

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 90/2025

Reserved on : **09.10.2025**

Pronounced on : **16 .10.2025**

Uploaded on : **16 .10.2025**

Whether the operative part or full
judgment is pronounced : **YES**

Abdul Gani S/o Noor Ahmed
R/o Magar Khad, Tehsil & District
Kathua. A/p Central Jail Kot
Bhalwal, Jammu

.... Petitioner/Appellant(s)

Through:- Mr. A. P. Singh, Advocate
Mr. Nikhil Verma, Advocate

V/s

- 1. Union Territory of Jammu &
Kashmir through Principal
Secretary to Govt., Home
Department, Civil Secretariat,
Jammu**
- 2. District Magistrate, Kathua.**
- 3. Senior Superintendent of
Police, Kathua**
- 4. Superintendent, Central Jail,
Kot Bhalwal, Jammu**

.....Respondent(s)

Through:- Mr. Suneel Malhotra, GA

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

01. Through the medium of this petition, detention Order No. PSA/162 dated 26.05.2025 passed by respondent No.2-District Magistrate, Kathua under Jammu and Kashmir Public Safety Act, 1978, vide which, the detenu namely, Abdul Ganai has been directed to be detained on the ground of being a threat to the maintenance of public order, is sought to be quashed.

02. The grounds on which the petitioner seeks to quash the detention order are that (i) detention order is allegedly based on ten (10) FIRs/ Challans registered against the petitioner and nine (09) of them relating to the period upto 2020 and only one (01) FIR being FIR No.66/2025 dated 09.04.2025 for offence under Section 223 BNS, and there does not exist proximate or live link between the antecedent activities; (ii) notice of detention indicates that the petitioner was not informed/not communicated of his right to make an effective representation to the detaining authority against his detention/order, thus, violating his valuable under Article 22(5) of the Constitution of India; (iii) the offences referred to in the grounds of detention alleged to have been committed by the petitioner are minor, non-heinous, separate and stray acts affecting private individuals and the alleged repetition of such acts would not affect even flow of public life and the same cannot by any stretch of imagination be taken as a basis of any detention order; (iv) the petitioner being an illiterate, an agriculturist by occupation, never explained the allegations or the grounds of his detention in the language he understands and the recommendations of District Screening Committee dated 24.05.2025 leading to recommendation of respondent No.3 for requesting the order of detention of petitioner to be passed by respondent No.2, was itself based on total vague and irrelevant material resulting in observations not supported by any iota of evidence and based on copy paste exercise as Column No.4, Column No.7, Column No.12 and Column No.13 would reflect that neither the fact of petitioner having granted bail in all the cases registered against him have been taken into account nor the fact of disturbance to

communal harmony or being a threat to security and integrity of nation find place in any of the allegations or cases registered against the petitioner, thus, indicating non-application of mind by the detaining authority while passing the order of detention; and (v) impugned detention order, notice of detention and the grounds of detention cannot be a substitute for ordinary criminal law of the land to stop the repetition of offences even if the petitioner was indulging in repeat of alleged activities under Section 188 RPC, for that the petitioner having been bailed out in all the cases registered against him, and the inaction of the respondents in challenging those bail orders or seeking cancellation of bail being effective remedy available under the ordinary criminal law, now, cannot seek shelter under the preventive detention law to detain the petitioner which can be invoked only in an exceptional circumstances.

03. Respondent No. 2 has filed his counter affidavit in which he submits that as per the dossier submitted by Sr. Superintendent of Police Kathua dated 24.05.2025 and also as per the recommendations of Screening Committee dated 24.05.2025, the subject is a desperate character, habitually indulging in criminal activities such as smuggling of bovine animals from this District, therefore, in order to prevent him from continuing his criminal activities, that are prejudicial to maintenance of public order, peace and tranquility in the region, he was detained by undersigned with full application of mind. Respondent No. 2 submits that the contents of grounds mentioned in Para 03 are false and incorrect and hence denied. It is submitted that the subject is a notorious criminal and repeatedly indulged in illegal activities. He has close associate with other

hardcore criminals and his conduct is highly pre-judicial to the maintenance of public order. The criminal activity of the subject has created terror among the peace loving people of the area in general and District Kathua in particular. The subject was arrested number of times in bovine smuggling/criminal cases, but he has not mend his ways and his acts have created great resentment among the general public of the area and it was necessary to curtail the liberty of the petitioner in order to maintain law and order in the area. Therefore, the subject was detained under J&K Public Safety Act. The detention order along with grounds of detention and other relevant documents have been provided to petitioner with proper acknowledgement of receipt.

