

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

HCP No. 17/2025

**Mohd. Abass, Age 51 years, S/o Abdul Sattar,
R/o Ward No. 08, Near G. H. S. S. Malhar, Tehsil Lohai Malhar,
District Kathua, A/P lodged at Central Jail, Kot Bhalwal, Jammu.**

.....*Petitioner*

Through: Mr. Ajay Gandotra, Advocate

Vs

- 1. Union Territory of Jammu & Kashmir
Through Principal Secretary to Government, Home
Department,
Civil Secretariat, Jammu.**
- 2. District Magistrate, Kathua
College Road, Shiv Nagar, Kathua.**
- 3. Senior Superintendent of Police, Kathua
College Road, Urliwand, Kathua.**
- 4. Superintendent, Central Jail Kot Bhalwal, Jammu.**

..... *Respondents*

Through: Mr. Suneel Malhotra, GA

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

**JUDGMENT
(05.06.2025)**

01. Heard learned counsel for the petitioner as well as Mr. Suneel Malhotra, learned GA for the respondents. Perused the pleadings and the documents therewith. Also

gone through the detention record produced from the end of Mr. Suneel Malhotra, learned GA.

02. The petitioner came to institute this writ petition on 17.01.2025, while being in the state of preventive detention custody lodged in the Central Jail, Kot Bhalwal, Jammu for seeking restoration of his personal liberty for which writ the jurisdiction of this court under article 226 of the Constitution of India has been invoked.

03. The respondent No. 2 – District Magistrate, Kathua, by virtue of an Order No. PSA/128 dated 03.12.2024 came to exercise jurisdiction under section 8 of the J&K Public Safety Act, 1978 thereby ordering the preventive detention of the petitioner by reckoning his alleged activities as being a hardened criminal, threat to the maintenance of public order and, thus, warranting his preventive detention.

04. The respondent No. 2 – District Magistrate, Kathua was, infact, approached by the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua with his communication No. 32698-701/DPO dated 03.08.2024 along with a dossier and other connected documents

related to the petitioner whereby the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua projected the petitioner to be a hardened criminal involved in various anti-social and anti-national activities thereby posing a threat to the maintenance of public order warranting his detention under the J&K Public Safety Act, 1978.

05. In his said dossier, the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua came to refer the petitioner to be a hardcore criminal, desperate character and history sheeter of the Police Station Billawar who was involved in the commission of organized crime for the past so many years and still continuing with the said state of conduct resulting in terror amongst the general public.

06. The respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua came to say and mean in his said dossier that an ordinary criminal law has also failed to restrain the petitioner from committing the criminal activities and given the terror of the petitioner no one dares to depose against him before the Police or in the court of law.

07. In order to profile the petitioner in said light, the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua came to refer the petitioner's involvement in three (3) FIRs, which are being :-

- i) FIR No. 90/2001 registered by the Police Station Billawar for alleged commission of offence/s under section/s 120-B/212 Ranbir Penal Code;
- ii) FIR No. 44/2007 again registered by the Police Station Billawar for alleged commission of offence/s under section/s 420/467/468/120-B Ranbir Penal Code &
- iii) FIR No. 16/2020 registered by the Police Station Malhar for alleged commission of offence under section 420 Indian Penal Code.

08. By reference to the aforesaid three (3) FIRs, the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua came to refer in his dossier that all the said FIRs have resulted in presentation of the challans against the petitioner in the competent court of law.

09. In the same breath, the respondent No.3- Sr. Superintendent of Police SSP, Kathua came to cite and state that with respect to a criminal case born out of FIR No. 90/2001, the petitioner stood acquitted and also with respect to FIR No. 44/2007 the petitioner is said to have also been acquitted, but without bearing any reference in the dossier about the respective date of the judgment of acquittal in said two criminal cases related to FIRs No. 90/2001 and 44/2007 and any appeal/s taken out against the said acquittal/s of the petitioner in said two cases by the State/UT of J&K.

10. With respect to active FIR No. 16/2020 under section 420 of Indian Penal Code registered by the Police Station Malhar, in the dossier it came to be stated that a Police Report/Challan has been presented but having been stayed by this Court in terms of an order dated 26.04.2022 without making any reference to the case number and in which state of adjudication.

11. Before parting with his dossier, the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua came to make a cursory and passing mention about the

preventive detention of the petitioner made earlier under the J&K Public Safety Act, 1978 on 18.11.2001 and his consequent detainment in the Central Jail, Kot Bhalwal, Jammu for two years and getting released after serving two years' maximum detention period on 25.11.2003.

