

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 104/2025

Reserved on: 25.09.2025
Pronounced on: 14.10.2025

**Murad Ali S/o Haneef Ali,
R/o Village Hardo Muthi, Tehsil Marheen,
District Kathua
Through his Father
Haneef Ali S/o Galu Deen,
R/o Village Ghatti, Forlain,
Tehsil Marheen, District Kathua**

.... Petitioner/Appellant(s)

Through:- Mr. Siddhant Gupta, Advocate.

V/s

**(i) UT of J&K,
Through Principal Secretary (Home)
Civil Secretariat, Jammu
(ii) District Magistrate, Kathua
(iii) SSP, Kathua
(iv) Superintendent, Central Jail,
Kot Bhalwal, Jammu**

.....Respondent(s)

Through:- Mr. Suneel Malhotra, G.A.

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

JUDGMENT

1) Through the medium of this petition, petitioner seeks quashing of Detention Order No. PSA/164 dated 12.06.2025, passed by District Magistrate, Kathua, (hereinafter referred to as 'Detaining Authority') detaining the detenu- Murad Ali S/o Haneef Ali R/o Village Hardo Muthi, Tehsil Marheen, District Kathua (hereinafter referred to as 'detenu'), whose activities are prejudicial to maintenance of public order. This order of detention has been challenged by the detenu through his father-Haneef Ali.

2) The detention order has been challenged on the grounds that (i) respondent No. 2, on the basis of dossier submitted by respondent No. 3 without application of mind, has passed the detention order which demonstrates complete non-application of mind; (ii) the detenu has already been granted bail in all FIRs and preventive detention cannot be used as substitute for the ordinary law of land when the detenu is already facing trial; (iii) the family members of the detenu have not been informed about his detention and the impugned detention order has been provided in the English language to the family members as the family members are not conversant to the same; and (iv) the detenu has been detained without affording fundamental and statutory right to make a representation against the order of detention as neither the grounds of detention were furnished in the language understood by the detenu nor he was informed of his right to make representation to the detaining authority or to the government.

3) As per the dossier submitted by the Superintendent of Police, Kathua, the detenu was involved in four different FIRs, i.e., FIR No. 89/2022 registered under Sections 452/323/147/148 IPC at Police Station Rajbagh; (ii) FIR No. 80/2023 registered under Sections 279/336/188 IPC and 11 of the Prevention of Cruelty to Animals Act, 1960 and Section 184 of Motor Vehicles Act at Police Station Rajbagh; (iii) FIR No. 216/2024 registered under Sections 125/132/121(1)/191(2) BNS at Police Station Rajbagh; and (iv) FIR No. 56/2024 registered under Sections 8/21/22/29 NDPS Act at Police Station Rajbagh.

4) Apart from that, the detenu is also involved in Antisocial/Anti National activities entered in the daily diaries i.e., (i) DD No. 34 dated 12.12.2024 of

Police Station Rajbagh; (ii) DD No. 29 dated 13.12.2024 of Police Station Rajbagh; (iii) DD No. 27 dated 14.12.2024 of Police Station Rajbagh; (iv) DD No. 20 dated 15.12.2024 of Police Station Rajbagh and (v) DD No. 15 dated 20.02.2025 of Police Station Rajbagh. The allegation against the detenu is that he is a habitual bovine smuggler and his repeated involvement in offences under Section 188/IPC and 11 of the Prevention of Cruelty to Animals Act, 1960, which reflects a continuous pattern of his illegal activities and the actions of detenu have caused communal tensions, which poses a significant threat to peace and stability in the region.

5) The aforesaid FIRs against the detenu reflect the activities of the detenu which poses a serious threat to public peace. The Detaining Authority, after considering the police dossier, arrived at its subjective satisfaction that detention of the detenu was necessary to prevent him from acting in a manner prejudicial to the maintenance of public order.

6) The respondents have filed their counter affidavit and produced the detention record. It is submitted by respondent No. 2-District Magistrate, Kathua, that the detenu was found continuously and repeatedly involved in number of criminal activities such as smuggling of bovine animals and also involved in heinous offences like attempt to murder, rash driving, snatching, wrongful assaillment and assault, bovine smuggling and drug peddling, therefore, in order to restrain him from doing such activities, detention order was passed by respondent No. 2 with full application of mind. Respondents further submit that the detenu was provided the order of detention as well as the copy of the dossier, contents of the order, the grounds of detention and other documents have been read over in English and explained to him in the language

which he fully understood and all the documents were handed over to him to make a representation to the Government or Detaining Authority and his acknowledgment was obtained on the execution report. The detention order was duly approved by the Home Department and subsequently confirmed by the Advisory Board. The illegal activities of detenu were threat to public peace and security. The Detaining Authority, thus, deemed it necessary to detain him under the Public Safety Act to prevent him from further pursuing such activities.

7) Heard learned counsel for the parties and perused the record.

8) 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 FIR No. 89/2022 registered under Sections 452/323/147/148 IPC at Police Station Rajbagh; (ii) FIR No. 80/2023 registered under Sections 279/336/188 IPC and 11 of the Prevention of Cruelty to Animals Act, 1960 and Section 184 of Motor Vehicles Act at Police Station Rajbagh; (iii) FIR No. 216/2024 registered under Sections 125/132/121(1)/191(2) BNS at Police Station Rajbagh; and (iv) FIR No. 56/2024 registered under Sections 8/21/22/29 NDPS Act at 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.

9) 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.

10) 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.

11) 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.

12) 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.”

13) "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.

14) 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.

15) 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 Court is ill-equipped to investigate into circumstances of suspicion on which such anticipatory action must be largely based. The nature of the proceeding is incapable of objective assessment. 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]**.

16) Grounds of detention must lay down the charge against detenu and it must be precise, unequivocal and unambiguous. The detenu must be in a position to give a specific reply/rebuttal to the charge and that is only possible where charge is specific and precise. Else, the detenu is only able to give a bare denial by stating that the allegations are false. If the grounds of detention are based on unsubstantiated allegations, the same along with the order of detention can be quashed as the detenu has not been given opportunity to make a viable representation either to detaining authority or to advisory board. The opportunity to represent to the authorities concerned is not a hollow formality. To detain a person only based on allegations without there being any material to substantiate those allegations would imperil the fundamental rights of an individual enshrined under Article 21 of the Constitution. These observations have been made by the Division Bench of this Court in **LPA no.19/2024 titled as Showkat Ali v. Union Territory of J&K and others**, vide judgment dated 26.07.2024.

17) In view of the aforesaid facts and circumstances of the case, the preventive detention of detenu is held to be unwarranted and misconceived and illegal. Accordingly, the preventive detention Order No. PSA/164 dated 12.06.2025, passed by the respondent No. 2- District Magistrate, Kathua under J&K Public Safety Act, 1978 is hereby set aside and the petitioner is directed to be restored to his personal liberty.

- 18) The respondent No. 2 - District Magistrate, Kathua as well as the Superintendent of the concerned Jail to ensure release of the detenu from the preventive custody unless required in any other case.
- 19) The instant petition is, accordingly, **disposed of**.
- 20) Detention record to be returned back to learned GA by the Registrar Judicial of this Court.

(VINOD CHATTERJI KOUL)
Judge

Jammu:
14.10.2025
Ram Murti

Whether the judgment is reportable : Yes

