

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

...
HCP No. 207/2024

Reserved on: 17.07.2025

Pronounced on: 01.08.2025

Bilal Ahmad Bhat aged 24 years S/o Gh Nabi Bhat R/o Nagam Kokernag
District Anantnag through his mother Mumtaza aged 61 years.

..... Petitioner(s)

Through: Mr. Wajid Haseeb, Advocate

Versus

1. Union Territory of J&K through Additional Chief Secretary, Home
Department, J&K Govt. Civil Sectt. Srinagar/Jammu
2. District Magistrate, Anantnag
3. Sr. Superintendent of Police, Anantnag

....Respondent(s)

Through: Mr. Jahingeer A Dar, GA

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Through the medium of this petition, Order no. 11/DMA/PSA/DET/2024 dated 20.04.2024 (*impugned detention order*) passed by District Magistrate, Anantnag – respondent no.2 herein (for short '*detailing authority*') whereby detenu, namely, Bilal Ahmad Bhat S/o Gh Nabi Bhat R/o Nagam Kokernag District Anantnag, has been placed under preventive detention with a view to prevent him from acting in any manner prejudicial to the security of the State/UT of J&K, is sought to be quashed and the detenu set at liberty on the grounds made mention of therein.

2. Respondents have filed reply affidavit, insisting therein that the activities indulged in by detenu are highly prejudicial to the security of the State/UT of J&K and, therefore, his remaining at large is a threat to the Security of State. The activities narrated in the grounds of detention have been reiterated in the reply affidavit filed by respondents. The factual averments that detenu was not supplied with relevant material

relied upon in the grounds of detention have been refuted. It is insisted that all the relevant material, which has been relied upon by the detaining authority, was provided to the detenu at the time of execution of warrant.

3. I have heard learned counsel for parties and considered the matter. I have gone through the detention record produced by the counsel appearing for respondents.

4. The case set up by the petitioner in the petition is that the detenu was arrested in the month of April, 2024 in connection with case FIR No.219/2022 under Section 120-B, 130 IPC, 18, 39 UAP Act by Police Station Anantnag, inasmuch as the allegations mentioned in the grounds of detention have no nexus with the detenu and the detention order seems to have been passed against the wrong person as the detenu does not know, nor he has associated himself with the person or organization as mentioned in the grounds of detention, inasmuch as the allegations made in the grounds of detention are vague, non-existent and no prudent man can make a representation against such allegations and passing of detention on such grounds is unjustified and unreasonable. It is further stated that the detenu was already arrested as per the grounds of detention in case FIR No. 219/2022 which involve Commission of Offence under Chapter IV & VI of Unlawful Activities Act wherein the grant of bail is restricted in terms of Section 43 D of ULA(P) Act, however, the detenu was released on bond due to insufficient evidence and admittedly the detenu even as the grounds of detention has remained silent after 2023, inasmuch as the last alleged activity attributed to the detenu has taken place in the year 2022 and thereafter no fresh activity has been attributed to the detenu as such, the allegation on which the detention order is based are stale and lack proximity. The delay of more than two years between the last alleged activity and the order of detention has snapped the proximity of the requirement of passing of detention order and on this ground alone the detention order is unjustified hence deserves to be quashed. It is also stated that the detaining authority has not prepared the grounds of detention by itself which is pre-requisite for it before passing any detention order and the detaining authority has relied only on the police dossier and has not perused any material relating to the case, inasmuch as the detenu on post detention has submitted a

representation before the respondent no. 2, however, the same was not considered in due course of law nor the material as requested was furnished to the detenu.

5. On the contrary, Mr. Jahingeer A Dar, GA, while opposing the submission of Mr. Wajid Haseeb, would vehemently contend that the order under challenge has been passed by the detaining authority validly and legally owing to the activities of the detenu being prejudicial to security of the State.

6. The submission that has been strenuously urged by learned counsel for detenu and reiterated in the Rejoinder filed by him, is that although representation filed by detenu post detention, which according to respondents has been rejected vide no.Home/PB-V/294/2024 (7459850) dated 13.09.2024, yet the rejection order has neither been communicated to him nor appears to have been sent to Advisory Board, which vitiates impugned order of detention.

7. In the context of Reply filed by respondents, it is worth to go through detention record, more particularly Report of Advisory Board. Perusal of Report of Advisory Board dated 14.05.2024, interestingly, mentions, “*No representation seems to have been made by the Detenue as no such representation is lying on the material placed before us*”.

