

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

HCP No.34/2025

Reserved on: 24.07.2025.

Pronounced on: 31.07.2025

Liyaqat Ali, Age 45 years
S/O Abdul Majid,
R/O Lohai, Tehsil Lohai, Malhar,
District Kathua, J&K
Through brother
Gull Mohd, S/O Abdul Majid

....Petitioner(s)/Appellant(s)

Through :- Mr. Sanchit Verma, Advocate.

V/S

1. The Union Territory of Jammu & Kashmir
Through Commissioner/Secretary to
Government, Home Department,
Civil Secretariat, Srinagar/Jammu
2. District Magistrate, Kathua
3. Senior Superintendent of Police, Kathua.
4. Superintendent, Central Jail, Kot Bhalwal, Jammu.

....Respondent(s)

Through :- Mr. Suneel Malhotra, GA

CORAM: HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

JUDGMENT

1. Petitioner namely **Liyaqat Ali** S/O Abdul Majid, R/O Lohai, Tehsil Lohai Malhar, District Kathua (for short 'the detenue') through his brother, has challenged the detention Order No.**PSA/132 dated 10.12.2024** (impugned order), issued by respondent No.2, District Magistrate, Kathua (hereinafter to be referred as "the detaining authority"), whereby he has been placed under preventive detention, in order to prevent him from acting in any manner prejudicial to the maintenance of 'public order'.

2. Petitioner has raised many grounds to assail the impugned order. It is his contention that Detaining Authority though referred earlier cases from the years

2003, 2021 and 2022, along with four DDR entries, as found in the Grounds of Detention, what was placed before him was only the copies of reports in those matters. Had the Authorities placed the outcome of such matters vis-à-vis acquittal in case FIR No.148/2003 and FIR No.05/2021, there would have been a different conclusion than the one which is challenged in the present petition. It is also contended that the petitioner was not informed about his right to make representation to the detaining authority as well as government as early as possible, which prevented him from making effective and meaningful representation; that the impugned detention order has been passed mechanically without application of mind, inasmuch as, the grounds of detention are mere reproduction of the dossier; that the petitioner was not explained the contents of detention order and grounds of detention in the language he understands which also prevented him from making meaningful representation to the detaining authority as well as government; that the FIRs relied upon pertaining to the year 2003, 2021 and 2022 could not have been relied upon in view of the fact that the cases registered in the year 2003, 2021 and 2022 being stale, for lack of live and proximate link, between the alleged activities and the preventive detention order, could not have been considered to pass the impugned order in the year 2024. Also, that the 4 DDRs recorded at P/S Malhar from 29.10.2024 to 21.11.2024 were general and vague conjectures without enumerating any specific activity being carried out by the detainee, so as to warrant his detention; that preventive action under Section 107 CrPC and 126 BNSS was claimed to have taken against the petitioner, yet no record pertaining to said action has been provided to the detainee, infringing the fundamental right of the detainee with regard to non-supply of record, therefore, documents on the basis of which

detention order was passed have not been provided to the detainee, rendering him unable to make effective representation; that the detention order is confusing as it is passed on both, to maintain 'public order' as well as 'Security of State'. Lastly, it is prayed that the petition be allowed and the impugned detention order be set aside.

3. The respondent No.2, in his counter affidavit, has controverted the averments made in the petition and submitted that the detainee is an OGW and a staunch facilitator of terrorist activities and sympathizer of banned terrorist organization and provides all possible help like transportation, internet, food and shelter to the banned terrorists outfits; that his actions are such a brazen and provocative in nature, as to create an environment of insecurity and terror, severely endangering public peace, tranquility, and communal harmony and therefore it was imperative to prevent him from continuing his criminal/anti social activities and to maintain public peace and order under the preventive detention; that the detention warrant along with grounds of detention was properly executed through PSI Riaz Ahmed of P/S Malhar under proper acknowledgement of the detainee and he was fully made to understand in the language he understands; that the detainee was also informed that he can make representation to the Govt. against the detention order, if he so desires. Lastly, it is prayed that the petition be dismissed and the impugned detention order be upheld as the same has strictly been passed as per the provisions of J&K Public Safety Act. The respondents have produced the detention records, in order to support the contentions raised in the counter affidavit.

4. Learned counsel for the petitioner, while seeking quashment of the impugned order, reiterated various grounds but his main thrust during the course of arguments was on the following grounds:

- (I) That the outcome of case FIR No.148/2003 of P/S Billawar as well as FIR No. 05/2021 of P/S Malhar was not brought to the notice of the competent authority who passed the order of detention while making the aforesaid FIRs as the foundation for passing the impugned detention order;
- (II) That he was not informed about his right to make effective and meaningful representation, as there is no mention of time in the detention order, within which, he can make representation;
- (III) That he was not informed that he can even make representation to the detaining authority against his detention;
- (IV) That grounds of detention are almost Xerox copy of the police dossier.

