

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 160/2024

Reserved on: **25.09.2025**
Pronounced on: **14.10.2025**
Uploaded on: **14.10.2025**
Whether operative part of full
judgment is pronounced **Yes**

Javid Iqbal Reshi

.... Petitioner/Appellant(s)

Through:- Mr. Muzaffar Iqbal Khan, Advocate

V/s

**Union Territory of J&K and
others**

.....Respondent(s)

Through:- Mr. Dewakar Sharma, GA

CORAM:HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGMENT

01. The petitioner has challenged Detention Order No. DMP/PSA/22 of 2024 dated 13.11.2024 passed by the District Magistrate Poonch, (hereinafter to be referred to as 'Detaining Authority'), whereby the detenu-Javid Iqbal Reshi has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial and detrimental to the maintenance of the public order. The order of detention has been assailed by him through his wife-Khalida Kouser.

02. The detention is sought to be quashed, mainly on the grounds that: (i) all the material relied upon by the Detaining Authority has not furnished to the detenu, depriving him to make an effective representation to the Government/detaining authority; (ii) respondent No. 2 on the basis of some

dossier submitted by SSP Poonch without application of mind and without evaluating the allegations has passed the impugned detention order; (iii) There is nothing against the detenu except four FIRs, out of which, three FIRs under investigation and in FIR No. 90/2016, there is a private dispute between the complainant and the detenu; (iv) respondent No. 2 while ordering detention of the detenu has not complied with the provisions of the Public Safety Act as the order of detention is required to be served upon detenu before arrest but all the information and the documents has been given after taking him into custody; (v) respondent No. 2 has not mentioned the period for which the detenu has been detained under PSA which shows that the detenu has been detained forever. The detention order is without application of mind and this type of lapse is a criminal negligence; (vi) the respondent No. 2 has passed the detention order and neither informed the detenu about his detention nor supplied the detention order and grounds to the detenu in the language, he could understand; and (vii) the detaining authority has not informed the detenu about the period within which he was supposed to make a representation, therefore, not informing him the time makes the entire communication meaningless.

03. The respondents have filed their counter affidavit and produced the detention record. It is submitted that none of the legal right of the petitioner has been infringed and the detenu has not availed remedy by filing representation despite communication of his right. The grounds of detention and supporting material relied upon by the Detaining Authority while passing the order of detention has been provided to the detenu within the

prescribed time and same has been read over and explained to him in the language which he understood. They further submit that the impugned order was approved by the Government for a period of three months in the first instant which was extended for further period of three months. Thereafter the detention period was again extended for a period of three months. The conduct of the detenu in past including involvement in FIRs was one of the reason considered by the detaining authority, therefore, his detention was necessary. The detenu was informed of his right to file a representation.

04. Heard learned counsel for the parties at length and also perused the record.

05. The District Magistrate Poonch has detained the detenu on the following grounds of detention :-

“Whereas, the Senior Superintendent of Police, Poonch has reported in the dossier that the subject is resident of village Fatehpur, Tehsil Mandi, District Poonch. The criminal activities and anti-national activities having seditious overtone of the subject have created disturbance, fear and an atmosphere of insecurity in the peaceful living of innocent general public. The criminal acts of subject include assault on public and provoking /instigating the general public against the Government and promotion of secessionist ideology. These activities are prejudicial to the maintenance of public order and safety/security of the lives and property of citizens. The acts of the subject have posed serious threat to the maintenance of public order in the District. The criminal/anti-social activities of the subject have posed serious threat to the safety and security of public in general and have very serious repercussions for the society. The subject is also involved in the following FIRs:

1. FIR No. 90/2016 U/S 341/147/354/323 RPC of Police Station Mandi (under trial).
2. FIR No. 72/2018 U/S 124-A RPC of Police Station Mandi (under investigation).
3. FIR No. 54/2019 U/S 124-A RPC of Police Station Mandi (under investigation).
4. FIR No. 57/2024 U/S 126(2)/115(2)/125/191(2)/307/352/351(2) BNS of Police Station Mandi (under investigation).”

06. First ground that has been argued during the course of arguments is that there has been non-application of mind on the part of the detaining authority as the grounds of detention are more or less replica of the dossier.

