

(2025) 11 J&K CK 1806
In the Jammu And Kashmir High Court
Case No : HCP No. 31 Of 2025

Mohd Rafiq

APPELLANT

Vs

Union Territory of Jammu & Kashmir

RESPONDENT

Date of Decision : 24-11-2025

Acts Referred:

Constitution of India, 1950 — Article 22(5)
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 126

Citation : (2025) 11 J&K CK 1806

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : B.S. Sudan, Sumeet Bhatia

Final Decision : Allowed

Judgement

Javed Iqbal Wani, J

1. A writ of Habeas Corpus has been sought by the petitioner in the instant petition for quashing of Order No. 17/PSA of 2024 dated 27.12.2024 (for short, "the impugned order") passed by the District Magistrate, Udhampur/respondent 2 herein (for short, "the Detaining Authority") under and in terms of the provisions of Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as "the Act of 1978").

2. The petitioner has challenged the impugned order on multiple grounds urged in the petition.

3. Counter affidavit has been filed by the respondent 2 in opposition to the petition, wherein the petition is being opposed on the premise that the respondent2 herein received a dossier dated 13.12.2024 along with supporting documents from the Senior Superintendent of Police, Udhampur, wherein it had been stated that the petitioner a known criminal element demonstrates admiration for individuals involved in anti-national activities and that the intelligence reports indicated that the petitioner has established affiliations with

terrorists organization and has actively participated in the said activities being detrimental to the security of the State and that on account of his involvement in said anti-national activities, petitioner was placed on the radar of the Police Station Bhasantgarh and was classified as an Over Ground Worker (OGW) and his said activities were found directly impacting local security operations, inasmuch, as In-charge Beat, Basantgarh received credible information about the suspicious activities of the petitioner including the inputs from the intelligence agencies suggesting that the petitioner is in contact with banned organization and individuals, who have infiltrated to Pakistan-Occupied Kashmir (POK) from Basantgarh and Udhampur regions, indicating his strong anti-national tendencies and that though preventive actions were taken against the petitioner under Section 126 of BNSS on 19.11.2024 and 04.12.2024, yet as per the reports from Chowkidar and Numberdar, the petitioner was found to be a threat to the public safety and Security of the State and taking into consideration the said entire material, the Detaining Authority made an assessment and consequently, ordered preventive detention of the petitioner, whereupon the copy of detention order along with notice of detention, grounds of detention, dossier and other documents including those on the basis of which the petitioner came to be detained were furnished to the petitioner, as also were read over to him and explained in Dogri/Hindi languages, besides informing him that he can make a representation against his detention and in lieu whereof, a receipt was executed by the petitioner and that the representation submitted by the petitioner against the detention came to be duly considered and rejected being without merit vide Rejection Order dated 26.03.2025. Heard learned counsel for the parties and perused the record including the detention record produced by the learned counsel for the respondents.

4. According to the learned counsel for the petitioner, the Detaining Authority while framing the grounds of detention has not applied its mind thereto, in that, the grounds of detention are vague and ambiguous not spelling out the details of the prejudicial activities attributed to the petitioner, be it, the name of the terrorists and organizations, the petitioner is alleged to have been associated with or the dates and the year in this regard.

5. Learned counsel for the petitioner would further submit that even though the respondents claim to have proceeded against the petitioner in terms of section 126 BNSS for obtaining security for keeping peace from the petitioner, yet the said proceedings have not been brought to the logical conclusion and instead, on the basis of flimsy and baseless report claimed to have been drawn by the Beat Officers in the area entered into so called Miscellaneous Registers of the Police Station, the petitioner has been detained under preventive law by the Detaining authority without any lawful justification, inasmuch as without drawing any subjective satisfaction thereof.

6. According to the counsel for the petitioner, the respondents even did not consider and decide the representation submitted by the petitioner against his

detention in accordance with the mandate provided in the Act of 1978 and the Constitution.

7. On the contrary, learned counsel for the respondents, while controverting the submissions of the counsel for the petitioner, would insist that the Detaining Authority has legally and validly ordered preventive detention of the petitioner in accordance with statutory provisions and after following Constitutional mandate. Learned counsel for the respondents while heavily placing reliance on the counter affidavit filed to the petition would, thus seek dismissal of the petition.

8. Insofar as the aforesaid first plea raised by the counsel for the petitioner is concerned, perusal of the detention record produced by the counsel for the respondents, inasmuch as, the grounds of detention available on the file would manifestly tend to show that the grounds of detention instead of being clear, explicit and unambiguous are vague and sketchy, as no details or particulars of the activities attributed to the petitioner being detrimental to the security of the State be it relating to the association of the petitioner with terrorists/terrorist organizations day, date and time have been detailed out in the grounds of detention. Therefore, the petitioner cannot under these circumstances said to have been able to make an effective representation against his detention. A reference in this regard to the judgment passed by this Court in case titled as "Tanveer Ahmed V/s State of Jammu and Kashmir reported in 2012(1) JKJ 19" would be relevant herein.

