
(2025) 10 J&K CK 1142
In the Jammu And Kashmir High Court
Case No : HCP No.60 Of 2025

Mohd. Rafiq

APPELLANT

Vs

Union Territory of Jammu and Kashmir

RESPONDENT

Date of Decision : 09-10-2025

Acts Referred:

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

Citation : (2025) 10 J&K CK 1142

Hon'ble Judges : M A Chowdhary, J

Bench : Single Bench

Advocate : Suneel Malhotra

Final Decision : Disposed Of

Judgement

M A Chowdhary, J

1. Petitioner namely Mohd Rafiq S/O Kalu Khan R/O Garh Malti Tehsil Billawar, District Kathua (for short 'the detainee') has challenged the detention Order No.PSA/143 dated 30.01.2025 ('impugned order'), issued by respondent No.2, District Magistrate, Kathua (hereinafter to be referred as "the detaining authority"), whereby he has been placed under preventive detention, in order to prevent him from acting in any manner which is highly prejudicial to the maintenance of 'public order'.

2. The detainee has raised many grounds to assail the impugned order. It is his contention that whole of the material relied upon by the detaining authority to pass the detention order was neither supplied nor explained to the detainee in the language he understands; that the detainee has not been informed time period, within which, he can approach the detaining authority or the Government of Union Territory of Jammu and Kashmir against the order of detention for its revocation; that the grounds of detention are replica of the police dossier; that the detainee filed representation on 06.04.2025 to the respondents, however,

same has not been considered till date. Lastly, it is prayed that the petition be allowed and the impugned detention order be set aside.

3. The respondent No.2, in his counter affidavit, has controverted the averments made in the petition and submitted that the detainee being an Over Ground Worker (OGW) is involved in anti national activities, having links with different banned terrorists organizations, providing all possible help like transportation, internet facility, food and shelter to their terrorists. It is further contended that the activities of the detainee have created terror, law and order problem in the area and are causing grave threat to the maintenance of 'public order' in the whole district in general and particularly in the area where he resides, which made it imperative for detaining authority to detain detainee under preventive detention; that the detention warrant along with grounds of detention was properly executed on 31.01.2025 through SI Balwan Singh of P/S Billawar Kathua under proper acknowledgement of the detainee; that 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 detaining authority against the detention order, if he so desires; that all the constitutional or statutory safeguards were observed in letter and spirit. 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 record, in order to lend support to the contentions raised in the counter affidavit.

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

5. The detention record, as produced, reveals that the detainee was bound of good conduct in following two applications, moved at Police Station Billawar:-

- 1) Preventive Action U/S 128 BNSS dated 30.12.2024; and
- 2) Preventive Action U/S 128 BNSS dated 08.01.2025;

Besides above Preventive Actions, one daily diary report DDR No.40 dated 09.01.2025 was also recorded against the detainee at P/S Billawar. Involvement of the detainee in the aforementioned cases appears to have heavily weighed with the detaining authority, while passing impugned detention order.

6. Learned counsel for the detainee, while seeking quashment of the impugned order, reiterated various grounds but his main thrust during the course of arguments was on the following grounds:

(I) that the entire material forming the basis of the grounds of detention was neither supplied nor explained to him in the language he understands;

(II) that the petitioner was not informed about the time frame within which he can approach the detaining authority by filing representation to the Government or to the detaining authority;

(III) that the detention order has been passed merely on apprehension basing two preventive actions and one DDR, without any substantial charge/accusation.

(IV) that grounds of detention are replica of police dossier;

7. The right to make representation is available to a detainee in terms of provisions contained in Section 13 of the Jammu & Kashmir Public Safety Act, which makes it obligatory on the detaining authority to communicate to the detainee the grounds on which the order of detention has been made, within a maximum period of ten days from the date of detention and to afford him the earliest opportunity of making representation against the order of detention. The purpose of furnishing the grounds of detention within a maximum period of ten days is to enable a detainee to make a representation against the order of detention at the earliest opportunity. Thus, a duty is cast upon the detaining authority or the government to consider the said representation at the earliest opportunity. Failure to decide the representation of a detainee within a reasonable time in an expeditious manner, strikes at the valuable right of a detainee emanating from the provisions of Section 13 of the Jammu & Kashmir Public Safety Act. This breach in the statutory safeguard, is sufficient to vitiate the impugned order of detention.

8. It is translucently clear from a perusal of the impugned detention order that the Detaining Authority has not communicated to the detainee that he can make representation to the detaining authority against the impugned detention order for its revocation. The fact of communicating the detainee of his right to approach the detaining authority itself for revocation of the impugned detention order in the present case, is conspicuous by its absence. A bare reading of the communication No.DMK/JC/2025/3790-94 dated 30.01.2025 issued by the District Magistrate, Kathua to the detainee, shows that 'the detainee may make representation to the Government against the order, within stipulating time period, if he so desires'.

9. In a case of National Security Act, titled "Jitendra Vs. Dist. Magistrate, Barabanki & Ors.", reported as 2004 Cri.L.J 2967, the Division Bench of Hon'ble Allahabad High Court, has held:-

"10. We make no bones in observing that a partial communication of a right (in the grounds of detention) of the type in the instant case, wherein the time limit for making a representation is of essence and is not communicated in the grounds of detention, would vitiate the right fundamental right guaranteed to the detainee under Article 22(5) of the Constitution of India, namely, of being communicated, as soon as may be the grounds of detention."

