

Sr. No.

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

HCP No.144/2024
CM No.6902/2024

Reserved on: 10.07.2024
Pronounced on: 14.07.2024

Liaqat Hussain, aged 41 years
S/O Mohd. Maqbool
R/O Ghambir Mughlan, Tehsil Manjakote,
District Rajouri (J&K),
A/P W. No.03 Kheora, Rajouri.
Through his wife Rubina Kouser, Age 38 years

...Petitioner(s)

Through :- Mr. Mazher Ali Khan, Advocate.
Mr. Sanchit Verma, Advocate.

V/S

1. The Union Territory of J&K,
through Principal Secretary (Home),
Civil Secretariat, Jammu.
2. The District Magistrate, Rajouri.
3. The Superintendent,
Central Jail, Jammu.

.....Respondent (s)

Through :- Mr. Dewakar Sharma, Dy. AG.

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

JUDGMENT

1. The petitioner, by the medium of instant petition, has challenged Detention Order No.DMR/INDEX/08 of 2024 dated 04.11.2024 ('impugned order) issued by District Magistrate Rajouri (for brevity 'Detaining Authority'), whereby petitioner namely Liaqat Hussain S/O Mohd. Maqbool R/O Ghambir Mughlan, Tehsil Manjakote, District Rajouri (hereinafter referred to as 'detenue') has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial to the maintenance of 'public order'.

2. Petitioner contends that the Detaining Authority has passed the impugned detention order mechanically without application of mind, inasmuch, as the grounds of detention are mere reproduction of the dossier; that the statutory procedural safeguards have not been complied with in the instant case; that the detaining authority has not mentioned a word with regard to satisfaction drawn by it in the detention order as to how it has come to the conclusion of passing of the impugned detention order; that he has not been informed about his right to make representation to the detaining authority; that the reliance placed by the detaining authority on the FIR of the year 2011, is misconceived, as the petitioner stands acquitted in this case.

3. It is further contended that the detainee has been shown involved only in one case vide FIR No. 18/2011 under Sections 2/3 E&IMCO registered at P/S Manjakote, however, it is alleged that the petitioner has already been acquitted in the said case vide judgment dated 29.04.2015 passed by trial court of the learned District Mobile Magistrate Rajouri, but the detaining authority has made this very case as sole basis for passing the order of detention. On this ground alone, the impugned detention order is liable to be quashed by this Court, as this apparently shows that the detaining authority is oblivious of the whole facts of the case of the detainee; that the detainee was not explained the contents of detention order and grounds of detention in the language he understands and that he was not informed of his right of making representation to the detaining authority, thus was prevented from making an effective and meaningful representation against his detention order.

4. The respondents, in their counter affidavit, have controverted the averments made in the petition and submitted that the detainee is a surrendered militant and his activities are anti-national, anti-social and prejudicial to the security of the State, and therefore, there was dire need to prevent the detainee from such activities; that the

detenue is involved in FIR No.18/2011 registered at P/S Manjakote; that the detention order and grounds of detention were handed over to the detenue and the same were read over and explained to him in the language he understands; that he was informed of his right to make representation before the government; that the grounds raised by the detenue are factually misconceived and legally untenable. The respondents have also produced the detention record in order to lend support to the contentions raised in the counter affidavit.

5. Mr. Khan and Mr. Verma, learned counsel for the detenue, while reiterating the grounds taken in the petition argued that the detenue was not supplied whole of the record and was not informed that he has a right to file representation to the detaining authority; that the detaining authority was under an obligation to provide whole of the material, which it had relied upon to pass the impugned detention order, however, the dossier submitted by the SSP concerned on the basis of which detention order was passed had not been provided to the detenue; that the detenue had a right to be informed, which was denied to him, about his right to file representation to the detaining authority, to seek review of the detention order. As such, the order impugned is vitiated on these counts and is liable to be set aside.

6. They further argued that the detaining authority had relied upon the case/FIR No.18/2011 registered at P/S Manjakote; that the said FIR relied upon could not have been relied upon in view of the fact that the detenue stands acquitted in the above case. It was finally submitted that the petition be allowed and the impugned detention order be quashed.

