

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

HCP No.02/2025

Reserved on: 03.07.2025.

Pronounced on: 14.07.2025

Shakia Kouser, Age 30 years
W/O Javed Iqbal,
R/O Ward No.1, Qazi Mohalla, Behrote,
Tehsil Thanna Mandi, District Rajouri

....Petitioner(s)

Through :- Mr. Rupak Ratta, Advocate.

V/s

1. The Union Territory of Jammu & Kashmir
Through Commissioner/Secretary to Govt.,
Department of Home Affairs,
Civil Secretariat, Srinagar/Jammu
2. The District Magistrate, Rajouri
3. Senior Superintendent of Police, Rajouri.
4. Incharge/Superintendent,
Central Jail, Jammu.

....Respondent(s)

Through :- Mr. Dewakar Sharma, Dy. AG.

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

JUDGMENT

1. Petitioner challenged the detention order No.**DMR/INDEX/11 of 2024** **dated 06.11.2024** (impugned order), issued by respondent No.2-District Magistrate, Rajouri (hereinafter to be referred as “the detaining authority”), whereby her husband namely Javed Iqbal, S/O Gulab Hussain Qazi, R/O Ward No.01, Qazi Mohalla Behrote, Tehsil Thannamandi, District Rajouri (for short ‘the detenue’) has been placed under preventive detention, purportedly, in order to prevent him from acting in any manner prejudicial to the maintenance of ‘public order’.

2. Petitioner contends that the Detaining Authority passed the impugned detention order, primarily based on FIR No.61/2006, which is more than 19 years old and in which detenue was neither named nor sent for any trial; that the dossier and grounds of detention would show that the respondents have relied heavily on the said FIR for passing the impugned detention order; that whole of the material, particularly, copy of FIR was not supplied to the detenue, which prevented him from making an effective and meaningful representation to the detaining authority or the government against the impugned detention order; that the detenue was never made to understand the detention order and grounds of detention, which formed the basis of his detention in the language he understands; that there is an unexplained delay of 22 days in the execution of detention warrant, as the impugned detention order passed on 06.11.2024 was got executed on 28.11.2024, which shows there is little or no apprehension in the minds of the respondents that the detenue can pose a threat to the 'public order' or 'state security'; that on the basis of mere apprehension formed 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' stating that the detenue is an Over Ground Worker (OGW) in the records of Criminal Investigation Department as he was arrested in the year 2003 for his involvement in the Militancy Activities but due to lack of evidence, he was released; that the activities of the detenue are anti-national, anti-social and prejudicial to the security and peaceful atmosphere of Darhal and its adjoining areas, and therefore, there was dire need to prevent the

detenue from such activities; that the detenue was charged in case FIR No.61/2006 U/s 307/120-B/122 RPC, 124-A and 7/27 Arms Act registered with Police Station Darhal; that the detention order and grounds of detention were handed over to the detenue and the same were read over and explained to him in the language he understands; that the grounds raised by the detenue 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. Rupak Ratta, learned counsel appearing for the petitioner, making reference to the grounds in the petition, that Detaining Authority though referred earlier activities of the year 2003 and an FIR of the year 2006 and many vague and unspecific allegations against the Detenue, as found in the Grounds of Detention, what was placed before it was only the copies of reports in those matters. Had the Authorities placed the outcome of such matters vis-à-vis name of detenue not mentioned in the FIR and outcome of that very FIR in which accused has earned acquittal, there would have been a different conclusion than the one which is challenged in the present petition; that the Detenue has not been copies of FIRs, statement of witnesses, and other relevant materials, which is mandatory as per the provisions of Public Safety Act; that there is total non application of mind by the detaining authority as barring two incidents of the year 2003 and 2006 alleged against the detenue, there is no single case/complaint against the detenue.

5. Learned counsel for the petitioner, while making his submissions in line with the case set up in the petition reiterated all the grounds, would further

contend that even though the impugned order of detention came to passed on 06.11.2024 and the detenue was available for its execution, yet the respondents failed to execute the same with due dispatch and delayed the execution of the order of detention, which nullifies the object of the preventive detention ordered against the detenue and consequently, renders the impugned order legally invalid.

6. Mr. Sharma, learned State Counsel, *ex adverso*, argued that the contentions made on behalf of the petitioner that whole of the material was not provided to the detenue is misplaced as all the documents relied upon including dossier prepared by the police had been provided to him and also that the receipt at the time of the execution of the warrant is available on the record to substantiate that whole of the record was provided to the detenue and that in such a situation the detenue cannot be stated to have been incapacitated to file an effective and meaningful representation against any detention; that the detention order and grounds of detention were explained to the detenue, at the time of execution of the detention warrant and that he has a right to file representation to the Government. In such a situation, the grounds agitated seeking quashment of the impugned order are not of any consequence as whole of the material was also provided and the detenue was also informed that he has a right of filing representation against his detention to the Government of Jammu & Kashmir; that in regard to contention of the counsel for the detenue that there is unexplained delay in execution of detention warrant, it is wholly untenable because the Public Safety Act does not stipulate any time limit for execution of

warrant. It was finally prayed that the petition be rejected and the impugned detention order be upheld.

