

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

HCP No.65/2025

Reserved on: 03.07.2025.

Pronounced on: 09.07.2025

Bhupinder Singh @ Pinku, Age 54 years
S/O Harnam Singh, R/O Ward No.8, Kathua,
Tehsil and District Kathua

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

Through :- Mr. M K Bhardwaj, Sr. Advocate with
Mr. Gagan Kohli, Advocate.

V/S

1. The Union Territory of Jammu & Kashmir
Through Commissioner/Secretary to
Government, Home Department,
Civil Secretariat, Srinagar/Jammu
- Respondent(s)
2. The District Magistrate, Kathua
3. Senior Superintendent of Police, District Kathua.
4. Superintendent, District Jail, Jammu.

Through :- Mr. Suneel Malhotra, GA

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

JUDGMENT

1. Petitioner namely Bhupinder Singh @ Pinku , S/O Harnam Singh, R/O Ward No.8, Kathua, Tehsil & District Kathua (for short 'the detenue') has challenged the detention Order No.PSA/154 dated 23.04.2025 (impugned order), issued by respondent No.2, District Magistrate, Kathua (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 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 though referred earlier cases from the years 2012, 2013, 2014 and 2024, as found in the Grounds of Detention, what was

placed before him was only the copies of reports in those matters. Had the Authorities placed the outcome of such matters vis-à-vis discharge of petitioner in case FIR No.347/2014 u/s 302 RPC, the cases of the year 2012 and 2013 were disposed of being compromised by the court of law; and the petitioner got bailed out in the case FIR of year 2024, there would have been a different conclusion than the one which is challenged in the present petition. It is also contended that the allegations attributed to the petitioner in the grounds of detention may be a 'law and order' problem but do not qualify within the definition of 'Public Order' under Section 8 of the J&K Public Safety Act 1978; that the petitioner was not supplied sufficient material which includes the copies of FIRs, statement of witnesses, list of witnesses, statements before Judicial Magistrate and other relevant materials which is mandatory as per the provisions of Public Safety Act; that there is total non application of mind by the detaining authority as the petitioner stands already discharged and acquitted from the FIRs mentioned in the grounds of detention; that the petitioner was prevented from making effective representation to the competent authority as he was not supplied with the entire material, let alone translated copies of the Urdu documents. Lastly, it is prayed that the petition be allowed and the impugned detention order be set aside.

3. The respondent No.2, in his counter affidavit, has controverted the averments made in the petition and submitted that the detainee is a hardcore criminal, desperate character and has been involved in the commission of organized crime for the past many years and was still continuing which is leading to eruption of terror among the general public, therefore, keeping in view the criminal/anti-social activities of the detainee, detention order was passed by the respondent no.2 as his remaining at large involves a greater risk to the

maintenance of Public Order; that the detention warrant along with grounds of detention was properly executed through SI Reham Ali of P/S Kathua under proper acknowledgement of the detinue and he was fully made to understand in the language he understands; that the detinue was also informed that he can make representation to the Govt. as well as detaining authority against the detention order, if he so desires; 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 support the contentions raised in the counter affidavit.

4. Learned counsel for the petitioner, while seeking quashment of the impugned order, reiterated various grounds but his main thrust during the course of arguments was on the following grounds:

(I) That the outcome of FIRs of the year 2012, 2013, 2014 and of the year 2024 was not brought to the notice of the competent authority who passed the order of detention while making the aforesaid FIRs as the foundation for passing the impugned detention order;

(II) That sufficient material was not supplied to the petitioner including translated copies of the Urdu documents which prevented the petitioner from making effective representation to the competent authority against the detention order; and

(III) That the allegations attributed to him in the grounds of detention may be a law and order problem but do not qualify within the definition of 'Public Order' in terms of Section 8 of the J&K Public Safety Act,

1978 and the grounds of detention have been formulated without application of mind.

5. Learned State Counsel, *ex adverso*, making reference to the grounds of detention, argued that the activities of the detainee were not only criminal but also in the direction of causing disturbance to the public order; that detention ordered vide impugned order was in the public interest; that whole of the material relied upon had been supplied to the detainee by the executing officer at the time of execution of the detention warrant and contents thereof were explained to the detainee in the language understandable to him; 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. It was urged, finally, that the same be upheld and petition be rejected.

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

7. Para 6 of the counter affidavit filed on behalf of District Magistrate, Kathua-respondent No.2 has detailed the following FIRs registered against the petitioner:

- i. FIR No.160/2012 u/s 323/504/506/147 RPC dated 02.08.2012;
- ii. FIR No. 285/2013 u/s 323/147/148 RPC dated 02.08.2013;
- iii. FIR No. 327/2014 u/s 302/307/326/336/120-B/147/148/149 RPC & 30 Arms Act dated 16.09.2014; and
- iv. FIR No. 373/2024 u/s 304/115(2)/352/351(2)/191(2) BNS dated 20.11.2024.

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

8. Petitioner has placed on record copies of the order dated 30.01.2015 Annexure III passed by the court of Special Mobile Magistrate, Kathua accepting the compromise agreement between the parties and closed the case involving FIR No.160/2012 under Sections 141/323/504/506 RPC as decided. Order dated 08.06.2016 (Annexure-IV) passed by the court of Special Mobile Magistrate, Kathua discharging the petitioner of the charges in case/FIR No.285/2013 u/s 323/147/148 RPC as mutual compromise was reached between the parties and closed the case as decided. The Judgment dated 09.05.2024 (Annexure-V) passed by the court of learned Additional Sessions Judge, Kathua, whereby the detainee was acquitted in case /FIR No.327/2014 of Police Station Kathua under Sections 302/307/326/336/120-B/147/148/149 RPC & 30 Arms Act. Further perusal of the grounds of detention vis-à-vis FIR No.373/2024 would show that the allegations leveled against the petitioner and other persons are vague and general in nature and nothing specific is alleged against the petitioner.

9. The whole edifice for passing the detention order impugned crumbles when faced with the outcome of the aforesaid FIRs which were made the basis of passing of the detention order. Had the outcome of the aforesaid FIRs brought to the notice of the detaining authority, the detention order could not have been passed. On this count alone, the detention order having been passed without application of mind by the detaining authority is not sustainable and liable to be quashed.

10. So far as the contention of the learned senior counsel that the petitioner in view of non supply of sufficient material including translated version of the

Urdu documents, the petitioner was prevented in making a meaningful and effective representation is concerned, this court finds force in the aforesaid contention. As regards the contention of the petitioner that the allegations contained in the grounds of detention against the detainee, would not constitute an act amounting to disturbance of public order. It is settled law that if ordinary law of the land is competent to deal with criminal activities of a criminal, recourse to the provisions of preventive detention laws is illegal. (See: Criminal Appeal No.2897 of 2025 in case titled Dhanya M v. State of Kerala & Ors. reported as 2025 INSC 809).

11. Having regard to what has been observed and discussed above, the present petition is allowed and the impugned order of detention No. **PSA/154 dated 23.04.2025** issued by respondent No.2, District Magistrate, Kathua is hereby quashed. The detainee is directed to be released from the preventive custody forthwith, if not involved in any other case.

12. The record of detention be returned to the learned counsel for the respondents.

13. **Disposed of.**

(MA CHOWDHARY)
JUDGE

Jammu:
09.07.2025
Raj Kumar

Whether the order is speaking? Yes

Whether the order is reportable? Yes