

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

Reserved on : 14.08.2025

Pronounced on: 26.08.2025

HCP No. 141/2024

Asif Mehmood, Age 31 years
S/O Mohd. Akram
R/O Ward No.7, Manyal,
Tehsil Thanamandi , District Rajouri
Through mother Billo Begum

.....Petitioner(s)

Through: Mr. Muzaffar Iqbal Khan, Advocate
Mr. Mazher Ali Khan, Advocate.

Vs

- 1. UT of Jammu & Kashmir** through
Principal Secretary, (Home),
Civil Secretariat, Jammu.
- 2. District Magistrate, Rajouri.**
- 3. Superintendent, District Jail, Rajouri.**

..... Respondent(s)

Through: Mr. Dewakar Sharma, Dy. AG.

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

JUDGMENT

01. Petitioner-Asif Mehmood, S/O Mohd. Akram R/O Ward No.7, Manyal, Tehsil Thanamandi, District Rajouri (for short 'the detenue') challenged the detention **Order No.DMR/INDEX/06 of 2024** dated **22.10.2024** (impugned order), issued by respondent No.2, District Magistrate, Rajouri (hereinafter to be referred as 'the detaining authority'), whereby he has been placed under preventive detention, in order to prevent him from acting in any manner prejudicial to the maintenance of 'public order'.

02. Petitioner contends that the Detaining Authority passed the impugned detention order without there being due application of mind as the impugned detention order shows that 'with a view to prevent detenue from acting in any

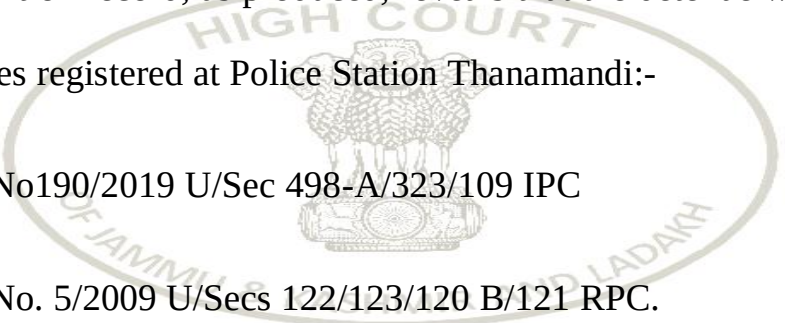
manner which is highly prejudicial to the maintenance of public order, the detenue is taken under preventive detention' whereas in the grounds of detention, at one place, it is mentioned that the detenue is involved in anti-national activities which are highly prejudicial to the maintenance of the 'security of State', which reflects non application of mind on the part of the detaining authority because detention order is to be issued either for law and order or for security of the State but not under both the heads; that the detaining authority has not informed the detenue about his right to file representation to the detaining authority and also the time frame within which such a representation must be filed to the detaining authority against his detention order, which incapacitated him to file effective and meaningful representation against his detention order; that the allegations against the petitioner are false and the sponsoring agency suppressed the vital fact that the petitioner got released in case FIR No.05/2009 and the second FIR No.190/2019 registered against him at Police Station, Thanamandi relates to matrimonial dispute and the detaining authority made these two FIRs as the basis for passing the impugned detention order, thus, vitiating the impugned detention order.

03. The respondents have contested the writ petition by filing counter affidavit of the detaining authority. In the counter affidavit, it has been submitted that the impugned order of detention has been passed by the detaining authority after carefully analyzing the dossier dated 20.07.2024 submitted by SSP Rajouri; that the detention order is based on subjective satisfaction of the detaining authority and the grounds of detention clearly reflect the application of mind; that the detaining authority was satisfied that the activities of the detenue were prejudicial to the security of the State and that there was every likelihood

of the detainee continuing with such activities if he be let free; that the respondents have supplied all the material to the detainee and have also read out and explained the contents thereof in the language he understands; that he was also informed about his right to make a representation to the Government as well as detaining authority; that the respondents, in order to lend support to their contentions, have produced the detention record.

04. Heard learned counsel for the parties at length, perused the record and considered the matter.

05. The detention record, as produced, reveals that the detainee was involved in following cases registered at Police Station Thanamandi:-

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- 1) FIR No190/2019 U/Sec 498-A/323/109 IPC
 - 2) FIR No. 5/2009 U/Secs 122/123/120 B/121 RPC.

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

06. Although detainee has raised many grounds for assailing the impugned order of detention, yet, during the course of arguments, his counsel restricted his arguments to the contentions that:

- i) That the detainee was not informed about his right to make representation to the detaining authority, as also no mention of time limit in the detention order within which detainee can make his representation to the detaining authority as well as the Government;
- ii) that the stale cases/FIRs of the year 2009 and 2019 are made basis for passing the detention order which has no proximate link;

iii) that the grounds of detention are replica of dossier.

iv) That non application of mind is writ large in the preventive detention of the petitioner as detention order cannot be passed on both the grounds viz. 'maintenance of public order' as well as 'security of state' at the same time.

07. The first ground as argued is, that the detainee was not informed about his right to make representation within stipulated time before the detaining authority, thereby violating his statutory and constitutional rights. It is translucently clear from perusal of the impugned detention order that the Detaining Authority has neither communicated to the detainee his right to make representation to the detaining authority as also the time limit, within which, he could make such representation to it, till approval of the detention order by the Government. In a case of National Security Act, titled "**Jitendra Vs. Dist. Magistrate, Barabanki & Ors.**", reported as **2004 Cri.L.J 2967**, the Division Bench of Hon'ble Allahabad High Court, has held:-

"10. We make no bones in observing that a partial communication of a right (in the grounds of detention) of the type in the instant case, wherein the time limit for making a representation is of essence and is not communicated in the grounds of detention, would vitiate the right fundamental right guaranteed to the detainee under Article 22(5) of the Constitution of India, namely, of being communicated, as soon as may be the grounds of detention."

