

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

HCP No. 01/2025
CM No.07/2025

Reserved on: 29.05.2025
Pronounced on: 06.06.2025

Adil Fareed
S/O Late Fareed Ahmed Butt,
R/O Runta, Tehsil Bhaderwah,
District Doda-182222
through his sister Ashfana Fareed

.....Petitioner(s)

Through :- Mr. Sheikh Faraz Iqbal, Advocate.

v/s

1. UT of J&K through
Principal Secretary,
Home Department, Jammu, J&K.
2. District Magistrate, Doda.

.....Respondent(s)

Through :- Mr. Eishaan Dadhichi, GA.

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

JUDGMENT

- 01.** District Magistrate, Doda (hereinafter called “Detaining Authority”) in exercise of powers under Section 8(1)(a) of the Jammu and Kashmir Public Safety Act, 1978 (for short, “Act of 1978”) passed the detention Order No. PSA/03 dated 23.11.2024 (for short ‘impugned order’), in terms whereof, the petitioner Adil Fareed S/O Late Fareed Ahmed Butt R/O Runta, Tehsil Bhaderwah, District Doda (for short ‘detenue’) has been detained.
- 02.** The impugned detention order has been challenged through the medium of the instant petition, allegedly having been passed in breach of the provisions of Article 22(5) of the Constitution of India read with Section 13(1) of the J&K Public Safety Act, 1978.

- 03.** It has been contended by the petitioner that the impugned order of detention has been passed by the detaining authority without application of mind, inasmuch as, the FIRs mention whereof is made in the grounds of detention, are the same which formed the grounds of petitioner's earlier detention vide Order No.126/DM/DODA/PSA/2022 dated 07.10.2022 but this fact is not recorded in the grounds of detention and there were no compelling circumstances for the detaining authority to pass the impugned order of detention; that the detaining authority was not sure as to whether alleged acts of the petitioner fall under the category of acts "prejudicial to the maintenance of public order" or under the category of acts "prejudicial to the security of the State".
- 04.** The impugned order of detention has further been challenged on the ground that whole of the material forming grounds of detention has not been furnished to him, as a result of which, he has been unable to make an effective representation against the order of detention; and that even the representation which was made by the petitioner on 14.12.2024 to the jail authorities was not considered; that the petitioner was not given the translated version of the material as a result of which he was unable to understand the technical language of the grounds of detention. Thus, according to the petitioner, his vital statutory and constitutional rights have been violated.
- 05.** The respondents have resisted the petition by filing a counter affidavit. In their counter affidavit, the respondents have submitted that all the safeguards have been adhered to and complied with by the detaining authority and that the order has been issued validly and legally; that the conduct of the petitioner is posing threat to the maintenance of public

order, which required the authorities to detain him. Previously 04 FIRs were registered against him at Police Station Bhaderwah and despite being detained earlier also, the petitioner did not mend his ways that led to his detention under PSA; that whole of the material forming basis of grounds of detention has been supplied to the petitioner and the grounds of detention were read over and explained to him in the languages he understands. According to the respondents, the grounds urged by petitioner are legally misconceived, factually untenable and without merit. Assertion regarding non consideration of representation dated 14.12.2024 does not pertain to the impugned detention order rather it relates to earlier detention order No.126/DM/DODA/PSA/2022 dated 07.10.2022.

- 06.** In their counter-affidavit, the respondents further assert that the detainee was ordered to be detained under the provisions of the Jammu & Kashmir Public Safety Act, 1978, with due application of mind. They contend that none of the statutory, legal, or fundamental rights of the petitioner has been violated. The detention warrant, grounds of detention, and other documents (totaling 142 pages) were read over to the detainee in English and explained to him in Urdu/Hindi, which he fully understood. Subsequently, the said copies were provided to him. The respondents further maintain that the petitioner was detained under the Jammu & Kashmir Public Safety Act, due to his repeated and continuous involvement in illegal and criminal activities, including bovine smuggling, which were prejudicial to the maintenance of peace and public order in District Doda. In order to support their contentions, the respondents have produced the detention record.

