

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

HCP No.153/2024
CM No. 7355/2024

Reserved on: 07.08.2025.
Pronounced on: 11.08.2025

Noor Din, Age 57 years, S/O Habib Gujjar,
R/O Kakerwagan, Tehsil Mughalmaidan,
District Kishtwar, J&K
Through son, Mohd. Ashraf

....Petitioner(s)

Through :- Mr. Sanchit Verma, Advocate.

V/S

1. The Union Territory of Jammu & Kashmir
Through Principal Secretary (Home),
Civil Secretariat, Jammu.
2. District Magistrate, Kishtwar
3. Senior Superintendent of Police, Kishtwar.
4. Superintendent, Central Jail, Jammu.

....Respondent(s)

Through :- Mr. Eishaan Dadhichi, GA

CORAM: HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

JUDGMENT

1. Petitioner namely **Noor Din** S/O Habib Gujjar, R/O Kakerwagan, Tehsil Mughalmaidan, District Kishtwar (for short 'the detainee') through his son, has challenged the detention Order No.4th /DM/K/PSA of 2024 dated 07.11.2024 (impugned order), issued by respondent No.2, District Magistrate, Kishwar (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 'security of the State'.
2. Petitioner has raised many grounds to assail the impugned order. It is his contention that Detaining Authority though referred earlier case for the year

2008, along with five DDR entries, as found in the Grounds of Detention, what was placed before him was only the copies of reports in those matters. Had the Authorities placed the outcome of such matters vis-à-vis acquittal in case FIR No.20/2008, there would have been a different conclusion than the one which is challenged in the present petition. It is also contended that the petitioner was not informed about his right to make representation to the detaining authority as well as government as early as possible, which prevented him from making effective and meaningful representation; that the DDRs allegedly recorded against the detainee do not disclose any specific activities; that the provisions of preventive detention have been misused in the case of detainee. Lastly, it is prayed that the petition be allowed and the impugned detention order be set aside.

3. The respondent No.2, in his counter affidavit, has controverted the averments made in the petition and submitted that the detainee is an Overground Workder (OGW) and there is every apprehension that he might be sharing information related to the movement of security forces with the active militants of the area; that the detainee may provoke the youth of the area on the name of Jihad and motivate them to join militant ranks and try to radicalize the youths to join terrorist groups; that the detention warrant along with grounds of detention was properly executed through PSI Shubam Kumar of P/S Sarthal under proper acknowledgement of the detainee and he was fully made to understand in the language he understands; that the detainee was also informed that he can make representation to the Govt. against the detention order, if he so desires. Lastly, it is prayed that the petition be dismissed and the impugned detention order be upheld as the same has been strictly passed as per the provisions of J&K Public

Safety Act. The respondents have produced the detention records, in order to lend support to the contentions raised in the counter affidavit.

4. Learned counsel for the petitioner, while seeking quashment of the impugned order, reiterated various grounds but his main thrust during the course of arguments was on the following grounds:

- (I) That detenue was not informed that he can make representation to the detaining authority against his detention;
- (II) That the detaining authority has not applied its mind while passing the detention order as case FIR No.20/2008 of P/S Chatroo has been made basis for passing the detention order despite the fact that the detneue has earned acquittal in the aforesaid case; that DDRs registered against the detenue are vague conjectures and do not allege any specific activity of the detenue;
- (III) That he was not informed about his right to make effective and meaningful representation, as there is no mention of time in the detention order, within which, he can make representation;
- (IV) That grounds of detention are almost replica of the police dossier, as such, detaining authority has not applied its mind, acting upon the dossier.

5. Learned State Counsel, *ex adverso*, making reference to the grounds of detention, argued that the activities of the detenue were not only criminal but also anti-national which are found to be highly prejudicial to the security of state; that the detention order has been passed in order to desist the detenue from

indulging in militant activities; that the grounds of detention are not replica of the dossier submitted by the SSP concerned, and the impugned detention order has been passed with due consideration and application of mind; that there is no necessity to give in detail the activities of the detainee as the order is preventive in nature; that whole of the material relied upon had been supplied to the detainee by the executing officer at the time of execution of the detention warrant and contents thereof were explained to the detainee in the language understandable to him; that all the constitutional or statutory safeguards were observed in letter and spirit and the petitioner had also been informed of his right to move representation against his detention, in terms of impugned order. It was urged, finally, that the same be upheld and petition be rejected.