5. Learned State Counsel, *ex adverso*, making reference to the grounds of detention, argued that the activities of the detainee were not only criminal but also in the direction of causing disturbance to the public order; that detention ordered vide impugned order was in the public interest; that the grounds of detention are not replica of the dossier submitted by the SSP concerned, and the impugned detention order is passed with due consideration and application of mind; that there is no necessity to give in detail the activities of the detainee as the order is preventive in nature; that though the detention order is passed to maintain 'public order' as well as 'security of State' but the detention order is

based on 'public order'; that whole of the material relied upon had been supplied to the detainee by the executing officer at the time of execution of the detention warrant and contents thereof were explained to the detainee in the language understandable to him; that all the constitutional or statutory safeguards were observed in letter and spirit and the petitioner had also been informed of his right to move representation against his detention, in terms of impugned order. It was urged, finally, that the same be upheld and petition be rejected.

6. Heard learned counsel for the parties at length, perused the detention record and considered.

7. Para 5 of the counter affidavit filed on behalf of District Magistrate, Kathua-respondent No.2 has detailed the following cases FIRs registered against the petitioner at different police stations:

- i. FIR No.148/2003 u/s 307/341/121/121-A/120-120-2 RPC P/S Billawar;
- ii. FIR No. 05/2021 u/s 452/509 IPC P/S Malhar;
- iii. FIR No. 15/2022 u/s 341/342/323/504 IPC P/S Malhar; and
- iv. u/s 107 CrPC dated 14.08.2023.
- v. u/s 107 CrPC dated 21.02.2024.
- vi. u/s 126 BNSS dated 13.08.2024.
- vii. u/s 126 BNSS dated 22.09.2024.
- viii. u/s 126 BNSS dated 02.11.2024

Besides the above cases/FIRs, grounds of detention show that following 04 DDRs entries are recorded at P/S Malhar:

- i. DDR No.011 dated 29.10.2024
- ii. DDR No. 012 dated 02.11.2024

iii. DDR No. 015 dated 05.11.2024, and

iv. DDR No. 11 dated 21.11.2024

Involvement of the detainee in the aforementioned cases appears to have been heavily weighed with the detaining authority, while passing the detention order.

8. Petitioner has placed on record copies, of the order dated 15.01.2011 passed by the court of Principal Sessions Judge, Kathua acquitting the accused of the offences in case FIR No.148/2003 u/s 307/34/121/121-A/120-B/212/201 RPC 7/27 A.A. Order dated 25.08.2021 passed by the Chairman, Legal Service Committee, Billohar disposing of the Challan in case FIR No.05/2021 U/S 451 IPC, P/S Malhar as compounded between the parties and closed the case as decided. Further perusal of the grounds of detention vis-à-vis FIR No.373/2024 would show that the accused stood bailed out.

9. So far as the DDR entries (supra) are concerned, it is an admitted case that those have not culminated in any criminal cases. Merely recording DDRs alleging some acts cannot be the ground to detain a person. It is surprising that if the acts mentioned in the DDR entries are criminal acts and are cognizable in nature, then why the State has not filed any First Information Report. Law provides that if cognizable offence is committed and is brought to the knowledge of any authority, First Information Report should be lodged. If at all those acts mentioned in DDRs make out any criminal offence, what prevented the State to file a First Information Report is a mystery.

10. As regards the complaints u/s 173 CrPC and u/s 126 BNSS, perusal of the execution report would show that detainee was provided detention order, notice of detention, grounds of detention, dossier of detention, copies of FIR, statement of witnesses and other relevant documents. However, respondents

have failed to substantiate with regard to the detailed documentation made available to the detainee so as to enable him to file a meaningful and effective representation to the detaining authority or the Government, so much so that no record pertaining to preventive action under CrPC and BNSS has been provided to the detainee. Since the petitioner has all along denied that relevant material was supplied to him, the respondents ought to have filed an affidavit of the executing officer to controvert the above allegations, which has ostensibly not been done by the respondents in the instant case.

11. The whole edifice, on which the impugned detention order is based, crumble when confronted vis-à-vis the outcome of the aforesaid FIRs. Had the outcome of the aforesaid FIRs brought to the notice of the detaining authority, the order could have been passed after subjective satisfaction. On this score alone, the detention order having been passed without application of mind by the detaining authority is not sustainable and liable to be quashed.

12. Second ground as argued is, that the detainee was not informed about his right to make representation within stipulated time before the detaining authority as well as government, thereby violating his statutory and constitutional rights. It is translucently clear from perusal of the impugned detention order that the Detaining Authority has not communicated to the detainee the time limit, within which, he could make a representation to it, till approval of the detention order by the Government. In a case of National Security Act, titled “**Jitendra Vs. Dist. Magistrate, Barabanki & Ors.**”, reported as **2004 Cri.L.J 2967**, the Division Bench of Hon’ble Allahabad High Court, has held:-

“10. We make no bones in observing that a partial communication of a right (in the grounds of detention) of the type in the instant

case, wherein the time limit for making a representation is of essence and is not communicated in the grounds of detention, would vitiate the right fundamental right guaranteed to the detainee under Article 22(5) of the Constitution of India, namely, of being communicated, as soon as may be the grounds of detention.”