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

8. Insofar as the aforesaid plea of the counsel for the petitioner qua the delay in execution of the order is concerned, it is not in dispute that the impugned order, passed on 06.11.2024, as per the detention record made available by the counsel for the respondents, indisputably, was executed on 28.11.2024, by the executing officer, namely, PSI Gurjot Singh of Police Station Darhal, Rajouri. Neither in the detention record nor in the counter affidavit filed by the respondents, has been explained, as to why the impugned order came to be executed belatedly after more than 22 days. No cogent explanation or reason has been provided or stated in the detention record or else in the counter affidavit filed to the petition. Insofar as delay in execution of the detention order is concerned, the law is no more *res integra* and stands settled by the Apex court in case titled “**Sushant Kumar Banik v State of Tripura**” reported in 2022 SCC Online SC 1333, wherein in paras 13, 14 & 15, following has been laid down:

“13. There is indeed a plethora of authorities explaining the purpose and the avowed object of given to detection in express and explicit language. We think that all those decisions of this Court on this aspect need not be recapitulated and recited. But it would suffice to refer to the decision of this court in Ashok Kumar v. Delhi Administration & Ors. reported in (1982) 2 SCC 403, where the following observation is made.”

“Preventive detection 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.”

14. In view of above object of preventive detention, it becomes very imperative on the part of the detaining authority as well as executing authorities to remain vigilant and keep their eyes skinned, but not to turn a blind eye in passing the detention order at the earliest from the date of the proposal and executing the detention order, because any indifferent attitude on the part of the detaining authority or executing authority would defeat the very purpose of preventive detention and turn the detention order as a dead letter and frustrate the entire proceedings.

15. The adverse effect of delay in arresting a detainee has been examined by this court in a series of decisions and this court had laid down the rules in clear terms that an unreasonable and unexplained delay in securing a detainee and detaining him vitiates the detention order. In the decisions we shall refer hereafter, there was a delay in arresting the detainee after the date of passing of the order of detention. However, the same principles would apply even in the case of delay in passing the order of detention from the date of the proposal. The common underlying principle in both situations would be ‘live and proximate link’ between the grounds of detention & the avowed purpose of detention.”

9. The Supreme Court has, in the case of **Manju Ramesh Nahar v. Union of India & Ors.**, AIR 1999 SC 2622, while considering a similar situation observed as under:

“This object can be achieved if the order is immediately executed. If, however, the authorities or those who are responsible for the execution of the order, sleep over the order and do not execute the order against the person against whom it has been issued, it would reflect upon the satisfaction of the detaining authority and

would also be exhibitve of the fact that the immediate necessity of passing that order was wholly artificial or non-existent.”

In another decision in **SMF Sultan Abdul Kader v. Jt. Secy. To Govt. of India & Ors, (1998) 8 SCC 343**, the Supreme Court has held unexplained delay in execution of the order of detention to be fatal.

10. In the instant case, the impugned detention order was issued on 06.11.2024 but the same has been executed on 28.11.2024 i.e. after a period of about 22 days. There is no explanation on the part of the respondents regarding delay in execution of the impugned detention order, which shows there was no urgency for taking resort to preventive detention of the Detenue. The unexplained delay in execution of the warrant of detention upon the Detenue renders the subjective satisfaction of the detaining authority shrouded in doubt. Consequently, the impugned order of detention on the ground of delay in execution without attributing any reason to the detenue, such as, having been not available or absconded, is rendered unsustainable in law.

11. So far as the next ground of challenge that the stale incident of the year 2003 and FIR of the year 2006 are made basis for passing the detention order, though consciously knowing that detenue was let go due to lack of evidence against him in the incident of 2003 and so far as FIR of 2006, his name not mentioned and subsequent acquittal of accused in case involving FIR 2006, are concerned, this Court is of the view that the grounds of detention do not reflect that it was imperative to take the detenue into preventive detention for the sake of preservation of ‘public order’ as the cases that have been considered are irrelevant and if the necessity of detaining the detenue on the

basis of those cases was essential, then the order of detention or the grounds of detention should have reflected why such a course of action was not resorted to earlier by the detaining authority as it is not disputed that not a single case was registered against the detainee after the year 2006.

12. The criminal cases registered in the year 2003 and 2006 could not have been made the basis to invoke preventive detention as the cases had no live and proximate link with the detention order, as has been held by the Apex Court in [Sama Aruna v. State of Telangana and another](#), (2018) 12 SCC 150, relevant paragraph whereof is reproduced herein below:

"22. We are of the view, that the detention order in this case is vitiated by taking into account incidents so far back in the past as would have no bearing on the immediate need to detain him without a trial. The satisfaction of the authority is not in respect of the thing in regard to which it is required to be satisfied. Incidents which are stale, cease to have relevance to the subject-matter of the enquiry and must be treated as extraneous to the scope and purpose of the statute."