- 07.** I have heard learned counsels for the parties at length, perused the material on record including the detention record and considered the matter.
- 08.** Though many grounds have been urged by the petitioner in his petition, however, during the course of arguments, the learned counsel restricted his arguments to the following grounds only:-
- i) Non-application of mind by the detaining authority;
 - ii) Reference of old cases with no proximity and live link to base the detention order; and
 - iii) The detaining authority not informing the detinue about his right to file representation to it and non-consideration of the representation by the Government of J&K.
- 09.** Learned counsel for the petitioner argued that there has been lack of application of mind on the part of the detaining authority while passing the impugned order of detention. In this regard, contention of the learned counsel for the petitioner is three folds; i) the FIRs mention whereof is made in the grounds of detention, are the same which formed the grounds of petitioner's earlier detention vide order No.126/DM/DODA/PSA/2022 dated 07.10.2022; ii) that a perusal of the grounds of detention would reveal that the detaining authority was not sure as to in which category the alleged acts of the petitioner fall; and iii) that the representation made by the petitioner on 14.12.2024 to the jail authorities was not considered.
- 10.** In the above context, if we have a look at the grounds of detention, there is a mention of as many as four (04) FIRs viz. i) FIR No.127/2018 for offences under Section 188 RPC 03 PC Act of Police Station Bhaderwah; ii) FIR No.28/2021 for offences under Section 188 IPC, 11 PC Act of

Police Station Bhaderwah; iii) FIR No.82/2021 for offences under Section 188 IPC, 11 PC Act of Police Station Bhaderwah; & iv) FIR No.08/2022 for offences under Sections 8/21 NDPS Act of Police Station Bhaderwah.

11. Besides the cases registered vide aforesaid FIRs, the police also recorded Daily Dairy Reports (DDR) at Police Station Bhaderwah on 22.05.2024, 14.06.2024, 16.06.2024, 07.07.2024, 23.10.2024 & 26.10.2024. In almost all these DDRs, it was recorded that the petitioner used to buy and sell cattle illegally and number of FIRs have already been registered against him. He is trying to increase the illegal business of narcotic drugs in Bhaderwah town and also indulging the youth and children of the town in this menace and various FIRs have also been registered against him. Strict surveillance has been kept on him.
12. From counter affidavit filed by the respondents and the record produced by them, it is apparent that the detaining authority has considered four cases registered vide different FIRs from the years 2018 to early 2022, which had been made basis for the detention of the detainee on an earlier occasion. The detainee, as per the submission of his counsel, had undergone the detention for the full term as he had chosen not to challenge the same. Though there are as many as five (05) DDRs recorded at Police Station Bhaderwah and Police Post Bhala falling under its jurisdiction, however, on perusal of all the DDRs, it is clear that no specific activity has been attributed to the detainee and only general observation has been made apprehending his involvement in future in view of his past conduct particularly laying focus that he was involved in the sale and purchase of cattle, which could lead to a communal divide. The detaining authority has not made any reference that the detainee was

also detained earlier and had undergone the detention, which shows that the detaining authority had not applied its mind to whole of the facts relating to the detention of the detainee depriving his cherished right of personal liberty. The DDRs being vague with regard to alleged activities of the detainee, the four cases are left to be considered, for which, an earlier detention order had been passed, therefore, there was no proximate and live link relating to the prejudicial activities alleged to have been committed by the detainee upto early 2022 for passing the impugned order in the year ending 2024.

13. The Apex Court in case titled, '**Saeed Zakir Hussain Malik vs. State of Maharashtra**' reported in **(2012) 8 SCC 233**, in paragraph Nos. 27 and 28 read as under:-

“27) As regards the second contention, as rightly pointed out by learned counsel for the appellant, the delay in passing the detention order, namely, after 15 months vitiates the detention itself. The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. Though there is no hard and fast rule and no exhaustive guidelines can be laid down in that behalf, however, when there is undue and long delay between the prejudicial activities and the passing of detention order, it is incumbent on the part of the court to scrutinize whether the Detaining Authority has satisfactorily examined such a delay and afforded a reasonable and acceptable explanation as to why such a delay has occasioned.

