

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 41/2025

Reserved on: 25.09.2025
Pronounced on: 30.09.2025

Jaffer Hussain Butt

.... Petitioner/Appellant(s)

Through:- Mr. Firdous Tak, Advocate

V/s

**Union Territory of J&K and
others**

.....Respondent(s)

Through:- Mr. Eishaan Dadhichi, GA

CORAM : HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGMENT

01. The petitioner has challenged detention order No.8th/DM/K/PSA of 2024 dated 24.12.2024 passed by the District Magistrate, Kishtwar (hereinafter to be referred to as 'Detaining Authority') under Section 8 of the of J&K Public Safety Act, 1978 with a view to prevent him from indulging into such activities which are prejudicial to the security of the State. The order of detention has been assailed by the petitioner (hereinafter to be referred to as 'detenu') through his father-Mohd. Ashraf Butt.

02. The detention of the detenu has been challenged on the following grounds that :

- (i)** *The detaining authority has not applied its mind before passing the detention order. The entire dossier is based on the alleged involvement of the detenu in FIR No. 31/2019 registered at Police Station, Kishtwar under Sections 392 RPC, 25, 30, 07 Indian Arms Act, and FIR No. 230/2019 under Sections 13/18/19/38/39 ULA*

Act, along with five Daily Diary Reports (DDRs), however, Detaining Authority while mentioning above two FIRs has stated the facts regarding the incident about barging of terrorists inside the house of the detenu, which is in no way connected to the aforesaid FIRs;

- (ii) The impugned detention order is a verbatim reproduction of the police dossier, lacking independent satisfaction of the detaining authority. The District Magistrate has not recorded any subjective satisfaction while passing the detention order, which is a mandatory requirement under the J&K Public Safety Act;
- (iii) The detention is based on stale and remote incidents from 2019, and there is no live and proximate link between the alleged prejudicial activities and the detention order and the detenu has been living peacefully after securing bail and has not indulged in any unlawful activity;
- (iv) The detenu had not been provided copies of the relevant material, like copy of dossier, details of any incidence with regard to his alleged association with the terrorist organizations and also the grounds of detention and material supporting thereto were not provided to the detenu, violating his fundamental right under Article-22(5) of the Constitution of India and failure to provide such documents renders the detenu incapable of making an effective representation;
- (v) The detaining authority was under legal obligation to decide the representation filed against the detention order, however, instead of deciding the representation, an officer not competent to deal with the matter, simply forwarded it to the Home Department vide letter dated 07.01.2025. The detenu again approached the Government through his representation dated January 11, 2025 and the said representation was also not decided before referring the matter to the Advisory Board and it is settled law that the Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's

representation to the Advisory Board, but the government has failed to accord consideration to the said representation;

- (vi) The SSP Kishtwar has concealed material facts before the detaining authority and the police recommendation is itself motivated and biased. The detenu has been out on bail since 2021 and has not been found involved in any kind of illegal, criminal or subversive activities. The petitioner released on bail was conditional and police was at liberty to approach competent court seeking cancellation of bail in case the detenu was found violating any bail condition;*

03. The order of detention has been passed on the grounds prepared by the District Magistrate, Kishtwar, on the basis of dossier produced before him by the SSP Kishtwar. The grounds of detention read as under:-

“Case FIR No. 31/2019 U/S 392 RPC 25, 30, 07 Indian Arms Act of Police Station Kishtwar and Case FIR No. 230/2019 U/S 13/18/19/38/39 ULA Act of P/S Kishtwar:

The facts of the case FIRs are that on 08-03-2019, it was reliably learnt at Police Station Kishtwar that at around 8 00 pm when you were present in your residential house at Hunjala Kishtwar, two terrorists namely Osama Bin Javid and Zahid Hussain entered into your house. The said terrorists directed you to accompany them for accomplishing some tasks. But your wife intervened and requested both terrorists to spare you from accompanying them which the militants accepted. Afterwards, the said militants demanded the key of your vehicle and threatened you that in case you disclose or intimate anything about this to anybody, they threatened you to kill all the members of your family. The terrorists took away key of your vehicle and left along with your vehicle to an unknown destination.

You didn't reveal this incident to any police authorities or even your any relatives, instead you filed a comp ant before the

police that your vehicle has been stolen from your house and also you provided details of your vehicle with fake registration number instead of the original one. Your this act of providing fake registration number of your vehicle (Alto Car) with the intent to mislead police authorities proves that you were yourself supporting terrorists activities and wanted that terrorists may accomplish to their nefarious designs and to help them to reach their safe locations after fulfillment of their nefarious design. It is to mention here that the destination to said terrorists was provided by OGW of HM outfit namely Rustum Ali, who is your relative besides also other destinations were provided by him in Hullar/Hunjala area. Your suspicious behavior and support towards anti-national elements despite being served in the police department proves that you remained indulged in anti-national activities since the terrorists frequently visited your house for long time. In view of your involvement in unlawful activities 02 FIR's has been registered against you and subsequently you were arrested on 08-10-2019. You were granted bail on 30-09-2021 by Hon'ble Court and the case is still under trial.

Your suspicious activities have been reported through Daily Diary Reports as 05 numbers DDRs Stand recorded against you at various police stations.