08. Since the detainee's right to make a representation to the detaining authority was only available to him till approval of detention order by the Government, it follows as a logical imperative that the detaining authority

should have communicated to the detainee in the detention order, the time limit, within which, he could make a representation to it i.e., till the approval of the detention order by the State Government. There is, therefore, force in the above argument of the detainee. On this count alone, the impugned detention order cannot sustain and is liable to be quashed.

09. So far as the second ground that stale cases are shown to pass detention order against the petitioner is concerned, the material placed before the detaining authority by the Police was his alleged involvement in two criminal cases, registered against the detainee at Police Station Thanamandi in the years 2009 and 2019. The reliance on the 15 year old case of 2009, in which the detainee was already exonerated and another case pertaining to matrimonial dispute of the year 2019 is not permissible being stale, irrelevant snapping any proximate and live link. (See: **Sama Aruna v. State of Telangana & Ors (2018) 12 SCC 150**).

10. The third ground, which has been urged by the learned counsel for the detainee is that the Detaining Authority while formulating the grounds of detention has failed to apply its mind, inasmuch as the grounds of detention are almost xerox copy of the police dossier. A perusal of grounds of detention and the police dossier reveals that the language and expressions used in both the documents are almost similar to each other with intermixing of words here and there. This clearly shows that the detaining authority has acted in a mechanical manner. The Supreme Court has, in the case of **Jai Singh and others vs. State of Jammu and Kashmir, (1985) 1 Supreme Court Cases 561** clearly stated that where the grounds of detention are verbatim reproduction of the dossier submitted by the police, it goes on to show that there is non-application of mind

on the part of the detaining authority. In **Rajesh Vashdev Adnani vs. State of Maharashtra and others, (2005) 8 SCC 390**, the Supreme Court again reiterated that where the detention order is verbatim reproduction of the police dossier, the said order suffers from non-application of mind on the part of the Detaining Authority.

11. The law is well settled and is no longer res integra that the expressions ‘law and order’, ‘public order’ and ‘security of State’ are distinct concepts, though not always separate. While every breach of peace may amount of disturbance of law and order, every such breach does not amount to disturbance of public order and every public disorder may not prejudicially affect the ‘security of the State’. (See: **G M Shah v. State of J&K, 1980 (AIR) SC 494**).

12. In the present case, detaining authority has made use of both expressions ‘prejudicial to maintenance of public order’ as well as ‘prejudicial to security of State’. Impugned detention order, made on the basis of ground of detention using both expressions by the detaining authority to place detainee under preventive detention, in view of well settled law is held illegal and consequently impugned order is vitiated.

13. In the face of the aforestated legal position, it can safely be stated that the detaining authority in the instant case has acted, in a mechanical manner while passing the impugned order of detention, rendering it unsustainable in law.

14. Personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. It was for this reason that the Founding Fathers enacted the safeguards in Article 22 in the Constitution so as to limit the power of the State to detain a person without trial,

which may otherwise pass the test of Article 21, by humanizing the harsh authority over individual liberty. In a democracy governed by the rule of law, the drastic power to detain a person without trial for ‘security of the State’ and/or ‘maintenance of public order’ must be strictly construed. However, where individual liberty comes into conflict with the interest of the security of the State or public order, then the liberty of the individual must give way to the larger interest of the nation. The Hon’ble Apex Court in **Smt. Icchu Devi Choraria v. Union of India & Ors. (AIR 1980 SC 1983)** held as under:

“The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade.”

This is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detainee even though the detention may have been valid till the breach occurred.”

15. Having regard to the facts, firstly, that not informing the detainee that he can make representation to the detaining authority, against the detention order besides time frame not specified in the detention order; within which detainee can file representation against the detention order; secondly, stale cases referred having no proximate link; thirdly, non application of mind by the detaining authority, in as much as the grounds of detention are almost xerox copy of the police dossier, and lastly, impugned order is vitiated as detaining authority has made use both the expressions ‘prejudicial to maintenance of public order’ as well as prejudicial to security of State, it can safely be held that the detainee was

disabled to exercise his right to file a representation against his detention, in terms of Article 22(5) of the Constitution of India; that the detaining authority has passed the impugned detention order arbitrarily and mechanically, without application of mind and the constitutional and statutory safeguards available to the detinue were also observed in breach and trampled, vitiating the impugned detention order, which render it unsustainable and liable to be quashed.

16. Viewed thus, the petition is allowed and the impugned detention **Order No.DMR/INDEX/06 of 2024** dated **22.10.2024**, passed by respondent No. 2, District Magistrate, Rajouri, is hereby quashed. The detinue-**Asif Mahmood**, S/O Mohd. Akram R/O Ward No.7, Manyal, Tehsil Thanamandi, District Rajouri, is directed to be released from the preventive custody forthwith, if not required in any other case(s). No costs.

17. The record of detention be returned to the respondents through their counsel.

18. **Disposed of**, accordingly, along with connected application(s).

(M A CHOWDHARY)
JUDGE

JAMMU
26.08.2025
Raj Kumar

Whether the order is speaking? :Yes/No.
Whether the order is reportable? : Yes/No.