

(2025) 09 J&K CK 0474
In the Jammu And Kashmir High Court
Case No : CM No. 2615 Of 2025

Shamas Din

APPELLANT

Vs

UT of J&K

RESPONDENT

Date of Decision : 01-09-2025

Acts Referred:

Constitution of India, 1950 — Article 22, 22(5)
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 128

Citation : (2025) 09 J&K CK 0474

Hon'ble Judges : M A Chowdhary, J

Bench : Single Bench

Advocate : S.H. Ashrafi, Satish K. Sharma, Sahil Singh, Suneel Malhotra

Final Decision : Disposed Of

Judgement

M A Chowdhary, J

1. The petitioner, namely Shamas Din S/o Kaku Din, R/o Village Gali Sadrota, Tehsil Lohai Billawar, District Kathua (hereinafter referred to as "the detainee"), has challenged Detention Order No. PSA/146 dated 13.02.2025 (hereinafter referred to as "the impugned order") issued by respondent No. 2, District Magistrate, Kathua (hereinafter referred to as "the detaining authority"), whereby he has been placed under preventive detention, with a view to preventing him from acting in any manner prejudicial to the maintenance of ? public order?.

2. The petitioner has raised several grounds to assail the impugned order. It is contended that the detaining authority has passed the order mechanically and without due application of mind; that the detainee was not informed of his right to make a representation to the detaining authority, nor of the timeframe, within which, such representation could be filed; that the detaining authority failed to apply its mind while passing the impugned order inasmuch as vague DDRs and complaints under Section 128 of the BNSS, 2023, were made the basis for the

detention, based on conjectures, and do not allege any specific overt act of the detainee; that the grounds of detention are nothing but a verbatim reproduction of the police dossier; and that there is no satisfaction recorded in the grounds of detention to the effect that how ordinary law was insufficient to deal with the alleged activities of the detainee; and that the detainee has no criminal history, yet he has been subjected to preventive detention without any justification. On these grounds, it is prayed that the petition be allowed and the impugned detention order be quashed.

3. The respondent No. 2, in his counter affidavit, has controverted the averments made in the petition and submitted that the detainee is involved in anti-national activities and has links with anti-national agencies. It is stated that he is a great sympathizer of banned terrorist organizations and has been providing all possible assistance such as transportation, internet facilities, food, and shelter to terrorists belonging to different banned outfits. It is further stated that the detainee is suspected to be involved in terrorist activities and has also been responsible for creating law and order problems in the area, while managing to evade law enforcement agencies. Since the detainee has started working as an Over Ground Worker (OGW) of a terrorist organization, this made it imperative for detaining authority to detain him under preventive detention.

4. It is further submitted by respondent No. 2 that the detention warrant along with the grounds of detention was duly executed through S.I. Balwan Singh of P/S Billawar under proper acknowledgement of the detainee, and that the grounds were fully explained to him in the language he understands. The detainee was also informed of his right to make a representation to the Government against the detention order. All constitutional and statutory safeguards were observed in letter and spirit, and that the detainee was duly apprised of his right to submit a representation against his detention in terms of the impugned order. Lastly, it is prayed that the petition be dismissed and the impugned detention order be upheld, as the same has been passed strictly in accordance with the provisions of the J&K Public Safety Act, 1978. The respondents have also produced the detention record to lend support to the contentions raised in the counter affidavit.

5. Learned counsel for the petitioner, while seeking quashment of the impugned order, reiterated various grounds urged in the petition; however, his main thrust, during the course of arguments, was on the following grounds:

(I) That the detainee was not informed that he has a right to make a representation to the detaining authority against his detention, and further, neither the impugned order nor the execution report makes any mention of the time frame within which such representation could be filed;

(II) That the detaining authority has not applied its mind while passing the impugned order, inasmuch as only DDRs and preventive proceedings under Section 128 of the BNSS, 2023, were made basis for passing the order of detention, as the said DDRs are vague, based on conjectures, and do not

attribute any specific overt act to the detainee;

(III) That the grounds of detention are a verbatim reproduction of the police dossier, which clearly reflects non-application of mind by the detaining authority.

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

7. Para 8 of the counter affidavit filed by the detaining authority – respondent No. 2, refers to the following preventive actions registered at Police Station Billawar:

(i) Preventive Action under Section 128 of the BNSS dated 26.01.2025;

(ii) Preventive Action under Section 128 of the BNSS dated 05.02.2025;

(iii) Preventive Action under Section 128 of the BNSS dated 09.02.2025.

Besides the above, the grounds of detention also refer to the following DDR entries recorded at Police Station Billawar:

(i) DDR No. 34 dated 05.02.2025;

(ii) DDR No. 22 dated 09.02.2025.

The involvement of the detainee in the aforesaid matters appears, to have weighed heavily with the detaining authority while passing the impugned detention order.

8. Insofar as the DDR entries (supra) recorded are concerned, it is an admitted position that the same have not culminated in the registration of any criminal case. Merely recording DDRs alleging certain acts, without attributing any specific overt activity to the detainee, cannot constitute a valid ground for placing a person under preventive detention. It is indeed surprising that if the acts mentioned in the DDR entries were of a criminal or cognizable nature, the State failed to lodge a First Information Report. The settled position of law is that where a cognizable offence is committed and brought to the notice of the authorities, an FIR is required to be registered. If at all the allegations in the DDRs disclosed the commission of any cognizable offence, the inaction on the part of the authorities in not lodging FIR remains unexplained. It appears that, in the absence of any substantial material against the detainee, the police merely recorded DDRs to create a semblance of justification for the detention, there being no proximate or credible adverse material otherwise available with the detaining authority.

