

(2025) 10 J&K CK 1143
In the Jammu And Kashmir High Court
Case No : HCP No.29 Of 2025

Abdul Qayoom @ Bittu

APPELLANT

Vs

Union Territory of Jammu and Kashmir

RESPONDENT

Date of Decision : 09-10-2025

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 226
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 126

Citation : (2025) 10 J&K CK 1143

Hon'ble Judges : M A Chowdhary, J

Bench : Single Bench

Advocate : Sumeet Bhatia

Final Decision : Dismissed

Judgement

M A Chowdhary, J

1. Petitioner namely Abdul Qayoom @ Bittu, S/O Abdul Gani, R/O Kadwah, Tehsil Basantgarh, District Udhampur (for short 'the detainee'), through the medium of this Habeas Corpus Petition, has challenged the detention Order No.14-PSA-2024 dated 24.12.2024 (impugned order), issued by respondent No.2, District Magistrate, Udhampur (hereinafter to be referred as "the detaining authority"), whereby detainee was ordered to be placed under preventive detention, in order to prevent him, from acting in any manner prejudicial to the 'security of State'.

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 1997 and 1998, as found in the Grounds of Detention, in which the petitioner stood acquitted in all the cases; that vague entries in the shape of DDRs have been recorded at Police Station Basantgarh; that he was not supplied whole of the material on the basis of which the impugned detention order is passed; that he was not informed of his right to file representation to the detaining authority; that there was no live and proximate link of the cases with the impugned

detention order; that the detaining authority has exceeded its jurisdiction as there was no compelling reasons and cogent material and details available before it on the basis of which respondent no.2 has made his subjective satisfaction and passed the impugned detention order; that whole material was not supplied to the detainee, as such, he was prevented from making an effective and meaningful representation to the respondents, in view of insufficient material provided to him; that he was not informed about his right to make representation to the detaining authority as well as government; that the representation made by the detainee on 24.01.2025 to the competent authority was not considered and if considered, its result was not communicated to him. Lastly, it is prayed that the petition be allowed and the impugned detention order be set aside.

3. The respondents in their counter affidavit, repudiated the averments made in the petition, submitting that the detainee is an Over Ground Worker (OGW) and his actions have directly impacted local security operations; that the detainee maintained contact with a banned organization and individuals who have infiltrated Pakistan-Occupied Kashmir from the Basantgarh and Udhampur regions, indicating strong anti-national tendencies; that the detainee has a consistent history of involvement in anti-social activities, as reflected in 4 FIRs registered against him between the year 1997 and 1998, that despite passage of time, there was no reformation on his part, and his recent conduct reinforces concern regarding his persistent engagement in activities prejudicial to public order and national security; that a Daily Diary Report of 03.11.2024 from the police station Basantgarh, as well as reports from Chowkidar, Numbardar and the proceedings initiated under Section 126 of BNSS Act for maintenance of public peace and tranquility in view of petitioner's antecedents and earlier involvement made it imperative to detain him under preventive detention.

4. Respondents have further contended that the detention warrant along with grounds of detention was properly executed through ASI Rupinder Singh of P/S Basantgarh 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. as well as the detaining authority against the detention order, if he so desires; that the representation filed by the detainee was duly considered and disposed of and result thereof was conveyed and a receipt in this regard has been placed on the record; 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.

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

6. Insofar as the plea raised by the detainee that the material relied upon by the detaining authority has not been supplied to him is concerned, the respondents

disputed the same by asserting that the executing officer who executed the detention warrants has filed an undertaking averring therein that the detention warrant was properly executed upon the petitioner and the petitioner was also briefed about the grounds of detention in the language he fully understands. As per record, the detainee received copy of detention order, notice of detention, Grounds of detention, dossiers of detention, copies of FIRs, Statements of Witnesses and other related documents (total 39 leaves) from executing officer ASI Rupinder Singh, of P/S Basantgarh in presence of Dy. Superintendent Central Jail, Jammu, which were read over in English language and explained to the detainee in Hindi/Dogri language he understands, and in lieu of which his signatures were obtained on the execution report. Additionally, there is an undertaking of the Executing Officer ASI Rupinder Singh, P/S Basantgarh in the detention record, to the aforesaid extent.

