

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 103/2025

Date of pronouncement: 04.03.2025

Date of uploading: 08.11.2025

Jai Kumar Alias Sonu

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

S/o Vijay Kumar

R/o Mirpur Jagoo, Tehsil Nagri,

District Kathua

A/p Lodged in District Jail, Rajouri.

Through his wife

Rakhi Devi

W/o Sh. Jai Kumar

R/o Mirpur Jagoo, Tehsil Nagri,

District Kathua.

Through: Ms. Palvi Sharma, Advocate and
Mr. Mohd. Bilal Khan, Advocate

vs

1. U.T. of J&K th. Comm/Secy., Home
Deptt., Civil Secretariat, Jammu/Srinagar.
2. District Magistrate, Kahua.
3. Senior Superintendent of Police, Kathua
4. Superintendent District Jail, Rajouri.

..... Respondent(s)

Through: Mr. Suneel Malhotra, 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 No. PSA/153 dated 23/04/2025 [for short “**the impugned order**”] passed by District Magistrate, Kathua, respondent 2 herein [for short “**the Detaining Authority**”] under and in terms of J&K Public Safety Act, 1978 [for short “**the Act**”].
2. The impugned order has been assailed by the petitioner in the instant petition on multiple grounds urged in the petition. Counter affidavit to

the petition has been filed by respondent 2, wherein the petition is being opposed and the impugned order is defended on the premise that the preventive detention of the petitioner was ordered after due consideration of dossier received from Senior Superintendent of Police, Kathua on 30.01.2025 and since the petitioner was continuously found involved in criminal activities, highly prejudicial to the maintenance of the public order and tranquillity, the petitioner, as such, was detained owing to his involvement in the said criminal activities, for which FIRs have been registered against the petitioner showing a continuous pattern of conduct on the part of the petitioner threatening law and order.

3. It is further stated that the petitioner had been involved in multiple FIRs consisting of FIR No. 75/2011, 168/2013, 154/2018, 326/2019, 82/2020, 328/2020, 370/2020, 190/2021, 117/2022, 153/2023 and 90/2024 registered with Police Station, Kathua for offences under Section 48-a of the Excise Act besides other offences and that owing to the consistent pattern of the said criminal activities of the petitioner and dispassionate assessment of the same led to the inescapable conclusion that the petitioner's conduct is highly prejudicial to the maintenance of the public order and consequently the petitioner came to be detained under preventive law and also came to be furnished the grounds of detention, detention warrant and all other relevant documents comprising of 127 leaves and that the same were also read over to the petitioner in the language which he fully understood, in response whereof, the petitioner subscribed his signatures on the

receipt obtained thereof and that the father of the petitioner was also informed about the preventive detention of the petitioner and also that a representation can be made against the said detention by the petitioner.

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

4. Despite the fact that the petitioner has urged multiple grounds of challenge against the impugned order in the instant petition, yet the counsel for the petitioner confined the challenge firstly to the ground that both the Sponsoring Agency/SSP Kathua as well as the Detaining Authority-respondent 2 herein has shown complete non-awareness about the discharge/acquittal of the petitioner in FIR No. 328/2020 as the petitioner was discharged/acquitted therein the said FIR by the competent Court on 17.03.2025 and as such, the detention order gets vitiate. Learned counsel would further submit that a representation against the impugned order came to be submitted by the petitioner through his wife before the respondents on 28.05.2025 and that the said representation, however, was not considered and decided with due diligence and promptness, therefore, infringing the constitutional right of the petitioner enshrined under Article 22(5) of the Constitution of India.
5. On the contrary, learned counsel for the respondents would further submit that the non-awareness about the discharge/acquittal of the petitioner *per se* would not vitiate the impugned order as the petitioner is a habitual offender having been found involved in multiple criminal

