

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No.252/2024

Reserved on: 20.11.2025

Pronounced on: 27.11.2025

Uploaded on: 01.12.2025

*Whether the operative part or full
judgment is pronounced-**Full Judgment***

Irfan Ahmad Reshi

...Petitioner(s)

Through: Mr. R.A. Khan, Advocate.

Vs.

Union Territory of J&K & Anr.

...Respondent(s)

Through: Mr. Faheem Nisar Shah, GA.

CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

1. In this Habeas Corpus Petition, petitioner challenges the Detention Order No. 05/DMK/PSA of 2024 dated 05.04.2024 passed by District Magistrate, Kupwara-respondent No. 2, under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 (for short the 'Act'), directing preventive detention of the detinue herein in order to prevent him from acting in any manner prejudicial to the security of the UT of Jammu & Kashmir.
2. The preventive detention of the detinue is challenged on various grounds *inter alia* that the detaining authority has passed the order of detention on the basis of dossier and other connected documents submitted by the Senior Superintendent of Police, Handwara. No relevant documents/material was provided to the detinue depriving him of a valuable right of making effective and meaningful representation. It is further

contended that normal law was never invoked nor it is mentioned anywhere in the grounds of detention that the normal law was ever invoked and the detaining authority has made this assumption without any basis. On this ground also the order suffers from non-application of mind and deserves to be quashed; 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 seeking its revocation. Finally, it is urged that the impugned detention order be quashed and the petition be allowed.

3. Pursuant to notice, respondents have filed their reply, wherein they have stated that the detenue came to be detained under the provisions of the Act of 1978 validly and legally by virtue of the impugned detention order. While doing so, all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority, indisputably keeping in mind the very object of law of preventive detention being not punitive but only preventive. The detaining authority was of the opinion that the normal law has not proved deterrent and the detenue has not mended his subversive activities. Since the activities of the detenue were highly prejudicial to the security of the UT of J&K, it was necessary to prevent him from acting in such activities. Accordingly, he has been detained strictly in accordance with the provisions of the Act.

4. Learned counsel for the petitioner would argue that non-application of mind by the detaining authority is writ large from the grounds of detention, which is nothing more than the reiteration of the contents of the dossier forwarded by the Superintendent of Police, Handwara and the detaining authority has acted mechanically. Furthermore, it is submitted that the

petitioner was detained and bound down under Sections 107 and 151 Cr.PC which amounts to no activity, but only a bond is to be obtained to warn him not to indulge in any activities which are prejudicial to the law and order. According to the learned counsel, this allegation by any amount of standard cannot be considered as a threat to the security of State, as mentioned in the grounds of detention. It is his further submission that normal law in such circumstances was sufficient to prevent the detainee from indulging in alleged activities prejudicial to the security of the UT of J&K.

5. It is being also contended that it would be in fundamental breach of Article 22(5) of the Constitution of India if the detainee is not provided relevant documents on the basis of which detaining authority has arrived at subjective satisfaction. Since the detainee would be disabled to submit a meaningful and effective representation, breach of same cannot be countenanced on any count.

6. Learned GA, however, supported the impugned order. He referred the detention order (*supra*) to demonstrate that the detaining authority had arrived at a satisfaction that the detainee has no respect for law. Since, he believes in breaking the law repeatedly and terrorizing the people of the area, therefore, the normal law was not sufficient to deal with him.

7. Heard, perused the detention record produced by the learned GA and considered the same.

8. It has already been held in various judgments by the Apex Court that in case the detainee has not been provided all the relevant material on which the subjective satisfaction is stemmed, same renders the order of detention bad in law. The respondents have neither shown as to which documents were provided to him nor filed any affidavit of the executing officer, as to what

was supplied by him to the detainee at the time of taking him into custody. It can be reasonably inferred that the detainee has not been in a position to make an effective representation, which is statutory and constitutional right of said detainee, due to this lapse of detaining authority and so it renders the impugned order bad.

9. In “**Smt. Icchu Devi Choraria Vs. Union of India & Ors.**” reported as **AIR 1980 SC 1983**, the Apex Court has observed as :-

“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.”

10. It is also notable that normal law in the instant case had to be assumed to be sufficient to disable the detainee to indulge in any such activity which may have been in the estimation of the detaining authority to be treated prejudicial to the security of the UT of J&K.

11. The preventive detention is not a quick alternative to normal process, is the saying of the Hon’ble Apex Court in its three-Judge Bench judgment “**Rekha Vs. State of Tamil Naidu & Anr.**” reported as **(2011) 5 SCC**, wherein it has observed that:-

“29. Prevention detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.

30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: Was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal.”

12. In another case **“V. Shantha Vs. State of Telangana & Ors.”** reported as **AIR 2017 SC 2625**, the Hon’ble Apex Court has observed that *“the preventive detention of a person by a State after branding him a ‘goonda’ merely because the normal legal process is ineffective and time-consuming in curbing the evil he spreads, is illegal and that the detention of a*

person is a serious matter affecting the liberty of the citizen. Preventive detention cannot be resorted to when sufficient remedies are available under general laws of the land for any omission or commission under such laws.”

13. On perusal of the impugned detention order, it transpires that the same has been passed on vague grounds as nothing has been recorded about the activities of the detainee, which were to be prevented by invoking his preventive detention. The detention based on vague grounds is thus not tenable and is liable to be quashed.

14. Next 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 within specific time frame is conspicuously missing, on a bare reading of the communication No.DMK/PSA/2024/184-91 dated 05.04.2024 issued by the District Magistrate, Kupwara to the detainee, which shows that *‘the detainee may make representation against to the Government/detaining authority against the said Detention Order, if he so desire.’*

15. 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.”

16. 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.

17. 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 required to be quashed.

18. Accordingly, the impugned detention order bearing No. **05/DMK/PSA of 2024 dated 05.04.2024**, is hereby ordered to be quashed.

19. As a sequel, personal liberty of the detainee namely **Irfan Ahmad Reshi S/O Ghulam Nabi Reshi R/O Ananwan, Kralgund Tehsil**

Qaziabad, Kralgund District Kupwara, is ordered to be restored forthwith, provided he is not warranted in other case(s).

20. Disposed of, accordingly.

21. Scanned copy of the detention record, as produced, be returned to learned counsel for the respondents.

**(M. A. CHOWDHARY)
JUDGE**

Srinagar
27.11.2025
Muzammil. Q

Whether the judgment/order is reportable: Yes

