

(2025) 09 J&K CK 0482
In the Jammu And Kashmir High Court
Case No : CM No.1546 Of 2025

Sunil Kumar @ Kashu

APPELLANT

Vs

Union Territory of Jammu and Kashmir

RESPONDENT

Date of Decision : 10-09-2025

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(5)
Indian Penal Code, 1860 — Section 188
Code Of Criminal Procedure, 1973 — Section 110

Citation : (2025) 09 J&K CK 0482

Hon'ble Judges : M A Chowdhary, J

Bench : Single Bench

Advocate : Satyajeet, Bhanu Jasrotia

Final Decision : Disposed Of

Judgement

M A Chowdhary, J

1. Petitioner namely Sunil Kumar @ Kashu S/O Krishan Lal R/O Radwan, Tehsil Ramgarh, District Samba(for short the deteneue?) has challenged the detention Order No.01/PSA of 2025dated 25.01.2025(impugned order), issued by respondent No.2, District Magistrate, Samba (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& peace?.

2. The deteneue 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 wasneither supplied nor explained to the deteneue in the language he understands; that the detention order and grounds of detention wereclaimed to have been communicated to the father of the detune had who expired in the year 2012; that no time period is stipulated within which he can approach the detaining authority or the Government of Union Territory of Jammu and Kashmir against the order of detention; that no affidavit of the executing

officer is on record; that the detention order has been passed on the basis of seven FIRs registered against the detainee, out of which in five FIRs, challan has been produced and on confession of offences by the detainee, he has been sentenced to fine by the competent court of law; that in FIR No.41/2022 investigation is still going on and in FIR No.110/2024 challan has been produced and detainee is facing trial. Lastly, it is prayed that the petition be allowed and the impugned detention order be set aside.

3. The respondents have contested the writ petition by filing counter affidavit of the detaining authority. In the counter affidavit, it has been submitted that the impugned order of detention has been passed by the detaining authority after carefully analyzing the dossier dated 24.01.2025 submitted by the Senior Superintendent of Police Samba; that keeping in view the continuous and repeated involvement of the Detainee in criminal activities, the Detainee was detained under the J&K Public Safety Act for maintenance of the public order with due application of mind; that the activities of the detainee were posing a serious threat to the maintenance of public order and peace; that the ordinary criminal law had failed to deter the detainee, from indulging in criminal activities, as such, the detaining authority was compelled to pass the impugned order of detention; that the respondents have supplied all the material to the detainee and have also read out and explained the contents thereof in the language he understands; that he was also informed about his right to make a

representation to the Government as well as to the detaining authority; that the respondents in order to lend support to their contentions, have produced the detention record. 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.

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 involved in following 07 cases registered at different Police Stations:-

- 1) FIR No. 113/2020; U/S 188/IPC of Police Station Rajbagh;
- 2) FIR No. 148/2020; U/S 188/IPC, 11 PCA Act, of Police Station Rajbagh;
- 3) FIR No. 41/2021; U/S 307/452/364/147/148 IPC, 3/4/25 Arms Act, of Police Station Ramgarh;
- 4) FIR No.104/2021; U/S 188/IPC, 11 PCA Act, of Police Station Ghagwal;
- 5) FIR No.226/2021; U/S 188/IPC, 11 PCA Act, of Police Station Rajbagh;
- 6) FIR No.36/2022; U/S 188/IPC, 11 PCA Act, of Police Station Samba;
- 7) FIR No.110/2024; U/S 4/25 Arms Act, of Police Station Vijaypur;

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 petitioner, 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 no time frame is specified in the detention order within which he can approach the detaining authority to make representation;

(III) that FIR No. 41/2022 is under investigation and in FIR No.110/2024, the detainee is facing trial and rest of the FIRs do not constitute heinous offence.

(IV) that no affidavit of executing officer qua execution of detention order and other material is on record;

7. Respondent No.2, the detaining authority, in his counter affidavit, has pleaded that whole of the material was supplied to the detainee and explained in the language he understands, in support whereof, there is an execution report of the executing officer PSI Rajat Sharma on detention record but since the detainee has all along denied the above assertions and stated that he was not explained the contents of the detention order and grounds of detention along with supporting material in the language he understands and also he was not informed of his right to file representation, the respondents, in order to substantiate their claim ought to have filed an affidavit of the Executing Officer, to that effect which was not filed.

8. The Hon'ble Apex Court in a judgment titled "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."

9. Therefore, the contention of the petitioner that the sufficient material, which formed the basis of grounds of detention, was not explained to him appears to be well founded. On this count, the impugned detention order is vitiated.

10. In view of law laid down by the various courts including the Hon'ble Apex Court, the law in this aspect is well settled and is no longer Res Integra that the detainee must be informed of his right to make representation to the Detaining Authority as this is one additional avenue for his detention order to be reconsidered in addition to the representation made to the Government. It is also

settled law that once the Government passes an order approving the order of detention, the Detaining Authority becomes functus officio 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 and by not doing so, the impugned detention order is vitiated.