28) It is also the duty of the court to investigate whether casual connection has been broken in the circumstance of each case. We are satisfied that in the absence of proper explanation for a period of 15 months in issuing the order of detention, the same has to be set aside. Since, we are in agreement with the contentions relating to delay in passing the Detention Order and serving the same on detainee, there is no need to go into the factual details.”

- 14. In Chhagan Bhagwan Kahar Vs. N. L. Kalna reported in 1989 Legal Eagle (SC) 161, in para 12 it is held as under:-**

“12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the Court strikes down an earlier order by issuing rule it nullifies the entire order.”

- 15.** In view of the vague grounds in the DDRs and there being no proximate and live link between the cases referred in the FIRs and the impugned detention order, the same is vitiated in view of the law laid down by the Apex Court in the aforesaid judgments and is unsustainable.
- 16.** The last ground urged by learned counsel for the petitioner is that the representation filed by the petitioner to the jail authorities was not considered. Though the respondents have taken a plea that the representation of which mention is being made by learned counsel for the petitioner was with regard to his earlier detention, however, on a perusal of the representation, copy of which has been placed on record, it is revealed that the representation was made by the detenue addressed to the Home Department, Govt. of J&K, on 14.12.2024 stating that he had been detained earlier on 07.10.2022 vide earlier detention order and that he cannot be detained on the same grounds again. The number of the earlier detention order had been made as a reference, as such, the submission made on behalf of respondents that the representation had been made by

the detinue against his earlier detention order is misplaced. The respondents in their counter affidavit filed through the detaining authority had taken a plea that this assertion made by the detinue that his representation was not considered by the government does not pertain to him. It is unfortunate that such a stance is taken by the detaining authority who had passed the detention order and made a recommendation to the government to approve the same. It transpires that the respondents had not considered the representation filed by the detinue on 14.12.2024, copy whereof had been placed on record of this petition by the petitioner, and the respondents have not bothered themselves to look into the matter so as to respond to that aspect as to whether the representation was filed, considered and what was the result.

17. In support of his contention that non consideration of the representation tantamount to non-compliance of Sub-Article (5) of Article 22 of the Constitution, learned counsel for the petitioner has relied upon judgment of the Apex Court in the case of **Rahmatullah Vs. State of Bihar & Ors., 1979 (4) SCC 559**. In para 4 of the aforesaid judgment, the Apex Court observed as under:-

“4. The normal rule of law is that when a person commits an offence or a number of offences, he should be prosecuted and punished in accordance with the normal appropriate criminal law; but if he is sought to be detained under any of the preventive detention laws as may often be necessary to prevent further commission of such offences, then the provisions of Article 22(5) must be complied with. Sub-Article (5) of Article 22 reads:

When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

This sub-Article provides, inter alia, that the detaining authority shall as soon as may communicate the grounds of detention and shall afford him the earliest opportunity of making a representation against the order. The opportunity of making a representation is not for nothing. The representation, if any, submitted by the detenu is meant for consideration by the Appropriate Authority without any unreasonable delay, as it involves the liberty of a citizen guaranteed by Article 19 of the Constitution. The non-consideration or an unreasonably belated consideration of the representation tantamount to non-compliance of Sub-Article (5) of Article 22 of the Constitution.”

18. Having regard to the facts and circumstances of the case, it is held that the petitioner/ detenu was detained vide impugned order by the detaining authority on a reference of stale cases, for which, he had already been detained under a previous detention order, vague grounds reflected in the DDRs and the non considerations of the representation filed by the petitioner/ detenu, the impugned order is vitiated and cannot be sustained in law.
19. As a result, this petition is allowed and the impugned detention order is hereby quashed. The petitioner/detenu namely Adil Fareed is ordered to be released from custody forthwith provided he is not required in any other case(s).
20. Detention record be returned to the respondents, through their counsel, against proper receipt.
21. The petition is, accordingly, **disposed of** alongwith connected application(s).

(M A Chowdhary)
Judge

JAMMU

06.06.2025*Narinder*

Whether the judgment is speaking? **Yes**
Whether the judgment is reportable? **Yes**

Narinder Kumar
2025.06.06 13:01
I attest to the accuracy and
integrity of this document