

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

HCP No. 122/2024

Reserved on: 14.01.2025
Pronounced on: 20 .01.2025

Raj Ali son of Benia Amin resident of Prangla, District Jammu at present lodged in Central Jail, Kotbhalwal through wife Asha wife of Raj Ali resident of Dohal Khour District Jammu

...PETITIONER(S)

Through: - Mr. Gagan Oswal Advocate.

Vs.

Union Territory of J&K & and ors.

...RESPONDENT(S)

Through: - Mr. Pawan Dev Singh Dy.AG

CORAM: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

1 The petitioner through his wife (hereinafter referred to as the 'detenu') has challenged order No.PSA 03 of 2024 dated 30.01.2024 issued by respondent No.2, District Magistrate, Jammu ('the detaining authority' for short) whereby he has been taken into preventive custody with a view to prevent him from acting, in any manner, prejudicial to the public order.

2 The detenu is shown to be involved in as many as five different FIRs registered in the years 2014, 2015, 2017 and 2023 at Police Station, Khour and Police Station, Akhnoor. The detenu is allegedly involved in the commission of offences under Sections 188,307,323,427,147,148,379,332, 3/11 PCA Act and 4/25 Arms Act.It

is mentioned in the grounds of detention that because of his persistent and continuous involvement in the criminal activities, the detenu has created fear amongst the locals. It is stated that the substantive law has failed to deter the detenu and, therefore, the impugned order is passed for the purpose of preventing and combating activities prejudicial to the maintenance of public safety.

3 The impugned order of detention is challenged by the detenu primarily on the following grounds:-

(i) That the impugned order suffers from non-application of mind. The detaining authority has, in the order of detention, referred to alleged commission of various offences and registration of FIRs, but has not spelled out how the involvement of the petitioner in the commission of different offences has the potential of disturbing the public order. The respondent No.2 has thus failed to make a distinction between what is prejudicial to public order and what is only a problem of law and order;

(ii) That it has not been brought to the notice of the Detaining Authority that in the aforesaid FIRs the detenu stood admitted to bail by the competent Court of law. The Detaining Authority has, thus, shown no awareness about the factum of detenu having been released on bail. The subjective satisfaction arrived at by the Detaining Authority without taking into consideration the said aspect is, thus, vitiated and is an outcome of total non application of mind.

(iii) That the grounds of detention are mere reproduction of dossier which shows non application of mind on the part of the Detaining Authority,

(iv) That the translated script in Gojri language of the material forming basis of the grounds of detention has not been supplied to the detenu.

4 The respondents, in their counter affidavit, have disputed the averments made in the petition and stated that they have followed the provisions of J&K Public Safety Act. It is submitted that the detenu has been detained only after following due procedure and that there has been proper application of mind for detaining the detenu. It is further submitted that the detenu has no respect for law of the land which is clearly reflected from the fact that a series of criminal cases stands registered against him, as a result of which, the detenu has become a threat to the life and liberty of the people at large. Thus, according to the respondents, the activities of the detenu are prejudicial and detrimental to the maintenance of public order in the area. The learned counsel for the respondents also produced the detention record to lend support to the stand taken in the counter affidavit.

5 I have heard learned counsel for the parties and perused the pleadings and the record produced by the respondents.

6 Although, learned counsel for the detenu has raised many grounds for assailing the impugned order of detention, yet, during the course of arguments, he has laid much emphasis on the following two grounds:

- (i) That it has not been brought to the notice of the Detaining Authority that in the aforesaid FIRs the detenu stood admitted to bail by the competent Court of law.. The Detaining Authority has, thus, shown no awareness about the factum of detenu having been released on bail. The subjective satisfaction arrived at by the Detaining Authority without taking into consideration the said aspect is, thus, vitiated and is an outcome of total non application of mind.

(ii) that the detenu is an illiterate person and the contents of detention warrant and grounds of detention have not been read over and explained to the detenu in a language which he fully understood i.e Gojri language.

7 From a perusal of the material available on the file, the ground regarding non-application of mind on the part of the detaining authority appears to be forceful, as the grounds of detention do not bear any reference to the fact that the detenu has already been admitted to bail in the aforesaid FIRs on the basis of which he has been taken into preventive custody. The non-mentioning of this important fact in the grounds of detention exhibits non-application of mind on the part of the detaining authority. This shows that the detaining authority has not meticulously examined the record which passing the impugned order of detention which renders the same unsustainable in law. I am supported in my aforesaid view by the judgment of the Supreme Court rendered in the case of **Anant Sakharam Raut vs. State of Maharashtra and ors, AIR 1987 SC 137**. Relevant paragraph is reproduced hereinbelow:

“We are not satisfied that this is a fit case to resort to preventive detention. We refrain from referring to the other grounds urged before us and from examining them. The petitioner is entitled to succeed on the first ground. We hold that there was clear non-application of mind on the part of the detaining authority about the fact that the petitioner was granted bail when the order of detention was passed. In the result we set aside the Judgment of the Bombay High Court under appeal, quash the order of detention and direct that the petitioner be released forthwith. The Appeal and the Writ Petition are allowed without any order as to costs”.

8 The next ground urged by the learned counsel for the detenu is that the detenu is an illiterate person, as such, it was incumbent upon the respondents to explain to him at least the grounds of detention in the language that he understands viz., Gojri but in the instant case, nothing of the sort has been done by the respondents.

09 If we have a look at the execution report, which is available in the detention record, it is recorded therein that the grounds of detention were read over to the detenu in English language and explained to him in Hindi/Urdu language. The execution report bears the thumb impression of the detenu, which means that he is an illiterate person. In these circumstances, it was incumbent upon the respondents to explain the contents of detention warrant and the grounds of detention to the detenu in his mother tongue viz., Gojri, which they have admittedly not done.

10 A Constitution Bench of Supreme Court examined in detail the scheme of Article 22(5) of the Constitution of India in the case of **Harikisan vs. State of Maharashtra and ors**, AIR 1962 SUPREME COURT 911 and held that the communication of the grounds of detention to the detenu in writing and in a language which he understands is imperative and essential to provide an opportunity to detenu of making an effective representation against the detention and in case such communication is not made, the order of detention would stand vitiated as the guarantee under Article 22(5) is violated.

11 For the foregoing reasons, the impugned order of detention becomes unsustainable in law and deserves to be quashed. The writ petition is, accordingly, allowed and the impugned order of detention is quashed. The detenu is directed to be released from the preventive custody forthwith, provided he is not required in any other case.

12 . The record, as produced, be returned to the learned counsel for the respondents.

(Moksha Khajuria Kazmi)
Judge

Jammu
20. 01.2025
"Sanjeev"

Whether the order is speaking: **Yes**
Whether the order is reportable: **Yes**

