
(2025) 09 J&K CK 0500
In the Jammu And Kashmir High Court
Case No : HCP No. 73 Of 2025

Mohd. Gulzar

APPELLANT

Vs

Union Territory of J&K and ors

RESPONDENT

Date of Decision : 25-09-2025

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Jammu and Kashmir Public Safety Act, 1978 — Section 8, 13
General Clauses Act, Samvat, 1977 — Section 21

Citation : (2025) 09 J&K CK 0500

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Siddhant Gupta, Suneel Malhotra

Final Decision : Disposed Of

Judgement

Vinod Chatterji Koul, J

1. Petitioner has challenged detention order No. PSA/155 of 2025 dated 14.05.2025 passed by District Magistrate, Kathua, detaining Mohd. Gulzar S/o Abdullah R/o village Dhannuparole, Tehsil Billawar District Kathua, under clause (a) of Section 8 of the Jammu and Kashmir Public Safety Act, 1978 to prevent him from acting in any manner prejudicial to the maintenance of public order and directed his lodgment in District Jail, Udhampur. The order of detention has been challenged through his brother namely Alam Din.

2. The order of detention has been challenged on the grounds that respondent no.2 on the basis of a dossier submitted by respondent no.3, without application of mind and without evaluating the allegations alleged against the petitioner in the said dossier proceeded to pass the impugned detention order. Subsequent DDR entries recorded by respondent no. 3 is without any legal as well as factual basis and lacks documentary proof which reflected that the petitioner is suspected of being involved in anti- national activities does not attract the essentials for detaining a person under JK PSA, 1978 and a bare perusal would

reflect that the same is nothing but just a counter measure to rope the petitioner and to unnecessarily harass and humiliate him to the extent of infringing his cherished fundamental and constitutional rights. There was nothing on record before the detaining authority to draw subjective satisfaction that the petitioner herein was involved in anti-national and militancy activities and there is no nexus or syndicate with the same which would suggest that the petitioner has committed very serious and heinous offence so as to hold that he was threat to public order. It was imperative for the respondents to furnish a translated script of the order of detention to the detenu but despite that no affidavit has been submitted by the Executing Officer that, the grounds of detention have been read over and explained to the detenu in a language he is conversant with.

3. Learned counsel for the petitioner has vehemently urged that the detenu was not informed that while making a representation against his detention to the Government, he has also a right to make a representation before the Detaining Authority, and therefore, his constitutional and statutory procedural safeguards have been violated. Another submission of learned counsel for petitioner is that grounds of detention are replica of police dossier.

4. Mr. Suneel Malhotra, learned GA has filed counter affidavit as well as produced the detention record. He submits that the detenu is involved in Anti-National activities and has links with Anti-National activists/agencies and is a great sympathizer of banned terrorist organizations and provides all possible help like transportation, internet, food and shelter to the terrorists of different banned outfits, therefore, in order to prevent him from continuing his anti national activities which are prejudicial to maintenance of public order, peace and tranquility in the region, as such, the subject was detained. The detention order along with grounds of detention and other relevant documents have been provided to petitioner with proper acknowledgement of receipt. The detention order along-with grounds of detention and other relevant documents have been supplied to the detenu against proper receipt and one copy was also supplied to his father. The contents of the detention order was explained to the detenu in the language which he understands i.e., Dogri/Urdu. All the procedural safeguards and constitutional guarantees were complied with by the detaining authority. The respondents have relied upon the judgment of the Supreme Court in the case of Hardhan Saha vs. State of W. B (1975) 3 SCC 198, and submits that the detention order is based on the subjective satisfaction of the detaining authority and the same cannot be gone into by this Court in exercise of its extra-ordinary writ jurisdiction.

5. I have heard learned counsel for parties and considered the matter.

6. Perusal of detention record would reveal that while passing impugned order of detention, a communication was addressed by detaining authority to detenu, informing to make a representation to the Government against the detention order. Thus, it is evident from the detention record that detenu has not been informed about his right to make the representation to the detaining authority

and time for making such a representation has also not been given. It is imperative upon the detaining authority to inform the detenu that he has a right to make a representation to the detaining authority as well as to the Government and not only that he is also to be informed about the time within which such representation is to be made. This right of the detenu is guaranteed under Article 22(5) of the Constitution of India.

