

HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU

Reserved on : 14.08.2025

Pronounced on: 26.08.2025

HCP No. 147/2024

**Abrar Afzal**, Age 26 years  
S/O Mohd Afzal  
R/O Village Panghai,  
Tehsil Thanamandi, District Rajouri  
Through sister Ifret Naz

.....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, Central Jail, Jammu

..... Respondent(s)

Through: Mr. Dewakar Sharma, Dy. AG.

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

**JUDGMENT**

**01.** Petitioner-**Abrar Afzal**, S/O Mohd Afzal, R/O Village Panghai, Tehsil Thanamandi, District Rajouri (for short 'the detainee') challenged the detention **Order No.DMR/INDEX/07 of 2024** dated **31.10.2024** (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 only a single

complaint U/Ss 107/151 CrPC was made the basis of passing the impugned detention order; that the detaining authority has not informed the detainee 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, and non supply of whole of the material, 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 was earlier detained under PSA in the year 2022 on the basis of these very 6 FIRS and two complaints but now again on the basis of single false complaint registered against the petitioner, he was taken into preventive detention for the sake of putting him behind bars which is illegal and unsustainable in the eyes of law; that the grounds of detention are replica of police dossier, which shows that the impugned detention order is passed mechanically without proper application of mind.

**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 10.08.2024 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 detainee 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 the petitioner was detained earlier also under Public Safety Act but he again indulged in the activities which are prejudicial to the maintenance of public order, so his detention was imperative; 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 different Police Stations:-

- 1) FIR No. 47/2019 U/Sec 452/323/147/336/427/109 RPC
- 2) FIR No. 115/2022 U/Secs 307/341/323 RPC
- 3) FIR No.11/2022 U/Secs 341/353/332/504 IPC
- 4) FIR No. 60/2022 U/Secs 307/341/323/147/336/504/506 IPC
- 5) FIR No. 206/2019 U/Secs 379/206 RPC
- 6) FIR No.55/2021 U/Secs 366/376/109 IPC

Besides above FIRs, following three complaints are also registered against the petitioner at P/S Thanamandi:

- i) Complaint U/S 107/151/110 CrPC
- ii) Complaint U/S 107/151 CrPC
- iii) Complaint U/S 107/151 CrPC

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 non supply of whole material, more particularly, record pertaining the proceedings u/s 107/151 CrPC which was made the basis for passing the impugned detention order, thus, vitiated the impugned detention order; and
- iii) that the grounds of detention are replica of dossier.

**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.** Perusal of the case file would show that the petitioner, on earlier occasion had also been detained under the preventive detention vide Order No.DMR/INDEX/01 of 2022 dated 15.11.2022, which was challenged by the petitioner vide **WP(Crl) No. 80/2022** titled ‘**Abrar Afzal v. UT of J&K & Ors**’ before this court, in which the detaining authority has detained the petitioner on the basis of above six FIRs and two complaints, and now the same six FIRs and complaints except one i.e. Compliant U/s 107/151 CrPC registered at P/S Thanamandi has been made the basis for detaining the petitioner again

vide impugned detention order dated 31.10.2024. In a case titled as "**C. B. Kahar vs. N. L. Kalna**" reported in **AIR 1989 SC 1234**, the hon'ble Supreme Court held in that grounds of detention of the earlier detention order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order of detention. Para 12 of the judgment (supra) is reproduced as:-

*"12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the court strikes down an earlier order by issuing rule it nullifies the entire order."*

**10.** Besides above, it is alleged by the petitioner that he was not supplied the entire material/record viz. pertaining to Section 107/151 CrPC on the basis of which he was detained under PSA. Since the petitioner has all along denied that he has received any material, more particularly, the material pertaining to Section 107/151 CrPC, the respondents ought to have filed an affidavit of the Executing Officer to the aforesaid extent to controvert the above allegations, which is ostensibly not been done by the respondents in the instant case. Therefore, in the considered opinion of this court, the petitioner was prevented from making effective and meaningful representation to the competent authority in view of insufficient material provided to him.

11. Hon'ble the Supreme Court of India in a case titled '**State of Maharashtra & Ors. v. Santosh Shanker Acharya**' reported as **AIR 2000 SC 2504** quashed the detention order on the ground, that the detenue was not supplied the copies of material from which detention order was made, which amounted to denial of representation to the detenue and infraction of a valuable constitutional right guaranteed to the detenue under [Article 22 \(5\)](#) of the Constitution of India. A Co-ordinate Bench of this Court at Srinagar in a case titled "[Hilal Ahmad Khuroo Vs. Union Territory of J&K & Ors. \[WP \(Crl.\) No. 80/2022, decided on 10.08.2022\]](#)" has held, that respondents are duty bound to provide to the petitioner/detenue the material as regards the proceedings [u/s 107/151](#) of the Cr.P.C and non-supply thereof renders the detention order illegal and unsustainable. Ratio of the judgments (supra) and the principle of law deduced therefrom are squarely applicable to the facts of the case in hand. In the instant case, on perusal of the detention record, it is discernable, that the essential material/record as regards to the proceedings [u/s 107/151](#) of Cr.P.C against petitioner forming the edifice for issuance of impugned detention order has not been supplied to the detenue, therefore, the petitioner/detenue's constitutional right guaranteed to him under [Article 22\(5\)](#) Constitution of India r/w [Section 13](#) of J&K PSA 1978 has been infringed/violated, which renders the impugned detention order illegal and legally unsustainable.

12. The third ground, which has been urged by the learned counsel for the detenue 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.

13. 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.”*

14. 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 and secondly, non supply of whole of the material which incapacitated the petitioner to file effective and meaningful representation to the detaining authority as well as government; 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, 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 detainee were also observed in breach and trampled, vitiating the impugned detention order, which render it unsustainable and liable to be quashed.

15. Viewed thus, the petition is allowed and the impugned detention **Order No.DMR/INDEX/07 of 2024** dated **31.10.2024**, passed by respondent No. 2, District Magistrate, Rajouri, is hereby quashed. The detainee- **Abrar**

**Afzal**, S/O Mohd Afzal, R/O Village Panghai, Tehsil Thanamandi, District Rajouri, is directed to be released from the preventive custody forthwith, if not required in any other case(s). No costs.

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

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

(M A CHOWDHARY)  
JUDGE

JAMMU  
26.08.2025  
Raj Kumar

