

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 165/2025

Reserved on: 10.07.2026
Pronounced on: 16.07.2026
Uploaded on: 16.07.2026

Whether the operative part or full
judgment is pronounced: Full

Rahil Gargotra

....Petitioner

Through:- Mr. Rahul Raina, Adv.
Mr. Hasnain Shakeel, Advocate.

v.

UT of J&K & ors.

.....Respondents

Through:- Mr. Pawan Dev Singh, Dy. AG.

CORAM: HON'BLE MR. JUSTICE RAJESH SKEHRI, JUDGE

JUDGMENT

1. The petitioner has filed the instant Habeas Corpus Petition under Article 226 of the Constitution of India seeking quashment of detention order No. PSA-13 of 2025 dated 06.09.2025 passed by respondent No.2 under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 (for short, "the Act"), whereby he has been detained and lodged in District Jail, Udhampur.

2. It is the case of the petitioner that he has been falsely implicated in various criminal cases owing to previous rivalry and that the criminal proceedings initiated against him were being used as a tool to settle personal

scores. It is submitted that he was already facing prosecution under ordinary criminal law and, therefore, there was no justification for invoking the drastic power of preventive detention.

3. The petitioner has specifically pleaded that FIR No.139/2025 registered with Police Station, Janipur was concealed from the detaining authority while forwarding the dossier and other relevant material. It is submitted that the petitioner was arrested in the said FIR on 28.08.2025 and remained in custody till the detention order came to be passed on 06.09.2025 and executed on 07.09.2025.

4. It is further submitted that petitioner was granted bail in FIR No.139/2025 vide order dated 06.09.2025 passed by learned Trial Court. However, in the counter affidavit filed by the respondents, an incorrect stand was taken that the said bail order related to the petitioner's brother, namely, Sahil Gargotra. The petitioner, by filing a rejoinder affidavit, has placed on record the subsequent order dated 06.10.2025 passed by the learned Trial Court whereby the typographical error was corrected and it was clarified that bail order dated 06.09.2025 had, in fact, been passed in favour of the petitioner.

5. According to the petitioner, aforesaid facts demonstrate complete non-application of mind on the part of the detaining authority. According to him, since he was already in custody and the facts relating to his arrest in FIR No.139/2025 and grant of bail had a direct bearing upon the necessity of preventive detention, non-consideration of these material facts renders the detention order unconstitutional.

6. Petitioner has also challenged the impugned order on the ground that his representation dated 04.10.2025 was not considered with promptitude required under Article 22(5) of the Constitution. It is submitted that his representation

was decided only on 07.11.2025 and the decision thereof was communicated to him on 13.11.2025, resulting in unexplained delay which vitiates the continued detention.

7. *Per contra*, learned counsel for the respondents has supported the impugned detention order and submitted that it has been passed after due application of mind on the basis of material placed before the detaining authority. It is contended that petitioner was involved in several serious criminal cases and his preventive detention was necessary to prevent him from indulging in activities prejudicial to maintenance of public order.

8. Learned counsel for the respondents has further submitted that dossier was prepared on 21.08.2025, whereas FIR No.139/2025 was registered subsequently and therefore, said FIR could not have formed part of the dossier. It is also submitted that all procedural safeguards contemplated under Article 22(5) of the Constitution and the provisions of the Act were duly complied with.

9. Heard learned counsel for the parties and perused the record.

10. The petitioner has challenged the impugned detention order on various grounds. However, during the course of hearing, learned counsel for the petitioner has primarily assailed the detention order on the ground that it suffers from non-application of mind, inasmuch as, material facts having a direct bearing on the subjective satisfaction of the detaining authority were not placed before it by the sponsoring agency.

11. Preventive detention is an exceptional power which authorizes curtailment of personal liberty without trial. Since such power directly affects the fundamental right guaranteed under Article 21 of the Constitution, the

constitutional safeguards embodied in Article 22(5) are required to be strictly complied with.

12. The subjective satisfaction required to be recorded by the detaining authority must be based upon relevant and complete material. The sponsoring authority is under a legal obligation to place before the detaining authority all facts which have a bearing upon the decision whether or not preventive detention is warranted.

13. Hon'ble Supreme Court in **V.C. Mohan v. Union of India [W.P.(Crl.) No.767 of 2002 dated 07.03.2022]**, has held that non-placement of relevant documents and material before the detaining authority vitiates the detention order because the authority is deprived of an opportunity to consider the complete factual position before recording subjective satisfaction.

14. Likewise, in **Sarabjeet Singh Mokha v. The District Magistrate, Jabalpur; (2021) 20 SCC 98**, Hon'ble Supreme Court held that suppression of material facts or failure to place relevant material before the detaining authority renders the detention order unsustainable as subjective satisfaction is then based upon incomplete facts.

15. Applying the aforesaid principles to the facts of the present case, it is evident that FIR No.139/2025 was registered prior to the passing of the detention order dated 06.09.2025. The petitioner had already been arrested in the said FIR. Therefore, the fact of registration of the FIR and the custody of the petitioner therein were relevant circumstances which were required to be placed before the detaining authority.

