



HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 18/2025

Pronounced on: 07.05.2025

Farman Ali

.... Petitioner/Appellant(s)

Through:- Mr. A.P Singh, Advocate
Mr. Nikhil Verma, Advocate

V/s

UT of J&K and others

.....Respondent(s)

Through:- Mr. Sumeet Bhatia, GA

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
JUDGMENT

01. The petitioner has challenged the legality, propriety and correctness of impugned detention order No. PSA/124 dated 23.02.2024, passed by the District Magistrate, Kathua, under Section 8 of the Jammu and Kashmir Public Safety Act, 1978.
02. The District Magistrate, Kathua, has detained Farman Ali, S/o Rashid, R/o Village Gota Roua, Tehsil Marheen, District Kathua, under Section 8 of the J&K Public Safety Act, 1978, to prevent him from acting in any manner prejudicial to the maintenance of public order on the basis of dossier submitted by Senior Superintendent of Police, Kathua.
03. As per the dossier submitted by the Senior Superintendent of Police, Kathua, the petitioner was involved in as many as five FIRs, i.e., FIR No. 209/2019, under Sections 341/323/147/436 IPC, FIR No. 268/2021, under Sections 341/323/382/147 IPC, FIR No. 100/2022, under Sections 341/323/504/506 IPC, FIR No. 233/2022, under Sections 341/323/336/504/506/147 IPC, FIR No. 104/2023, under



Sections 341/323/382/147 IPC, all registered at Police Station Rajbagh. The detaining authority has arrived at its subjective satisfaction that the petitioner is continuously indulging in illegal and criminal activities and his activities are threat to the life and liberty of the people and is also acting in a manner which is prejudicial to the maintenance of safety and security of public in the area. Therefore, in order to maintain public order, the detaining authority has arrived at a conclusion to detain the petitioner for maintenance of public order.

04. The impugned detention order has been assailed by the petitioner on the following grounds: -

- i. That the grounds of detention are verbatim copy of dossier, therefore, there is no application of mind.
- ii. That the petitioner has neither been furnished all the relevant material relied upon by the detaining authority while passing the order of detention nor was informed of his statutory right to make an effective representation to the detaining authority against his detention, as such, the same has resulted in infraction of the valuable rights as guaranteed to the petitioner under Article 22(5) of the Constitution of India, thus, the detention is bad and is required to be set aside.
- iii. That there is a delay of ten months in execution of the detention order dated 23.02.2024, thus, the detention is vitiated.
- iv. That the detention order is vague and irrelevant to its purpose, as none of the five FIRs/Challans cited by the



detaining authority mention any offence related to communal harmony or religious feelings, as such, the detaining authority has failed to apply its mind while issuing the order of detention.

- v. That there is no live link between the last alleged activity against the petitioner, and the order of detention has been passed nearly after ten months, i.e., 23.02.2024;
- vi. That the petitioner was acquitted in FIR No. 100/2022, but the detaining authority has failed to notice this fact and erroneously relied upon the said FIR while passing the order of detention.

05. The respondents have filed their counter affidavit and produced the detention record.

06. It is submitted that as per the communication dated 13.02.2024, received from the Senior Superintendent of Police, Kathua, and keeping in view the continuous and repeated involvement of the petitioner in illegal and criminal activities, he was detained under the J&K Public Safety Act, 1978, for maintenance of public order. Further, the detention warrant along with grounds of detention was properly executed under proper acknowledgement of the petitioner. The same were read over to the petitioner and explained to him in the language he understands. The petitioner has also been informed that he can make a representation to the Government against his detention.

