

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 67/2025

Reserved on: 18.09.2025
Pronounced on: 30.09.2025

Mohd. Kalu Petitioner(s)

Through:- Mr. Gagan Oswal, Advocate,

V/s

Union Territory of J&K Respondent(s)
&ors.

Through:- Mr. Pawan Dev Singh, DyAG

CORAM: HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGMENT

01. District Magistrate, Jammu – detaining authority, vide Detention Order No.PSA 05 of 2025 dated 10.04.2025 has placed the detenu-Mohd. Kalu S/o Mohd. Bashir R/o W. No. 5 Gujjar Basti Dak Bungalow Miran Sahib, Jammu,(for short detenu) under preventive detention under Section 8(a) of the Jammu and Kashmir Public Safety Act,1978 with a view to prevent him from acting in any manner in the activities which are prejudicial to maintenance of public order. The detenu has assailed this order of detention through his mother-Leema Bibi.

02. The legality and validity of the detention order has been assailed by the detenu on the grounds that: (i) the detenu has been deprived of making effective representation in the absence of the documents as relied upon by the Detaining Authority and he has not been communicated the time limit within which representation is required to be made; (ii) the grounds of detention were neither read over to the detenu nor the detenu was made to understand the same in the language which he understands; (iii) the

Detaining Authority failed to consider the bail conditions in the cases registered against the detenu at the time of passing the detention order and the impugned order has been passed on the ground of involvement of the detenu in the FIRs with respect to which he has already been enlarged on bail; and (iv) the respondents have not recorded satisfaction that normal punitive law has failed to prevent illegal activities of the detenu which renders necessary issuance of detention order and the detention order is an absolute verbatim of the police dossier.

03. Mr. Pawan Dev Singh, learned Deputy Advocate General appearing on behalf of the respondents, has filed the counter affidavit as well as produced the detention record. Learned counsel for the respondents has controverted the averments made in the petition. It is submitted by him that all the procedural safeguards and constitutional guarantees were duly complied with by the Detaining Authority. The grounds of detention, order of detention as well as entire material relied upon by the Detaining Authority has been provided to the detenu and he was also informed of his right to make an effective representation against the order of detention to the Government. The grounds urged by the detenu are misconceived and without any reason.

04. Heard learned counsel for the parties and perused the record also.

05. The first contention raised by the detenu is that all the material relied upon by the Detaining Authority has not been provided to him. The detenu has only received the detention warrant/ground of detention, leaves of dossier and other documents as per the receipt of grounds of detention but the dossier and other material relied upon by the Detaining Authority has not

been provided to the detenu. Perusal of the record reveals that as per the execution report, the detenu has not been supplied with all the material. The receipt of grounds of detention reads as under:-

‘In compliance to the District Magistrate Jammu vide order No.PSA 05 of 2025 Dated 10.04.2025 issued under endorsement No. DMJ/JC/PSA/2025-26/67-69 dated 10.04.2025.1 PSI Yasar Arfat PID No.EX3-196286 of P/S Miran Sahib executed the detention warrant of detenue Namely Mohd Kalu S/o Mohd Bashir R/o W.No.05 Gujjar Basti Dak Bunglow Miran Sahib Jammu today 11.04.2025 and lodged in District Jail Rajouri under PSA. The contents of the detention warrant and Grounds of Detention documents has been read-over in English and explained to him in Urdu language which he understood fully in token of which his signature has been obtained below at mark” A”. Moreover, a copy of detention warrant and Grounds of Detention documents is also provided to him and he has also been informed that he can make representation to the Govt. against his detention order, if he so desire.’

06. The detention order dated 10.04.2025 reflects that the same is based on the dossier placed before the Detaining Authority by the Senior Superintendent of Police, Jammu. The detenu must know what weighed with the Detaining Authority while passing the order of detention.

07. This right to make a representation can only be exercised by the detenu when all the material relied upon by detaining authority while passing the order of detention, is provided to be detenu. In order to make an effective representation, the detenu must know the fact that weighed in the mind of the Detaining Authority for passing the impugned order of detention. Article 22(5) of the Constitution of India provides that when any person is detained, the Detaining Authority shall, as soon as may be, communicate to the detenu the grounds on which the detention order has been made and shall afford him an earliest opportunity of making an effective representation against the order of the detention.

08. Failure by the Detaining Authority to supply material relied upon at the time of passing the detention order renders the detention order unsustainable in law as held in view of the law laid down in **Sophia**

Ghulam Mohd. Bham V. State of Maharashtra and others, reported as **AIR 1999 SC 3051**, the Apex Court observed as under:-

“... The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language...”

09. Reliance is also placed on **Thahira Haris etc. etc. Vs. Government of Karnataka and others**, reported as **AIR 2009 Supreme Court 2184**, has held as under:

“27. There were several grounds on which the detention of the detenu was challenged in these appeals but it is not necessary to refer to all the grounds since on the ground of not supplying the relied upon document, continued detention of the detenu becomes illegal and detention order has to be quashed on that ground alone.

28. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detenu who has been detained in pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all documents, statements and other materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the detenu at the earliest opportunity to make effective and meaningful representation against his detention.”

10. The next contention of the detenu is that the grounds of detention are in English language and the same was to be given to him in the language understood by him. In view of the law laid down by the Hon’ble Apex Court in **Raziya Umar Bakshi V. Union of India and others**, reported as **AIR 1980 SC 1751**, it has been held that a person who explained the grounds of detention to the detenu should have filed an affidavit, but no such affidavit of the person who has explained and translated the grounds of detention in this case is found on record to show that the detenu was actually explained or translated the grounds of detention and, this has also vitiates the detention of the detenu.

11. In view of the aforesaid reasons, there is no need to advert to other grounds raised in this petition. Therefore, this petition is allowed and Detention Order No.PSA 05 of 2025 dated 10.04.2025, passed by the District Magistrate, Jammu, under which detenu-Mohd. Kalu S/o Mohd. Bashir R/o W. No. 5 Gujjar Basti Dak Bungalow Miran Sahib, Jammu, is under detention, is quashed. Accordingly, the respondents are directed to release the detenu from the custody forthwith, if he is not required in any other case.

12. Detention record be returned to learned counsel for the respondents by the Registry forthwith.

(Vinod Chatterji Koul)
Judge

Jammu
30 .09.2025
Ram Murti/PS

Whether the judgment is reportable : Yes