Whereas, it is further apprehended that your such anti-national activities may put threat to the non-locals and the projects of national importance which are at present under execution in District Kishtwar.

Whereas, there are inputs that long surviving terrorist of this District namely Jahangir Saroori as well as 1-2 foreign terrorists groups active in the District are trying their best to establish contact with you so that error attacks may be carried out in the District and there is apprehension that they may plan

and execute terror attacks on the Project sites and attack non-locals and political leaders of the district.

Whereas, the record shows that you have been found influenced by extremist mindset and various subversive activities in the past which are prejudicial to security of state;

Keeping in view the above mentioned facts, it establishes that, the substantive laws have failed you to desist from carrying such anti-national activity, as such in order to prevent you from indulging in militant activities / misdeeds in future and also in the interest of security of state, you have been ordered to be detained under Public Safety Act, 1978 vide this office order no.:8th/DM/K/PSA of 2024 Dated 24-12-2024 for a period to be determined by the advisory board.”

04. The respondents have filed their counter affidavit as well as produced the detention record. The respondents submit that the detention order was properly executed and while executing the warrant, Executing Officer read over the contents of the detention warrant and grounds of detention to the detenu in Urdu, Hindi and Kashmiri language which he understands. All the relevant documents were provided to the detenu so that he can make an effective representation as none of the constitutional or statutory rights of the detenu has been violated or infringed by the answering respondents. They further submit that the detenu was not mending his ways and after acquitted by the learned court retained his anti-national activities which are prejudicial to the security of the State.

05. Heard learned counsel for the parties at length and also perused the record.

06. As per the dossier of the Sr. Superintendent of Police, the detenu was involved in FIR No. 31/2019 U/S 392 RPC 25, 30, 07 Indian Arms Act

of Police Station Kishtwar and Case FIR No. 230/2019 U/S 13/18/19/38/39 ULA Act of P/S Kishtwar. The Detaining Authority, after considering the dossier of activities submitted by the Police, has arrived at its subjective satisfaction to prevent the detenu from further committing any offences and accordingly, issued the order of detention.

07. From perusal of the record, the ground projected appears to have substance. The grounds of detention, in this case are, in fact, a replica of dossier with interplay of some words here and there. This exhibits non-application of mind and in the process deriving of subjective satisfaction has become a causality. While formulating the grounds of detention, the detaining authority has to apply its own mind. It cannot simply reiterate whatever is written in the dossier. In this regard, the observations of the Hon'ble Supreme Court in the case of ***"Jai Singh and ors vs. State of J&K"*** (AIR 1985 SC 764), are reproduced hereunder:

"First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited "The subject is an important member of"

Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, S/o Ram Singh, resident of village Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find proof of non-application of mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner."

08. From a perusal of the aforesaid observations of the Hon'ble Supreme Court, it is clear that the grounds of detention and the dossier, if in

similar language, go on to show that there has been non application of mind on the part of the detaining authority. As already noted, in the instant case, it is clear from the record that the dossier and the grounds of detention contain almost similar wording which shows that there has been non application of mind on the part of the detaining authority. The impugned order of detention is, therefore, unsustainable in law on this ground alone.

09. The detenu has made a representation before the detaining authority/Government but the same has not been considered till date. The record reveals that the representation has not been considered till date, this infringes the valuable right of the detenu. The Hon'ble Supreme Court has time and again held that the representation submitted by the petitioner must be considered and disposed of at the earliest. In **“Sarabjeet Singh Mokha vs. The District Magistrate, Jabalpur and others”**, reported as **2021 SCC Online SC 1019**, it has held as under:

“22.....Article 22(5) reflects a keen awareness of the framers of the Constitution that preventive detention leads to the detention of a person without trial and hence, it incorporates procedural safeguards which mandate immediacy in terms of time. The significance of Article 22 is that the representation which has been submitted by the petitioner must be disposed of at an early date. The communication of the grounds of detention, as soon as may be, and the affording of the earliest opportunity to submit a representation against the order of detention will have no constitutional significance unless the detaining authority deals with the representation and communicates its decision with expedition.”

10. It is next submitted that even if the detenu was released on bail, then the respondents had to oppose the bail application. The law on the subject is settled. If the detaining authority is apprehensive that, in case the detenu is released on bail, he may again carry on his criminal activities, then in such a situation, the authority should oppose the bail application. In the event that bail is granted, the authority should challenge such a bail order in a higher forum. Merely on

the ground that an accused in detention is likely to get bail, an order of preventive detention should not ordinarily be passed.

11. In '*Ramesh Yadav vs. District Magistrate, Etah and others*', reported as **AIR 1986 SC 315**, 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 Nation Security Act should not ordinarily be passed.”

12. In view of the aforesaid discussion and without adverting to the other grounds raised in this petition, this petition is allowed. Accordingly, impugned detention order No.8th/DM/K/PSA of 2024 dated 24.12.2024 passed by the District Magistrate Kishtwar, is quashed. The detenu-**Jaffer Hussain Butt**, is directed to be released from the custody forthwith if he is not otherwise required in any other case.

13. Detention record be handed over to learned counsel for the respondents by the Registry forthwith.

(Vinod Chatterji Koul)
Judge

Jammu:
30.9.2025
Ram Murti

Whether approved for speaking : Yes