10. Since the detainee's right to make a representation to the detaining authority was only available to him till approval of detention order by the Government, it follows as a logical imperative that the detaining authority should have informed the detainee the time limit, within which, he could make a representation to it i.e., till the approval of the detention order by the State Government. It is settled

law that once the Government passes an order approving the order of detention, the Detaining Authority becomes functus officio and thereafter cannot review its order. Therefore, the Detaining Authority had to inform the detainee about his right at the very outset so that the detainee can make a representation for reconsideration by the Detaining Authority. There is, therefore, sound reason so as to vitiate the order. On this count alone, the impugned detention order cannot sustain and is liable to be quashed.

11. The other ground urged by the learned counsel for the detainee that the entire material forming the basis of the grounds of detention was neither supplied nor explained to him in the language he understands, has been contradicted by respondent No.2 in its affidavit. The detention record produced by the respondents contains report of execution as also receipt executed by the detainee. According to the receipt, the detainee has received a total of 21 leaves comprising copy of detention order, notice of detention, grounds of detention and other documents. Since the detainee has denied that entire material has not been supplied and explained to him in the language he understands, the respondents ought to have filed affidavit of executing officer in this regard, which on the perusal of the record would show that though a routine affidavit has been filed but the affidavit stating that the detainee has been supplied the entire material forming the basis of the grounds of detention is not there on the record, thus, vitiating the impugned detention order. It can, thus, safely be assumed that whole of the material was not supplied to the petitioner on the basis of which impugned detention order is passed.

12. Hon'ble the Supreme Court of India in a case titled 'State of Maharashtra & Ors. v. Santosh Shanker Acharya' reported as AIR 2000 SC 2504 quashed the detention order on the ground, that the detainee was not supplied the copies of material, based on which detention order was passed, which amounted to denial of representation to the detainee and infraction of a valuable constitutional right guaranteed to the detainee under Article 22 (5) of the Constitution of India.

13. So far as the DDR entry (supra) recorded at Police Station Billawar is concerned, it is an admitted case that same has not culminated in any criminal cases. Merely recording DDR/complaint alleging some acts without specifying any activity allegedly carried out, cannot be the ground to detain a person. It is surprising that if the acts mentioned in the complaint/DDR entry, are criminal acts and are cognizable in nature, then why the Union Territory has not filed any First Information Report. Law provides that if cognizable offence is committed and is brought to the knowledge of any authority, First Information Report should be lodged. If at all those acts mentioned in DDR make out any criminal offence, what prevented the Union Territory to file a First Information Report is a mystery.

14. The last ground, which has been urged by the learned counsel for the detainee is that the Detaining Authority, while formulating the grounds of detention, has failed to apply its mind, inasmuch as the grounds of detention are almost photo-copy of the police dossier. A perusal of grounds of detention and

the police dossier reveals that the language and expressions used in both the documents are almost similar to each other with intermixing of words here and there. This clearly shows that the detaining authority has acted in a mechanical manner. The Supreme Court has, in the case of *Jai Singh and others vs. State of Jammu and Kashmir*, (1985) 1 Supreme Court Cases 561 clearly stated that where the grounds of detention are verbatim reproduction of the dossier submitted by the police, it goes on to show that there is non-application of mind on the part of the detaining authority. In *Rajesh Vashdev Adnani vs. State of Maharashtra and others*, (2005) 8 SCC 390, the Supreme Court again reiterated that where the detention order is verbatim reproduction of the police dossier, the said order suffers from non-application of mind on the part of the Detaining Authority.

15. 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 Founding Fathers enacted 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 the 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. The Hon'ble Apex Court in *Smt. Icchu Devi Choraria v. Union of India & Ors.* (AIR 1980 SC 1983) held as under:

"The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade.

This is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detainee even though the detention may have been valid till the breach occurred."

16. Having regard to the facts, firstly, that not informing the detainee that he can make representation to the detaining authority and that too within certain time-limit, secondly, non-supply of whole of the material, which in turn, incapacitated the detainee to file effective and meaningful representation to the detaining authority as well as government; thirdly, non application of mind by the detaining authority, inasmuch as the grounds of detention are not only vague but almost replica of the police dossier, it can safely be held that the detainee was disabled to exercise his right to file a representation against his detention, in terms of Article 22(5) of the Constitution of India; that the detaining authority has passed the impugned detention order arbitrarily and mechanically, without application of mind and the constitutional and statutory safeguards available to the detainee

were also observed in breach and trampled, vitiating the impugned detention order, which render it unsustainable and liable to be quashed.

17. Viewed thus, the petition is allowed and the impugned detention Order No. PSA/143 dated 30.01.2025, passed by respondent No. 2, District Magistrate, Kathua, is hereby quashed. The detenue-Mohd. Rafiq is directed to be released from the preventive custody forthwith, if not required in any other case(s). No costs.

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

19. Disposed of, accordingly, along with connected application(s).