

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

HCP No. 114/2025

Reserved on: 29.01.2026
Pronounced on : 06.02.2026
Uploaded on : 06.02.2026
Whether the operative part or full
judgment is pronounced: Full

Mohd. Tahir Pall

....Petitioners

Through:- Mr. Satinder Gupta, Advocate and
Mr. Mohd. Hafiz Nazki, Advocate.

V/s

UT of J&K & Ors

.....Respondents

Through:- Mr. P.D. Singh, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

(JUDGMENT)

01. The petitioner, through the medium of the present petition, has challenged Order No. PSA No. 11 of 2025 dated 19.07.2025 issued by District Magistrate, Jammu-respondent No. 2 herein whereby petitioner-Mohd. Tahir Pall has been placed under preventive detention so as to prevent him from acting in any manner prejudicial to the maintenance of public order.

02. It has been contended by the petitioner that representation filed by him against the impugned order of

detention has been considered belatedly by the respondents and while rejecting the same, no reasoned order has been passed. It has been further contended that the impugned order of detention has been issued by respondent No. 2 in a casual and mechanical manner without application of mind inasmuch as the grounds of detention are verbatim reproduction of the dossier prepared by SDPO, City East, Jammu-respondent No. 4 herein who, according to the petitioner, is holding a grudge against him being closely related to persons inimical to the petitioner.

03. It has been contended that the impugned order of detention has been passed by respondent No. 2 with a view to put the petitioner behind the bars despite having been bailed out by courts of law in all the FIRs registered against him. It has also been contended that the petitioner even after being bailed out in FIR No. 59 of 2025 of Police Station, Bahu Fort, Jammu was again taken into custody on the basis of suspicion and was illegally detained by the police till such time the impugned order of detention came to be issued by respondent No. 2 which clearly shows that the action of the respondents is tainted with malafides and the same constitutes colourable exercise of power on the part of the detaining authority.

04. It has been submitted that petitioner had approached the court of learned Chief Judicial Magistrate, Jammu, seeking directions to the police for his production in the court as he had been illegally detained despite having been

bailed out in criminal case registered against him. In the report submitted by the police before the Chief Judicial Magistrate, Jammu, it was submitted by the police that petitioner had been arrested on the basis of suspicion after his release on bail, which clearly goes on to show that action of the respondents in passing the impugned order of detention is malafide in nature and the same has been issued at the behest of respondent No. 4.

05. Respondent No. 2 has contested the petition by filing the counter affidavit. In the counter affidavit, it has been submitted that the petitioner is a hardcore and habitual criminal, who indulges in heinous crimes in Jammu. It has been submitted that the petitioner is a notorious and hardcore criminal, who does not follow the rule of law and his activities are detrimental to the maintenance of public order. According to the respondents, five FIRs have been registered against the petitioner, details whereof are given in the grounds of detention and despite being bailed out in all these FIRs, he has continued his criminal activities, which compelled the detaining authority to pass the impugned detention order so as to prevent the petitioner from indulging in activities prejudicial to the maintenance of public order.

06. It has been submitted that the impugned order has been passed by the detaining authority after arriving at satisfaction to the effect that the petitioner is a grave threat to the society and public order. It has also been submitted that

representation submitted by the petitioner was thoroughly examined and the same was rejected whereafter the result of consideration was conveyed to the petitioner through Superintendent, District Jail, Kathua and Tehsildar, Bahu was also instructed to inform the sister of the petitioner. It has been contended that all the statutory and constitutional imperatives have been followed by the respondents while executing the impugned order of detention against the petitioner and he has been furnished all the material on the basis of which grounds of detention have been formulated. It has also been contended that contents of detention order and grounds of detention have been explained to the petitioner in dogri/hindi languages. In order to lend support to the contentions projected by the respondents in the counter affidavit, they have produced the detention record.

07. I have heard learned counsel for the parties and perused the record of the case.

08. Learned counsel for the petitioner while seeking quashment of the impugned order has projected various grounds but his main thrust during the course of arguments was on the ground that representation submitted by the detainee against his detention has been considered belatedly by the respondents thereby rendering the order of detention unsustainable in law.

