Serial No. 3

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 90/2026
CM Nos. 6316/2026, 6315/2026

Bhag Hussain @ Bhaga Th. Mother Baggu Begum ……Appellant(s)/Petitioner(s)

Through: Mr. Jaffar Hussain Beg, Advocate.

Vs

UT of J&K and others …… Respondent(s)

Through: Mr. Suneel Malhotra, GA
Mr. Divyanshu Malhotra, Advocate.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER
19.11.2026

1. The petitioner, through the medium of the present petition, has challenged Order No. PSA/179 dated 16.07.2026 (hereinafter referred to as the 'impugned order'), passed by respondent No. 2, District Magistrate, Kathua (hereinafter referred to as the 'Detaining Authority'), whereby the petitioner has been detained under Section 8 of the Jammu and Kashmir Public Safety Act.

2. Although the present petition comprises 175 paragraphs and raises 29 grounds to assail the impugned order, learned counsel for the petitioner has, however, restricted the challenge to the order of detention on the following grounds:

   (I) That the impugned order has been passed on stale grounds.

(II) That the two DDRs relied upon by the Detaining Authority are vague and, as such, could not have formed the basis for the issuance of the detention order.

(III) That the grounds of detention bear no nexus with the 'maintenance of public order', inasmuch as all the FIRs referred to therein pertain to disputes between private individuals and have no bearing on public order at large.

(IV) That there has been a delay in the disposal of the representation submitted by the petitioner against the order of detention.

(V) That the grounds of detention are a verbatim reproduction of the contents of the dossier, which demonstrates that the Detaining Authority failed to apply its mind while passing the order of detention.

3. Counter-affidavit has been filed by the respondents, wherein it has been stated that the Senior Superintendent of Police, Kathua, submitted a dossier referring to six First Information Reports, two DDRs and preventive action initiated under Sections 126/136 of the BNSS against the petitioner between 2014 and 2024 and, accordingly, requested the Detaining Authority to detain the petitioner on the aforesaid grounds. Upon perusal of the dossier and the connected documents, the Detaining Authority found that the activities of the detenue were prejudicial to the maintenance of public order and that the ordinary law of the land had failed to deter the petitioner from indulging in illegal activities. Accordingly, the petitioner was ordered to be detained vide the impugned order. The warrant of detention was executed by PSI Neeraj Choudhary, who, in his execution report, stated that the grounds of detention

were read over and explained to the petitioner in English and Hindi/Urdu, the languages he fully understood. In acknowledgment thereof, the petitioner signed the relevant documents, and a proper receipt was also obtained from the Assistant Superintendent, District Jail, Bhaderwah. The petitioner was further informed of his right to make a representation to the Government against the order of detention. The petitioner, through his mother, submitted a representation against the order of detention, which was forwarded to the Principal Secretary to the Government, Department of Home, on 07.08.2026. The Department of Home, vide communication dated 13.10.2026, intimated the answering respondent that, upon consideration, the representation was found to be devoid of merit. A copy of the said communication dated 13.10.2026 was also endorsed to the Superintendent, District Jail, Bhaderwah, with a direction to inform the detenue about the disposal of the representation. A copy thereof was also handed over to the petitioner. It has further been stated that the Home Department, vide order dated 27.07.2026, approved the detention order, which had been executed on 17.07.2026. Subsequently, the detention order was confirmed by the Government vide order dated 11.08.2026, after obtaining the requisite opinion of the Advisory Board.

4. Heard learned counsel for the parties and perused the detention record produced by Mr. Suneel Malhotra.

5. The record reveals that the petitioner, through his mother, submitted a representation on 04.08.2026, which, as admitted by the respondents, was forwarded to the Principal Secretary to the Government, Department of Home, on 07.08.2026. The said representation was ultimately decided vide

order dated 13.10.2026. Thus, there was a delay of more than two months in deciding the representation, which undoubtedly resulted in violation of the constitutional mandate requiring expeditious consideration and disposal of a representation made by the detenue.

6. Reliance is placed upon the judgment of the Hon'ble Supreme Court in **Sarabjeet Singh Mokha v. District Magistrate, Jabalpur and Others, reported in (2021) 20 SCC 98**. It would be apposite to refer to the observations made by the Supreme Court in paragraph 47 of the judgment, which are reproduced hereinbelow:

> "47. By delaying its decision on the representation, the State Government deprived the detenue 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 detenue "as soon as may be" and the affording to the detenue 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 detenue 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 detenue. 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 detenue that are fundamental to the laws of preventive detention enshrined in the Constitution."

7. The purpose of furnishing the grounds of detention within a maximum period of ten days is to enable a detenue to make a representation against the order of detention at the earliest opportunity. Consequently, a duty is cast upon the Detaining Authority or the Government, as the case may be, to

consider such representation at the earliest opportunity. Failure to decide the representation of a detenue within a reasonable time and in an expeditious manner strikes at the valuable right of the detenue guaranteed under Section 13 of the Jammu and Kashmir Public Safety Act.

8. In the present case, there has been a delay of more than two months in deciding the representation submitted by the petitioner, which delay has remained unexplained. There is nothing either in the detention record or in the counter-affidavit filed by the respondents to justify such delay. The impugned order of detention, therefore, stands vitiated.

9. Since this Court has already observed that the detention order deserves to be quashed on the aforesaid ground alone, this Court does not find it necessary to adjudicate upon the other grounds raised by the petitioner.

10. For the foregoing reasons, the present petition is **allowed** and the impugned detention order No. PSA/179 dated 16.07.2026, issued by respondent No. 2 under Section 8 of the Jammu and Kashmir Public Safety Act, is hereby quashed. The respondents are directed to release the petitioner from preventive detention forthwith, provided he is not required in connection with any other case.

11. The petition stands **disposed of** accordingly.

12. The detention record, after perusal, is returned to Mr. Suneel Malhotra, learned Government Advocate, in open Court.

(RAJNESH OSWAL)
JUDGE

Jammu
19.11.2026
Sahil Padha

Sahil Padha
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I attest to the accuracy and
integrity of this document