

Jammu & Kashmir High Court**Bhupinder Kumar @ Pappu vs Ut Of J&K Through on 3 September, 2025**

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
No.43/2025

Sr. No. 139
AT JAMMU HCP
Reserved on: 21.08.2025
Pronounced on: 03.09.2025 Bhupinder Kumar

@ Pappu, S/O Krishan Lal, R/O Sundar Nagar,
Petitioner(s) Talab Tillo, Jammu, District Jammu Through daughter Rohani Devi.
Through: Mr. Jagpaul Singh, Advocate. Vs 1. UT of J&K
through Commissioner-cum-Secretary, Home Department, Civil Secretariat, Jammu. 2.
District Magistrate, Kathua. . Respondent(s) 3. Senior
Superintendent of Police, Kathua. 4. In charge, Central Jail, Jammu.
Through: Mr. Suneel Malhotra, GA. CORAM: HON"BLE MR. JUSTICE M A
CHOWDHARY, JUDGE JUDGMENT

01. Petitioner-Bhupinder Kumar @ Pappu, S/O Krishan Lal, R/O Sundar Nagar, Talab Tillo, Jammu, Tehsil and District Jammu (for short „the detainee“) challenged the Detention Order No. PSA/137 dated 16.01.2025 („impugned order“), issued by respondent No.2, District Magistrate, Kathua ("the detaining authority"), whereby he has been placed under preventive detention, in order to prevent him from acting in any manner prejudicial to the maintenance of „public order“.

02. The petitioner has contended that the detaining authority has passed the impugned order mechanically without application of mind; that the petitioner was not informed of his right to file representation to the detaining authority against the impugned detention order and also, time period, within which, he can make such representation; that whole of the material was not supplied to the petitioner, which incapacitated him in filing an effective and meaningful representation to the competent authority; that the sponsoring agency has suppressed a vital fact that earlier also, the petitioner was detained under preventive detention, and now same FIRs are made the basis for detaining the petitioner despite the fact that this court had quashed the earlier detention order. Lastly, it is prayed that the impugned detention order be quashed by allowing the present petition.

03. Pursuant to the notice, the respondents, filed counter affidavit through the respondent No. 2, asserting therein that the petitioner was detained by the detaining authority with full application of mind; that the grounds of detention along with detention warrant was properly executed through Inspector Tribhawan Khajuria, SHO P/S Lakhanpur under proper acknowledgement of the detainee; that the petitioner was duly informed of his right to make representation to the government within the stipulated time period; that he was also informed that he has right to file representation to the detaining authority against his preventive detention; that the executing officer read out the whole material to the petitioner in English and explained the same in the language the petitioner understands; that the petitioner is a criminal minded person, who is reportedly involved in a number of criminal activities and bovine smuggling cases, as such, is a threat to the life and liberty of the people, therefore, it was imperative to detain him under the preventive detention; that whole of the material was supplied to the petitioner against proper receipt; that the detaining authority has observed all the safeguards enshrined in Article 22 (5) of the Constitution of India as well as the provisions of the Jammu and Kashmir Public Safety Act, 1978 while directing his detention; that the liberty of the detainee is subservient to the welfare, safety and interest of society at large, as such, the detention order has been passed by the detaining authority within the ambit of law observing all the safeguards. It has been further asserted that the detainee was involved in the cases of commission of several offences punishable under the Indian Penal Code and Prevention of Cruelty to Animals Act, registered at Lakhanpur Police Station, and the detaining authority had drawn its satisfaction on the basis of cogent, credible and incriminating material against the detainee to prevent him from the activities prejudicial to the maintenance of public order and finally it was prayed that the petition be dismissed and the impugned order be upheld.

04. Heard learned counsel for the parties, perused the detention record and considered.

05. The detention record, as produced, reveals that the detainee was involved in following 04 cases registered at Lakhanpur Police Station:-

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| 1) FIR No.26/2023; U/Sec 188 IPC, 11 PCA Act. | 2) FIR No. 48/2023; |
| U/Sec 188 IPC, 11 PCA Act. | 3) FIR No. 51/2024; U/Sec 233 IPC, 11 PCA Act, and |
| 4) FIR No. 142/2024; U/S 233 IPC, 11 PCA Act. | |

Involvement of the detainee in the aforementioned cases appears to have heavily weighed with the detaining authority, while passing impugned detention order.