9. With regard to the contention of the detainee that he was not informed about his right to make a representation to the detaining authority, it is well settled and no longer res integra that the detainee must be apprised of such a right, as this constitutes an additional safeguard enabling reconsideration of the detention order by the detaining authority, apart from the right to make a representation to the Government. It is equally settled that once the Government approves the

order of detention, the detaining authority becomes functus officio and thereafter does not have power, to review its own order. Therefore, the obligation was upon the detaining authority to inform the detainee at the very outset, of his right to make a representation, so as to afford him an opportunity of having the detention order reconsidered at that stage. The Hon^{ble} Apex Court in "Sophia Gulam Mohd. Bham v. State of Maharashtra & Ors.", (AIR 1999 SC 3051), has 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 detainee 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 detainee 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."

10. In the present case, it is significant to note that the detaining authority, vide communication No. DM/K/JC/2025/3904-08 dated 13.02.2025, has only recorded that 'the detainee may make a representation to the Government against the detention order, if he so desires'. The detaining authority has not stated anywhere that the detainee was also informed of his right to make a representation before the detaining authority itself, which is a distinct and valuable safeguard. This omission on the part of the detaining authority to inform the detainee of this right renders the detention order vitiated at its very inception. Even in the affidavit filed by the executing officer, it is merely mentioned that a copy of the detention order was handed over to the detainee; there is no averment therein that the detainee was properly apprised of his right to make a representation both to the Government as well as to the detaining authority. This omission and lack of clarity strike at the root of the detention and render the impugned order unsustainable in law. Accordingly, the contention raised on behalf of the detainee that the detention order stands vitiated on this ground carries substance, inasmuch as the valuable right of making a representation before the detaining authority for reconsideration of its decision was not made available to the detainee.

11. The last ground urged by the learned counsel for the petitioner is that the detaining authority, while formulating the grounds of detention, has failed to apply its independent mind, inasmuch as the grounds of detention are almost a verbatim reproduction of the police dossier. A perusal of the grounds of detention and the police dossier reveals that the language, structure and expressions used in both are substantially similar, with only cosmetic changes or intermixing of words here and there. This clearly establishes that the detaining authority has acted in a mechanical manner, without proper application of mind to the material before it. The Hon^{ble} Supreme Court in *Jai Singh and others v. State of Jammu and Kashmir*, (1985) 1 SCC 561, categorically held that where the grounds of

detention are a verbatim reproduction of the police dossier, it demonstrates non-application of mind on the part of the detaining authority. Again, in *Rajesh Vashdev Adnani v. State of Maharashtra and others*, (2005) 8 SCC 390, the Hon^{ble} Supreme Court reiterated that such mechanical reproduction of the police dossier vitiates the detention order for want of independent satisfaction by the detaining authority.

12. In the face of aforesaid legal position, it can safely be stated that the detaining authority has acted in a mechanical manner without proper application of mind while passing the impugned order of detention. Such a casual and perfunctory exercise of power strikes at the very root of the subjective satisfaction required under law, thereby rendering the impugned detention order wholly unsustainable.

13. Personal liberty is one of the most cherished freedoms, perhaps even more precious than many other freedoms guaranteed under the Constitution. It was for this reason that the framers of the Constitution enacted specific safeguards in Article 22 to limit the power of the State to detain a person without trial, which may otherwise pass the test of under 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 the purposes of "security of the State" and/or "maintenance of public order" must receive strict construction. Where, however, individual liberty comes into conflict with the interest of the security of the State or public order, the liberty of the individual must yield to the larger interest of the nation. The Hon^{ble} Supreme Court in *Smt. Icchu Devi Choraria v. Union of India & Ors.* (AIR 1980 SC 1983) underscored this principle in the following words:

"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."

14. Having regard to the facts of the present case, it emerges, firstly, that the detainee was not informed that he can make a representation to the detaining authority against the order of detention, which omission amounts to denial of a valuable constitutional safeguard; secondly, the detention order as well as execution report do not specify the timeframe, within which, such representation could be made, thereby disabling the detainee from effectively exercising his right under Article 22(5) of the Constitution; and thirdly, the grounds of detention are almost a verbatim reproduction of the police dossier, reflecting mechanical exercise of power and non-application of mind by the detaining authority. These

circumstances, taken cumulatively, demonstrate that the impugned order has been passed in arbitrary manner, in breach of constitutional and statutory safeguards, vitiating the detention at its very inception and rendering the same unsustainable in law.

15. Viewed thus, the petition is allowed and the impugned Detention Order No. PSA/146 dated 13.02.2025, passed by respondent No. 2–District Magistrate, Kathua, is hereby quashed. The detenue-Shamas Din S/o Kaku Din, R/o Village Gali Sadrota, Tehsil Lohai Billawar, District Kathua, is directed to be released from preventive custody forthwith, if not required in any other case(s). No order as to costs.

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

17. Disposed of, accordingly, along with connected CM(s).