HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 08.10.2026
Pronounced on: 22.10.2026
Uploaded on: 22 .10.2026

Whether the operative part or full judgment is pronounced: ***Full***

HCP No. 30/2026

Mushtaq Ahmad th. wife Mursa Begum

...Petitioner /Appellant(s)

Through: - Mr. Sachin Verma, Advocate

vs.

Union Territory of J&K and others **...Respondent(s)**

Through: - Mr. Adarsh Bhagat, GA

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

JUDGMENT

1. The petitioner, through the medium of the present petition, has challenged Order No. 5th/DMK/PSA of 2026 dated 11.02.2026 (hereinafter referred to as "the impugned order of detention") issued by respondent No. 2, the District Magistrate, Kishtwar, whereby he has been placed under preventive detention with a view to prevent him from acting in a manner prejudicial to the maintenance of public order.

2. The petitioner has challenged the impugned order on the grounds that the same is totally illegal, arbitrary and contrary to the provisions of law. It has been contended that respondent No. 2, while passing the impugned order, has exceeded his jurisdiction and that the said order has been passed without application of mind, inasmuch as there were no compelling reasons for passing the impugned order of detention. It has

also been contended that there was no material on record before the detaining authority to establish involvement of the petitioner in activities that pose a threat to public order. It has been contended that the entire material on the basis of which the impugned order of detention was passed has not been furnished to the petitioner, as a result of which he has been unable to make an effective and suitable representation against the impugned order of detention. It has been further contended that the petitioner has not been informed of his right to make a representation before the detaining authority, as a result of which he could not make a representation before the said authority. It has also been contended that the grounds of detention have not been communicated to the petitioner in a language that he understands, nor has he been provided the translated version of the material on the basis of which the grounds of detention have been formulated. It has been further contended that the grounds of detention formulated by the detaining authority is a replica of the dossier furnished by the sponsoring agency, which shows non-application of mind on the part of the detaining authority. It has also been contended that the impugned order of detention has been passed on mere apprehension without any basis. It has further been contended that the representation made by the petitioner against the impugned order of detention has not been considered by the respondents.

3. Respondent No. 2, the detaining authority, has filed the counter affidavit in opposition to the writ petition. In the counter affidavit, it has been submitted that the impugned order of detention has been passed after an independent, objective and conscientious examination of the dossier and

the connected material furnished by the Senior Superintendent of Police, Kishtwar. It has been submitted that the detaining authority arrived at its subjective satisfaction after due application of mind. It has further been submitted that the detention order was necessitated by the petitioner's persistent involvement in activities that have the propensity to disturb public tranquility, communal harmony and the normal tempo of life of the community. It has further been submitted that, despite his repeated involvement in criminal cases and his subsequent enlargement on bail, the petitioner has continued to engage in similar unlawful activities, which shows that the ordinary criminal law has failed to achieve the desired deterrent effect. Thus, it was imperative to pass the impugned order of detention with a view to forestall the recurrence of the petitioner's prejudicial activities. It has further been submitted that all the procedural safeguards envisaged under Article 22(5) of the Constitution of India and the J&K Public Safety Act have been meticulously complied with, inasmuch as the petitioner has been furnished with the entire material on the basis of which the grounds of detention have been formulated and he has been informed of his right to make a representation against the order of detention before the detaining authority as well as the Government. It has been submitted that as many as three FIRs have been registered against the petitioner and that these FIRs pertain to incidents of involvement of the petitioner in bovine smuggling. According to the detaining authority, such activities of the petitioner possess serious communal overtones and are inherently capable of generating communal

discord and, as such, pose a threat to public order. In support of their case, the respondents have produced the detention record.

4. I have heard learned counsel for the parties and perused record of the case, including the detention record.

5. Although the petitioner has challenged the impugned order of detention on several grounds, the main thrust of the arguments advanced by learned counsel for the petitioner was upon the contention that the activities alleged to have been committed by the petitioner cannot be termed prejudicial to public order. According to learned counsel for the petitioner, merely because the petitioner was found to be involved in three instances of bovine smuggling over a period of two years, it cannot be stated that he is a habitual bovine smuggler. It has also been submitted that there is nothing on record to show that the alleged activities of the petitioner led to the flaring up of communal passions, as such, the detaining authority has, while passing the impugned order of detention, misused the power vested in it under the J&K Public Safety Act.

6. In the above context, it is to be noted that the grounds of detention refer to as many as three FIRs, namely, FIR No. 268/2023, registered at Police Station Kishtwar for offences under Section 188 IPC and Section 11 of the PCA Act; FIR No. 100/2023, registered at Police Station Chatroo for offences under Section 188 IPC and Section 11 of the PCA Act; and FIR No. 50/2025, registered at Police Station Chatroo for offences under Section 223 BNS and Section 11 of the PCA Act. In all these FIRs, the allegations against the petitioner are that he has indulged in the

transportation of bovine animals, thereby violating prohibitory orders issued by the District Magistrate.

7. The respondents have contended that the petitioner's involvement in the aforesaid three cases of bovine smuggling and the Daily Diary Reports recorded at Police Station Chatroo and Police Post Mughalmaidhan during December 2025 and January 2026, shows that the petitioner has no respect for the law. It has been contended that, because bovine animals include cows, which are held in reverence by a particular community, the petitioner's activities have the potential to create communal disharmony and, hence, a threat to public order.