7. Perusal of the record would show that there is a receipt of disposal of representation in which the petitioner has put his signatures, and the said document is duly attested by the Assistant Superintendent, Central Jail, Jammu. This shows that the representation filed by the petitioner was duly considered and result thereof was effectively communicated to the petitioner.

8. The grounds of detention clearly show that the detainee was involved in cases with serious offences; that there is every apprehension that the detainee would indulge in more such criminal activities and pose a grave threat to the 'security of State', therefore, he cannot be let off scot-free; that four FIRs and one DDR containing offences of serious nature are registered/recorded against the detainee; that the impugned detention order has been passed by the detaining authority, on the basis of dossier submitted by the SSP concerned based on 04 FIRs and one DDR registered/recorded, against the detainee at Basantgarh Police Station, showing the detainee's continuous involvement in criminal/anti-national activities without any respect of substantive law, thus, disturbing the peace and tranquility of the area and maintenance of law and order in District Udhampur. Keeping in view the activities of the detainee, the Detaining Authority after due application of mind, by arriving at subjective satisfaction, issued the impugned order of detention, which cannot be found fault with.

9. It is settled proposition of law that this Court while exercising jurisdiction under Article 226 of the Constitution has a limited scope to scrutinize whether detention order has been passed on the material placed before it, and it cannot go further and examine the sufficiency of material. This Court does not sit in appeal over the decision of the Detaining Authority and cannot substitute its opinion over that of detaining authority when the grounds of detention are precise, pertinent, proximate and relevant [See *State of Punjab v. Sukhpal Singh*, (1990) 1 SCC 35]. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. The order of preventive detention may be made before or during prosecution and the pendency of the prosecution is not a bar to an order of

preventive detention which is also not a bar to prosecution. The power of preventive detention is different from punitive detention. In a prosecution, the accused is sought to be punished for his past acts, however, in preventive detention the past act is merely a material for drawing inference about future conduct of the detainee.

10. The aim of the preventive detention is not to punish a person for having done something but to intercept and prevent him from doing so. Hon'ble the Supreme Court in the case of *Naresh Kumar Goyal v. Union of India & Ors* [(2005) 8 SCC 276] and *Union of India & Anr v. Dimple Happy Dhakad* [AIR 2019 SC 3428] has held that "an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being, to prevent anti-social and subversive elements from imperiling welfare of the country or security of the nation from disturbing public tranquility or from indulging in illegal activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so."

11. The law of preventive detention has direct bearing on the subjective satisfaction of the Detaining Authority. The subjective satisfaction of a Detaining Authority, whether to detain a person or not, is not open to the objective assessment by a Court. The Court while exercising power under Article 226 is not to act as an appellate forum to scrutinize the merits of the administrative decision to detain a person. The Court cannot substitute its own satisfaction for that of the authority concerned and decide whether its satisfaction was reasonable or proper, or whether in the circumstances of the matter, the person concerned should have been detained or not.

12. It is apt to mention that Indian Constitution undoubtedly guarantees various freedoms and personal liberty to citizens in our Republic, however, such freedoms guaranteed by the Constitutional mandate are not meant to be abused and misused so as to endanger and threaten the very foundation of our society. The larger interests of our nation as a whole and the cause of preserving for every person the guaranteed freedoms demands reasonable restrictions on the prejudicial activities of individuals who jeopardize the rightful freedoms of the rest of the society. The main object of preventive detention is the security of the State, maintenance of public order and of supplies and services essential to the community. Detention order, which has been issued by the detaining authority after arriving at subjective satisfaction, does not suffer from any legal infirmity as the grounds of detention are definite, proximate and free from any ambiguity. Furthermore, the detainee was duly informed of what weighed with the detaining authority while passing the order of detention. The Detaining Authority has recorded its subjective satisfaction after considering all the material available, thus, none of the constitutional or statutory provision has been violated.