16. The explanation offered by the respondents that dossier had already been prepared on 21.08.2025 cannot justify non-consideration of such material by the detaining authority at the time of passing the detention order. The relevant

date for examining the validity of the detention order is the date on which it was passed. Any material circumstance existing on that date was required to be considered by the detaining authority.

17. The fact that petitioner was already in custody assumes considerable significance because the law governing preventive detention of a person already in custody is well settled. The detaining authority must record compelling reasons showing its awareness of custody and must be satisfied that there is a likelihood of release and that after such release the detenue is likely to indulge in prejudicial activities.

18. Hon'ble Supreme Court in **Rekha v. State of Tamil Nadu; (2011) 5 SCC 244**, held that preventive detention cannot be used as a substitute for ordinary criminal law and that where a person is already in custody, there must be a real possibility of his release and a likelihood of his indulging in prejudicial activities thereafter.

19. The same principle has been reiterated in **Kamarunnissa v. Union of India, (1991) 1 SCC 128**, wherein Hon'ble Supreme Court held that the detaining authority must demonstrate awareness of custody and must record satisfaction regarding the necessity of detention despite such custody.

20. In the context of preventive detention under the Jammu and Kashmir Public Safety Act, this Court in **Javid Ahmad Zargar v. Union Territory of J&K and other [HCP No. 22/2026 dated 24.03.2026]** has also held that where the detenue is already in custody, failure of the detaining authority to consider such custody and record compelling reasons vitiates the detention order.

21. In the present case, the detention record, as pleaded by the petitioner, does not demonstrate consideration of FIR No.139/2025, the custody of the

petitioner therein and the bail order dated 06.09.2025. These circumstances had a direct and substantial bearing on the subjective satisfaction required to be recorded by the detaining authority.

22. The stand of the respondents that the bail order dated 06.09.2025 pertained to the petitioner's brother cannot be accepted in view of the subsequent correction order dated 06.10.2025 passed by learned Trial Court whereby it has been categorically clarified that the bail order had in fact been passed in favour of the petitioner. It clearly shows that petitioner was already in custody at the time detention order in question came to be passed on 06.09.2025 and executed on 07.09.2025.

23. Once the competent Court corrected the typographical error, the respondents cannot rely upon the earlier typographical mistake to sustain the detention order. The grant of bail constituted a material circumstance requiring consideration by the detaining authority. The failure to consider the same renders the subjective satisfaction legally unsustainable

24. Another ground urged by the petitioner relates to delayed disposal of his representation dated 04.10.2025. The respondents admit that his representation was disposed of only on 07.11.2025 and that the decision was communicated to him on 13.11.2025.

25. The right of a detainee to make representation under Article 22(5) of the Constitution is a valuable constitutional safeguard and the corresponding obligation of the State is to consider such representation with utmost expedition.

26. Hon'ble Supreme Court has repeatedly emphasized that the constitutional safeguard under Article 22(5) would be rendered illusory if the representation of a detainee is permitted to remain pending by calling for opinions from one

department after another or by allowing the file to move routinely through official channels. The representation is required to be taken up immediately upon its receipt and dealt with continuously, unless awaiting some indispensable assistance is absolutely necessary, until a final decision is taken and communicated to the detainee. Any avoidable or unexplained delay in the process strikes at the constitutional guarantee afforded to the detainee.

27. In **Jayanarayan Sukul v. State of West Bengal; (1970) 1 SCC 219**, Hon'ble Supreme Court held that representation of a detainee must be considered as early as possible and without avoidable delay.

28. Similarly, in **K.M. Abdulla Kunhi v. Union of India; (1991) 1 SCC 476**, Hon'ble Supreme Court held that unexplained delay in disposal of representation would amount to violation of the constitutional safeguard guaranteed to the detainee.

29. In the present case, no satisfactory explanation has been furnished by the respondents on record explaining the delay of more than one month in deciding the representation. Mere disposal of the representation after delay would not satisfy the constitutional requirement.

30. The Court is conscious that while exercising jurisdiction in habeas corpus proceedings against preventive detention, it does not examine the correctness or otherwise of the allegations contained in the FIRs. However, the Court is duty bound to examine whether the procedural safeguards, which constitute the protection available to a detainee against arbitrary deprivation of liberty, have been strictly complied with.

31. Preventive detention cannot be sustained where relevant facts are withheld from the detaining authority or where the subjective satisfaction is arrived at without considering material circumstances having a direct bearing

on the necessity of detention. The liberty of a citizen cannot be curtailed on the basis of an incomplete or mechanical exercise of power.

32. In view of the discussion made hereinabove, this Court is of the considered opinion that the detention order dated 06.09.2025 suffers from legal infirmity. The non-placement of FIR No.139/2025, the custody status of the petitioner, and the bail order dated 06.09.2025 before the detaining authority has resulted in failure of proper application of mind. The delay in disposal of the representation constitutes an additional ground for interference.

33. Consequently, the present petition is allowed. Detention order No. PSA-13 of 2025 dated 06.09.2025 passed by respondent No.2 under Section 8 of the Jammu and Kashmir Public Safety Act, 1978, is hereby quashed. The respondents are directed to release the petitioner forthwith, if he is not involved in any other case.

34. This petition stands disposed of accordingly.

(Rajesh Sekhri)
Judge

Jammu
16.07.2026
Paramjeet

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