

**(2022) 03 J&K CK 0062**

**In the Jammu And Kashmir High Court**

**Case No :** Writ Petition (Criminal) No. 27 Of 2021, Criminal Miscellaneous Cases  
No. 899 Of 2021

Sarpreet Singh

APPELLANT

Vs

Union Territory Of J & K & Ors

RESPONDENT

**Date of Decision :** 31-03-2022

**Acts Referred:**

Constitution Of India, 1950 — Article 21, 22, 22(5)  
Jammu And Kashmir Public Safety Act, 1978 — Section 8(1)(a), 13  
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 34, 120B, 147, 148,  
307, 323, 341, 367, 382, 452, 511  
Arms Act, 1959 — Section 3, 25 Information Technology Act, 2000 — Section 66  
Indian Penal Code, 1860 — Section 120B, 307

**Citation :** (2022) 03 J&K CK 0062

**Hon'ble Judges :** M. A. Chowdhary, J

**Bench :** Single Bench

**Advocate :** Jagpaul Singh, Amit Gupta

**Final Decision :** Disposed Of

## Judgement

M.A.Chowdhary, J

1. District Magistrate, Jammu (hereinafter called 'Detaining Authority') in exercise of powers conferred on him under Section 8 (1) (a) of the Jammu & Kashmir Public Safety Act, 1978, passed the detention Order No. 06 of 2021 dated 05.05.2021 (for short impugned order), in terms whereof petitioner Sarpreet Singh @ Raja S/O Davinder Singh R/O H.No. 285-EP Dalpatian, Pirmitha, Jammu (for short 'detenue') has been detained.

2. The impugned detention order has been challenged through the medium of the instant petition, being in breach of the provisions of Article 22(5) of the Constitution of India read with Section 13 of the J&K Public Safety Act, 1978.

3. It is being pleaded in the petition that the detaining authority-respondent No.2 has not attributed any specific allegation against the detenue. Furthermore, it is

stated that the detainee has been incapacitated in filing a representation as the grounds of detention are not in a language which could be understood by the detainee. It is being also stated that the detainee is not an English literate person and understands only Dogri language but the order of detention is in English and it is not possible for him to understand such a hyper technical language. It has also been pleaded that the order of detention and the connected documents annexed with the petition, clearly show violation of right of the detainee guaranteed in terms of Article 22(5) of the Constitution of India.

4. Respondents No. 2 and 3 in their counter affidavits have stated that the detainee was ordered to be detained for maintenance of 'public order' and if he would be let free there will be every likelihood of his re-indulging in scaring and terrorizing the people of the area as he is a hardcore criminal. It is further stated that detention of the petitioner under preventive law is only to keep the petitioner at bay, as a precautionary measure and not as a punishment.

5. Heard learned counsel for both the sides at length, perused the record and considered.

6. Learned counsel for the detainee while being heard makes reference to the grounds of the detention and states that on a cursory look on the same it is manifest that same are vague. It is also submitted that the detaining authority on the basis of dossier submitted by Senior Superintendent of Police, Jammu, without application of mind and without evaluating the allegations alleged against the detainee in the said dossier, copy of which was not even provided to the detainee, proceeded to pass impugned detention order whereby the detainee has been detained and directed to be lodged at Central Jail Jammu. In addition, learned counsel submitted that the allegations levelled against the detainee are totally vague as nothing specific has been stated in the grounds of detention.

7. In rebuttal, learned AAG submits that the record reveals that there is no vagueness in the grounds of detention. The procedural safeguards prescribed under the provisions of Public Safety Act and the rights guaranteed to the detainee under the Constitution have strictly been followed in the instant case. The detainee has been furnished all the material, as was required, and was also made aware of his right to make representation to the detaining authority as well as government, against his detention.

8. 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 humanising 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.

