

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

HCP No.135/2024

Reserved on: 21.08.2025

Pronounced on: 29.08.2025

Mohd. Nazir, Age 27 years
S/O Mohd. Shuban,
R/O Khablan,
Tehsil Thanamandi,
District Rajouri.

..... Petitioner(s)

Through: Mr. S. A. Hussain, Advocate.

Vs

1. UT of J&K through
Financial Commissioner,
Department of Home
Civil Secretariat, Jammu.

. Respondent(s)

2. District Magistrate, Rajouri.

3. Senior Superintendent of Police, Rajouri.

Through: Mr. Dewakar Sharma, Dy. AG.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

01. Petitioner-**Mohd. Nazir**, S/O Mohd. Shuban, R/O Khablan, Tehsil Thanamandi, District Rajouri (for short 'the detenué') challenged the **Detention Order No. DMR/INDEX/23 of 2023 dated 14.09.2023** (impugned order), issued by respondent No.2, District Magistrate, Rajouri ("the detaining authority"), at its pre-execution stage, whereby he has been ordered to be placed under preventive detention, in order to prevent him from acting, in any manner, prejudicial to the maintenance of 'public order'.

02. This court vide interim order dated 28.10.2024 stayed the execution of the impugned order of detention.

03. The petitioner has contended that the detaining authority has passed the impugned order mechanically, without application of mind; that the dossier from the concerned SSP received on 08.07.2023, however, the detention order was passed on 14.09.2023 after a delay of more than two months, that the detention order issued by the detaining authority not approved by the Government, as required in terms of Section 8(4) of the J&K Public Safety Act; that that there is no sufficient ground to connect the alleged activities of 'bovine smuggling' with the activity prejudicial to the maintenance of 'public order'; that there is no live or proximate link between the alleged activities and the detention order; that the representation filed by the petitioner on 09.03.2024 was not considered by the respondents nor result conveyed to the petitioner; that whole of the material was not supplied to the petitioner which incapacitated him in filing the effective and meaningful representation. Lastly, it is prayed that the impugned detention order be quashed, by allowing the writ petition.

04. Pursuant to the notice, the respondents, filed counter affidavit through the respondent No. 2, asserting therein that keeping in view the prejudicial activities of the detainee, the preventive detention has been ordered so as to deter him from acting and/or indulging in those activities; that the petitioner has raised disputed questions of facts which cannot be adjudicated upon in a writ petition; that the detaining authority has observed all the safeguards enshrined in Article 22 (5) of the Constitution of India as well as the provisions of the Jammu and Kashmir Public Safety Act, 1978 while directing his detention; that the liberty of the detainee is subservient to the welfare, safety and interest of society at large, as such, the detention order has been passed by the detaining authority within

the ambit of law. It has been further asserted that the detainee was involved in the cases of commission of several offences punishable under the Indian Penal Code and the Prevention of Cruelty to Animals Act, registered at Kandi, Thannamandi and Rajouri Police Stations, and the detaining authority had drawn its satisfaction on the basis of cogent, credible and incriminating material against the detainee to prevent him from the activities prejudicial to the maintenance of public order and finally it was prayed that the petition be dismissed and the impugned order be upheld.

05. Mr. S. A. Hussain, learned counsel for the petitioner while making reference to the grounds raised, has, *inter alia*, restricted his arguments and argued that detaining authority has shown involvement of the detainee in the several cases of the commission of offences punishable under the Indian Penal Code and Prevention of Cruelty to Animals Act, and on the basis of it, has drawn satisfaction to detain the detainee under preventive detention, which cannot be done in view of various judgments passed by this court on the subject. In support of his submissions, he has relied upon the law laid down by this Court in two earlier cases “**Hamid Mohd Vs UT of J&K & Ors**” (HCP No. 4/2024) and “**Muskan Ali Vs. UT of J&K & ors**” (HCP No. 72/2024) in similar facts and circumstances, holding that the involvement of a person in cases of bovine smuggling or cruelty to animals, there being no instance of creating communal disharmony resulting into “public disorder”, the preventive detention cannot be ordered in terms of J&K Public Safety Act. It is also argued that the detainee was disabled in making an effective and meaningful representation as whole of the material relied upon by the detaining authority for passing the impugned

detention order was not supplied to the detainee, which has seriously prejudiced the detainee in contravention to the fundamental rights enshrined in the Constitution of India. He has also taken the court to the various other grounds, enumerated in the petition and argued extensively in support thereof. Lastly, it is prayed that the writ petition be allowed and impugned detention order be quashed.