6. Heard learned counsel for the parties at length, perused the detention record and considered.

7. Para 3 of the counter affidavit filed on behalf of District Magistrate, Kisthwar-respondent No.2 has detailed the following one case registered at Police Station, Chatroo vide FIR No.20/2008 u/s 302/404/149/120-B RPC, 7/27 IA Act;

Besides the above case/FIR, grounds of detention show that following 05 DDRs entries are recorded at P/P Mughalmaidan and P/S Chatroo:

- i. DDR No.11 dated 28.06.2024
- ii. DDR No. 13 dated 29.06.2024
- iii. DDR No. 14 dated 08.07.2024,
- iv. DDR No. 10 dated 12.07.2024, and
- v. DDR No. 24 dated 12.07.2024.

Involvement of the detenue in the aforementioned case and DDRs, appear to have been heavily weighed with the detaining authority, while passing the detention order.

8. Petitioner has placed on record copy, of the order dated 12.08.2011 passed by the court of Principal Sessions Judge, Kishwar acquitting the accused of the offences in case FIR No.20/2008 u/s 302/404/149/120-B/109 RPC and 7/25 Arms Act. This case in which detenue had earned acquittal after facing trial, otherwise, could not be based to pass the impugned order, for lack of live and proximate link, of the alleged commission of offences in the year 2008 to the impugned order passed in 2024. Stale cases cannot be made basis to pass detention order. (See: **Sama Aruna v. State of Telangana & Ors (2018) 12 SCC 150**).

9. So far as the DDR entries (supra) recorded within a short span of a fortnight are concerned, it is an admitted case that those have not culminated in any criminal cases. Merely recording DDRs alleging some acts without specifying any activity allegedly carried out, cannot be the ground to detain a person. It is surprising that if the acts mentioned in the DDR entries are criminal acts and are cognizable in nature, then why the State has not filed any First Information Report. Law provides that if cognizable offence is committed and is brought to the knowledge of any authority, First Information Report should be lodged. If at all those acts mentioned in DDRs make out any criminal offence, what prevented the State to file a First Information Report is a mystery. It appears that in view of the stale cases of the year 2008, Police recorded the

DDRs, just to complete the formality to show grounds to justify detention of the detainee, there being no other material.

10. As regards the contention of the detainee that he was not informed about his right to make representation to the detaining authority is concerned, 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.”

11. 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. Though, the Detaining Authority as per record, vide his No.DM/K/2024-25/5153-57 dated 07.11.2024 mentioned that the detainee may make a representation 'to the undersigned and to the Government' against the detention order, if he so desires, however, the perusal of the compliance report, which is hand written and signed by executing officer, PSI Shubam Kumar, IC PP Sarthal would show that *'the detainee has also been informed about his right of appeal against the said detention against the detention order'* meaning thereby that the detainee had not been informed that he could file a representation before the Detaining Authority as well. Since the petitioner has all along denied that relevant material was supplied to him as also he was not informed about his right to make representation to the detaining authority, the respondents ought to have filed an affidavit of the executing officer to the aforesaid extent to controvert the above allegations, which has ostensibly not been done by the respondents in the instant case.

12. 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.

13. Next ground as argued is, that the detainee was not informed about his right to make representation within stipulated time before the detaining authority as well as government, thereby violating his statutory and constitutional rights. It is translucently clear from perusal of the impugned detention order that the

Detaining Authority has not communicated to the detainee the time limit, within which, he could make a 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.”

14. 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 grounds of detention 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.

15. The last ground, which has been urged by the learned counsel for the petitioner 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 replica 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 & Ors, (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.

16. In the face of the aforesaid 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.

17. 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.”

18. Having regard to the facts, firstly, whole reliance of the detaining authority on the stale case of the year 2008, in which the detainee stands acquitted, secondly, not informing the detainee that he can make representation to the detaining authority against the detention order; and thirdly time frame is not specified in the detention order within which detainee can file representation against the detention order disabling him of his right to file a representation against his detention, in terms of Article 22(5) of the Constitution of India, it can be safely held that it is established 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 renders it unsustainable and liable to be quashed.

19. Viewed thus, the petition is allowed and the impugned detention Order No.4th/DM/K/PSA of 2024 dated 07.11.2024, passed by respondent No. 2, District Magistrate, Kisthwar, is hereby quashed. The detenue-**Noor Din** S/O Habib Gujjar, R/O Kakerwagan, Tehsil Mughalmaidan, District Kishtwar is directed to be released from the preventive custody forthwith, if not required in any other case(s). No costs.

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

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

Jammu:
11.08.2025
Raj Kumar

(MA CHOWDHARY)
JUDGE

Whether the order is speaking? Yes

Whether the order is reportable? Yes