11. As regards the contention of the petitioner that he was not supplied the whole documents is concerned, a perusal of the Receipt of Grounds of Detention would show that the detainee was supplied grounds of detention along with notice of detention consisting of 49 leaves. The above receipt, apparently, does not mention that the detainee was supplied all the material including copies of FIRs/Challans, etc. The copies of FIRs/Challans are conspicuous by their absence. This brings the court to a conclusion that whole material is not supplied to the petitioner, disabling him from making an effective and meaningful representation.

12. Perusal of the grounds of detention would show that the detainee is shown indulging in smuggling of bovine animals, with potential to promote feeling of enmity and disharmony among communities. The petitioner is referred to be involved in numerous criminal activities of serious and heinous nature over a period of time thereby spreading a reign of terror amongst the peace loving people of the area by which anti-social activities the maintenance of public order was found to be a risk. The antecedents of the petitioner are established in the context of the FIRs.

13. Obviously, the FIRs referred in the grounds of detention are the feeding support to the characterization of the petitioner as formulated by the respondent No. 2 – District Magistrate, Samba. The objective of the preventive detention order against the petitioner is with respect to maintenance of “public order”. If the FIRs are to be reckoned into consideration then by no stretch of reasoning the offences in which the petitioner was alleged to be involved, can be said to be related to maintenance of public order. By his alleged involvements, the petitioner may be a pain in the neck with respect to law and order maintenance but for that situation to be dealt with the legal course of action to deal with the petitioner is through Penal Criminal Law. J&K Public Safety Act, 1978 is not a tool in the hands of detaining authority to make a short-cut of the Penal Criminal Law, which is actually meant for convicting or acquitting an accused person charge-sheeted for alleged commission of offences, be it a solitary case or in a series of cases decided or pending against a particular accused person.

14. In the grounds of detention, the very fact that in almost in all the cases registered against the petitioner, it is the offences under section 188 Indian Penal Code, read with offence under the Prevention of Cruelty to Animals Act, 1960, and that is a pointer to the fact that the same are not relatable in any manner, to maintenance of public order. On record there is not even an single incident referred to or reported that by alleged involvements of the petitioner in anyone of the said FIRs, any such event had taken place, which led to the law and order

enforcement agency suffering a difficult time, in bringing under control the disturbed ?public order?, so as to showcase the petitioner to be a threat to maintenance of public order.

15. The "Public Order" as a concept in distinction to "Law and Order" has been considered by the Hon?ble Supreme Court of India in a long line of cases. In the case of "K. K. Saravana Babu Vs State of Tamil Nadu & Anr." (2008) 9 SCC 89, the Hon?ble Supreme Court of India has recapitulated the case law on the said aspect in which the "Security of the State" followed by the "Public Order" and last by "Law and Order" has been set up in an hierarchy. The "Public Order" has been read to be mean the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of Public Order is meant to be distinguished from acts directing against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. In a case "Arun Ghosh Vs State of West Bengal," (1970) 1 SCC 1998, the Hon?ble Supreme Court of India has laid emphasis on the potentiality of the act, to be a determining factor to compartmentalize an act to be one disturbing "public order" or a "law and order" problem. It has been observed that an act by itself is not determinant of its own gravity as in its quality it may not differ from another but in its potentiality it may be very different.

16. "Maintenance of Public Order" as being one of the grounds of subjecting a person to preventive detention is not to be easily assumed to be readily available by a just reference to a series of FIRs reporting crimes against a particular individual, which would at the most render him to be branded as a habitual offender, for which the Code of Criminal Procedure, 1973 in itself has conceived a preventive measure, which enlists a number of categories for an Executive Magistrate to take cognizance and bind a person so as to prevent him from indulging in repeat of the alleged activities. What is meant to be effectively cured and dealt with under section 110 of the Code of Criminal Procedure, 1973 cannot be diverted to be dealt with by the application of prevention detention mode of J&K Public Safety Act, 1978, by depriving a person of his personal liberty for any given period of time. A preventive detention cannot be resorted to by the debunking ordinary criminal procedure and trial of cases.

17. 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.”

18. For the foregoing reasons and observations made hereinabove, in view of the facts of the instant case and the law laid down by the Hon?ble Apex Court on the subject, the order of detention, impugned herein, does not sustain and is found liable to be quashed. Accordingly, this petition is allowed and the impugned order of detention bearing No.1/PSA of 2025 dated 25.01.2025, passed by respondent No. 2, District Magistrate, Samba, is hereby quashed. The detainee-Sunil Kumar@ Kashu S/O Krishan Lal R/O Radwan, Tehsil Ramgarh, District Sambais directed to be released from the preventive custody forthwith, if not required in any other case(s). No costs.

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

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