06. Mr. Dewakar Sharma, Dy. AG, *ex adverso*, argued that smuggling of bovines and subjecting them to cruelty while transporting, is a sensitive issue, as such activities do hurt religious feelings of a particular community, where cow is revered and considered sacred. He further submits that on religious feelings being hurt, there is always an apprehension in the minds of law enforcement agencies that it can result into communal disharmony and consequently to law and order problem. It was finally prayed that the detainee being a potential threat, to the 'public order' was rightly placed under preventive detention, in view of his continuous involvement in such activities. The learned counsel for the respondents also produced the detention record to lend support to the stand taken in the counter affidavit.

07. Heard learned counsel for the parties, perused the detention record and considered.

08. The detention record, as produced, reveals that the detainee was involved in following 04 cases registered at Kandi, Thannamandi and Rajouri Police Station:-

- 1) *FIR No.142/2021; U/Sec 188 IPC, 03 PCA Act.*
- 2) *FIR No. 98/2022; U/Sec 451/354/323 IPC, 03 PCA Act.*

- 3) *FIR No. 559/2022; U/Sec 188 IPC, 03 PCA Act, and*
- 4) *FIR No. 75/2023; U/S 188 IPC, 03 PCA*

Involvement of the detainee in the aforementioned cases appears to have heavily weighed with the detaining authority, while passing impugned detention order.

09. Since the impugned detention order was passed on 14.09.2023 after an inordinate delay of more than two months from the receipt of dossier and was also not executed for more than 13 months, until its execution was stayed by this Court, as an ad-interim on 28.10.2024. While discussing the effect of delay in executing the warrant of detention, hon'ble the Supreme Court in the case '**A. Mohd. Farook v. Joint Secretary to Govt. of India**', reported as (2000) 2 SCC 360, observed that unexplained delay in execution of warrant of detention vitiates the subjective satisfaction of the detaining authority in issuing the detention order. Relevant paragraph of the judgment (supra) is reproduced below:

“11. There is catena of judgments on this topic rendered by this Court wherein this Court emphasised that the detaining authority must explain satisfactorily the inordinate delay in executing the detention order otherwise the subjective satisfaction gets vitiated. Since the law is well settled in this behalf we do not propose to refer to other judgments which were brought to our notice.

12. As indicated earlier the only explanation given by the detaining authority as regards the delay of 40 days in executing the detention order is that despite their efforts the petitioner could not be located at his residence or in his office and therefore the order could not be executed immediately. No report from the executing agency was filed before us to indicate as to what steps were taken by the executing agency to serve the detention order. In the absence of

any satisfactory explanation explaining the delay of 40 days, we are of the opinion that the detention order must stand vitiated by reason of non execution thereof within a reasonable time. From Annexure P.2 (the proceeding sheet of the M.M. Court Madras) it appears that the petitioner (accused) was present in the court of Additional Chief Metropolitan Magistrate on 25.2.1999 as well on 25.3.1999. Despite such opportunities neither the detaining authority nor the executing agency as well as sponsoring authority were diligent to serve the detention order on the petitioner at the earliest. In this view of the matter, we are of the opinion that the subjective satisfaction of the detaining authority in issuing detention order dated February 25, 1999 is vitiated. It is in these circumstances it is not possible for us to sustain the detention order.”

Applying the analogy discussed hereinabove in the case of *A. Mohammad Farook (supra)*, passed by the Apex Court, it is discernable that the delay in passing the detention order after the receipt of dossier from the SSP concerned and also delay in execution there was no urgency so as to detain the detenu, the order itself is vitiated to have been passed on account of delays in passing and execution.

10. There is also force in the contention of the petitioner that the detention order issued by respondent no.2 being not approved by the Government, as required in terms of Section 8(4) of the J&K Public Safety Act, could not be acted upon. The respondents herein have not come with a defence or any explanation regarding this contention of the petitioner. For appreciating the merit of this point, it would be proper herein to reproduce sub-section (4) of Section 8 of the J&K Public Safety Act:

“When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the Government”

It is an admitted case that the order impugned passed by the Detaining Authority has not been approved by the Government of Jammu and Kashmir and the same in view of sub section (4) of Section 8 of the Jammu and Kashmir Public Safety Act without being approved, does not remain in force after 12 days, as such, the impugned order has otherwise lost its significance so as to be enforced without having been approved by the Government after 12 days of its passing. It may not be out of place to mention that this Court had stayed the execution much after those 12 days period on 28.10.2024. Therefore, on this count also, this order has become unenforceable.

