

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 77/2025

Date of pronouncement: 06.11.2025

Date of uploading: 10.11.2025

Totu, age 34 years
S/o Suraj Din & Siraj Din
R/o Katwalt, Tehsil Ramnagar
At present lodged at Central Jail, Kot
Bhalwal
Through Wife
Guddi Begum
W/o Totu
R/o Birnoo, Tehsil Ramnagar,
Udhampur

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

Through: Mr. Gagan Oswal, Advocate

vs

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

..... Respondent(s)

Through: Mr. Sumeet Bhatia, GA

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

1. Extraordinary writ jurisdiction, enshrined under Article 226 of the Constitution of India, has been invoked by the petitioner herein in the instant petition for quashing detention order No. PSA 05 of 2025 dated 16.05.2025 [“for short **the impugned order**”] passed by District Magistrate, Udhampur-respondent No. 2 herein [“for short **the**

detaining authority”] in terms of J&K Public Safety Act, 1978 [“for short **the Act”]**].

2. The impugned order has been challenged by the petitioner on multiple grounds, urged in the petition.
3. Counter affidavit to the petition has been filed by the respondents, wherein the petition is being opposed on the premise that the petitioner is a hardened criminal, involved in bovine smuggling and owing to the said illegal activities, has been disturbing significantly the public order and peaceful co-existence of the communities of the area and that after examining the material furnished to the detaining authority by the sponsoring agency regarding the said illegal activities of the petitioner, the detaining authority, after deriving subjective satisfaction passed the order of detention against the petitioner after fulfilling and complying with all statutory and constitutional formalities, and that the copy of detention order, along with notice of detention, ground of detention, dossier and other documents, on the basis of which the petitioner came to be detained under the provisions of the Act of 1978 to him were served upon the petitioner and also read over and explained to him in the language he understands, besides informing him that he can make a representation against his detention, in response to which, the petitioner submitted a representation before the detaining authority which, however, came to be rejected on 13.06.2025.

Heard counsel for the parties and perused the record.

4. Learned counsel for the petitioner, while making his submissions in tune with the case set up with the petition would confine the challenge to the impugned order, *inter alia*, to the ground that the petitioner knows only “Gojri” language and that he was never furnished and read over or explained the grounds of detention, order of detention and other related documents in the Gojri language which only language he understands and, as such, the respondents failed to comply with the statutory and constitutional requirements rendering the impugned order illegal.
5. On the contrary, the counsel for the respondents, while making his submission, would contend that the petition is liable to be dismissed owing to the validity of the order under challenge having been passed in accordance with law, having been passed on account of the activities of the petitioner found to be pre-judicial to public order by the detaining authority.
6. Insofar as the aforesaid plea raised by the counsel for the petitioner qua the non-submission and non-explanation of the warrant of detention, as also the grounds of detention and other material to the petitioner in Gojri language is concerned, record available on the file as also the detention record produced by the counsel for the respondents lends support to the said plea of the counsel for the petitioner, in that, indisputably, the Executing Officer, has, while swearing an affidavit in support of the execution report, stated that the grounds and the order of detention were read over and explained to the

petitioner in Hindi/Dogri language. Further perusal of the detention record also, indisputably, tends to show that the petitioner has not been furnished the documents referred and relied upon by the detaining authority, including the warrant and grounds of detention in the language the petitioner claimed to be understanding. Under these circumstances, it can safely be concluded that the respondents, in the process of detaining the petitioner, have violated the constitutional mandate contained under Clause (5) of Article 22 of the Constitution of India.

7. Insofar as the plea of submission of representation by the petitioner against the detention is concerned, the respondents do admit in the counter affidavit that the said representation stands disposed of on 13.06.2025, which representation, according to the petitioner, came to be submitted on 21.05.2025 through registered post. Admittedly, more than a month has been consumed by the detaining authority in considering the said representation, which *per se*, is not legally sustainable, in that the consistent view of the Courts in this regard has been that delay of even eight to ten days in disposal of the representation of a detenu would vitiate the order of detention.
8. For the aforesaid reasons, the instant petition succeeds, as consequence whereof, the impugned order bearing No. PSA 05 of 2025 dated 16.05.2025 is quashed with a direction to the respondents, including the concerned jail authority to release the petitioner from preventive detention forthwith unless he is required in any other case.

- (Javed Iqbal Wani)**
Judge

Whether the order is reportable:	Yes/No
Whether the order is speaking:	Yes