12. It is by reference to said profile of the petitioner that the respondent No. 2 – District Magistrate, Kathua was addressed to and sought to be impressed upon by the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua to place preventive detention against the petitioner and deprive him of personal liberty.

13. Along with said dossier, the documents accompanying therewith are judgment dated 30.03.2019 of the court of Additional Sessions Judge, Kathua on file No. 36/101/163/Sessions relatable to a criminal case out of FIR No. 44/2007; copy of the order dated 17.01.2022 by the court of Additional Sessions Judge, Kathua on file No. 15/Bail in relation to bail granted in favour of the petitioner with respect to FIR No. 16/2020 annexed in terms whereof the petitioner came to be

granted bail upon consideration of facts and circumstances relatable to the case.

14. One of the additional documents accompanying the dossier is an order dated 26.04.2022 passed by this Court in the petitioner's petition CRM(M) No. 293/2022 titled "Mohd. Abass and another Vs UT of J&K and another" whereby the petitioner along with co-accused has sought quashment of FIR No. 016/2020 registered by the Police Station Malhar wherein this Court came to allow the investigation to go ahead but final police report/challan to be produced only with the permission of this Court, meaning thereby not staying the investigation of FIR No. 016/2020 of the Police Station Malhar, contrary to the recital as made by the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua in his dossier that the charge-sheet has been stayed by the High Court, whereas the fact of the matter is that this Court meant only to say that without permission of the Court the final charge-sheet not to be produced.

15. The record of the dossier was made bulky by accompanying FIR No. 44/2007 and the challan No. 125 of 2007 dated 23.10.2007 produced therewith and also copy of FIR No. 90/2001 but without its related final police report/challan.

16. On the basis of said dossier so received by him in terms of letter No.32698-701/DPO dated 03.08.2024, the respondent No. 2 – District Magistrate, Kathua took his own time in considering the same and came up with a decision in response thereto when after three months of pendency of the dossier, the respondent No. 2 – District Magistrate, Kathua came to formulate the purported grounds of detention making mechanical references to FIR No. 90/2001, FIR No. 44/2007 & FIR No. 16/2020 verbatim as it is as made in the dossier and upon that purported basis arriving at the conclusion that it was established that the petitioner was involved in serious and repeated criminal activities and has a longstanding history of criminal behavior and close association with hardened criminals having already suffered a preventive detention on an earlier occasion on 18.11.2001 and was, thus, convinced to arrive at subjective satisfaction that

the preventive detention of the petitioner is imperative to prevent him from continuing his criminal activities and to maintain public peace and order and thereby directing the petitioner to be detained for the maximum period specified under the J&K Public Safety Act, 1978.

17. Vide a communication No.DMK/JC/2024-25/3361-65 dated 03.12.2024, the respondent No.2- District Magistrate, Kathua meant to notify the petitioner about the fact of passing of preventive detention order No. PSA/128 dated 03.12.2024 against him warranting his preventive detention and also meaning to apprise that upon his detention taking place the petitioner having a right to make a representation to the Govt. against the preventive detention order and consequent custody.

18. The preventive detention order No.PSA/128 dated 03.12.2024 of the respondent No.2 - District Magistrate, Kathua came to be approved in terms of requirement of section 8(4) of the J&K Public Safety Act, 1978 by the Govt. of Jammu & Kashmir acting through its Home Department by issuance of Govt. Order No. Home/PB-V/2314 of 2024 dated 09.12.2024.

19. The arrest and detention of the petitioner in furtherance of detention Order No. PSA/128 dated 03.12.2024 came to take place on 06.01.2025 when the petitioner came to be arrested by PSI Riaz Ahmed of Police Station Malhar who came to hand over to the petitioner detention order (02 leaves), notice of detention (01 leaf), grounds of detention (06 leaves), dossier of detention (06 leaves) and accompanying documents (16 leaves) (total 31 leaves) and is also said to have explained about the contents of the detention order and also apprising the petitioner about his right to make a representation to the Govt. as well as to the detaining authority and the petitioner came to be handed over to the Superintendent Central Jail, Kot Bhalwal, Jammu who vide his communication No. MS/CJJKB/8875-81 dated 06.01.2025 addressed to the Principal Secretary, Home Department, UT of J&K apprised about the execution of the detention warrants against the petitioner and his detainment and custody in the Central Jail, Kot Bhalwal, Jammu having taken place.

