

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

HCP No.25/2025

Reserved on: 29.05.2025

Pronounced on:03.06.2025

Makhan Din, Age 38 years
S/o Sh. Sarwar Din R/o Chak Desa Choudhrian,
Tehsil Marheen District Kathua
A/P District Jail Rajouri.

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

Through :- Mr. A.P.Singh, Advocate with
Mr. Nikhil Verma, Advocate

V/s

1. Union Territory of Jammu and Kashmir through Principal Secretary to the Home Department, Civil Secretariat, Jammu
2. The District Magistrate, Kathua
3. Senior Superintendent of Police, Kathua.
4. SHO Policie Station, Rajbagh, District Kathua.
5. Superintendent, District Jail, Rajouri.

....Respondent(s)

Through :- Mr. Suneel Malhotra, GA

CORAM: HON'BLE MS.JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

01. In the instant petition, the detainee herein, has challenged Order No. PSA/140 dated 17.01.2025 issued by respondent No. 2, by virtue of which the detainee has been detained under preventive detention in terms of the provisions of Section 8(1) (a) of J&K Public Safety Act, 1978 in order to prevent him from acting in any manner prejudicial to the maintenance of public peace and order.

02. FIR No. 177/2011 under Sections 341/323/504/506 RPC of Police Station Rajbagh, FIR No.57/2016 under Sections 365/323 RPC of Police Station, Lakhanpur, FIR No.244/2017 under Sections 307/147/148/149/323 RPC of Police Station, Rajbagh, FIR No.209/2019 under Sections 341/323/147/436 IPC of Police Station Rajbagh, FIR No.216/2019 under Sections 188 IPC, 03 PCA/3 PDPP Act 184 MV Act of Police Station, Rajbagh, FIR No.11/2020 under Section 307/279/427/186 IPC of Police Station, Lakhanpur, FIR No.123/2023 under Section 179/336/353/427 IPC of Police Station Hiranagar, FIR No.16/2024 under Section 188 IPC of Police Station, Rajbagh and FIR No. 20/2024 under Section 188 IPC of Police Station, Rajbagh came to be registered against the detainee.

03. FIR No 216/2019, FIR No. 16/2024 and FIR No.20/2024 have been registered against the detainee for the illegal activities of 'bovine smuggling' in violation of the prescribed permission from District Magistrate concerned, whereas FIR Nos. 177/2011, 157/2016, 244/2017, 209/2019, 11/2020 and 123/2023 stood registered against the detainee and others for their illegal activities like attempt to murder, wrongful restraint and assault, abduction and arson. It is stated that out of nine FIRs, in four FIRs, the detainee has been bailed out by the competent Court of jurisdiction, however, in rest of the FIR the arrest of the detainee and other accused is still awaited. According to the grounds of detention, the detainee is found to have been involved in serious criminal activities related to wrongful abduction, arson and bovine smuggling and has created terror among the peace loving citizens of the area in general and particularly in District Kathua. It is stated that the detainee's actions are such a brazen and provocative nature so as to create an environment of

insecurity and terror, severely endangering public peace, tranquility and communal harmony, which necessitate stringent preventive measures.

04. The contention of the detinue is that the present detention order is an act of abuse of power by the respondent No.2 because the detinue along with other people of the locality obtained a status quo order with respect to their ownership and possession over the land in the village in a suit for declaration and permanent prohibitory injunction filed against the respondents to evict the detinue from the suit land. According to the detinue, he is suffering at the hands of high handedness of District Administrative Authorities, more particularly respondent No.2 and 3 and is a victim of *mala fide* exercise of power by respondent No.2, in that, it is the third detention order in a row issued against the detinue. It is stated that the detention of the detinue under preventive detention is illegal, arbitrary and without any lawful jurisdiction as the substantive law of the land could have sufficiently taken care of the alleged activities of the detinue. The detinue, as such, has challenged the impugned order *inter alia* on the following grounds:-

- a) That the impugned detention order has been passed on the same FIRs and challans, which are part of the earlier two detention orders passed against the petitioner being PSA/102 dated 22.05.2020, which stands quashed by this Court on 22th November, 2020 and PSA/123 dated 23.02.2024, which came to be quashed by this Court on 05.08.2024, without there being any fresh FIR or challan, which course is impermissible in law.
- b) That the impugned detention order and grounds of detention suffer from total non-application of mind and has been issued with an ulterior motive of forcing the detinue alongwith his relatives to evict from the

land, which is subject matter of a civil suit pending in the Court of Chief Judicial Magistrate, Kathua.

