswal, learned counsel for the petitioner while making reference to the grounds raised, has, *inter alia*, restricted his arguments and 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 different police stations and on the basis of 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 two earlier cases **“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 was disabled in making an effective and meaningful representation as the impugned detention order and its execution report does not specifically state the time limit within which the detainee can make representation, which has severely prejudiced the detainee in contravention to the 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 be quashed.

05. Mr. Pawan Dev Singh, Dy. AG 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. 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 detainee was involved in following 05 cases registered at different Police Stations:-

- 1) *FIR No.15/2021 U/Sec 457/380 IPC P/S Janipur*
- 2) *FIR No. 373/2023 U/Sec 379/201 IPC P/S Domana*

- 3) FIR No. 530/2023 U/Sec 457/380 IPC P/S Nagrota
- 4) FIR No. 24/2024 U/Sec 379/201 IPC P/S Bari Brahmana
- 5) FIR No. 267/2024 U/Sec 223/299 BNS P/S Jhajjar Kotli.

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 the stipulated time before the detaining authority as well as government, 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 the time limit, in 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. 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.”

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, 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 of the detinue. On this count alone, the impugned detention order cannot sustain and is liable to be quashed.

10. Second ground argued, referring judgment passed by 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.”

Another Coordinate Bench in a judgment titled as “Muskan Ali Vs. UT of J&K & Ors” (HCP No. 72/2024) decided on 29.08.2024 has followed the dictum laid down in the case of “Hamid Mohd Vs. UT of J&K & Ors” (supra).

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 thefts of cows/oxen regarding which five FIRs had been registered at different police stations viz FIR No. 15/2021 u/s 457/380 IPC at Police Station, Janipur; FIR No.373/2023 u/s 379/201 IPC P/S Domana; FIR No. 530/2023 u/s 457/380 P/S Nagrota; FIR No.24/2024, u/s 379/201 IPC P/S Bari Brahmana and FIR No. 267/2024 at Police Station, Jhajjar Kotli. 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. All the cases registered vide FIRs were regarding thefts of cows/oxens, except one which pertained to deliberate and malicious acts intended to outrage religious feelings, with allegations that detainee was found involved in smuggling of cows. Therefore, it cannot be stated that detainee was involved in smuggling of bovines in many cases and a solitary case of transporting the cows but with no detail with regard to number of bovines but just that a vehicle was seized by Police on 18.12.2024 by Jhajjarkotli Police.

13. 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 2021 or in the year 2023 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 such public order or communal tension and no problem of “law and order” is shown to have erupted which is even far away from “public order.”

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 discussed in the preceding paragraphs.

16. For the aforesaid reasons, the petition is allowed and impugned **Detention Order No.PSA 31 of 2024 dated 28.12.2024** issued by respondent No.2, District Magistrate, Jammu is quashed. The petitioner- **Mohd. Mansha @ Gunnu S/O Mohd. Yousuf R/O Raipur Jaggir, Tehsil Marh, District Jammu** is directed to be released forthwith, in case he is not required in any other case.

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

(M A Chowdhary)
Judge

Jammu
22.07.2025
Raj kumar