20. Upon getting detained, the petitioner came forward with an immediate representation dated

11.01.2025 made on his behalf through his son – Gulbaz Sheikh addressed and submitted to the Principal Secretary, Home Department, UT of J&K wherein the petitioner came to refer that without any factual basis he has been subjected to suffer loss of his personal liberty against whom case for preventive detention was framed by the then SHO Police Station Malhar, namely, Tariq Ahmed, Inspector. Said representation was sent through registered-post dated 11.01.2025 to the respondent No. 2 – District Magistrate, Kathua, Home Secretary, UT of J&K and also to the Divisional Commissioner, Jammu.

21. The Home Department, UT of J&K came to forward the detention case of the petitioner to the Advisory Board constituted under the J&K Public Safety Act, 1978 for its opinion, which came to be furnished on file No. Home/PB-V/606/2024 dated 21.01.2025, whereby it came to be opined that the petitioner's preventive detention is for sufficient cause and that the representation submitted by the petitioner to the Home Department, UT of J&K through his son -Gulbaz Sheikh is having no substance and, thus, paved the way

for confirmation of the preventive detention of the petitioner.

22. Vide Govt. Order No. Home/PB-V/224 of 2025 dated 30.01.2025, the preventive detention of the petitioner came to be confirmed in terms of section 17(1) of the J&K Public Safety Act, 1978 ordering the preventive detention of the petitioner for a period of three months at the first instance with effect from 06.01.2025 to 05.04.2025 while continuing to be detained in the Central Jail, Kot Bhalwal, Jammu. The detention period of the petitioner came to be extended for another period of three months in terms of Govt. Order No. Home/PB-V/552 of 2025 dated 01.04.2025 ordering the petitioner's detention with effect from 06.04.2025 to 05.07.2025.

23. It is in the aforesaid facts and circumstances of the case that the adjudication of the writ petition is to take place.

24. The petitioner has assailed his preventive detention as being unlawful in terms of grounds as set out in para 8(A) to (L). The detention order has been questioned to be vague without application of mind by

the respondent No. 2 – District Magistrate, Kathua. The passing of the impugned detention order of the petitioner is said to have been in a hush and haste manner, contrary to the spirit of the judgment of the Hon'ble Supreme Court of India in the case of "Amina Begum Vs State of Telangana" 2023 Live Law (SC) 743.

25. The petitioner came to highlight the fact that out of three (3) FIRs, two (2) FIRs cited in the dossier as well as in the grounds of detention are the ones which were no more reckonable to be having any legal effect on account of the criminal case born out of said two(2) FIRs having resulted in dismissal of the Police Report/Challan and consequent acquittal of the petitioner.

26. The petitioner has drawn reliance from the judgments of the Hon'ble Supreme Court of India in the cases of "**Vijay Narian Singh Vs State of Bihar and others**" (1984)3 SCC 14 and "Rushikesh Tanaji Bhoite Vs State of Maharashtra and others" (2012) 2 SCC 72.

27. The petitioner came to lay emphasis on the fact that public order and law and order are the two different aspects as highlighted by the Hon'ble Supreme Court of

India in the case of **“Dr. Ram Manohar Lohia Vs State of Bihar” 1966 AIR SC 740** which cannot be allowed to mix for the purpose of exercise of preventive detention jurisdiction. It has been asserted by the petitioner that he is a victim of Police *malafide*.

28. The petitioner has also referred to the judgments passed by the High Court of Jammu & Kashmir and Ladakh under the J&K Public Safety Act, 1978 in which regard reference is made to the cases of **“Mehraj Ud Din Khan Vs UT of J&K” - HCP No. 236/2024**, **“Gagandeep Singh Vs UT of J&K” - HCP No. 85/2025** & **“Felix Mattoo Vs UT of J&K and others” - HCP No. 17/2024**.

29. The counter affidavit came to be filed on behalf of the respondents on 24.04.2025 supported with an affidavit of the District Magistrate, Kathua sworn on 02.04.2025. The counter affidavit is accompanied with no supporting documents. The sequence in which the detention order against the petitioner came to be passed has been reiterated in the counter affidavit while indulging in a ritual like denial of the averments made in

the writ petition. Thus, it is the detention record produced wherefrom the averments made in the counter affidavit are being lend support.

30. It is in the aforesaid backdrop that this Court is to examine the fate of the preventive detention of the petitioner as to whether it would fail or sail in the eyes of law by the judgment of this Court through the adjudication hereby being made.

