

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR**

Reserved on: 27.08.2025
Pronounced on: 04.09.2025

CJ Court

LPA No.331/2024

1. UT of J&K through Principal Secretary to Govt.
Home Department, Civil Secretariat
Srinagar/Jammu .
2. District Magistrate, Shopian.
3. Superintendent of District Jail, Baramulla.

...APPELLANTS(S)

Through: - Mr. Bikramdeep Singh, Dy. AG.

Vs.

Mohammad Ismail Thoker, aged:41 years S/o Ab.
Ahad Thoker R/o Heffkuri Zainapora, District Shopian,
through his brother Manzoor Ahmad Thoker.

...RESPONDENT(S)

*Through: - Mr. Umar Rashid Advocate, vice
Mr. Tariq M. Shah, Advocate.*

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

JUDGMENT

OSWAL 'J'

1) The respondent was detained in terms of order No.174/DMS/PSA/2023 dated 27.09.2023, issued by respondent No.2 in terms of clause (a) of Section 8 of the Jammu and Kashmir Public Safety Act.

2) The respondent through the medium of HCP No.142/2023 assailed the order No.174/DMS/PSA/2023 dated 27.09.2023 on various grounds including the one that

against the order of detention (supra), he had filed a representation dated 16th October, 2023 through his brother, but the same was neither considered by the appellants nor any decision in respect thereof was conveyed to him.

3) The appellants filed their response objecting to the petition preferred by the respondent by asserting that all the constitutional and statutory safeguards were complied by them while issuing as well as executing the order of detention.

4) The learned Writ Court, after hearing the parties, vide its judgment dated 10.05.2024, quashed the order of detention on the grounds of non-consideration of representation dated 16th October, 2023 and non-furnishing of the material relied upon by the Detaining Authority to the respondent.

5) The appellants have assailed the judgment on the ground that the learned Writ Court has ignored the settled proposition of law that while examining the validity of the detention order, the Court does not sit as an appellate court over the subjective satisfaction recorded by the detaining authority.

6) Heard and perused the record.

7) The perusal of the record reveals that the order of detention dated 27.09.2023 was quashed by the learned Writ Court, primarily, on twin grounds i.e. non-consideration of representation and non-providing of material relied upon by the detaining authority to the respondent.

8) The first ground which weighed with the learned Writ Court was that the representation preferred by the respondent through his brother was not considered. In this regard, after examining the record, we find that the representation submitted by the respondent through his brother has been rejected by the appellant No.1 vide order dated 11th January, 2024. However, we have not come across any evidence/document demonstrating that the decision of the representation was communicated either to the respondent or his brother. In this context it would apt to take note of the judgment of the Hon'ble Supreme Court in the case of **Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur and others**, (2021) 20 SCC 98, wherein it has been held that failure of the government to communicate rejection of detainee's representation in a time bound manner is sufficient to vitiate the detention order.

9) The other ground which weighed with the learned Writ Court was that whole of the material relied upon by the

detaining authority was not provided to the respondent. After examining the execution report dated 30th September, 2023, we find that only the detention warrant and the grounds of detention were provided to the respondent. However, the dossier of detention which formed the basis for formulating the grounds of detention and consequent issuance of order of detention was not provided to the respondent. It is settled law that once whole material relied upon by the detaining authority while issuing the detention order is not provided to the detenu, the detention order would not be sustainable in law. (***See Thahira Haris Vs. Government of Karnataka & Ors. (AIR 2009 SC 2184).***)

10) In view of the above, we do not find any merit in this appeal and the same is, accordingly, dismissed.

11) The record be returned to learned counsel for the appellants.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Srinagar
04.09.2025
“Bhat Altaf”

Whether the Judgment is speaking:	Yes
Whether the judgment is reportable:	No