

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

HCP No.157/2024

Reserved on: 24.07.2025.

Pronounced on: 31.07.2025

Mohd Irfan, Age 27 years
S/O Tariq Hussain,
R/O Kahnal Bajarni, Tehsil Bhagwah,
District Doda

....Petitioner(s)/Appellant(s)

Through :- Mr. M. A. Bhat, Advocate.

V/S

1. The Union Territory of Jammu & Kashmir
Through Additional Chief Secretary to
Government, Home Department,
Civil Secretariat, Srinagar/Jammu
2. District Magistrate, Doda
3. Senior Superintendent of Police, Doda.
4. Superintendent, Central Jail, Kot Bhalwal, Jammu.

....Respondent(s)

Through :- Mr. Eishaan Dadhichi, GA

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

JUDGMENT

1. Petitioner namely **Mohd Irfan** S/O Tariq Hussain, R/O Kahnal Bajarni, Tehsil Bhagwah, District Doda (for short 'the detenue') has challenged the detention Order No.**PSA-04 of 2024 dated 27.11.2024** (impugned order), issued by respondent No.2, District Magistrate, Doda (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 against the 'Security of the State'.

2. Petitioner has raised many grounds to assail the impugned order. It is his contention that Detaining Authority has passed the detention order mechanically

without due application of mind; that the fate of the representation submitted by the petitioner was not communicated to the petitioner; that just one FIR was made the basis for passing the detention order, that too stale FIR, in which the petitioner is bailed out and is facing trial; that the order granting bail and seeking its cancellation was not brought to the notice of the District Magistrate; that non application of mind is writ large as there is reference of FIR No.42/2020 registered at P/S Pir Mitha, which is alien as the petitioner as he is not remotely connected with the said case FIR. 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 detinue is a strong motivator of Jihad and instrumental in instigating the youth of District Doda in particular and UT of Jammu and Kashmir to join militancy and propagate against the country; that the activities of the detinue have the potential of creating serious threats to the safety and security of our country; that in order to save the young generation and society from the clutches of the petitioner, it was, therefore imperative in order to prevent him from indulging in activities which are prejudicial to the security of the state to place him under the preventive detention; that the detention warrant along with grounds of detention was properly executed through PSI Arun Thakyal, I/C, P/P Bhagwah under proper acknowledgement of the detinue and he was fully made to understand in the language he understands; that the detinue was also informed that he can make representation to the Govt. as well as detaining authority 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 strictly been passed as per the provisions of J&K Public Safety Act. The respondents have produced the detention records in order to support 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 the fate of the representation submitted by the petitioner to the respondents was never communicated to him;
- (II) That there is non-application of mind on the part of the detaining authority in passing the detention order vis-à-vis reference of FIR which is alien to the petitioner;
- (III) That insufficient material, no compelling circumstances and vague DDRs and complaints were made basis for passing the impugned detention order;

5. Learned State Counsel, *ex adverso*, making reference to the grounds of detention, argued that the activities of the detainee were anti national and were posing threat to the security of the State; that detention ordered vide impugned order was in the public interest; that there is no necessity to give in detail the activities of the detainee as the order is preventive in nature not punitive or reformatory; that the representation of the petitioner was duly considered and rejected being found devoid of any merit and the result thereof was sent to the detainee; that there were number of complaints and DDR entries against the detainee; that even one case is sufficient to pass the detention order if the conduct

of the detainee poses serious threat to the security of the State; 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. The first ground projected by learned counsel for the petitioner is that the representation of the petitioner against the impugned order of detention has not been considered by the respondents thereby violating his statutory and constitutional rights. Even the outcome of the said representation was not informed to the petitioner. In support of his contention, the petitioner has placed on record a copy of the representation dated 06.12.2024 along with his writ petition (Page 68). He has also placed on record postal receipts dated 07.12.2024 (Annexure-VI), which indicates that the representation has been sent to the Additional Chief Secretary to Government, Home Department, Jammu and District Magistrate, Doda as well as Chairman, State Advisory Board under Public Safety Act, Jammu.

8. A perusal of the detention record reveals that the respondents have received the representation of the petitioner. This is evident from communication dated 21.12.2024, addressed by District Magistrate, Doda to the Principal

Secretary to the Govt. Home Department, J&K, Jammu. The detention record suggests that the said representation has been considered by the Government. The record shows that report regarding representation of the petitioner was called by the Government, whereafter it has been rejected. This is evident from communication dated 07.01.2025 addressed by Home Department of the Government to the District Magistrate, Doda.