31. The preventive detention of the petitioner as impugned in the writ petition is seriously misconceived, unwarranted and illegal on all fours.

32. The respondent No. 2 – District Magistrate, Kathua was served with the dossier by the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua on 03.08.2024, projecting there in that the petitioner was a desperate hardened criminal whose activities were posing a challenge to the maintenance of public order. Now, if that was such a pressing concern of the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua in the matter of seeking preventive detention of the petitioner, then why a period of four months was let go by the respondent

No.2.- District Magistrate, Kathua without bothering to act upon the sad dossier and only finding time to take up the matter on 03.12.2024 to formulate the grounds of detention so as to draw purported subjective satisfaction in passing the impugned detention Order No. PSA/128 dated 03.12.2024.

33. Neither in the grounds of detention nor in the detention Order No. PSA/128 dated 03.12.2024, the respondent No.2- District Magistrate, Kathua has come up with any statement of fact as to why period of four months was allowed to go in wait and waste in the matter of considering so called pressing case for preventive detention of the petitioner put forth by the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua. In the counter affidavit filed by the respondent No. 2 – District Magistrate, Kathua to the writ petition, there is not any whisper of cause pleaded with respect to the time lag, which was allowed to set in for considering the dossier as submitted by the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua.

34. In the case of **“Sushant Kumar Manik Vs State of Tripura and others,” 2022 AIR SC 4715**, the Hon’ble Supreme Court of India has dealt with the aspect of delay in passing of the order of detention observing in para 14 as under:–

“14. In view of the above object of the preventive detention, It becomes very imperative on the part of the detaining, authority as well as the executive authorities to remain vigilant and keep their eyes skinned but not to turn a blind eye in passing the detention order at the earliest from the date of the proposal and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority would defeat the very purpose of the preventive detention and turn the detention order as a dead letter and frustrate the entire proceedings.”

35. When this Court examines the tone and tenor of the dossier so submitted by the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua, it is meant to be conveyed that the preventive detention of the petitioner must come forth as early as possible lest by his state of being in personal liberty the petitioner’s presence in the

civil society as a free citizen compounds the risk to the maintenance of public order and by that tone and tenor, the respondent No. 2 – District Magistrate, Kathua was expected to be acting with due dispatch and not at his leisure consuming four months as if maintenance of public order was a last priority for the respondent No. 2 – District Magistrate, Kathua to attend while attending the routine administrative matters at first instance.

36. It was for the respondent No. 2 – District Magistrate, Kathua to have stated the reasons, which otherwise are supposed to be known only to him, as to what kept him distanced from considering the dossier submitted by the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua for a period of four months. If there would have been some reason/s stated in the grounds of detention or for that matter in the counter affidavit filed, this Court would have been in a position to appreciate the intervening cause at the end of the respondent No. 2- District Magistrate, Kathua in not being able to address his attention to consider the dossier so submitted by the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua.

37. Even if by some stretch of reference and inference the intervening delay could have been justified by the respondents, still the preventive detention of the petitioner was unwarranted and uncalled for on the purported basis on which the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua came forward.

38. A dossier submitted by Law & Enforcement Authority in a given District with respect to a person within jurisdiction, whose preventive detention is solicited from the detention order making authority, is meant to be based on facts that too very live facts having a proximate connect related with the alleged activities of a prospective detenue जयते warranting to be checked/prevented from being continued by getting him under the preventive detention custody as early as possible lest his state of physical liberty endangers the Society/State in the context of a given preventive detention law.

39. When this Court examines the dossier so submitted by the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua, this Court is astonished rather

disturbed to read that two criminal cases, which had earned closure in the form of the acquittal of the petitioner and against which no further appeal is reported to have been preferred in the appellate court of law and said two cases being of 2001 and 2007, getting cited as the bad antecedents of the petitioner so as to club it with the latest involvement of the petitioner in FIR No. 16/2020 for alleged commission of offence under section 420 Indian Penal Code so as to inflate the dossier to sensationalize the petitioner's antecedents. Thus, the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua by referring to the said two FIRs in his dossier was in fact was referring to feigned narrative rather than actual situation involving the petitioner.