09. The record produced by the respondents reveals that two representations have been received by the

respondents on behalf of the petitioner. One representation has been addressed to District Magistrate, Jammu whereas, the other representation has been addressed to Home Department of the Government. It seems that representation dated 24.07.2025 submitted on behalf of the petitioner to District Magistrate, Jammu has been rejected by the said authority on 08.08.2025 and a communication in this regard has been sent to Smt. Parveena Bano, the sister of petitioner. The record further shows that Smt. Parveena Bano had addressed a communication to District Magistrate, Jammu in which she has stated that she had never filed a representation on behalf of the petitioner and that the representation in her name is fictitious.

10. So far as the representation dated 29.07.2025 forwarded by the petitioner to the Home Department is concerned, a copy of the same is available in the record, which goes on to show that the said representation has been received by the Home Department. The detention record tends to show that the said representation was forwarded by the Home Department to ADGP, CID, J&K under covering letter dated 04.08.2025 for obtaining the comments. Vide communication dated 10.09.2025, ADGP CID J&K forwarded his comments to the Home Department and on 16.09.2025, the Government rejected the representation of the petitioner and communicated the same to the petitioner through Superintendent, District Jail, Kathua.

11. The question that arises for consideration is whether the delay of more than one and a half month in considering the representation of the petitioner by the Government vitiates the impugned order of detention.

12. The aforesaid question has been answered by the Supreme Court in **Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur and others**, (2021) 20 SCC 98. It would be apt to refer to observations made by the Supreme Court in para 47 of the judgment, which are reproduced as under:-

“47. By delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of Section 8(1) of having the representation being considered expeditiously. As we have noted earlier, the communication of the grounds of detention to the detenu “as soon as may be” and the affording to the detenu of the earliest opportunity of making a representation against the order of detention to the appropriate government are intended to ensure that the representation of the detenu is considered by the appropriate government with a sense of immediacy. The State Government failed to do so. The making of a reference to the Advisory Board could not have furnished any justification for the State Government not to deal with the representation independently at the earliest. The delay by the State Government in disposing of the representation and by the Central and State Governments in communicating such rejection, strikes at the heart of the procedural rights and guarantees granted to the detenu. It is necessary to understand that the law provides for such procedural safeguards to balance the wide powers granted to the executive under the NSA. The State Government cannot expect this Court to uphold its powers of subjective satisfaction to detain a person, while violating the procedural guarantees of the detenu that are fundamental to the laws of preventive detention enshrined in the Constitution.”

15. From the foregoing analysis of law on the subject, it is manifest that delaying of decision on the representation of the detenu amounts to an infringement of a valuable right which is available to a detenu in terms of provisions

contained in Section 13 of the Jammu & Kashmir Public Safety Act, which makes it obligatory on the detaining authority to communicate to the detainee the grounds on which the order of detention has been made within a maximum period of ten days from the date of detention and to afford him the earliest opportunity of making representation against the order of detention. The purpose of furnishing the grounds of detention within a maximum period of ten days is to enable a detainee to make a representation against the order of detention at the earliest opportunity. Thus, a duty is cast upon the detaining authority or the government to consider the said representation at the earliest opportunity. Failure to decide the representation of a detainee within a reasonable time in an expeditious manner strikes at the valuable right of a detainee emanating from the provisions of Section 13 of the Jammu & Kashmir Public Safety Act. In the present case, the respondents have decided the representation after a period of one and a half month. This slackness on the part of respondents to take a decision on the representation of the petitioner renders the impugned order of detention illegal.

16. For the afore-stated reasons, the petition is allowed and the impugned detention order is quashed. The respondents are directed to release the petitioner from the preventive custody forthwith, provided he is not required in connection with any other case.

17. The record be returned to learned counsel for the respondents.

(SANJAY DHAR)
JUDGE

JAMMU
06.02.2026
Naresh/Secy.

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **No**