11. Next ground argued, referring judgment passed by a Coordinate Bench of this Court while deciding a petition titled **“Hamid Mohd Vs. UT of J&K & Ors” (HCP No. 4/2024)** on 06.08.2024, is that on record, there is not even a single incident referred or reported that by alleged involvements of the detainee in anyone of the said FIRs registered for alleged bovine smuggling, the so called communal tension or disharmony took place on such and such occasion which led to the law and order enforcement agency suffering a difficult time in bringing under control the disturbed ‘public order’ so as to showcase the detainee to be a threat to maintenance of public order. Para 14 of the judgment

titled “Hamid Mohd Vs. UT of J&K & Ors” (HCP No. 4/2024) decided on 06.08.2024 is reproduced for convenience as under:

“In the grounds of detention, the very fact that in almost in all the cases related to the FIRs registered against the petitioner, it is the offences under section 188 Indian Penal Code read with offence under the Prevention of Cruelty to Animals Act, 1969 which are involved and that is a pointer to the fact that the same are not relatable in any manner to maintenance of public order. On record there is not even a single incident referred or reported that by alleged involvements of the petitioner in anyone of the said FIRs, the so called communal tension or disharmony came to take place on such and such occasion which led to the law and order enforcement agency suffering a difficult time in bringing under control the disturbed public order so as to showcase the petitioner to be a threat to maintenance of public order.”

This Court again in a judgment titled as “**Muskan Ali Vs. UT of J&K & Ors**” (HCP No. 72/2024) decided on 29.08.2024 has followed the dictum laid down in the case of “**Hamid Mohd Vs. UT of J&K & Ors**” (supra).

12. On a perusal of the grounds of detention, it is apparent that the detainee has been accused of being involved in the commission of illegal transportation of bovines and cruelty against the animals regarding which 4 FIRs had been registered at different Police Stations viz FIR No. 142/2021 u/s 188 IPC, 03 PCA Act, FIR No.98/2022 u/s 451/354/323 IPC, 03 PCA, FIR No. 559/2022 U/S 188 IPC, 03 PCA and FIR No. 75/2023 U/S 188 IPC, 03 PCA. The detainee has been ordered to be detained in preventive custody, preventing him from indulging into the activities prejudicial to the maintenance of the “public order.”

13. Most of the cases registered vide aforesaid FIRs were regarding illegal transportation of bovines. A perusal of grounds of detention would show that the said FIRs do not specifically or categorically insinuate that the detainee is involved in illegal transportation of such animals which are revered by a particular community.

14. The detention order, however, is conspicuously silent with regard to any development based on the cases relating to the maintenance of 'public order'. Though the detaining authority has apprehended the public order based on the FIRs (supra), however, the detaining authority has failed to record as to what was the "law and order problem" much less as that of "public order" in the year 2021 or immediately after registration of the last FIR in the year 2023. Communal disharmony erupts at the spur of the moment and cannot be expected at a later stage. Since the registration of all the cases which has been made basis for the passing of the detention order has neither evoked communal tension nor any problem of "law and order" which is even far away from "public order," is shown to have erupted.

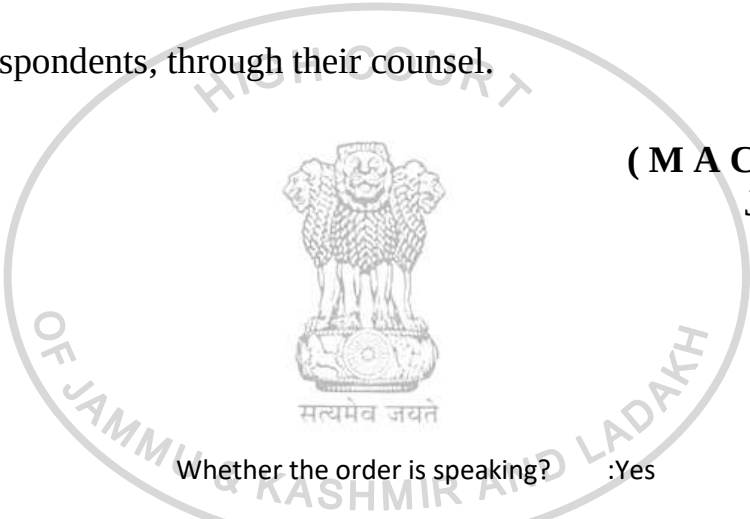
15. This court, in view of the aforesaid opinion of the Coordinate Benches and the discussion made hereinabove, has no reason to take a different view in this regard and is persuaded to agree with the view expressed by the Coordinate Benches in the aforesaid cases.

16. The other grounds urged by the learned counsel for the petitioner need not be deliberated upon by this court, in view of succeeding of the writ petition on the grounds discussed in the preceding paragraphs.

17. For the aforesaid reasons, the petition is allowed and impugned **Detention Order No. DMR/INDEX/23 of 2023** dated **14.09.2023** issued by respondent No.2, District Magistrate, Rajouri is hereby quashed. The detenue- **Mohd. Nazir**, S/O Mohd. Shuban, R/O Khablan, Tehsil Thanamandi, District Rajouri is directed to be released forthwith, in case he is not required in any other case(s).

18. The detention record produced by the counsel for the respondents be returned to the respondents, through their counsel.

Jammu
29.08.2025
Raj Kumar



(M A Chowdhary)
Judge

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