40. The respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua while authoring the dossier owed an answerability to the respondent No. 2 – District Magistrate, Kathua as to why he was putting to exploit the petitioner's implication in said two FIRs i.e. FIR No. 90/2001 & FIR No. 44/2007 when the criminal cases in relation therewith had resulted in acquittal of the petitioner which always come from a criminal court of law

after having conducted a criminal trial. An acquittal in a criminal case earned by an accused after undergoing a criminal trial tantamount to removal of taint against accused of being the doer of crime alleged against him and an acquittal cleanses him of any criminal antecedent by relation to the criminal case for which he came to be tried.

41. The respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua by referring the said two FIRs of 2001 & 2007 vis-à-vis the petitioner meant to present that the petitioner was a criminal by reference to the said two FIRs as if his acquittal by a criminal court of law was of no interest and attention to the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua.

42. Least this Court can observe on this aspect of the case is that the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua was in fact abusing the position of being the author of the dossier against the petitioner and was acting out of malice in law if not malice in fact.

43. The dossier, thus, being tainted by said malice ought not to have earned any accommodation from the end of the respondent No. 2 – District Magistrate, Kathua except rejection. May be the reason for the respondent No. 2 – District Magistrate, Kathua to stay non-responsive to the dossier of the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua was for this reason that dead facts were reported in seeking curtailment of the personal liberty of the petitioner by using the authority of the respondent No. 2 – District Magistrate, Kathua.

44. Insofar as 3rd FIR No.16/2020's mention is concerned, the petitioner's involvement is for alleged commission of offence under section 420 Indian Penal Code which by no stretch of imagination can be held to be a ground for reckoning the petitioner's personal liberty prejudicial to maintenance of public order while it may be a scenario of law and order even which is doubtful.

45. In the case of **“K. K. Saravana Babu Vs State of Tamil Nadu,” (2008)9 SCC 89**, the Hon'ble Supreme Court of India came to deal with the distinction between

law and order and public order in the context of preventive detention jurisdiction by re-emphasizing the fact that a law and order related scenario cannot be given the color of public order maintenance so as to deprive a person of his fundamental right to personal liberty.

46. It seems that the respondent No. 2 – District Magistrate, Kathua was not bearing in mind the position of law in the matter of exercising jurisdiction under the J&K Public Safety Act, 1978 when he is supposed to be fully cognizant of the position of law settled by the constitutional courts of the Country relatable to the preventive detention jurisdiction.

47. Ignorance of law is no excuse and the same applies with equal vigor upon the respondent No. 2 – District Magistrate, Kathua that in exercising preventive detention jurisdiction under the J&K Public Safety Act, 1978 he is short of effort and energy in consulting with the position of law related to preventive detention jurisdiction. A District Magistrate's ignorance cannot be allowed to run at the cost of a fundamental right of a citizen.

48. This Court is further concerned with the manner in which the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua came to make a passing casual reference to the petitioner's earlier preventive detention having taken place in 2011 but without coming forth with any factual reference as to vide which detention order the petitioner had been so subjected to preventive detention custody. If the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua is to be heard to say that he recited the fact about the petitioner's previous detention as reported to him by his subordinate police officials then this Court wonders where was the sense of care and caution of the respondent No. 3 – Sr. Superintendent of Police (SSP), Kathua in confirming the fact first and then acting thereupon later. So much so, even the respondent No. 2 – District Magistrate, Kathua in his dossier fell in same state of error by making a passing reference to the petitioner's preventive detention of 2011 but without even an iota of fact on the record to show that such a preventive detention custody of the petitioner had actually taken place.

49. The cumulative effect of the aforesaid facts and circumstances is that the petitioner's preventive detention as solicited, ordered and effected is seriously vitiated from its very inception and in fact is nothing but punitive in its intent and effect rather than preventive and, therefore, warrants to be held illegal and is, accordingly, held to be illegal.

50. Consequently, the preventive detention Order No. PSA/128 dated 03.12.2024 read with consequent approval/confirmation/extension orders passed by the Home Department, UT of Jammu & Kashmir are also held and declared to be illegal and are, accordingly, quashed.

51. The petitioner is directed to be released forthwith from his preventive detention custody from the Central Jail, Kot Bhalwal, Jammu or in whichever Jail he is presently confined. The Superintendent of the concerned Jail is, thus, directed to release the petitioner forthwith.

52. Detention record produced for the perusal and inspection of this Court to be returned back to Mr. Suneel Malhotra, learned GA against receipt.

53. ***Disposed of.***

(RAHUL BHARTI)
JUDGE

JAMMU
05.06.2025
Muneesh

Whether the judgment is speaking : **Yes**

Whether the judgment is reportable : **Yes**