8. The detaining authority, after taking note of the aforesaid incidents, has observed that the ordinary penal law has proved insufficient to deter the petitioner from indulging in prejudicial activities. It has further been recorded by the detaining authority that the illegal transportation and smuggling of bovine animals have a high potential to inflame communal passions and trigger social unrest and that, therefore, the activities of the petitioner are capable of disturbing the tempo of life, thereby falling squarely within the ambit of public order. However, the grounds of detention do not indicate whether there was any apprehension that the alleged activities of the detenue would hurt the religious feelings of any particular community. There is no mention in the grounds of detention about the complaints or reports about apprehension of communal disharmony in any area of the district. Thus, the apprehension expressed by the detaining authority has no basis. It is to be noted that in all the FIRs mentioned in the grounds of detention, the petitioner is alleged to

have been involved in transportation of male bovine animals, including yaks. Therefore, even according to the material on the basis of which the grounds of detention have been formulated, the petitioner has not indulged in the transportation of cows, which are held in reverence by a particular community. The fact that the detaining authority has not taken these aspects of the matter into account while arriving at its subjective satisfaction demonstrates the mechanical exercise of power. On this ground alone, the subjective satisfaction arrived at by the detaining authority becomes a casualty.

9. The detaining authority has recorded that out of three FIRs, the petitioner has been discharged in two FIRs, meaning thereby that these two cases were not even worth proceeding to trial stage. Therefore, on the basis of a solitary incident, the detaining authority could not have concluded that normal law has not proved sufficient to deter the petitioner. The satisfaction recorded by the detaining authority in this regard is misplaced.

10. A Coordinate Bench of this Court in the case of **Bhupinder Kumar alias Pappu Krishan Lal vs. UT of J&K and ors, AIR Online 2025 J&K 499** has, while dealing with the effect of allegations relating to transportation of bovine animals and cruelty against animals and considering the issue as to whether such allegations would have the potential of disturbing the public order, made the following observations:

> "16. It appears that the detenue was charged for having contravened the order issued by the District Magistrate to have transported the bovine animals without permission, therefore, simply registering a case under Section 188 IPC does not "ipso facto" constitute an offence of "bovine smuggling".

> Transportation without permission can be a disobedience of an order issued by public authority which does not necessarily mean that it amounts to bovine smuggling of which the detenue has been alleged. For example a person who transports his own animals or purchased animals from one district to another without permission cannot be stated to have smuggled such bovine animals and such an offence if committed by a person can be dealt with under the penal law for which invoking the preventive detention of a person for a period of one year, without affording him an opportunity of being heard or without being tried would be a travesty of justice. The detaining authority in this case has, thus, exceeded its jurisdiction to state that the detention order was required to be passed so as to prevent the detenue from carrying on the activities prejudicial to the public order. Public order is a form of development, which erupts due to public anger and is something beyond the failure of the law and order, therefore, without any such development, it cannot be stated that the detenue was a threat to the maintenance of public order, so as to attract his detention.
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> 17. Instead of being contended with, investigation into, prosecution therefore, with regard to penal offences, the State should not take recourse to preventive detention of an accused of such offences, without there being any right to bail, as during trial. Preventive detention is a strong arm tactic of the State to divest a citizen, from his most cherishable fundamental right of "personal liberty". The State should not resort to take recourse to preventive detention, on drop of a hat, but reserve this option for exceptionally grave cases, which may call for the same, having regard to the prejudicial activities to public order or national security. Public order is a grave situation, much beyond the law and order situation. In the detenu's case, no such instance or activity on his part has been shown that there was any problem of law and order even, the State had to tackle with, not to talk of public order."

11. Thus, it is clear that merely because the petitioner is involved in offences relating to the transportation of bovine animals without permission is not a

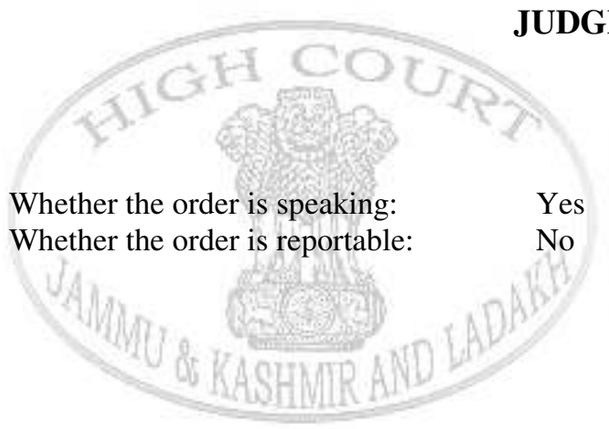
sufficient ground to invoke preventive detention, particularly in a case where the subjective satisfaction arrived at by the detaining authority suffers from non-application of mind. The impugned order of detention becomes, therefore, unsustainable in law on this ground alone.

12. For the reasons discussed hereinbefore, the petition is allowed, and the impugned order of detention is quashed. The respondents are directed to release the petitioner from preventive detention forthwith, provided he is not required in connection with any other case,

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

(SANJAY DHAR)
JUDGE

Jammu:
22.10.2026
Karam Chand



Whether the order is speaking: Yes
Whether the order is reportable: No