

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

HCP No.154/2024

Reserved on: 10.07.2025.

Pronounced on: 22.07.2025

Rehmatullah, Age 27 years,
S/O Abdul Ghani Padder,
R/O Dessa Bhata, At present
H. No.32, Ward No.7, Akramabad,
Tehsil & District Doda.
Through brother Mohd. Irfan,
S/O Abdul Ghani Padder.

....Petitioner(s)

V/S

Through :- Mr. Rahul Raina, Advocate vice
Mr. S S Ahmed, Advocate

1. The Union Territory of Jammu & Kashmir
Through Commissioner/Secretary,
Home Department, Civil Secretariat,
Jammu-180001.
2. The Chairman, Advisory Board (constituted under
J&K Public Safety Act, 1978) Mini Block, Civil
Secretariat, Jammu-180001.
3. The District Magistrate, Doda-182202.
4. Senior Superintendent of Police, Doda-182202.
5. Superintendent, Central Jail,
Kot Bhalwal, Jammu-181122.

....Respondent(s)

Through :- Mr. Eishaan Dadhichi, GA.

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

JUDGMENT

1. Petitioner challenged the Detention Order No.PSA-02 of 2024 dated 09.11.2024 (impugned order), issued by respondent No.3, District Magistrate, Doda ("the detaining authority"), whereby the petitioner namely Rehmatullah

S/O Abdul Ghani Padder R/O Dessa Bhata A/P Akramabad, Tehsil & District Doda (for short 'the detainee') has been placed under preventive detention, in order to prevent him from acting in any manner against the 'Security of the State'.

2. Petitioner contends that the Detaining Authority passed the impugned detention order, based primarily on 05 FIRs, in most of which the detainee stands discharged and the remaining FIRs are nothing but vague and the sponsoring agency has concealed this material fact from the detaining authority, that on this count alone, the impugned detention order is liable to be quashed; that the representation filed on behalf of the petitioner by his brother on 22.11.2024 to the Government with copy to the District Magistrate was neither considered expeditiously, nor outcome of the said representation was conveyed to the detainee; the dossier and grounds of detention would show that the respondents have relied heavily on the above FIRs for passing the impugned detention order, however, whole of the material, was not supplied to the detainee, which prevented him from making an effective and meaningful representation to the detaining authority or the government against the impugned detention order; that on the basis of mere apprehension that too on the vague allegations alleged in the dossier or grounds of detention, the detaining authority has passed the impugned order.

3. Per contra, the respondents, in their counter affidavit, have controverted the averments made in the petition and submitted that the representation submitted by the petitioner to the detaining authority as well as Government was duly considered by the respondents and was found without any merit and rejected by the detaining authority on 05.12.2024 and by the Home Department

on 21.01.2025; that the petitioner was found involved in multiple cases and his activities have been anti social and anti national; that in order to maintain security of State, one FIR is sufficient to take the person into preventive detention; that the detention order and grounds of detention were handed over to the detainee and the same were read over and explained to him in the language he understands; that the grounds raised by the detainee 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.

4. Mr. Rahul Raina, learned counsel appearing for the Detainee making reference to the grounds of challenge raised in the petition, that Detaining Authority, though shown the detainee involved in 05 cases, what was placed before it was only the copies of reports in those matters; that the detainee stands discharged in a case/FIR No.173/2016 U/Secs 153-A/124-A/120-B RPC of Police Station Doda vide order dated 24.02.2022, in another case FIR No.177/2016 U/Secs 153-A, 120-A, 124-A, 332, 336 RPC of Police Station, Doda vide order dated 27.02.2019 by the learned Additional District & Sessions Judge, Doda. Had the Authorities placed the outcome of aforesaid cases FIRs, in which the detainee stands discharged, before the detaining authority, there would have been a different conclusion than the one which is challenged in the present petition; that the detainee through his brother submitted representation to the respondents on 22.11.2024 but the same was not considered and even if considered, the outcome of the same was not conveyed to the petitioner, which has prejudiced the rights of the petitioner enshrined in the Constitution of India; that it is finally prayed that the writ petition be allowed and the impugned detention order be set aside.