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

05. Perusal of the record reveals that the detenu has been detained for his activities which were found to be prejudicial to the public peace and order. In the grounds of detention, the Detaining Authority, has relied on the fact that the detenu was involved in (i) FIR No. 64/2008 under Section 188 RPC, 3 PCA Act of Police Station Lakhanpur; (ii) FIR No. 86/2008 under Sections 307, 147, 148, 323 RPC, 4/25 Arms Act of Police Station Lakhanpur; (iii) FIR No. 90/2011 under Sections 451, 323, 147, 148 RPC, 4/25 Arms Act of Police Station Lakhanpur; (iv) FIR No. 106/2013 under Section 188 RPC, 3 PCA Act of Police Station Lakhanpur; (v) FIR No. 03/2014 under Section 188 RPC, 3 PCA Act of Police Station Lakhanpur; (vi) FIR No. 68/2017 under Section 188 RPC, 11 PCA Act of Police Station Kathua; (vii) FIR No. 40/2018 under Section 188 RPC, 3/5 PCA Act of Police Station Kathua;

(viii) FIR No. 132/2019 under Section 188 IPC, 3/5 PCA Act of Police Station Kathua; (ix) FIR No. 11/2020 under Section 307, 279, 427, 186 IPC, of Police Station Lakhanpur and (x) FIR No. 66/2015 under Section 223 BNS, 11 PCA Act of Police Station Rajbagh. However, there is a clear non-application of mind, as the Detaining Authority has failed to consider the fact that the detenu was on bail in all the FIRs and therefore, the order of detention is bad.

06. The Detaining Authority has relied upon the aforesaid FIRs while passing the impugned order, without considering that the detenu was admittedly on bail, and no further activities have been alleged against the detenu, as such, the impugned detention order is liable to be quashed.

07. The "Public Order" as a concept in distinction to "Law and Order" has been considered by the Hon'ble Supreme Court in a long line of cases. In the case of "**K. K. Saravana Babu Vs State of Tamil Nadu and another**" (2008) 9 SCC 89, the Hon'ble Supreme Court of India has recapitulated the case law on the said aspect in which the Security of the State followed by the Public Order and last by "Law and Order" has been set up in an hierarchy. The "Public Order" has been read to be even the tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of Public Order is meant to be distinguished from acts directing against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility.

08. By reference to a case of "**Arun Ghosh Vs State of West Bengal,**" (1970) 1 SCC 1998, the Hon'ble Supreme Court of India has laid emphasis on the potentiality of the act to be a determining factor to compartmentalize an act

to be one disturbing public order or a law-and-order problem. It has been observed that an act by itself is not determinant of its own gravity as in its quality it may not differ from another but in its potentiality, it may be very different.

09. The Supreme Court of India in a case titled as "**Sama Aruna Vs State of Telangana and another**" (2018) 12 SCC 150 in paras 17 & 23 has held as under:-

“17.....A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it.
23.....A detaining authority must be taken to know both, the purpose and the procedure of law.”

10. "Maintenance of Public Order" as being one of the grounds of subjecting a person to preventive detention is not to be easily assumed to be readily available by a just reference to series of FIRs reporting crimes against a particular individual which would at the most render him to be branded as a habitual offender for which the Code of Criminal Procedure, 1973 in itself has conceived a preventive measure under section 110 which enlists a number of categories for an Executive Magistrate to take cognizance and bind a person so as to prevent him from indulging in repeat of the alleged activities. What is meant to be effectively cured and dealt with under section 110 of the Code of Criminal Procedure, 1973 cannot be diverted to be dealt with by application of preventive detention mode of J&K Public Safety Act, by depriving a person of his personal liberty for any given period of time. A preventive detention cannot be resorted to by the debunking ordinary criminal procedure and trial of cases.

11. Sr. Superintendent of Police (SSP), Kathua in his dossier did not serve respondent No. 2 - District Magistrate, Kathua with full picture of facts with respect to the detenu. All the FIRs referred to in the grounds of detention are those cases in which detenu has already been bailed out. Offences under Section 188 Penal Code read with offence under Prevention of Cruelty to Animals Act, 1960 in which detenu is said to be involved are not relatable in any manner to maintenance of public order. Moreover, in the grounds of detention, it is mentioned that due to involvement of detenu in any of aforesaid FIRs, any communal tension or disharmony came to take place which led to the law and order enforcement agency facing a difficult time in bringing under control the disturbed public order.

12. It may be appropriate to mention that perusal of grounds of detention reveals that grounds of detention are vague and ambiguous and do not refer to any date, month or year of the activities, which have been attributed to detenu. Detention in preventive custody on the basis of such vague and ambiguous grounds cannot be justified. It may not be out of place to mention here that preventive detention is largely precautionary and is based on suspicion. The matters to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of surrounding circumstances and other relevant material, is likely to act in a prejudicial manner as contemplated by the provisions of the law and, if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not the matters susceptible of objective determination, and they could not have been intended to be judged by objective standards. They are essentially the matters which have to be administratively determined for the purpose of taking