9. The respondents have not placed on record anything to show that the order of rejection of representation was conveyed to the petitioner. The communication dated 07.01.2025 is an inter-departmental communication between Home Department and the District Magistrate. It is not coming forth from the record produced by the respondents as to whether the result of the representation has been conveyed to the petitioner. A further perusal of communication dated 07.01.2025 would show that the Superintendent Central Jail, Jammu was requested to inform the detenue about the disposal of the representation. However, there is nothing on record which would show that the result of the representation has been duly communicated to the petitioner. Since the petitioner has all along alleged that he was not informed the outcome of the representation submitted by him, the respondents ought to have placed on record, supporting material in this regard which may include receipt of communicating the result of the representation to the petitioner, which is conspicuously absent in the present case.

10. The Supreme Court in the case of [Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur & others](#)" (2021) 20 SCC 98, while dealing with the effect of failure to communicate the result of the representation has held that

failure in timely communication of the rejection of the representation is a relevant factor for determining the delay that the detainee is protected under [Article 22\(5\)](#). It has been further held that failure of the government to communicate rejection of detainee's representation in a time bound manner is sufficient to vitiate the detention order.

11. In the said case, the Supreme Court has further held that the delay in decision on the representation of the detainee amounts to an infringement of a valuable right which is available to a detainee in terms of provisions contained in [Section 13](#) of the Jammu & Kashmir Public Safety Act, which makes it obligatory on the detaining authority to communicate to the detainee the grounds on which the order of detention has been made within a maximum period of ten days from the date of detention and to afford him the earliest opportunity of making representation against the order of detention. The purpose of furnishing the grounds of detention within a maximum period of ten days is to enable a detainee to make a representation against the order of detention at the earliest opportunity. Thus, a duty is cast upon the detaining authority or the government to consider the said representation at the earliest opportunity. Failure to decide the representation of a detainee within a reasonable time in an expeditious manner, strikes at the valuable right of a detainee emanating from the provisions of [Section 13](#) of the Jammu & Kashmir Public Safety Act.

12. In the present case, the record shows that the District Magistrate, Doda received the representation of the petitioner on 16.12.2024 and the forwarded the copy of the representation on 21.12.2024 to the Home Department (J&K) for placing it before the Advisory Board. From perusal of the detention record

produced by the respondents, it is evident that result of consideration of representation has not been conveyed to the detainee. This is sufficient to vitiate the impugned order of detention.

13. The next ground contended by the petitioner that there is total non-application of mind on the part of the detaining authority in passing the detention order vis-à-vis reference of FIR No.42/2020 U/S 17, 18, 20, 21, 40 ULA of Police Station Peer Mitha, Jammu is concerned, a perusal of the record would show that the said FIR is not remotely relatable to the petitioner. So, there is a force in the above contention of the petitioner, which, thus vitiates and makes the detention order unsustainable and liable to be quashed on this count alone.

14. So far as the last ground that vague DDR entries and complaints have been lodged against the petitioner is concerned, a perusal of the ground of detention would show that those have not culminated in any criminal cases. Merely recording complaints to bind down the petitioner for good conduct and DDRs alleging some acts 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.

15. Regarding the complaint u/s 126/136 BNSS is concerned, perusal of the execution report would show that detainee was provided detention order, notice of detention, grounds of detention, dossier of detention, and other documents.

However, respondents have failed to substantiate with regard to the detailed documentation made available to the detainee so as to enable him to file a meaningful and effective representation to the detaining authority or the Government, so much so that no record pertaining to preventive action under section 126 BNSS has been provided to the detainee. Since the petitioner has all along denied that relevant material was supplied to him, the respondents ought to have filed an affidavit of the executing officer to controvert the above allegations, which has ostensibly not been done by the respondents in the instant case.

16. 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.”

17. Having regard to the facts that firstly, outcome of the representation was not communicated to the petitioner; secondly, reference of irrelevant FIR not pertaining to the petitioner, therefore, non application of mind while passing the detention order impugned; and thirdly whole of the material not supplied to the detainee, 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 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.

18. Viewed thus, the petition is allowed and the impugned detention Order No. **PSA-04 of 2024 dated 27.11.2024**, passed by respondent No. 2, District Magistrate, Doda, is hereby quashed. The detainee- **Mohd Irfan** S/O Tariq Hussain, R/O Kahnal Bajarni, Tehsil Bhagwah, District Doda is directed to be released from the preventive custody forthwith, if not required in any other case(s). No costs.

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

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

Jammu:
31.07.2025
Raj Kumar

(MA CHOWDHARY)
JUDGE