07. Heard learned counsel for the parties and perused the record.



08. Perusal of the record reveals that the petitioner has been detained for his activities which were found to be prejudicial to the public peace and order. In the grounds of detention, it has been stated that the petitioner is a habitual criminal involved in organized crime for many years, and continues to engage in such activities, leading to a sense of terror among the general public. The actions of the petitioner are prejudicial to the maintenance of public order and tranquility. The repeated illegal and criminal activities of the petitioner have instilled insecurity, fear, and terror in the area, disturbing both public order and communal harmony, therefore, in order to prevent him from further actions detrimental to the maintenance of public order and communal harmony, it has become necessary to detain the petitioner.
09. Perusal of the record further reveals that the petitioner has been detained for his activities which were found to be prejudicial to the public peace and order. The Detaining Authority has relied on the fact that the petitioner was involved in as many as five FIRs, i.e., i.e. FIR No. 209/2019, FIR No. 268/2021, FIR No. 100/2022, FIR No. 233/2022 and FIR No. 104/2023. However, there is a clear non-application of mind, as the Detaining Authority has failed to consider the fact that no FIR other than the FIRs mentioned above has been registered against the petitioner after the year 2023, during which the petitioner was on bail.
10. Another important aspect of the matter is that no FIR has been registered against the petitioner after April 2023, while the petitioner was on bail. However, the detention order was issued on 23.02.2024, nearly ten months after his last alleged involvement in criminal activity.



11. In the present case, there is no cogent explanation coming forth from perusal of the grounds of detention with reference to the live-link between the prejudicial activities and the purpose of the detention and resultantly the impugned detention order is liable to be quashed.
12. The detention order was passed on 23.02.2024, but the same was executed on 06.01.2025 i.e. after a delay of nearly ten months. There is no explanation put forth for the delay in execution of detention warrant. The petitioner has stated that he was available and this fact has not been rebutted.
13. In “**A. Mohammed Farook vs. Jt. Secy. To G.O.I. and ors**”, (2000) 2 SCC 360, the Hon’ble Apex court has held that:

“The only contention before the Court was that of delay in executing the order of detention. In that case, the detention order was passed on 25.02.1999 but the authorities have chosen to execute the detention order only on 06.04.1999 after an inordinate and unreasonable delay of nearly 40 days. In the absence of proper and acceptable reasons for the delay of 40 days in executing the detention order, this Court concluded that the subjective satisfaction of the Detaining Authority in issuing the detention order dated 25.02.1999 gets vitiated and on this ground quashed the same.”

14. Similar view has been expressed in “**K.P. M. Basheer V. State of Karnataka and another**”, AIR 1992 SC 1353, the Hon’ble Apex court has held that:

“...Under these circumstances, we are of the view that the order of detention cannot be sustained since the ‘live and proximate link’ between the grounds of detention and the purpose of detention is snapped on account of the undue and unreasonable delay in security the appellant/detenué and detaining him...”

15. It is next submitted that the petitioner has not been provided all the requisite material relied upon by the detaining authority while passing



the order of detention. Perusal of the receipt of grounds of detention reveals that the petitioner has been provided detention order (02 leaves), notice of detention (01 leaf), grounds of detention (08 leaves), dossier of detention (40 leaves) and other document (Nil). It is thus clear that petitioner has not been provided all the relevant material relied upon by the detaining authority while passing the order of detention. This has resulted in infraction of his statutory rights available to him under law.

16. Reliance is placed on **“Thahira Haris etc. etc. Vs. Government of Karnataka and others”**, reported as **AIR 2009 Supreme Court 2184**, has held as under:

“27. There were several grounds on which the detention of the detenu was challenged in these appeals but it is not necessary to refer to all the grounds since on the ground of not supplying the relied upon document, continued detention of the detenu becomes illegal and detention order has to be quashed on that ground alone.

28. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detenu who has been detained in pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all documents, statements and other materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the detenu at the earliest opportunity to make effective and meaningful representation against his detention.”

17. Similar view has been held by the Hon’ble Apex Court in **“Sophia Ghulam Mohd. Bham V. State of Maharashtra and others”**, **AIR 1999 SC 3051**, wherein the Hon’ble Apex Court 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 detenu to make a representation against the order of detention. Are presentation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated 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....”



18. In view of the aforesaid reasons, there is no need to advert to other grounds raised in this petition. Accordingly, this petition is allowed and the Detention Order No. No. PSA/124 dated 23.02.2024, passed by the District Magistrate, Kathua, under which the petitioner-Farman Ali, S/o Rashid, R/o Village Gota Roua, Tehsil Marheen, District Kathua, is under detention, is quashed. The respondents are directed to release the petitioner from the custody forthwith, provided he is not required in any other case.
19. Detention record be returned to the learned counsel for the respondents by the Registry forthwith.



**(SINDHU SHARMA)
JUDGE**

Jammu:
07.05.2025
Vishal Khajuria

Whether the judgment is reportable : *Yes*