administrative action. Their determination is, therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of detaining authority which, by reason of its special position, experience and expertise, would be best suited to decide them. Thus, the Constitutional imperatives of Article 22(5) and the dual obligation imposed on the authority making the order of preventive detention, are twofold: (1) The detaining authority must, as soon as may be, i.e. as soon as practicable, after the detention order is passed, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention, i.e. to be furnished with sufficient particulars to enable him to make a representation which, on being considered, may obtain relief to him. The inclusion of an irrelevant or non-existent ground, among other relevant grounds, is an infringement of the first of the rights and the inclusion of an obscure or vague ground, among other clear and definite grounds, is an infringement of the second of the rights. In either case there is an invasion of the constitutional rights of the detenu entitling him to approach the Court for relief. The reason why the inclusion of even a simple irrelevant or obscure ground, among several relevant and clear grounds, is an invasion of the detenu's constitutional right is that the Court is precluded from adjudicating upon the sufficiency of the grounds, and it cannot substitute its objective decision for the subjective satisfaction of the detaining authority. Even if one of the grounds or reasons, which led to subjective satisfaction of detaining authority, is non-existent or misconceived or irrelevant, the order of detention would be invalid. Where order of detention is founded on distinct and separate grounds, if any one of the

grounds is vague or irrelevant the entire order must fall. The satisfaction of detaining authority being subjective, it is impossible to predicate whether the order would have been passed in the absence of vague or irrelevant data. A ground is said to be irrelevant when it has no connection with the satisfaction of the authority making the order of detention. Irrelevant grounds, being taken into consideration for making the order of detention, are sufficient to vitiate it. One irrelevant ground is sufficient to vitiate the order as it is not possible to assess, in what manner and to what extent, that irrelevant ground operated on the mind of the appropriate authority, and contributed to his satisfaction that it was necessary to detain the detenu in order to prevent him from acting in any manner prejudicial to the maintenance of the public order or security of the State. Reference in this regard is made to **Mohd. Yousuf Rather v. State of J&K and others, AIR 1979 SC 1925**; and **Mohd. Yaqoob v. State of J&K and ors, 2008 (2) JKJ 255 [HC]**.

13. The detenu was detained vide order dated 26.05.2025, which reads as under:

“Whereas, Sr, Superintendent of Police, Kathua vide letter no.Pros/29328-31/DPOK dated 24.05.2025 has submitted dossier and other connected documents in respect of Abdul Gani S/o Noor Ahmed R/o Magar Khad Tehsil and District Kathua for his detention under the Jammu and Kashmir Public Safety Act, 1978.

Whereas, after perusal of material records submitted by Sr, Superintendent of Police, Kathua and after applying my mind carefully and having regard to the requirements of law, I am satisfied that Abdul Gani S/o Noor Ahmed R/o Magar Khad, Tehsil and District Kathua is a hardcore criminal who has indulged in number of criminal/anti-social activities such as smuggling of bovine animals from this district and his remaining at large involves a greater risk to the maintenance of Public order and it is necessary to detain him on the basis of grounds enclosed as Annexure (1);

Now, therefore, in exercise of powers conferred under Section B of the Jammu and Kashmir Public Safety Act, 1978. I, Dr. Rakesh Minhas, IAS, District Magistrate, Kathua hereby direct that said Abdul Gani S/o Noor Ahmed R/o Magar Khad, Tehsil and District Kathua detained in Central Jail Jammu Kot Bhalwal.”

14. Vide communication dated /05/2025 issued by District Magistrate, Kathua, an information was given to the detenu which reads as under:-

“Whereas, you have been detained under Order dated 26.05.2025 under Section 8 of the Jammu and Kashmir Public Safety Act, 1978.

Now, in pursuance of sub-section (1) of Section 13 of the said Act, you are hereby informed that your detention has been ordered on the grounds specified in the Annexure (1).

You may approach the Home Department, J&K Government, Jammu, if you would like to be heard in person by the Advisory Board. You may make representation to the Govt. against the order within stipulated time period, if you so desire.”

15. Thus, it is clear from the said communication that the detenu was informed about his right to make representation to the Government but he has not been informed about his right to make such representation to the detaining authority nor the time has been stipulated in the said communication within which the detenu could make representation to the detaining authority. Since he has not been provided information regarding making such representation, the same could be in violation of his right under Article 22(5) of the Constitution of India.

16. It was incumbent upon detaining authority to have informed detenu that he could also make a representation to detaining authority, if he so desired. Since detaining authority did not communicate to detenu that such a representation could be made to detaining authority, this in itself amounted to infraction of provisions of Section 13 of the Act of 1978 read with Article 22(5) of the Constitution of India. Reliance in this regard is placed on *State of Maharashtra and others v. Santosh Shankar Acharya, (2000) 7 SCC 463*. In the present case, detaining authority did not inform the detenu that the detenu, independent of his right to file a representation against his detention to the Government, has also right to submit a representation to detaining authority till detention was

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considered by the Government and accorded approval thereto. Detaining authority has, thus, violated Constitutional and Statutory rights of detenu, guaranteed under Article 22(5) of the Constitution of India and Section 13 of the Act of 1978 and resultantly vitiates impugned detention.

17. 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/162 dated 26.05.2025 passed by respondent no. 2-District Magistrate, Kathua under J&K Public Safety Act, 1978, is quashed. Accordingly, the respondents are directed to release the detenu from the custody forthwith, if he is not required in any other case.

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

(VINOD CHATTERJI KOUL)
Judge

JAMMU
16 .10.2025
RAM MURTI