- c) That when in the Police dossier it is stated that there is apprehension of the detinue creating a law and order problem and situation, detaining authority can order detention of the detinue for maintaining public peace and order.
- d) That the detinue has been denied of his constitutional right guaranteed under Article 22(5) of the Constitution of India as the whole material relied on by the detaining authority has not been provided to him, thus, disabling him to make an effective representation.
- e) The petitioner was not informed of his right to make an effective representation to the detaining authority against the detention order
- f) That though, the detinue/detinue has been booked in many FIRs, as is depicted from the detention order/dossier but it is settled position of law, that if the remedies to deal with the criminal activities of the detinue/detinue are sufficient under ordinary law of the land, the detention order is unsustainable and the same is liable to be set aside.

05. *Per contra*, the respondents in their counter affidavit have stated that keeping in view the continuous involvement of the detinue in illegal and criminal activities, he was detained under the J&K Public Safety Act, 1978. It is stated that the detinue is a criminal minded person involved in a number of anti-national activities and, as such, is a threat to the life and liberty of the people. The activities of the petitioner are prejudicial to the safety and security of the public in general and as a result, safety and security of the public has become very difficult. According to the respondents, there is strong apprehension that the detinue would indulge into more criminal activities and become a danger to the public peace and tranquility in the area.

06. It is further stated that at the time of execution of detention order, the executing officer has provided the relevant documents along with detention warrant, grounds of detention and along with other documents (total 24 leaves) and had explained the same to the detainee in the language i.e Urdu language, which he understands, informing him about his right to make representation before the Government (Home Department) as well as before the Detaining Authority against the detention order. Respondents have also placed on record the execution report, and confirmation of detention order by Home Department after seeking opinion of the Advisory Board.

07. Heard learned counsel for the parties and perused the material on record including the detention record produced by the learned counsel for the respondents.

08. The primary ground urged by the learned counsel for the petitioner is that the FIRs and criminal antecedents relied upon in the present detention order were the very same which were also made the basis of earlier detention order Nos.PSA/102 of 2020 dated 22.05.2020 and PSA/123 dated 23.02.2024, which have already been quashed by this Court in WP(Crl) No.21/2020 and HCP No.36/2024 vide judgments 21.11.2020 and 05.08.2024 respectively. It is further submitted that despite the quashing of the earlier detention order, the detaining authority has passed the impugned detention order on identical material without pointing out any fresh grounds or supervening circumstances, thereby rendering the present detention order illegal and *non est* in the eyes of law. It is submitted that even if order of detention comes to an end either by revocation or by expiry of period of detention, there must be fresh facts for

passing a subsequent detention order. To substantiate his argument, learned counsel for the petitioner has placed reliance upon **Ameena Begum v. The State of Telangana and others, (2023) 9 SCC 587** and **Chhagan Bhagwan Kahar v. N.L.Kalna, (1989) 2 SCC 318**.

09. Mr. Suneel Malhotra, GA on the other hand submits that the detnue is a hardcore/habitual criminal and has been involved in various criminal offences by blatantly violating the rule of law indulging in bovine smuggling and other criminal activities and has spread a reign of terror amongst the peace-loving people of the area and his anti-social activities are pre-judicial to the maintenance of public order and had he been let free, there would have been every likelihood of his re- indulging in criminal activities. He further submits that the procedural safeguards prescribed under the provisions of Public Safety Act and the rights guaranteed to the detainee under the Constitution have strictly been followed in the instant case. The detainee has been furnished all the material, as was required, and was also made aware of his right to make representation to the detaining authority as well as to the government, against his detention. However, he could not dispute that the FIRs mentioned in the impugned detention order are the same as those relied upon in the earlier detention order which stood quashed by this Court. He, however, submitted that the authority has re-evaluated the threat posed by the detenu and formed a fresh subjective satisfaction.