13. So far as the contention of the detainee that the representation filed by the

petitioner was neither considered nor result thereof conveyed to the petitioner, as also he was not provided the copy of the detention order is concerned, the said contentions have been effectively addressed by this court in the preceding paragraphs and need not be reiterated here again. Thus, contention of the detenue that he was incapacitated in view of non supply of whole documents for the aforesaid reasons pales into insignificance.

14. So far as the contention of the detenue that he was not informed of his right to file representation to the detaining authority was concerned, the same contention becomes ineffective on a bare perusal of the execution report in which the executing officer has informed the detenue that the petitioner can make representation to the Government as well as Detaining Authority against his detention order, if he so desires. Also a further perusal of the execution report would show that the petitioner was duly explained the detention warrant and grounds of detention in Hindi/Dogri language which he fully understood, in lieu of which his signatures were also taken on the execution report.

15. The challenge to the detention order, in the considered opinion of the court by taking into account the above facts as emerged from the record, fails on all fours. The above conspectus of things would goad this court to the only inescapable conclusion that the respondents have rightly detained the detenue under the J&K Public Safety Act, in view of serious allegations, of which he was charged.

16. The Detaining Authority has applied its mind by going through all the documents, past conduct of the detenue against whom 04 FIRs/DDR stand registered/recorded and accordingly, arrived at subjective satisfaction that the activities of the detenue were prejudicial to the interest of the State and issued the order of detention, which cannot be found fault with. Since the activities of the detenue were directed against the object mentioned in the Act and the Detaining Authority has arrived at subjective satisfaction that it was necessary to prevent the detenue from acting in such manner and consequently, order of detention came to be issued. Thus, it clearly shows that it is satisfaction of the Government on the point, which alone is necessary to be established.

17. Liberty of an individual has to be curtailed, within reasonable bounds, for the good of the society at large. The framers of the Constitution were conscious of the practical need of preventive detention with a view to strike a just and delicate balance between need and necessity to preserve individual liberty on one hand, and security of the country as well as the interest of society on the other hand. Security of State, maintenance of public order, prevention of drug trafficking and other criminal activities demand effective safeguards in the larger interest of the sustenance of a peaceful and democratic way of life. The personal liberty may be curtailed, where a person faces a criminal charge or is convicted of an offence and sentenced to imprisonment. Where a person is facing the trial on a criminal charge and is temporarily deprived of his personal liberty because of the criminal charge framed against him, he has an opportunity to defend

himself and to be acquitted of the charge in case the prosecution fails to bring home his guilt. Where such an accused is convicted of offence, he still has satisfaction of having been given the adequate opportunity to contest the charge and also adduce the evidence in his defence.

18. The incorporation of Article 22 in the Constitution left room for detention of person without a formal charge and trial and without such person held guilty of an offence and sentenced to imprisonment by a competent Court. Its aims and objects are to save the society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case, it would be dangerous for the people at large, to wait and watch, by the time ordinary law is set into motion, the person having dangerous designs, would execute his plans, exposing the general public to risk, causing colossal damage to life and property. It is for that reason necessary to take preventive measures and subsequently, prevent the person bent upon to perpetuate mischief from translating his ideas into actions. Therefore, where individual liberty comes into conflict with an interest of the security of the State or public order, then the liberty of individual must give way to the larger interest of the nation, as has been laid by the Hon'ble Supreme Court in 'Sunil Fulchand v. Union of India' reported as (2003) 3 SCC 409.

19. Hon'ble the Supreme Court in the case of 'Mohd. Subrati alias Mohd. Karim v. State of West Bengal' reported as (1973)3 SCC 250, has held as under:-

"7. No doubt, the right to personal liberty of an individual is zealously protected by our Constitution but this liberty is not absolute and is not to be understood to amount to licence to indulge in activities which wrongfully and unjustly deprive the community or the society of essential services and supplies. The right of the society as a whole is, from its very nature, of much greater importance than that of an individual. In case of conflict between the two rights, the individual's right is subjected by our Constitution to reasonable restrictions in the larger interest of the society."

20. 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 framers of the Constitution included 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 an 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.

21. Viewed thus, there is no ground to interfere in the impugned order of detention. The petition lacks merit and is dismissed, as such.

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