

Sr. No. 61

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No.158/2024

Reserved on: 14.08.2025

Pronounced on: 21.08.2025

Abdul Qayoom, Age 45 years
S/O Sher Mohd,
R/O Village Jajote Kandou,
Tehsil Qila Darhal, District Rajouri,
Through son, **Zahid Hussain**

....Petitioner(s)

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

V/S

1. The Union Territory of Jammu & Kashmir
Through Principal Secretary to Govt.,
Home Department, Civil Secretariat, Jammu
2. District Magistrate, Rajouri
3. Senior Superintendent of Police, Rajouri.
4. Superintendent, District Jail, Kishtwar.

....Respondent(s)

Through :- Mr. Dewakar Sharma, Dy. AG

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

JUDGMENT

1. Petitioner namely **Abdul Qayoom** S/O Sher Mohd, R/O Village Jajote Kandou, Tehsil Qila Darhal, District Rajouri (for short 'the detenue') has challenged the detention Order No. **DMR/INDEX/13 of 2024 dated 15.11.2024** (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 which is highly prejudicial to the maintenance of 'public order'.

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 never made known to the petitioner; that two remote FIRs of the year 2011 and 2014 and other two FIRs regarding family disputes were made the basis for passing the detention order, besides some vague complaints; that the petitioner was not informed about his right to file representation to the detaining authority as also the time frame within which the said representation must be filed; that whole of the material on which the detention order was passed was neither supplied to the detainee nor explained to him in the language he understands; that the grounds of detention are replica of the police dossier. 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 OGW/surrendered militant and criminal activities of the petitioner have created terror and law and order problem in the area and are causing grave threat to the maintenance of public order in the whole District in general and Tehsil Qila Darhal in particular, which made it imperative for detaining authority to detain him under preventive detention; that the detention warrant along with grounds of detention was properly executed through PSI Arun Kumar of P/S Nowshera 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. as well as detaining authority

against the detention order, if he so desires; that the representation filed on behalf of the petitioner was duly considered and rejected and result whereof was duly conveyed to the petitioner through the jail authorities; 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. 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 lend support the contentions raised in the counter affidavit.

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

5. The detention record, as produced, reveals that the detainee was involved in following cases registered at Police Station Nowshera:-

- 1) FIR No. 43/2011; U/S 2/3 E&IMCO
- 2) FIR No. 183/2014; U/S 121/122 RPC,
7/25 Indian Arms Act, 2/3 E&IMCO
- 3) FIR No.157/2023; U/Ss 452/323/354/34 IPC
- 4) FIR No.72/2024; U/Ss 341/323/504/506/147 IPC

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

- i) Three Complaint U/S 107/110 CRPC
- ii) Complaint U/S 126/136 BNSS

Involvement of the detainee in the aforementioned cases appears to have heavily weighed with the detaining authority, while passing impugned detention order.

6. 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 the petitioner was not informed that he has a right to file representation to the detaining authority and also time frame is not specified in the detention order within which he can approach the detaining authority;
- (III) that the entire material forming the basis of the grounds of detention was neither supplied nor explained to him in the language he understands;
- (IV) That grounds of detention are replica of police dossier;

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 28.11.2024. He has also placed on record postal receipt dated 29.11.2024 (Annexure-VI), which indicates that the representation has been sent to the Additional Chief Secretary to Government,

Home Department, Jammu as well as Chairman, State Advisory Board under J&K 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 04.12.2024, addressed by Deputy Secretary to Government to the Principal Secretary to the Chairman, Advisory Board, PSA/PIT NDPS Acts, 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 23.12.2024 addressed by Home Department of the Government to the District Magistrate, Rajouri.

9. There is nothing on record to show that the order rejecting representation was conveyed to the petitioner. The communication dated 23.12.2024 (supra) is an inter-departmental communication between Home Department and the District Magistrate. It is not forthcoming 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 (supra) would show that the Superintendent District Jail, Kishtwar, was requested to inform the detenue about the disposal of the representation. However, when enquired whether any supporting document is placed on record, which would show that the result of the representation was communicated to the petitioner, this court has drawn a blank from the respondents in this regard. 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 detinue is protected under [Article 22\(5\)](#). It has been further held that failure of the government to communicate rejection of detinue'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 detinue amounts to an infringement of a valuable right. This right is available to a detinue 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 detinue 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 detinue 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 detinue 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, it is pellucid that respondents have failed to communicate the petitioner the result of the representation, as is discussed in the preceding paragraphs. This breach in the statutory safeguard, is sufficient to vitiate the impugned order of detention.

13. Second ground as argued is that the detainee was not informed about his right to make representation before the detaining authority thereby violating his statutory and constitutional rights. It is translucently clear from a perusal of the impugned detention order that the Detaining Authority has not communicated to the detainee that he can make representation to the detaining authority against the impugned detention order for its revocation. The above fact of not communicating the detainee of his right to approach the detaining authority itself for revocation of the impugned detention order is conspicuously missing, on a bare reading of the communication No.DMR/JC/2024-25/2366-66 dated 15.11.2024 issued by the District Magistrate, Rajouri to the detainee, which shows that *‘the detainee may make representation against the detention order mentioned above issued by the undersigned to the Government, if so desired.*

14. 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.”

15. 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, at the first hand, that he has right to file representation before the detaining authority as well and secondly, the detaining authority should have informed the detainee 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. It is 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. 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.

16. The third ground urged by the learned counsel for the detainee that the entire material forming the basis of the grounds of detention was neither supplied nor explained to him in the language he understands, has been contradicted by respondent No.2 in its affidavit. The detention record produced by the respondents contains report of execution as also receipt executed by the detainee. According to the receipt, the detainee has received a total of 63 leaves comprising

copy of detention order, and other documents. Since the petitioner has denied that entire material has been supplied and explained to him in the language he understands, the respondents ought to have filed affidavit of executing officer in this regard, which on the perusal of the record would show that same has not been done, thus vitiating the impugned detention order. It can, thus, safely be assumed that all the material, including complaints U/S 107/110 CrPC, was not supplied to the petitioner on the basis of which detention order is passed.

17. 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 detinue was not supplied the copies of material, based on which detention order was passed, which amounted to denial of representation to the detinue and infraction of a valuable constitutional right guaranteed to the detinue 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/detinue the material as regards the proceedings [u/s 107](#) 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 there from 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](#) of Cr.P.C against petitioner forming the edifice for issuance of impugned detention order has not been supplied to the detinue, therefore, the petitioner/detinue'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.

18. The last ground, which has been urged by the learned counsel for the detainee 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 photo-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.

19. 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.”

20. 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 communication of the result of the representation to the detainee; thirdly, 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; fourthly, 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.

21. Viewed thus, the petition is allowed and the impugned detention Order No. **DMR/INDEX/13 of 2024 dated 15.11.2024**, passed by respondent No. 2, District Magistrate, Rajouri, is hereby quashed. The detainee- **Abdul Qayoom** S/O Sher Mohd, R/O Village Jajote Kandru, Tehsil Qila Darhal, District Rajouri is directed to be released from the preventive custody forthwith, if not required in any other case(s). No costs.

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

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

(MA CHOWDHARY)
JUDGE

Jammu:
21.08.2025
Raj Kumar

Whether the order is speaking? Yes/No.

Whether the order is reportable? Yes/No.