10. The law on this issue is well-settled. Once a detention order is quashed by a Court, a fresh detention order on the same grounds and materials, in absence of any fresh or supervening circumstances, is unsustainable. The

Supreme Court in the case of **Chhagan Bhagwan Kahar v. N.L.Kalna, (1989) 2 SCC 318** after considering various judgments, has in paragraph No.12 held thus:

“12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the Court strikes down an earlier order by issuing rule it nullifies the entire order.”

11. The Supreme Court in the case of **Ameena Begum v. The State of Telangana and others, (2023) 9 SCC 587** after surveying considering various decisions, has in paragraph No.48 observed:-

“48. Since the aforesaid order of the High Court went unchallenged and is, thus, binding upon the parties, it was not open to the Commissioner to the very same antecedent offences again in the Detention Order under challenge. There was no direct nexus or link with the immediate need to order detention and we hold extraneous considerations having found their way into the Detention Order.”

12. A perusal of the impugned detention order indicates that there is no live or proximate link with respect to the FIRs mentioned in the detention order. The detaining authority has merely reiterated the same FIRs and antecedents without offering any new material which could justify the issuance of a fresh detention order.

13. Perusal of the detention record produced by the learned State counsel indicates that the Senior Superintendent of Police, Jammu submitted dossier in respect of the detainee to the Detaining Authority on 17.01.2025 with a request to detain the detainee under the provisions of J&K Public Safety Act and the detaining authority by virtue of the order impugned issued on 17.01.2025 itself

has ordered detention of the detainee under preventive detention. The detention order came to be executed on 19.01.2025. The Execution Report reveals that the notice of detention was given to the detainee and contents of the detention warrant and grounds of detention have been read over and explained to the detainee/detenu in Urdu language, which he understood fully. The relevant material consisting of detention warrant (02 leaf, dossier (12 leaves), grounds of detention and other documents (10 leaves) total 24 leaves have been supplied to the detainee, which has been acknowledged by him by affixing his signatures on the execution receipt. The detainee was also informed by the executing officer that he can make representation to the Government against his detention, if he so desires.

14. Insofar as plea of the detainee that he has been deprived of his right to make effective representation is concerned, the detention record reveals that there is no intimation to the detenu that he could make a representation to the detaining authority. This omission is not a mere formality but a fatal flaw, as it has prejudiced the detenu's right to make representation at the earliest stage. Hon'ble the Supreme Court in the case of **State of Maharashtra v. Santosh Shankar Acharya, (2000)7 SCC 463** has observed that non-communication of the fact to the detainee that he could make a representation to the detaining authority so long as the order of detention has not been approved by the State Government would constitute an infraction of a valuable right of the detainee under Article 2(5) of the Constitution. Relevant extract of the judgment is reproduced hereunder:-

“This being the position, non-communication of the fact to the detenu that he could make a representation to the detaining authority so long

as the order of detention has not been approved by the State Government in a case where an order of detention is issued by an officer other than the State Government under sub-section (2) of Section 3 of the Maharashtra Act would constitute an infraction of a valuable right of the detenu under Article 22(5) of the Constitution and the ratio of the Constitution Bench decision of this Court in Kamlesh Kumar Ishwardas Patel v. Union of India, (1995) 4 SCC 51 would apply notwithstanding the fact that in Kamlesh Kumars case (supra) the Court was dealing with an order of detention issued under the provisions of COFEPOSA.”

15. From the discussion made above, it becomes manifest that the impugned detention order suffers from total non-application of mind by the detaining authority, for the FIRs and antecedents mentioned in the grounds of detention, were also the basis of earlier detention orders, which stood quashed by this Court. Besides this, the detenu has also been deprived of his right to make effective representation by non-communication of his right to make representation to the detaining authority.

16. In the premises, this petition succeeds. Impugned detention order No.PSA/140 dated 17.01.2025, issued by the District Magistrate, Kathua is quashed. The detenu is directed to be set at liberty forthwith, if not required in any other case.

17. Record be returned to Mr. Suneel Malhotra, learned counsel for the respondents.

(Moksha Khajuria Kazmi)
Judge

Jammu:
03.06.2025
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