8. It is well settled that detaining authority must provide detenu a very early opportunity to make a representation. The detaining authority is also required to consider the representation as soon as possible and this preferably must be before the representation is forwarded to Advisory Board. The representation must be forwarded to Advisory Board before the Board makes its report. The consideration by detaining authority of representation must be entirely independent of the hearing by the Board or its report, expedition being essential at every stage. The appropriate Government/detaining authority is to exercise its opinion and decision on the representation of detenu before sending the case along with detenu's representation to Advisory Board. Reference in this regard is made to ***Jayanarayan Sukul v. State of W.B. (1970) 1 SCC 219; Pankaj Kumar Chakraborty v. State of W.B. (1969) 3 SCC; Frances Corallie Mullin v.***

W.C.Khambra (1980) 2 SCC 275; and Ankit Ashok Jalan v. Union of India and others, (2020) 16 SCC 127.

9. Right to make a representation is an enshrined right guaranteed under Article 22(5) of the Constitution of India. It incorporates a dual requirement: first, it requires detaining authority to communicate grounds of detention as soon as may be; and second, it requires to afford detenu an earliest opportunity to make a representation. Both these procedural requirements are mutually reinforcing. The communication, as soon as may be, of the grounds of detention is intended to inform the detenu of the basis on which the order of detention has been made. The expression “as soon as may be” imports a requirement of immediacy. The communication of grounds is in aid of facilitating right of detenu to submit a representation against order of detention. In absence of grounds being communicated, detenu would be left in the dark about the reasons which have led to issuance of order of detention. The importance which the constitutional provision ascribes to communication of grounds as well as affording of an opportunity to make a representation is evident from the use of the expression “as soon as may be” in the first part in relation to communicating the grounds and allowing the detenu “the earliest opportunity” of availing of the right to submit a representation. Thus, the significance of Article 22 of the Constitution is that representation submitted by detenu must be disposed of at an early date. The communication of grounds of detention, as soon as may be, and the affording of earliest opportunity to submit a representation against the order of detention will have no constitutional significance unless detaining authority deals with representation and communicates its decision with expedition.

10. The provisions of J&K Public Safety Act subscribe to the mandate of Article 22(5). Section 13 thereof contains a requirement that when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention communicate to him, in the language which is understandable to him the grounds on which the order has

been made, and shall afford him the earliest opportunity of making a representation, against the order to the Government.

11. Article 22(5) of the Constitution provides for communication of grounds on which order of detention is made by detaining authority “as soon as may be”. Section 13 (1) of the Act uses the expression “as soon as may be”, qualifying it with the requirement that the communication of grounds should ordinarily not be later than five days and, in exceptional circumstances, for reasons to be recorded in writing not later than ten days from the date of detention. Section 8(1) of the Act, thus, also embodies the second requirement of Article 22(5) of affording to detenu the earliest opportunity of making a representation against the order to the appropriate government.

12. Section 15 of the Act mandates a reference to the Advisory Board constituted under Section 14 of the Act. What Section 15 says is profitable to be reproduced hereunder:

“Section 15. Reference to Advisory Board.

In every case where a detention order has been made under this Act, the Government shall, within four weeks from the date of detention under the order place before the Advisory Board constituted by it under section 14, the grounds on which the order has been made, the representation, if any, made by the person affected by the order and in case where the order has been made by an officer, also report by such officer under sub-section (4) of section 8.”

13. Under Section 15 of the Act, the appropriate government has to place the grounds on which the order of detention has been made within four weeks from the date of detention of the person together with a representation, if any, made by the person affected by the order of detention before the Advisory Board constituted under the provisions of Section 14 of the Act. The Advisory Board, under the provisions of Section 16 of the Act, after considering the material placed before it and after calling for such further information as it may deem necessary from the Government or from the person called for the purpose through the Government or from the person concerned and if in any particular case it considers it essential so to do or, if the person concerned desires to be heard, after hearing him in person, submit its report to the Government within six weeks from the date of detention.

14. Article 22(5) of the Constitution reflects keen awareness of the framers of the Constitution that preventive detention leads to the detention of a person without trial and, therefore, it incorporates procedural safeguards which mandate immediacy in terms of time. The significance of Article 22 is that the representation which has been submitted by detenu must be disposed of at an early date. The communication of grounds of detention, as soon as may be, and affording of earliest opportunity to submit a representation against order of detention will have no Constitutional significance unless detaining authority deals with representation and communicates its decision with expedition.

15. The Supreme Court in the case of *Jayanarayan Sukul* (supra) laid emphasis on the expeditious consideration of the representation by the appropriate government. The Supreme Court held that there was an inordinate delay in considering representation of petitioner. It was observed:

“18. It is established beyond any measure of doubt that the appropriate authority is bound to consider the representation of the detenu as early as possible. The appropriate Government itself is bound to consider the representation as expeditiously as possible. The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities.

[...]