7. It is pertinent to mention here that prior to Government's approval of detention order, which is to be done within 12 days of detention order, in terms of Section 8 (4) of the J&K Public Safety Act, 1978 (for short "Act of 1978") detaining authority also has power to revoke detention order. This power is clearly relatable to Section 21 of the General Clauses Act, Samvat, 1977, which has been saved by virtue of Section 19 of the Act of 1978. Till the Government's approval to detention order is granted, since the detaining authority had the power to revoke the detention order, a representation could have been made to the detaining authority for revoking detention order. It was incumbent upon detaining authority to have informed detenu that he could also make a representation to detaining authority, if he so desired. Since detaining authority did not communicate to detenu that such a representation could be made to detaining authority, this in itself amounted to infraction of provisions of Section 13 of the Act of 1978 read with Article 22(5) of the Constitution of India. Reliance in this regard is placed on *State of Maharashtra and others v. Santosh Shankar Acharya*, (2000) 7 SCC 463. In the present case, detaining authority did not inform the detenu that the detenu, independent of his right to file a representation against his detention to the Government, has also right to submit a representation to detaining authority till detention was considered by the Government and accorded approval thereto. Detaining authority has, thus, violated Constitutional and Statutory rights of detenu, guaranteed under Article 22(5) of the Constitution of India and Section 13 of the Act of 1978 and resultantly vitiates impugned detention.

8. The Hon'ble Division Bench, while considering a similar issue in *Tariq Ahmad Dar vs. State of J&K and others*, 2017 (II) SLJ, 665 (HC) and relying on the judgment of the Constitutional Bench in *Kamlesh Kumar Ishwardas Patel vs. Union of India*, (1995) 4 SCC 51, has held as under:

"..... This being the position, it goes without saying that even under the Maharashtra Act , a detenu will have a right to make a representation to the detaining authority so long as the order of detention has not been approved by the State Government and consequently non-communication of the fact to the detenu that he has a right to make representation to the detaining authority would constitute an infraction of the valuable constitution right guaranteed to the detenu under Article 22 (5) of the Constitution and such failure would make the order of detention invalid. We, therefore, see no infirmity with the impugned judgement of the Full Bench of the Bombay High Court to be interfered with by this Court. These appeals accordingly fail and stand dismissed."

"From a reading of the said decision, it is abundantly clear that non-communication of the fact that the detenu can make a representation to the detaining authority, till the detention order is not approved by the government, would constitute an infraction of a valuable Constitutional right guaranteed under article 22 (5) of the Constitution of India as also of the right under Section 13 of the Jammu and Kashmir Public Safety Act, 1978. Failure of such non communication would invalidate the order of detention".

9. Another ground that has been argued during the course of arguments is that there has been non-application of mind on the part of the detaining authority as the grounds of detention are more or less a xerox copy of the dossier.

10. From perusal of the record, the ground projected appears to have substance. The grounds of detention, in this case are, in fact, a replica of dossier with interplay of some words here and there. This exhibits non-application of mind and in the process deriving of subjective satisfaction has become a causality. While formulating the grounds of detention, the detaining authority has to apply its own mind. It cannot simply reiterate whatever is written in the dossier. In this regard, the observations of the Hon'ble Supreme Court in the case of "Jai Singh and ors vs. State of J&K" (AIR 1985 SC 764), are reproduced hereunder:

"First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited "The subject is an important member of"

Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, S/o Ram Singh, resident of village Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find proof of non-application of mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner."

11. From a perusal of the aforesaid observations of the Hon'ble Supreme Court, it is clear that the grounds of detention and the dossier, if in similar language, go on to show that there has been non application of mind on the part of the detaining authority. As already noted, in the instant case, it is clear from the record that the dossier and the grounds of detention contain almost similar wording which shows that there has been non application of mind on the part of the detaining authority. The impugned order of detention is, therefore, unsustainable in law on this ground alone.

12. For the afore-stated reasons, this petition is disposed of and impugned detention order No. PSA/155 of 2025 dated 14.05.2025 passed by District Magistrate, Kathua, is quashed. Accordingly, the respondents are directed to release the detenu namely Mohd. Gulzar S/o Abdullah R/o village Dhannuparole, Tehsil Billawar District Kathua from the custody forthwith, if he is not required in any other case.

13. Detention record be handed over to learned GA by the Registry forthwith.