5. Mr. Dadhichi, learned State Counsel, *ex adverso*, argued that the contentions made on behalf of the detainee that the outcome of the FIR No.173/2013 as well as FIR No. 177/2016 was not brought to the notice of the detaining authority is concerned, it is contended that the detaining authority has only considered the post FIRs lodged before his previous detention in 2016 vide PSA No.01-09/PSA/DM/Doda/2016 dated 12.08.2016 as background history of the detainee and has relied upon the fresh cases reported against him viz. FIR No.82/2021, FIR No.178/2023, FIR No. 192/2024 and FIR No. 192/2024; the latest DD report No. 05 dated 02.08.2024 and complaint U/S 126-B, 136 BNSS to conclude with satisfaction that the detainee's remaining at large poses serious security threat to the State; that the aforesaid FIRs registered against the detainee would show the continuous involvement of the detainee in criminal/anti-national activities without any respect for substantive law; that it was on the basis of thorough examination, the detaining authority came to the conclusion that the remaining at large of the detainee has grave possibility of creating serious threats to the security scenario of the UT of J&K, particularly sensitive District Doda; that the outcome of the representation rejected by the detaining authority as well as Government has duly been communicated to the detainee; that the impugned detention order has been passed after due application of mind. Lastly, it is prayed that the writ petition be dismissed and the detention order be upheld.

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

7. Insofar as the plea raised by the detainee that the material relied upon by the detaining authority has not been supplied to him is concerned, the respondents disputed the same by asserting that the entire material like detention

order, dossier of detention, grounds of detention and copies of FIR and other relevant documents was supplied to the detainee at Central Jail, Jammu, through its superintendent. As per record, the detainee received detention order, Notice of detention, grounds of detention (05 leaves), dossier of detention (07 leaves), copies of FIRs/Statement of witnesses and other related documents (143 leaves), total 157 leaves from executing officer PSI Khem Raj in presence of Assistant Superintendent Central Jail Jammu, which were read over in English and explained to the detainee in Urdu/Kashmiri languages, which he fully understood and in lieu of which his signatures were obtained on the execution report. Additionally, there is an affidavit of the Executing Officer PSI Khem Raj in the detention record, to the aforesaid extent, that the grounds of detention and warrant were read over to him on 11.11.2024 in Hindi/Urdu/English language, in presence of Superintendent Central Jail, Jammu.

8. The grounds of detention clearly show that the detainee is an OGW and a sympathizer of militants, who was detained under PSA earlier in the year 2016 vide PSA No.01-09/PSA/DM/Doda/2016 dated 12.08.2016; that after his release, fresh cases came to be registered against him viz. FIR No.82/2021, FIR No. 178/2023, FIR No. 192/2024 and FIR No. 192/2024, DD report No.05 dated 02.08.2024 and complaint U/S 126-B, 136 BNSS, for the commission of offences serious in nature; that the impugned detention order is passed by the detaining authority on the basis of dossier submitted by the SSP concerned wherein 05 FIRs, including 2 FIRs lodged before his preventive detention in 2016 and 03 FIRs lodged after his release registered against the detainee at Police Station, Doda, showing the detainee's continuous involvement in criminal/anti-national activities without any respect of substantive law, thus,

posing serious threat to the security scenario of the UT of J&K, particularly, District Doda. Keeping in view the activities of the detainee, the Detaining Authority after due application of mind, by arriving at subjective satisfaction has issued the order of detention, which cannot be found fault with.

9. It is settled proposition of law that this Court while exercising jurisdiction under Article 226 of the Constitution has a limited scope to scrutinize whether detention order has been passed on the material placed before it, and it cannot go further and examine the sufficiency of material. This Court does not sit in appeal over the decision of the Detaining Authority and cannot substitute its opinion over that of detaining authority when the grounds of detention are precise, pertinent, proximate and relevant (**See State of Punjab v. Sukhpal Singh, (1990) 1 SCC 35**). The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. The order of preventive detention may be made before or during prosecution and the pendency of the prosecution is not a bar to an order of preventive detention and is also not a bar to prosecution. The power of preventive detention is different from punitive detention. In a prosecution, the accused is sought to be punished for his past acts, however, in preventive detention the past act is merely a material for drawing inference about future conduct of the detainee.

10. The aim of the preventive detention is not to punish a person for having done something but to intercept and prevent him from doing so. Hon'ble the Supreme Court in the case of **Naresh Kumar Goyal v. Union of India and others, (2005) 8 SCC 276** and **Union of India and another v. Dimple Happy Dhakad, AIR 2019 SC 3428** has held that "an order of detention is not a

curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent anti-social and subversive elements from imperiling welfare of the country or security of the nation from disturbing public tranquility or from indulging in illegal activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so.”

The law of preventive detention has direct bearing on the subjective satisfaction of the Detaining Authority. The subjective satisfaction of a Detaining Authority, whether to detain a person or not, is not open to the objective assessment by a Court. The Court while exercising power under Article 226 is not to act as an appellate forum to scrutinize the merits of the administrative decision to detain a person. The Court cannot substitute its own satisfaction for that of the authority concerned and decide whether its satisfaction was reasonable or proper, or whether in the circumstances of the matter, the person concerned should have been detained or not.