20. Broadly stated, four principles are to be followed in regard to representation of detenus. First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. **Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration.** It is true that no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for consideration but it **has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State.** Fourthly, the appropriate **Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board.**” (*emphasis supplied*)

16. As has been held by the Supreme Court in *Jayanarayan Sukul* (supra), four principles are required to be followed with respect to representation of a detenu. First, appropriate authority is bound to give an opportunity to detenu to make a representation and to consider it as early as

possible. Secondly, consideration of detenu's representation by appropriate authority is entirely independent of any action by Advisory Board including consideration of representation of detenu by Advisory Board. Thirdly, there should not be any delay in the matter of consideration and it has to be remembered that Government has to be vigilant in governance of citizens. A citizen's right raises a correlative duty of the State. Fourthly, appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to Advisory Board.

17. In the case of **Ankit Ashok Jalan** (supra) it was observed by the Supreme Court that consideration of representation(s) by appropriate Government and by Advisory Board would always be qualitatively different and the power of consideration by appropriate Government must be completely independent of any action by Advisory Board. In the case of **Pankaj Kumar Chakrabarty** (supra) it was stated by the Supreme Court that the obligation on the part of the Government to consider representation would be irrespective of whether the representation was made before or after the case was referred to the Advisory Board. Any delay in consideration of representation would not only be an irresponsible act on the part of appropriate authority but also unconstitutional.

18. In **Sarabjeet Singh Mokha v. District Magistrate Jabalpur and others** reported in (2021) 20 SCC 98, the Supreme Court has reproduced certain observations made by the Supreme Court on the consideration of representation by appropriate government and by the Advisory Board in **Ankit Ashok Jalan** (supra), which are reproduced hereunder:

“39 In a recent decision of a three judge Bench of this Court in *Ankit Ashok Jalan v. Union of India*⁵¹, Justice UU Lalit revisited the body of precedent on the subject and noticed the qualitative difference between the consideration of a representation by the appropriate government on the one hand and by the Advisory Board on the other. Justice UU Lalit, speaking for himself and Justice Indu Malhotra (with Justice Hemant Gupta dissenting⁵²) observed:

“16. These decisions clearly laid down that the consideration of representations by the appropriate Government and by the Board would always be qualitatively different and the power of consideration by the appropriate Government must be completely independent of any action by the Advisory Board. In para 12 of the decision in *Pankaj Kumar Chakrabarty* [*Pankaj Kumar Chakrabarty v. State of W.B.*, (1969) 3 SCC 400 : (1970) 1 SCR 543] it was stated that the obligation on the part of the Government to consider representation would be irrespective of whether the representation was made before or after the

case was referred to the Advisory Board. As stated in para 18, this was stated so, as any delay in consideration of the representation would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional. The contingency whether the representations were received before or after was again considered in para 29 of the decision in Haradhan Saha [Haradhan Saha v. State of W.B., (1975) 3 SCC 198 : 1974 SCC (Cri) 816] .”

Justice UU Lalit categorized the different stages for when a representation is received and disposed, with the underlying principle that the representation must be expeditiously disposed of, at every stage:

“17. In terms of these principles, the matter of consideration of representation in the context of reference to the Advisory Board, can be put in the following four categories:

17.1. If the representation is received well before the reference is made to the Advisory Board and can be considered by the appropriate Government, the representation must be considered with expedition. Thereafter the representation along with the decision taken on the representation shall be forwarded to and must form part of the documents to be placed before the Advisory Board.

17.2. If the representation is received just before the reference is made to the Advisory Board and there is not sufficient time to decide the representation, in terms of law laid down in Jayanarayan Sukul [Jayanarayan Sukul v. State of W.B., (1970) 1 SCC 219 : 1970 SCC (Cri) 92] and Haradhan Saha [Haradhan Saha v. State of W.B., (1975) 3 SCC 198 : 1974 SCC (Cri) 816] the representation must be decided first and thereafter the representation and the decision must be sent to the Advisory Board. This is premised on the principle that the consideration by the appropriate Government is completely independent and also that there ought not to be any delay in consideration of the representation.

17.3. If the representation is received after the reference is made but before the matter is decided by the Advisory Board, according to the principles laid down in Haradhan Saha [Haradhan Saha v. State of W.B., (1975) 3 SCC 198 : 1974 SCC (Cri) 816], the representation must be decided. The decision as well as the representation must thereafter be immediately sent to the Advisory Board.

17.4. If the representation is received after the decision of the Advisory Board, the decisions are clear that in such cases there is no requirement to send the representation to the Advisory Board. The representation in such cases must be considered with expedition.