9. Insofar as the next plea urged by the counsel for the petitioner is concerned, perusal of the record available in the file, inasmuch as, the detention record produced by the counsel for the respondents indisputably reveals that some handwritten reports have been framed by some Beat Officers claimed to have been entered into Miscellaneous Registers of the Police Station, wherein it had been alleged that the activities of the petitioner have been found to be suspicious in and around the area. The detention record also reveals that two communications dated 09.11.2023 and 19.11.2024 have had been addressed by SHO Police Station, Basantgarh to the Executive Magistrate 1st class, Basantgarh, providing therein that there are apprehensions that the petitioner is involved in terrorists activities by way of providing of logistic support and help to the anti-national elements, therefore, requesting for initiation of proceedings against the petitioner under Section 126 BNSS, however, nothing is forthcoming from either the counter affidavit filed by the respondents to the petition or the detention record produced by the counsel for the respondents to show that any proceedings thereto the said communications were ever initiated or concluded against the petitioner and the petitioner was bound-down on thereunder the said proceedings. It is significant to mention here that a proceeding under Section 126 BNSS is of preventive nature and has to be invoked when a person is likely to commit breach of peace or disturb public tranquility and since the activities attributed to the petitioner in the said communications does not anywhere spell out that the petitioner is involved in the activities, which are likely to result into

breach of peace or disturb public tranquility, the initiation of such proceedings against the petitioner by writing mere letters to the concerned authority would not otherwise also justify the passing of the impugned order of detention. The Detaining Authority, in this view of the matter, seems to have grossly erred and without deriving any subjective satisfaction, seemingly, has passed the impugned order on mere asking of the sponsoring agency, while directing preventive detention of the petitioner in terms of the impugned order.

10. Insofar as the aforesaid last plea raised by the counsel for the petitioner is concerned, record bears testimony to the fact that the petitioner has filed a representation, which as per the detention record has been sent by Additional Secretary to the Government, Home Department to the Additional Director General of Police, CID J&K vide letter dated 11.02.2025 for furnishing of the comments and in response thereto, the Additional Director General of Police, CID J&K vide letter dated 22.03.2025 has stated that the representation of the petitioner in view of his activities being prejudicial/detrimental to the security sovereignty and integrity of the UT of J&K does not deserve consideration and consequent to which communication, the Additional Secretary to the Government, Home Department in terms of communication dated 26.03.2025 addressed to the respondent 2 herein has stated that the representation submitted by the petitioner after being considered, has been found without any merit. Before advertng to the aforesaid mode of consideration and disposal of representation of the petitioner, it needs to be pointed out that the consistent view of the Apex Court has been that the preventive detention is a serious invasion of personal liberty and consideration of the representation submitted by a person detained is a meager safeguard, provided by the Constitution against the improper exercise of power by the Detaining Authority and putting heavy onus from the Court to jealously watch, scrutinize and judicially review the order of detention, if challenged. Since a Constitutional safeguard and protection has been provided to a detainee, which mandates the grant of liberty to a detainee to make a representation against his detention under Article 22 (5) of the Constitution, it simultaneously imperates, inasmuch as obligates the authority, under which, an order of detention is passed to address to the representation with utmost expedition, inasmuch as in correct and right perspective. This view has expressed by the Apex Court in case titled as "Union of India V/s Chaya Ghoshal, reported in 2005(10) SCC 97."

Keeping in view the aforesaid position of law and reverting back to the aforesaid plea of the counsel for the petitioner qua the improper and illegal disposal of the representation of the petitioner, record reveal and as has been noticed herein-above, the representation, seemingly, has not been adverted to either by the Detaining Authority/respondent 2 herein or else by the Government/respondent 1 herein, but surprisingly has been left to be considered and decided by the Additional Director General of Police, CID J&K. This mode of consideration and disposal of representation of the petitioner in the instant case cannot, but said to be in violation and total breach of the Statutory provisions and Constitutional

safeguards provided under the Act of 1978 and Article 22 (5) of the Constitution respectively.

11. Besides above, it is noticed and found in the record available on the file, as also the detention record produced by the counsel for the respondents that the petitioner is stated to have been furnished various documents at the time of execution of the impugned order by the Executing Officer, namely, ASI-Rupinder Singh of Police Station, Basantgarh and in the execution report as also the receipt obtained thereof from the petitioner would reveal that the petitioner is stated to have been furnished the copy of the detention order one leaf notice of detention two leaves, grounds of detention three leaves, dossier of detention four leaves, copies of FIR, statement of witnesses, and other relevant documents (in total consisting of 22 leaves), however, ironically the detention record produced by the counsel for the respondents, inasmuch as the counter affidavit filed by the respondents to the petition does not anywhere show that the petitioner has been found involved in any FIR or else is implicated as an accused thereof, so the question of furnishing of copies of FIRs and statements of witnesses, if any, to the petitioner does not arise at all. The aforesaid state of affairs manifestly signifies that the respondents in the process of detaining the petitioner under preventive detention, have grossly erred and have mechanically and without application of mind, detained the petitioner under preventive detention. It also goes without saying that the petitioner has specifically pleaded in the petition that he only understands Urdu and Gojri language and that he was never explained the order of detention, grounds of detention and other material in the said language, whereas in the detention record, the Executing Officer has specifically stated in the execution report that the order of detention, as also the grounds of detention were read over to petitioner in English and that it was explained to him Hindi and Dogri, thus, suggesting that the respondents have not complied with the statutory requirement, inasmuch as the Constitutional mandate in this regard.

12. Viewed, thus, for what has been observed, considered and analyzed herein-above, the only inescapable conclusion that could be drawn in the instant matter is that respondents have passed the impugned order in breach and violation of law.

13. Resultantly, the petition succeeds and the impugned Order No. 17/PSA of 2024 dated 27.12.2024 passed by the District Magistrate, Udhampur/respondent 2 is quashed, as a consequence whereof, respondents including concerned Jail Authority is directed to release the petitioner forthwith from the preventive detention unless the petitioner is required any other case.

14. The detention record produced by the counsel for the respondents is returned back in open Court.