

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

**HCP No. 115/2024**

Reserved on: 28.11.2024

Pronounced on:06.12.2024

**Vidya Sagar**

**...PETITIONER(S)**

Through: - Mr. Ajay Bakshi, Advocate.

Vs.

**UNION TERRITORY OF J&K & ORS**

**...RESPONDENT(S)**

Through: - Mr. Sumeet Bhatia G.A.

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

**JUDGMENT**

1 The petitioner (hereinafter referred to as the 'detenu') has challenged order No.3-PSA-2024 dated 06.02.2024 issued by the District Magistrate, Udhampur, respondent No.2 herein ('detaining authority' for short) whereby the detenu, namely Vidya Sagar son of Dewan Chand resident of Bindla, Tehsil Ramnagar, District Udhampur has been taken into preventive custody with a view to prevent him from acting, in any manner, prejudicial to the public order.

2 The impugned order of detention has been challenged by the detenu on the ground that the allegations made against him, as per the grounds of detention, are not of such a serious nature as would amount to a threat to the public order. It has been contended that the impugned order of detention has been passed without application of mind, inasmuch as, the detaining authority could not have derived a

subjective satisfaction on the basis of the material that was available before it. It has been further contended that whole of the material forming the basis of the grounds of detention was not furnished to the detenu, as a result of which, he could not make an effective representation against the order of detention. It has also been contended that the detenu had made a representation against the impugned order of detention, but the same has not been considered by the respondents thereby violating his statutory and constitutional rights.

3 Respondent No.2, the detaining authority, has filed its counter affidavit in opposition to the petition. In the counter affidavit, it has been contended that the detenu is a criminal-minded person with a history of involvement in a number of heinous crimes. It has been alleged that the criminal activities of the detenu are highly prejudicial to the safety and security of the public and the maintenance of public order. According to the respondents, the detenu is a habitual bovine smuggler and bootlegger, and his activities can injure the sentiments of a particular community and create feeling of enmity, hatred and disharmony which is likely to disturb the public order. It has been contended that all the procedural and constitutional safeguards have been adhered to by the respondents in the present case and whole of the material forming the basis of the grounds of detention has been furnished to the detenu, whereafter, the contents thereof, were read over and explained to him in Hindi/Dogri language. It has been further contended that the representation of the detenu was considered by the respondents and the

same was rejected. In this regard, a communication bearing No.Home/PB-V/67/2024 dated 31.07.2024 has been addressed by the Home Department to the District Magistrate, Udhampur, a copy thereof, has been endorsed to the Superintendent, Central Jail, Kotbhalwal, Jammu with a request to inform the detenu. Detention record relating to the detenu has also been produced by the respondents.

4 I have heard learned counsel for the parties and perused the record produced by the respondents.

5 Although, learned counsel for the detenu has raised many grounds for assailing the impugned order of detention, yet, during the course of arguments, he has laid much emphasis on the contention that the activities alleged to have been committed by the detenu are not of such a nature as would warrant invocation of a stringent law, like the Public Safety Act against him. It has also been contended that the representation of the detenu against the impugned order of detention has not been considered by the respondents and, even if the same has been considered, the result thereof, has not been conveyed to the detenu thereby violating his statutory and constitutional rights.

6 So far as the first ground urged by the detenu is concerned, if we have a look at the grounds of detention, it bears reference to (04) FIRs; (i) FIR No. 56/2023 for offence under Section 48 (a) of Excise Act registered with Police Station, Udhampur, (ii) FIR No. 76/2023 for offence under Section 48(a) of Excise Act registered with Police Station, Ramanagar, (iii) FIR No. 116/2023 for offences under Section 188 IPC

and Section 11 of Prevention of Cruelty to Animals Act ('PCA Act' for short), registered with Police Station, Ramnagar, and (iv) FIR No. 03/2024 for offences under Section 188 IPC and Section 11 of PCA Act registered with Police Station, Ramnagar. As per the allegation made in FIR No 56/2023, the detenu was found to be in possession of (08) bottles of JK Special Whisky, whereas as per the allegation made in FIR No. 76/2023, the detenu was found to be in possession of (18) bottles of JK Special Whisky. As per the allegations made in FIR No. 116/2023 and FIR No. 03/2024, the detenu was found to be involved in smuggling of bovine animals.

7           The question that is required to be determined in this case is as to whether the aforesaid allegations against the detenu form a sufficient ground for resorting to preventive detention against him. It is a settled law that this Court, while exercising its writ jurisdiction, cannot undertake judicial review of the subjective satisfaction arrived at by the detaining authority, but then, if it is found from the grounds of detention that there has been total non-application of mind on the part of the detaining authority while deriving its subjective satisfaction regarding the requirement of putting a person under preventive detention, this Court would be well within its jurisdiction to quash the order of detention.

8           Adverting to the facts of the present case, the allegations made in the FIRs, reference whereof is made hereinabove, which has persuaded the detaining authority to pass the impugned order of

detention, constitute petty crimes and the same by, no stretch of imagination, could have impacted the maintenance of public order. Although, it has been alleged in the grounds of detention that the involvement of the detenu in bovine smuggling has led to communal tension and disharmony, but not even a single instance of such nature has been indicated in the grounds of detention. Mere vague allegation that the activities of the detenu with regard to his indulging in bovine smuggling would lead to communal tension in the area without there being any specific instance to this effect, cannot form a ground for invoking stringent law of preventive detention against a person. The activities of the detenu as alleged in the grounds of detention, at best, constitute a law and order problem for the authorities, but the same, by no stretch of reasoning, can be termed to constitute a threat to the maintenance of public order. The activities prejudicial to the public order have to be distinguished from the acts which essentially concern individuals and do not disturb the community to the extent of disrupting the normal tempo of life.

9            In the instant case, the grounds of detention could have, by no stretch of imagination, led the detaining authority to conclude that the activities of the detenu are prejudicial to the public order. Hence, there has been total non-application of mind on the part of the detaining while passing the impugned order which, as such, deserves to be set aside on this ground alone.

10           Regarding the second ground, it is to be noted that the detenu has placed on record a copy of the representation which is stated to have been sent to the respondents through registered post on 28.06.2024. The receipt thereof has been admitted by the respondents in their counter affidavit and it has been contended that the said representation was rejected in terms of communication dated 31.07.2024 (supra). However, there is nothing in the record produced by the respondents that would go on to show that the order of rejection has been conveyed to the detenu. Even though the order of rejection dated 31.07.2024 has been endorsed to the Superintendent of the Jail concerned, but the record does not reflect anything that would form an evidence regarding the receipt of copy of the said communication by the detenu. In these circumstances, it can be inferred that the result of consideration of the representation of detenu has not been conveyed to the petitioner.

11           The Supreme Court in the case of **Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur and others**, (2021) 20 SCC 98 while dealing with the effect of failure to communicate the result of the representation has, held that failure in timely communication of the order of rejection of the representation is a relevant factor for determining the delay as the detenu is protected against under Article 22 (5) of the Constitution. It has been further held that failure of the Government to communicate the rejection of the representation of the detenu in a time bound manner is sufficient to vitiate the order of detention. In view of

this position of law, the impugned order of detention deserves to be set aside on this ground as well

12 Viewed in the above context, the petition is allowed and the impugned order of detention is quashed. The detenu is directed to be released from the preventive custody forthwith, provided he is not required in connection with any other case.

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

**(Sanjay Dhar)**  
**Judge**

**JAMMU**  
**06.12.2024**  
**"SANJEEV"**