This was further affirmed by the Supreme Court in [Khaja Bilal Ahmed v. State of Telangana](#), (2020) 13 SCC 632, in which order of detention was issued on 2nd November 2018 and detaining authority had delved into the history of cases involving the appellant-detenu therein from the years 2007-2016, despite the subjective satisfaction of the Officer not being based on such cases. In quashing such an order, it was observed:

"23..... If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in

the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the Appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future."

13. The impugned detention order was passed on a reference of two criminal cases- one registered in the year 2003 and other in the year 2006, cannot be considered to be just ground for invoking preventive detention in the year 2024, after a gap of more than 19 years. Thus, there being no live link or proximity, the impugned order is not sustainable. The Supreme Court has held that the order of detention must not be based upon stale events and the relevant observations

made by the Supreme Court in [Ameena Begum v. State of Telangana and others](#), (2023) 9 SCC 587, are as under:-

"17. In a different context, we may take note of the decision in [Sama Aruna vs. State of Telangana](#)¹¹, where, S.A. Bobde, J. (as the Chief Justice then was) while construing the provisions of the Act, held:

"16. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account." In holding that the order of detention therein was grounded on stale grounds, the Court held that:

"The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it."

14. Another ground agitated on behalf of the Detenu is that he was not provided whole of the material, which was based by the detaining authority to pass the impugned order and that he was not made to understand the contents of the detention warrant and the grounds of dossier in the language he understands is concerned. Though there is receipt of the material on the record, but to substantiate their claims that they were duly explained to the detenue, the contents of the warrant and grounds of dossier in the language he understands, they should have filed an affidavit by the executing officer to that effect.

15. 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 interest of the security of the State or public order, then the liberty of the individual must give way to the larger interests of the nation. The Hon'ble Apex Court in **Smt. Icchu Devi Choraria v. Union of India & Ors. (AIR 1980 SC 1983)** on personal liberty 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.

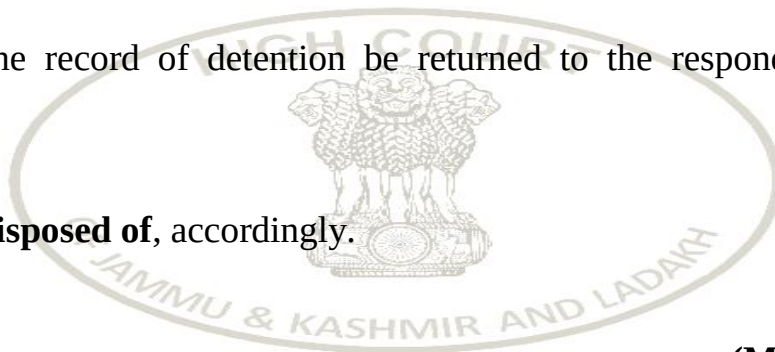
This is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detainee even though the detention may have been valid till the breach occurred.”

16. Having regard to the facts that firstly whole of the record particularly copy of FIR of the year 2006 was not provided to the detainee which is even not available on record produced by the respondents , secondly, there is an unexplained and inordinate delay in execution of the detention warrant and thirdly the absence of live and proximate link to the activities attributed to the detainee in the year 2003 and 2006 and the impugned detention order passed, after a period of more than 19 years in the year 2024, 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 whole of the material was not provided to the detainee disabling him from making representation against his detention to both the detaining authority as well as government, inordinate and unexplained delay in execution of the impugned detention order, indicating no necessity to invoke the same; and that impugned detention order was not permissible to be passed on references to the stale cases, after a period of 19 years. In this backdrop, it is established that the detaining authority has passed the impugned detention order mechanically in an arbitrary manner, without application of mind and is, thus, vitiated being liable to be quashed.

17. For the foregoing reasons and observations made hereinabove, in view of the facts of the instant case and the law laid down by the Hon'ble Apex Court as referred above, the order of detention, impugned herein, does not sustain and is found liable to be quashed. Accordingly, Petition is allowed and the impugned order of detention bearing No. **DMR/INDEX/11 of 2024 dated 06.11.2024**, passed by respondent No. 2, District Magistrate, Rajouri, is hereby quashed. The detenue- **Javed Iqbal**, S/O Gulab Hussain Qazi, R/O Ward No.01, Qazi Mohalla Behrote, Tehsil Thannamandi, District Rajouri is directed to be released from the preventive custody forthwith, if not involved in any other case(s). No order as to costs.

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

19. **Disposed of**, accordingly.



(MA CHOWDHARY)
JUDGE

Jammu:
14.07.2025
Raj Kumar

Whether the order is speaking? **Yes**

Whether the order is reportable? **Yes**