7. Mr. Sharma, learned State Counsel, *ex adverso*, argued that the contentions made on behalf of the petitioner that whole of the material was not provided to him is wholly misplaced, as all the documents relied upon, including dossier prepared by

the police, had been provided to him and also that the receipt at the time of the execution of the warrant is available on the record to substantiate that whole of the material was provided to the detainee and that in such a situation the detainee cannot be stated to have been incapacitated to file an effective and meaningful representation against his detention; that the detainee had also been informed through the detention order, which was also explained to him at the time of execution of the detention warrant, that he has a right to file representation to the Government, however, the detainee had chosen not to file representation. In such a situation, the grounds agitated seeking quashment of the impugned order are not of any consequence as whole of the material was provided and the detainee was also informed that he has a right of filing representation against his detention to the Government of Jammu & Kashmir; that the detainee was duly explained the contents of the detention order as well as grounds of detention and other supporting documents in Urdu/Hindi language, which is evident from the receipt of ground of detention and other relevant record executed by PSI Kunal Bhargav of P/S Rajouri. It was finally prayed that the petition be rejected and the impugned detention order be upheld.

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

9. The detention record, as produced, reveals that the detainee was involved in only one case detailed above. Order dated 29.04.2015 (Annexure-IV), is passed by the learned District Mobile Magistrate, Rajouri acquitting the petitioner of the charges in case/FIR No. 18/2011 u/s 2/3 E& IMCO.

10. The whole edifice for passing the detention order impugned crumbles when faced with the outcome of the aforesaid FIR, which was made basis of passing of the

detention order. Had the outcome of the aforesaid FIR been brought to the notice of the detaining authority, the detention order could not have been passed. Besides the afore-stated case registered against the detainee, there is not a single case against the detainee. On this count alone, the detention order having been passed without application of mind by the detaining authority is not sustainable and is liable to be quashed.

11. As regards the contention of the detainee that he was neither supplied the whole of the material nor explained the contents thereof in the language he understands, which includes that he has a right to file representation, as reflected in the execution report of the executing officer, which prevented him from filing a meaningful and effective representation to the detaining authority or the Govt. of J&K, the same, in the opinion of the court, has a force, as the respondents have not denied the same by way of filing an affidavit of the executing officer to that extent.

12. The law is well settled and is no longer *res integra* that the detainee must be informed of his right to make representation to the Detaining Authority as this is one additional avenue for his detention order to be reconsidered in addition to the representation to be made to the Government. It is also settled law that once the Government passes an order approving the order of detention, the Detaining Authority becomes *functus officio* and thereafter cannot review its order. Therefore, the Detaining Authority had to inform the detainee about his right at the very outset so that the detainee can make a representation for reconsideration by the Detaining Authority. The Hon'ble Apex Court in a judgment titled "**Sophia Gulam Mohd. Bham v. State of Maharashtra & Ors. (AIR 1999 SC 3051)**", has held as under:

"The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detainee to make a

representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detainee and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language.”

13. In the case on hand, the ground that the detainee was not informed about his right to file a representation to the Detaining Authority can also be ascertained from the detention order. The Detaining Authority as per record, vide his No.DMR/JC/2024-25/2216-19 dated 04.11.2024 had informed the detainee that he may make a representation to the Government against detention order, if he so desires, meaning thereby that the Detaining Authority had not informed the detainee that he could file a representation before the Detaining Authority as well. Therefore, the contention made on behalf of detainee that the detention order is vitiated on this count has also force as a valuable right of filing representation before the Detaining Authority to reconsider its decision, was not afforded to the detainee.

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 that firstly, whole reliance of the detaining authority on one case that too a stale case of the year 2011, in which the detainee stands acquitted, secondly, non explaining of contents of detention order and grounds of detention to the language he understands; and thirdly, he was not informed about his right to file representation to the detaining authority, 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 in this backdrop, it is established that the detaining authority has passed the impugned detention order arbitrarily and mechanically, without application of mind by the detaining authority and the constitutional and statutory safeguards available to the detainee were also observed in breach and trampled, vitiating the impugned detention order, which renders it unsustainable and liable to be quashed.

16. Viewed thus, the petition is allowed and the impugned detention Order No. **DMR/INDEX/08 of 2024 dated 04.11.2024**, passed by respondent No. 2, District

Magistrate, Rajouri, is hereby quashed. The detenue is directed to be released from the preventive custody forthwith, if not involved in any other case(s). No costs.

17. The record of detention be returned to the learned counsel for the respondents.

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

(M A Chowdhary)
Judge

JAMMU
14.07.2025
Raj Kumar

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