07. From perusal of the record, the ground projected appears to have substance. The grounds of detention, in this case are, in fact, a replica of dossier with interplay of some words here and there. This exhibits non-application of mind and in the process deriving of subjective satisfaction has become a causality. While formulating the grounds of detention, the detaining authority has to apply its own mind. It cannot simply reiterate whatever is written in the dossier. In this regard, the observations of the Hon'ble Supreme Court in the case of ***"Jai Singh and ors vs. State of J&K"*** (AIR 1985 SC 764), are reproduced hereunder:

"First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited "The subject is an important member of"

Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, S/o Ram Singh, resident of village Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find proof of non-application of mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner."

08. It is pertinent to mention here that prior to Government's approval of detention order, which is to be done within 12 days of detention order, in terms of Section 8 (4) of the J&K Public Safety Act, 1978 (for short "Act of

1978”) detaining authority also has power to revoke detention order. This power is clearly relatable to Section 21 of the General Clauses Act, Samvat, 1977, which has been saved by virtue of Section 19 of the Act of 1978. Till the Government’s approval to detention order is granted, since the detaining authority had the power to revoke the detention order, a representation could have been made to the detaining authority for revoking detention order. It was incumbent upon detaining authority to have informed detenu that he could also make a representation to detaining authority, if he so desired. Since detaining authority did not communicate to detenu that such a representation could be made to detaining authority, this in itself amounted to infraction of provisions of Section 13 of the Act of 1978 read with Article 22(5) of the Constitution of India. Reliance in this regard is placed on ***State of Maharashtra and others v. Santosh Shankar Acharya, (2000) 7 SCC 463***. In the present case, detaining authority did not inform the detenu that the detenu, independent of his right to file a representation against his detention to the Government, has also right to submit a representation to detaining authority till detention was considered by the Government and accorded approval thereto. Detaining authority has, thus, violated Constitutional and Statutory rights of detenu, guaranteed under Article 22(5) of the Constitution of India and Section 13 of the Act of 1978 and resultantly vitiates impugned detention.

09. The Hon’ble Division Bench, while considering a similar issue in ***Tariq Ahmad Dar vs. State of J&K and others, 2017 (II) SLJ, 665 (HC)***

and relying on the judgment of the Constitutional Bench in ***Kamlesh Kumar***

Ishwardas Patel vs. Union of India, (1995) 4 SCC 51, has held as under:

“..... This being the position, it goes without saying that even under the Maharashtra Act , a detenu will have a right to make a representation to the detaining authority so long as the order of detention has not been approved by the State Government and consequently non-communication of the fact to the detenu that he has a right to make representation to the detaining authority would constitute an infraction of the valuable constitution right guaranteed to the detenu under Article 22 (5) of the Constitution and such failure would make the order of detention invalid. We, therefore, see no infirmity with the impugned judgment of the Full Bench of the Bombay High Court to be interfered with by this Court. These appeals accordingly fail and stand dismissed.”

“From a reading of the said decision, it is abundantly clear that non-communication of the fact that the detenu can make a representation to the detaining authority, till the detention order is not approved by the government, would constitute an infraction of a valuable Constitutional right guaranteed under article 22 (5) of the Constitution of India as also of the right under Section 13 of the Jammu and Kashmir Public Safety Act, 1978. Failure of such non communication would invalidate the order of detention”.

10. There is force in the submission of learned counsel for petitioner that there is no live link between the last activity and impugned detention order because FIR No. 90/2016 has been taken into account by Detaining Authority while passing order impugned, unmindful of the fact that there is nothing against the detenu except four FIRs, out of which, three FIRs under investigation and in FIR No. 90/2016, there is a private dispute between the complainant & the detenu and there have been no further activities alleged against detenu.

11. In view of the aforesaid facts and circumstances and without advertng to the other grounds, the impugned order of detention is liable to be quashed. The Detention Order No. DMP/PSA/22 of 2024 dated 13.11.2024 passed by the District Magistrate Poonch, against the detenu is,

accordingly, **quashed**. As a corollary, respondents are directed to release the detenu-Javid Iqbal Reshi forthwith, provided he is not required in any other case.

12. Detention record be handed over to learned counsel for the respondents by the Registry forthwith.

(Vinod Chatterji Koul)
Judge

Jammu
14.10.2025
Ram Murti

