

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 64/2025

Date of pronouncement: 27.11.2025

Date of uploading: 02.12.2025

Jaqoob Ali @ Juka

S/o Alam Din

R/o Mandhera Tehsil & District Samba

a/p lodged in District Jail Kathua

Through his brother

Ali Sain

S/o Alam Din

Brother of Jaqoob Ali @ Juka

R/o Mandhera Tehsil & District Samba

.....Appellant(s)/Petitioner(s)

Through: Mr. Jagpaul Singh, Advocate

vs

1. UT of J&K th. Additional Chief Secretary
to Govt. Home Deptt, Civil Secretariat
Jammu/Srinagar.

2. District Magistrate, Samba

3. Senior Superintendent of police, Samba.

4. In-charge/ Superintendent, District Jail,
Kathua.

..... Respondent(s)

Through: Mr. Bhanu Jasrotia, GA

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE
ORDER (ORAL)

1. The petitioner, in the instant petition, filed under Article 226 of the Constitution of India seeks quashing of detention order bearing No. 26-PSA-2024 dated 19.12.2024 [for short **“the impugned order”**] passed by respondent No. 2 herein [for short **“the Detaining Authority”**] under and in terms of J&K Public Safety Act of 1978 [for short **“the Act”**].

2. The petitioner has challenged the impugned order on multiple grounds urged in the petition.
3. Counter affidavit to the instant petition has been filed, wherein the petition has been opposed on the premise that the detention of the petitioner under preventive law was ordered by the Detaining Authority after due consideration and proper application of mind to the dossier and other material received from the Senior Superintendent of Police, Samba vide letter dated 23.07.2024 and also on account of continuous repeated involvement of the petitioner in criminal activities posing threat to the public order, whereupon preventive detention of the petitioner was found to be imperative, and that the petitioner was also booked in three FIRs bearing Nos. 145/2021 dated 07.05.2021 u/s 188 IPC, 271/2023 dated 15.11.2023 u/s 188 IPC & 11 PCA Act and 124/2024 dated 03.05.2024 u/s 279/188 IPC & 11 PCA Act registered with Police Station, Samba and also owing to his involvement in the criminal activities same were found being prejudicial to the security of the State, public order as well as safety of the public in general, as such, the petitioner was ordered to be detained by the Detaining Authority after following all constitutional and statutory requirements and that upon detention of the petitioner, a copy of order of detention, grounds of detention, dossier and other documents were furnished to the petitioner as also were explained to him in English, Urdu, Hindi and Dogri languages, which he fully understood and was also

informed that he can make a representation against his detention order, if he so desires.

4. In opposition to the aforesaid counter affidavit filed by the respondents to the instant petition, the petitioner has also filed a rejoinder affidavit, stating therein that the detention of the petitioner was extended by the respondents in terms of order dated 16.05.2025 without any lawful justification and that the initial detention order was executed after a period of more than two months without any plausible reason and that the petitioner came to be informed vide communication dated 01.08.2025 that the representation submitted by him stands rejected, which representation had been belatedly considered and decided.

Heard learned counsel for the parties and perused the record, including the detention record produced by the counsel for the respondents.

5. Notwithstanding multiple grounds of challenge urged by the petitioner in the instant petition, the counsel for the petitioner would confine the challenge to the impugned order on the ground that the respondents delayed the execution of the impugned order without any plausible reason, even though the petitioner was available and had neither absconded nor had avoided execution of the same. It is further urged by the counsel for the petitioner that a representation submitted against his detention by the petitioner on 24.03.2025 came to be belatedly considered and decided by the respondents and decision thereof conveyed to him on 21.08.2025. Learned counsel for the petitioner

would also contend that the preventive detention came to be invoked against the petitioner, allegedly for his involvement in the activities of bovine smuggling, which activities have been held neither prejudicial to the security of the State or to the public order.

6. On the contrary, counsel for the respondents, while opposing the submissions of the counsel for the petitioner would heavily rely upon the counter affidavit filed to the petition, as also to the detention record produced during the course of hearing of the case and would insist that the petition is liable to be dismissed.
7. Insofar as the aforesaid first ground urged by the counsel for the petitioner *qua* the delayed execution of the impugned order is concerned, law in no more *res integra* and stands settled in case titled as “*A. Mohd. Farook Vs. Jt. Secy. To GOI & Ors.*”, reported in (2000) 2 SCC 360, wherein it has been, *inter alia*, held that the Detaining Authority must satisfactorily explain the inordinate delay, if caused in executing the detention order, as otherwise the subjective satisfaction of the Detaining Authority gets vitiated. Having regard to the aforesaid position of law, inasmuch as the plea of the counsel for the petitioner that the respondents have not spelt out any reason or justification either in the pleadings or else in the detention record produced that as to why the detention order came to be executed belatedly against the petitioner besides there is no report filed either by the Executing Agency or else from the Detaining Authority or else produced before this Court to indicate as to what steps were taken for executing the

impugned order upon the issuance of the same for requiring the petitioner to serve the detention order it can safely be held that the impugned order is legally unsustainable.

8. Insofar as the aforesaid next ground urged by the counsel for the petitioner *qua* the delayed consideration of representation is concerned, law in this regard as well is settled by the Apex Court in series of judgments, including in case titled as “*K. M. Abdulla Kunhi Vs. Union of India*”, reported in (1991) 1 SCC 476, wherein it has been held that slackness or callus attitude in considering the representation of the detenu and any unexplained delay in disposing thereof tantamount to the non-compliance of the mandate of Article 22(5) of the Constitution of India, and vitiates the detention order. Record reveals that the respondents admittedly have caused delay in consideration and disposal of the representation of the petitioner without there being any plausible explanation.
9. Regarding the aforesaid third ground urged by the counsel for the petitioner that the activities of bovine smuggling alleged against the petitioner do not constitute either an activity prejudicial to the security of the State or public order is concerned, law in this regard is also no more *res integra*, as the consistent view of the Courts have been that in the matter of bovine smuggling without permission, a penal law is sufficient to deal with such activity and that the preventive law cannot be invoked as a substitute thereof.

10. Viewed thus, for what has been observed, considered and analysed hereinabove, the impugned order is found to be legally unsustainable.
11. Accordingly, the instant petition is allowed and impugned order No. 26-PSA-2024 dated 19.12.2024 is quashed with a direction to the respondents, including the concerned jail authority to release the petitioner from preventive detention unless he is required in any other case.
12. Detention record produced by the counsel for the respondents is returned back in the open Court.
13. **Disposed of.**

Jammu
27.11.2025
Vishal Sharma

The seal of the High Court of Jammu & Kashmir and Ladakh is a circular emblem. It features the Ashoka Lion Capital in the center, with the words "HIGH COURT" at the top and "OF JAMMU & KASHMIR AND LADAKH" at the bottom. To the right of the seal, the text "(Javed Iqbal Wani) Judge" is written.

(Javed Iqbal Wani)
Judge

Whether the order is reportable: Yes

Whether the order is speaking: Yes/No