cases pertaining mainly to liquor and that as such, the preventive detention of the petitioner got necessitated by the Detaining Authority after the activities of the petitioner were assessed and found to be highly prejudicial to the maintenance of the public order. Learned counsel for the respondents would further contend that although the representation submitted by the petitioner through his wife stands belatedly considered and decided by the respondents, yet the same would not, as such, vitiate the order under challenge. Insofar as the aforesaid first plea of the counsel for the petitioner is concerned, law is no more *res integra* and stands settled by a series of judgments of Apex Court as well as of this Court wherein the consistent view has been that non-awareness of the Detaining Authority about grant of bail or discharge/acquittal in a case relied upon by the Detaining Authority for the purposes of preventive detention of a detenu would suggest non-application of mind by the Detaining Authority and thus vitiates the impugned order. A reference in this regard to the judgment of this Court passed in case titled as “*Mohd. Maqbool Itoo Vs. State & Ors.*” reported in 2010 (3) JKJ 700 would be relevant.

6. Insofar as the aforesaid next ground urged by the counsel for the petitioner is concerned, it is settled position of law that for invoking the provisions of the preventive law, adherence to the statutory requirements as well as constitutional guarantees are mandatory and any non-adherence thereto would render the detention order legally unsustainable. In this regard, a reference to the judgments of the Apex Court passed in cases titled as “*The State of Manipur & Ors. Vs.*

Buyamayum Abdul Hanan” reported in 2022 SCC OnLine SC 1455 and “*Rahmatullah Vs. State of Bihar & Ors.*” Reported in 1979 (4) SCC 559, wherein following has been held at paragraphs 24 & 4 respectively:-

“24. In other words, the right of personal liberty and individual freedom which is probably the most cherished is not, in any manner, arbitrarily to be taken away from him even temporarily without following the procedure prescribed by law and once the detenu was able to satisfy while assailing the order of detention before the High Court in exercise of jurisdiction Article 226 of the Constitution holding that the grounds of detention did not satisfy the rigors of proof as a foundational effect which has enabled him in making effective representation in assailing the order of detention in view of the protection provided under Article 25(5) of the Constitution, the same renders the order of detention illegal and we find no error being committed by the High Court in setting aside the order of preventive detention under the impugned judgment.

04. The normal rule of law is that when a person commits an offence or a number of offences, he should be prosecuted and punished in accordance with the normal appropriate criminal law; but if he is sought to be detained under any of the preventive detention laws as may often be necessary to prevent further commission of such offences, then the provisions of Article 25(5) must be complied with. Sub-Article (S) of Article 22 reads:

“When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.”

This Sub-Article provides, inter alia, that the detaining authority shall as soon as may be communicate the grounds of detention and shall afford him the earliest opportunity of making a representation against the order. The opportunity of making a representation is not for nothing. The representation, if any, submitted by the detenu is meant for consideration by the Appropriate Authority without any unreasonable delay, as it involves the liberty of a citizen guaranteed by Article 19 of the Constitution. The non-consideration or an unreasonably belated consideration of the representation tantamount to non-compliance of Sub-Article (5) of Article 22 of the Constitution.”

7. As is evident from other judgment of the Apex Court, the consideration and disposal of a representation by an appropriate authority submitted by a detenu has to be without any unreasonable delay as the same involves the liberty of a citizen guaranteed by Article 19 of the Constitution of India and any unreasonable belated consideration of representation would tantamount to non-compliance of Article 22(5) of the Constitution.
8. It is significant to mention here that perusal of the detention record indisputably reveals that the decision of the representation of the petitioner submitted by him through his wife dated 28.05.2025 has been conveyed to the petitioner by the Superintendent District Jail, Rajouri on 05.08.2025 and the disposal of the said representation as per the detention record seemingly has been done on 28.06.2025.
9. Viewed thus, for the aforesaid reasons, the impugned order is found to be legally unsustainable.

10. Accordingly, the instant petition is **allowed** and impugned order No. PSA/153 dated 23/04/2025 is quashed with a direction to respondents, including the concerned jail authority to release the petitioner from preventive detention forthwith unless the petitioner is required in any other case.
11. The detention record produced by the counsel for the respondents is returned back in the open Court.
12. **Disposed of.**

(Javed Iqbal Wani)
Judge

Jammu
04.12.2025
Vishal Sharma