9. Before appreciating the rival contentions of the parties, it would be appropriate to note that the procedural requirements are the only safeguards available to the detainee since the Court cannot go behind the subjective satisfaction of the detaining authority as has been laid down by Hon'ble Apex Court in a case titled Abdul Latif Abdul Wahab Sheikh Vs B.K. Jha & Anr., reported as (1987) 2 SCC 22. The procedural requirements are, therefore, to be strictly complied with, if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard.

10. The detention record, as produced, reveals that the detainee was involved in following cases registered at different Police Stations of Jammu City:-

- (i) FIR No. 64/2014 U/S307, 323 & 34 RPC; (P/S Peer Mitha)
- (ii) FIR No.210/2015 U/S 307, 34 RPC;(P/S Gandhi Nagar)
- (iii) FIR No. 04/2017 U/S 452, 367, 511, 147, 148 RPC, 3/25 Arms Act; (P/S Bahu Fort)
- (iv) FIR No. 30/2017 U/S 307, 323, 341 RPC, 3/25 Arms Act; (P/S Pacca Danga)
- (v) FIR No. 31/2018 U/S 307 RPC, 3/25 Arms Act; (P/S Gandhi Nagar)
- (vi) FIR No. 208/2018 U/S 382,401,120-B RPC, 3/25 Arms Act and 66 IT Act (P/S Bahu Fort); and
- (vii) FIR No. 91/2021 U/S 307, 120-B IPC, 3/25 Arms Act (P/S Gandhi Nagar).

Involvement of the detainee in the aforementioned cases appears to have heavily weighed with the detaining authority while passing detention order. The detention record, as per execution report reveals that 129 leaves of detention warrant (01 leaf), grounds of detention (06 leaves), notice of detention (01 leaf), dossier (13 leaves and other relevant record (108 leaves) were read over in English and explained in Urdu/Hindi. The detainee, in fact, was stated to be 12th pass and should have been explained in Pubjabi which he understands.

11. The requirement of law is that whole of the record, on which the detention order is based, has to be made available to the detainee in the language that he understands. As per the execution report, he has been furnished copies of detention order (01 leaf), grounds of detention (06 leaves), notice of detention (01 leaf), dossier of detention (13 leaves) and other relevant documents (108 leaves) total one hundred twenty nine leaves. He has neither been provided with copies of FIRs, nor charge-sheets and the statements of witnesses. The detainee, thus cannot be said to be provided with whole of the record which based his detention, so as to make an effective representation. The failure on the part of the detaining authority to supply material renders detention illegal and unsustainable.

12. Hon'ble the Supreme Court in a case titled Chaju Ram Vs The State of Jammu & Kashmir, reported as AIR 1971 SC 263, held in Para-9 of the judgment as under:-

".....The detenu is an illiterate person and it is absolutely necessary that when we are dealing with a detenu who cannot read or understand English language or any language at all that the grounds of detention should be explained to him as early as possible in the language he understands so that he can avail himself of the statutory right of making a representation. To hand over to him the document written in English and to obtain his thumb impression on it in token of his having received the same does not comply with the requirements of the law which gives a very valuable-right to the detenu to make a representation which right is frustrated by handing over to him the grounds of detention in an alien language. We are therefore compelled to hold in this case that the requirement of explaining the grounds to the-detenu in his own language was not complied with."

13. It shall also be quite apposite to reproduce the following portions from Paras 3 and 5 of the judgment rendered by Hon'ble the Supreme Court in the case titled "Raziya Umar Bakshi Vs Union of India & Ors." (AIR 1980 SC 1751):

"3.....The service of the ground of detention on the detenu is a very precious constitutional right and where the grounds are couched in a language which is not known to the detenu, unless the contents of the grounds are fully explained and translated to the detenu, it will tantamount to not serving the grounds of detention to the detenu and would thus vitiate the detention ex-facie.

5.....in cases where the detaining authority is satisfied that the grounds are couched in a language which is not known to the detenu, it must see to it that the grounds are explained to the detenu, a translated script is given to him and the grounds bear some sort of a certificate to show that the grounds have been explained to the detenu in the language which he understands."