19. In the case in hand, it is an admitted position that representation had been made by detenu through his mother, which, according to respondents, was rejected. The detention record includes report of the Advisory Board. It mentions that although detenu was informed about his right of making representation against his detention to detaining authority as also government, but no such representation seems to have been made by detenu because no such representation was lying on the material before the Advisory Board. This would show and suggest that respondents have not placed copy of representation as also decision taken by detaining authority thereon before the Advisory Board as was required of respondents under and

in terms of Section 15 of J&K Public Safety Act. In that view of matter, impugned order of detention is vitiated.

20. It may be appropriate to mention that perusal of grounds of detention reveals that grounds of detention are vague and ambiguous and do not refer to any date, month or year of the activities, which have been attributed to detenu. Detention in preventive custody on the basis of such vague and ambiguous grounds cannot be justified. It may not be out of place to mention here that preventive detention is largely precautionary and is based on suspicion. The Court is ill-equipped to investigate into circumstances of suspicion on which such anticipatory action must be largely based. The nature of the proceeding is incapable of objective assessment. The matters to be considered by detaining authority are whether the person concerned, having regard to his past conduct judged in light of surrounding circumstances and other relevant material, is likely to act in a prejudicial manner as contemplated by the provisions of the law and, if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not the matters susceptible of objective determination, and they could not have been intended to be judged by objective standards. They are essentially the matters to be administratively determined for purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of detaining authority which, by reason of its special position, experience and expertise, would be best suited to decide them. Thus, the Constitutional imperatives of Article 22(5) and the dual obligation imposed on the authority making the order of preventive detention, are twofold: (1) The detaining authority must, as soon as may be, i.e. as soon as practicable, after the detention order is passed, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention, i.e. to be furnished with sufficient particulars to enable him to make a representation which, on being considered, may obtain relief to him. The inclusion of an irrelevant or non-existent ground, among other relevant grounds, is an infringement of the first of the rights and the inclusion of an obscure or vague ground, among other clear and

definite grounds, is an infringement of the second of the rights. In either case there is an invasion of the constitutional rights of the detenu entitling him to approach the Court for relief. The reason why the inclusion of even a simple irrelevant or obscure ground, among several relevant and clear grounds, is an invasion of the detenu's constitutional right is that the Court is precluded from adjudicating upon the sufficiency of the grounds, and it cannot substitute its objective decision for the subjective satisfaction of the detaining authority. Even if one of the grounds or reasons, which led to subjective satisfaction of detaining authority, is non-existent or misconceived or irrelevant, the order of detention would be invalid. Where order of detention is founded on distinct and separate grounds, if any one of the grounds is vague or irrelevant the entire order must fall. The satisfaction of detaining authority being subjective, it is impossible to predicate whether the order would have been passed in the absence of vague or irrelevant data. A ground is said to be irrelevant when it has no connection with the satisfaction of the authority making the order of detention. Irrelevant grounds, being taken into consideration for making the order of detention, are sufficient to vitiate it. One irrelevant ground is sufficient to vitiate the order as it is not possible to assess, in what manner and to what extent, that irrelevant ground operated on the mind of the appropriate authority, and contributed to his satisfaction that it was necessary to detain the detenu in order to prevent him from acting in any manner prejudicial to the maintenance of the public order or security of the State. Reference in this regard is made to ***Mohd. Yousuf Rather v. State of J&K and others*, AIR 1979 SC 1925**; and ***Mohd. Yaqoob v. State of J&K and ors*, 2008 (2) JKJ 255 [HC]**.

21. Grounds of detention must lay down the charge against detenu and it must be precise, unequivocal and unambiguous. The detenu must be in a position to give a specific reply/rebuttal to the charge and that is only possible where charge is specific and precise. Else, the detenu is only able to give a bare denial by stating that the allegations are false. If the grounds of detention are based on unsubstantiated allegations, the same along with the order of detention can be quashed as the detenu has not been given opportunity to make a viable representation either to detaining authority or

to advisory board. The opportunity to represent to the authorities concerned is not a hollow formality. To detain a person only based on allegations without there being any material to substantiate those allegations would imperil the fundamental rights of an individual enshrined under Article 21 of the Constitution. These observations have been made by the Division Bench of this Court in LPA no.19/2024 titled as ***Showkat Ali v. Union Territory of J&K and others***, vide judgement dated 26.07.2024.

22. For the reasons discussed above, the detention Order no. 11/DMA/PSA/DET/2024 dated 20.04.2024, passed by District Magistrate, Anantnag, is quashed. Respondents, including Superintendent Jail concerned, are directed to release the detenu forthwith, provided he is not required in any other case.

23. **Disposed of.**

24. Registry to return detention record to learned counsel for respondents.

(Vinod Chatterji Koul)
Judge

Srinagar
01.08.2025
(Qazi Amjad, Secy)