13. Since the detainee’s right to make a representation to the detaining authority was only available to him till approval of detention order by the Government, it follows as a logical imperative that the detaining authority should have communicated to the detainee in the grounds of detention the time limit, within which, he could make a representation to it i.e., till the approval of the detention order by the State Government. There is, therefore, force in the above argument of the detainee. On this count alone, the impugned detention order cannot sustain and is liable to be quashed.

14. In so far as third ground is concerned, the law is well settled and is no longer *res integra* that the detainee must be informed of his right to make representation to the Detaining Authority as this is one additional avenue for his detention order to be reconsidered in addition to the representation to be made to the Government. It is also settled law that once the Government passes an order approving the order of detention, the Detaining Authority becomes *functus officio* and thereafter cannot review its order. Therefore, the Detaining Authority had to inform the detainee about his right at the very outset so that the detainee can make a representation for reconsideration by the Detaining Authority. The Hon’ble Apex Court in a judgment titled “**Sophia Gulam Mohd. Bham v. State of Maharashtra & Ors. (AIR 1999 SC 3051)**”, has held as under:

“The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detainee to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detainee and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language.”

15. In the case on hand, the ground that the detainee was not informed about his right to file a representation to the Detaining Authority can also be ascertained from the detention order. The Detaining Authority as per record, vide his No.DMR/JC/2024-25/3409-73 dated 10.12.2024 had informed the detainee that he may make a representation to the Government against the detention order, if he so desires, meaning thereby that the Detaining Authority had not informed the detainee that he could file a representation before the Detaining Authority as well. Therefore, the contention made on behalf of detainee that the detention order is vitiated on this count has also force as a valuable right of filing representation before the Detaining Authority to reconsider its decision, was not afforded to the detainee.

16. The last ground, which has been urged by the learned counsel for the petitioner is that the Detaining Authority while formulating the grounds of detention has failed to apply its mind, inasmuch as the grounds of detention are almost xerox copy of the police dossier. A perusal of grounds of detention and the police dossier reveals that the language and expressions used in both the documents are almost similar to each other with intermixing of words here and there. This clearly shows that the detaining authority has acted in a mechanical

manner. The Supreme Court has, in the case of **Jai Singh and others vs. State of Jammu and Kashmir, (1985) 1 Supreme Court Cases 561** clearly stated that where the grounds of detention are verbatim reproduction of the dossier submitted by the police, it goes on to show that there is non-application of mind on the part of the detaining authority. In **Rajesh Vashdev Adnani vs. State of Maharashtra and others, (2005) 8 SCC 390**, the Supreme Court again reiterated that where the detention order is verbatim reproduction of the police dossier, the said order suffers from non-application of mind on the part of the Detaining Authority.

17. In the face of the aforesaid legal position, it can safely be stated that the detaining authority in the instant case has acted in a mechanical manner while passing the impugned order of detention rendering it unsustainable in law.

18. Personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. It was for this reason that the Founding Fathers enacted the safeguards in Article 22 in the Constitution so as to limit the power of the State to detain a person without trial, which may otherwise pass the test of Article 21, by humanizing the harsh authority over individual liberty. In a democracy governed by the rule of law, the drastic power to detain a person without trial for ‘security of the State’ and/or ‘maintenance of public order’ must be strictly construed. However, where individual liberty comes into conflict with the interest of the security of the State or public order, then the liberty of the individual must give way to the larger interest of the nation. The Hon’ble Apex Court in **Smt. Icchu Devi Choraria v. Union of India & Ors. (AIR 1980 SC 1983)** held as under:

“The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade.

This is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detainee even though the detention may have been valid till the breach occurred.”

19. Having regard to the facts, firstly, whole reliance of the detaining authority on the stale cases of the year 2003 and 2021, in which the detainee stands acquitted, secondly, not informing the detainee that he can make representation to the detaining authority against the detention order, thirdly time frame is not specified in the detention order within which detainee can file representation against the detention order and fourthly non application of mind by the detaining authority, it can safely be held that the detainee was disabled to exercise his right to file a representation against his detention, in terms of Article 22(5) of the Constitution of India; that in this backdrop, it is established that the detaining authority has passed the impugned detention order arbitrarily and mechanically, without application of mind and the constitutional and statutory safeguards available to the detainee were also observed in breach and trampled, vitiating the impugned detention order, which renders it unsustainable and liable to be quashed.

20. Viewed thus, the petition is allowed and the impugned detention Order No.**PSA/132 dated 10.12.2024**, passed by respondent No. 2, District Magistrate, Kathua, is hereby quashed. The detainee-**Liyaqat Ali** S/O Abdul Majid,

R/O Lohai, Tehsil Lohai Malhar, District Kathua is directed to be released from the preventive custody forthwith, if not required in any other case(s). No costs.

21. The record of detention be returned to the respondents through their counsel.

22. Disposed of, accordingly, along with connected application(s).

Jammu:
31.07.2025
Raj Kumar

(MA CHOWDHARY)
JUDGE

Whether the order is speaking? Yes

Whether the order is reportable? Yes