14. The Hon'ble Apex Court in the judgment rendered in the case of "Sophia Gulam Mohd. Bham V. State of Maharashtra & Ors. (AIR 1999 SC 3051), has also held as under:

"The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language."

15. Another argument raised by learned counsel for the petitioner that since the detenue was in the custody at the time of passing of the detention order,

therefore, the question that arises for consideration is whether an order of detention could be passed in the face of such an eventuality, the answer has to be in negative. The law on the subject has been laid down by the Hon'ble Apex Court in "Sama Aruna v. State of Telangana & Anr. (AIR 2017 SC 2662). The relevant Para 24 is extracted as under:-

There is another reason why the detention order is unjustified. It was passed when the accused was in jail in Crime No. 221 of 2016. His custody in jail for the said offence was converted into custody under the impugned detention order. The incident involved in this offence is sometime in the year 2002-2003. The detenu could not have been detained preventively by taking this stale incident into account, more so when he was in jail. In Ramesh Yadav v. District Magistrate, Etah and Ors. 9, this Court observed as follows:-

"6. On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an under-trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed."

16. On the touchstone of the law laid down above, the detenue in the present case would not have been detained after taking recourse to the provisions of the Public Safety Act, when he was already in the custody in case FIR No. 91/2021, registered at Police Station, Gandhi Nagar U/S 307, 120-B IPC and 3/25 Arms Act. Therefore, in view of the facts of the case and the law laid down by the Hon'ble Apex Court as quoted hereinabove, the impugned order of detention, does not sustain on the aforesaid grounds.

17. Here is a case where detenue was stated to be under detention in a criminal case and the order of detention despite that was executed, depriving the detenue to avail remedy of filing representation to the Detaining Authority within statutory period. The non-application of mind of the Detaining Authority is also explicit from the fact that even the detention order does not say anything with regard to the detention of the detenue in a criminal case, leaving apart to assign the compelling reasons to resort to order preventive detention.

18. Vide impugned order, the Detaining Authority has though communicated to the detenue his right to represent against the order to it and the government but has not given the time limit, in which, he could make a representation to him, till approval of the detention order by the Government. 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.”

19. This is another reason, as to why the impugned order would be vitiated 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 communicated to the detainee in the grounds of detention the time limit, in which, he could make a representation to it i.e., till the approval of the detention order by the State Government. All the cases registered against the detainee except one were much earlier in the point of time. Thus, there was no proximity between the alleged activities of the detainee and his detention.

20. Reproducing the dossier prepared by the Senior Superintendent of Police, Jammu in the order of detention, almost word by word; non furnishing of the whole of the record on which detention order was based; furnishing the material in English and not the language of the detainee; no mention of the fact that detainee was already in judicial custody and compelling reasons to order preventive detention; likelihood of his being released on bail and not informing detainee of his right to make representation before the Detaining Authority or the Government, all reflect that the Detaining Authority has not applied its mind to draw the subjective satisfaction to detain the petitioner, depriving detainee of his fundamental right to make effective and meaningful representation against the detention order to the Detaining Authority and the government, in contravention of his fundamental right guaranteed to him in terms of Article 22(5) of the Constitution.

21. For the foregoing reasons and the law laid down as above, this petition is allowed. Impugned order of detention No. 07 of 2020 dated 07.07.2020 passed by the District Magistrate, Jammu, being violative of the fundamental right of the detainee as provided under Article 22 (5) of the Constitution and as a result detention being illegal is unsustainable and is liable to be upset. The impugned order is, thus, quashed. The detainee namely Sarpreet Singh @ Raja S/O Davinder Singh R/O H.No. 285-EP Dalpatian, Pirmitha, Jammu, is ordered to be released from the preventive custody forthwith provided he is not required in connection with any other case(s).

22. Detention record, as produced, be returned to the learned AAG.

23. Petition along with pending application (s), if any, disposed of, accordingly.