11. It is apt to mention that our Constitution undoubtedly guarantees various freedoms and personal liberty to citizens in our Republic, however, such freedoms guaranteed by the Constitutional mandate are not meant to be abused and misused so as to endanger and threaten the very foundation of our society. The larger interests of our nation as a whole and the cause of preserving for every person the guaranteed freedoms demands reasonable restrictions on the prejudicial activities of individuals who jeopardize the rightful freedoms of the rest of the society. The main object of preventive detention is the security of the

State, maintenance of public order and of supplies and services essential to the community. Detention order, which has been issued by the detaining authority after arriving at subjective satisfaction, does not suffer from any legal infirmity as the rounds of detention are definite, proximate and free from any ambiguity. Furthermore, the detainee was duly informed of what weighed with the detaining authority while passing the order of detention. The Detaining Authority has recorded its subjective satisfaction after considering all the material available, thus, none of the constitutional or statutory provision has been violated.

12. So far as the contention of the detainee that neither his representation was considered nor the outcome of the same conveyed to him is concerned, on perusal of the detention record, it appears that the said representation dated 22.11.2024 was received by the detaining authority on 28.11.2024 and duly considered and rejected on 05.12.2024; the Home Department, J&K vide No. Home/PB-V/539/2024/7594861 dated 21.01.2025 disposed of the representation of the detainee as well, being without merit. Thus, contention of the detainee that his representation was neither considered nor outcome of the same was conveyed to the detainee, pales into insignificance.

13. The challenge to the detention order, in the considered opinion of the court by taking into account the above facts as emerged from the record, fails on all fours. The above conspectus of things would goad this court to the only inescapable conclusion that the respondents have rightly detained the detainee under the Public Detention Act in view of serious allegations alleged against him.

14. In the present case, the Detaining Authority has applied its mind by going through all the material, past conduct of the detainee against whom five

FIRs stand registered and accordingly, arrived at subjective satisfaction that the activities of the detainee were prejudicial to the interest of the State and issued the order of detention, which cannot be found fault with. Since the activities of the detainee were directed against the object mentioned in the Act and the Detaining Authority has arrived at subjective satisfaction that it was necessary to prevent the detainee from acting in such manner and consequently, order of detention came to be issued. Thus, it clearly shows that it is satisfaction of the Government on the point, which alone is necessary to be established.

15. Liberty of an individual has to be curtailed, within reasonable bounds, for the good of the society at large. The framers of the Constitution were conscious of the practical need of preventive detention with a view to strike a just and delicate balance between need and necessity to preserve individual liberty on one hand, and security of the country as well as the interest of society on the other hand. Security of State, maintenance of public order, prevention of drug trafficking and other criminal activities demand effective safeguards in the larger interest of the sustenance of a peaceful and democratic way of life. The personal liberty may be curtailed, where a person faces a criminal charge or is convicted of an offence and sentenced to imprisonment. Where a person is facing the trial on a criminal charge and is temporarily deprived of his personal liberty because of the criminal charge framed against him, he has an opportunity to defend himself and to be acquitted of the charge in case the prosecution fails to bring home his guilt. Where such an accused is convicted of offence, he still has satisfaction of having been given the adequate opportunity to contest the charge and also adduce the evidence in his defence.

16. The incorporation of Article 22 in the Constitution left room for detention of person without a formal charge and trial and without such person held guilty of an offence and sentenced to imprisonment by a competent Court. Its aim and object are to save the society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case, it would be dangerous for the people at large, to wait and watch, by the time ordinary law is set into motion, the person having dangerous designs, would execute his plans, exposing the general public to risk, causing colossal damage to life and property. It is for that reason necessary to take preventive measures and subsequently, prevent the person bent upon to perpetuate mischief from translating his ideas into actions. Therefore, where individual liberty comes into conflict with an interest of the security of the State or public order, then the liberty of individual must give way to the larger interest of the nation, as has been laid by the **Hon'ble Supreme Court in Sunil Fulchand v. Union of India (2003) 3 SCC 409.**

17. Hon'ble the Supreme Court in the case of **Mohd. Subrati alias Mohd. Karim v. State of West Bengal (1973)3 SCC 250**, has held as under:-

“7. No doubt, the right to personal liberty of an individual is jealously protected by our Constitution but this liberty is not absolute and is not to be understood to amount to licence to indulge in activities which wrongfully and unjustly deprive the community or the society of essential services and supplies. The right of the society as a whole is, from its very nature, of much greater importance than that of an individual. In case of conflict between the two rights, the individual's right is subjected by our Constitution to reasonable restrictions in the larger interest of the society.”

18. 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 framers of the Constitution included 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 an 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.

19. Viewed thus, there is no ground to interfere in the impugned order of detention. The petition lacks merit and is **dismissed**, as such.

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

Jammu:
22.07.2025
Raj Kumar

(MA CHOWDHARY)
JUDGE

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