06. Though many grounds on behalf of the detainee have been raised, for assailing the impugned order of detention, yet, during the course of arguments, his counsel restricted his arguments to the contentions that:

i) That the detainee was not informed about his right to make representation to the detaining authority, as also no mention of time limit in the detention order within which detainee can make his representation to the detaining authority as well as the Government;

ii) The petitioner was not supplied whole of the material nor explained the contents of the impugned detention order, grounds of detention etc. in the language he understands;

iii) That the representation filed by the petitioner to the competent authority was neither considered nor decision on the representation communicated to the petitioner;

iv) That there is non-application of mind on the part of respondents vis-à-vis no cognizance taken of the previous detention of the petitioner ordered vide No.01/PSA of 2018 on 03.05.2018 and quashed by this court vide order dated 06.09.2018 vitiates the impugned detention order; and

v) That the grounds of detention of the earlier prevention detention should not be taken into consideration either as a whole or in part even along with fresh grounds of detention for drawing requisite subjective satisfaction to pass a fresh detention order.

07. The first ground as argued is, that the detainee was not informed about his right to make representation within stipulated time before the detaining authority, thereby, violating his statutory and constitutional rights. It is translucently clear from perusal of the record that communication No.DMK/JC/2025-26/3628-32 dated 16.01.2025 addressed to the petitioner by the District Magistrate, Kathua, whereby, it is informed to the petitioner that „you may make representation to the Govt. against the order within stipulated time period, if you so desire" shows that the Detaining Authority has neither communicated to the detainee his right to make representation to the detaining authority itself, as also the time limit, within which, he could make representation to it, 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."

08. Since the detainee's right to make 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 detention order, the time limit, within which, he could make a representation to it i.e., till the approval of the detention order by the State Government. There is, therefore, force in the above argument of the detainee. On this count alone, the impugned detention order cannot sustain and is liable to be quashed.

09. The second ground urged by the learned counsel for the detainee that the entire material forming the basis of the grounds of detention was neither supplied nor explained to the detainee in the language he understands, has been contradicted by respondent No.2 in his affidavit. The detention record produced by the respondents contains report of execution, as also receipt executed by the detainee. According to the receipt, the detainee has received a total of 78 leaves comprising copy of detention order, notice of detention, grounds of detention, Police dossier, Copies of FIRs, Statements of Witnesses and other related documents. Since the petitioner has denied that entire material has been supplied and explained to him in the language he understands, the respondents ought to have filed affidavit of executing officer in this regard, which on the perusal of the record would show that same has not been done except a general routine affidavit, thus vitiating the impugned detention order. It can, thus, be safely assumed that the material, was not supplied to the petitioner, on the basis of which detention order is passed nor its contents explained to the detainee in the language he understands.

10. Hon'ble the Supreme Court of India in a case titled „State of Maharashtra & Ors. v. Santosh Shanker Acharya" reported as AIR 2000 SC 2504 quashed the detention order on the ground, that the detainee was not supplied the copies of material from which detention order was made, which amounted to denial of representation to the detainee and infraction of a valuable constitutional right guaranteed to the detainee under Article 22 (5) of the Constitution of India. A Co-ordinate Bench of this Court at Srinagar in a case titled "Hilal Ahmad Khuroo Vs. Union Territory of J&K & Ors. [WP (CrI.) No. 80/2022, decided on 10.08.2022] has held, that respondents are duty bound to provide to the petitioner/detainee the material and non-supply thereof renders the detention order illegal and unsustainable. Ratio of the judgments (supra) and the principle of law deduced therefrom are squarely applicable to the facts of the case on hand. In the instant case, the petitioner has denied that he has been supplied the material on the basis of which detention order is passed. The respondents ought to have filed affidavit of the executing officer in this regard which is conspicuously absent in the instant case. Therefore, the petitioner/detainee's constitutional right guaranteed to him under Article 22(5) Constitution of India r/w Section 13 of J&K PSA 1978 has been infringed/violated, which renders the impugned detention order illegal and legally unsustainable.

11. The third ground was that representation of the detainee was neither considered nor result whereof, conveyed to the detainee. In the Counter affidavit filed on behalf of respondent no. 2, nothing was whispered that any representation was received from the detainee, yet the record produced by the respondents would reveal that

Government vide communication dated 28.04.2025 addressed to District Magistrate, Kathua with copy to the Superintendent Central Jail, Jammu asked to inform the detainee about the disposal of his representation. The respondents, in order to substantiate their claim that they duly informed the detainee of the decision taken on the representation, ought to have filed an affidavit to that effect, since detainee has all along denied any receipt or information about the outcome of the representation, however, such affidavit is conspicuously absent and, what the respondents have placed on record is copy of the same communication dated 28.04.2025 (supra) on which it is alleged that detainee has put his signatures. Even if it is assumed that, the representation filed on 06.03.2025 was considered by the government, after 52 days of its filing, there is, thus, inordinate and unexplained delay in according consideration to the representation, which ought to have been considered at the earliest. This slackness on the part of respondents to take a decision on the representation of the detainee, also vitiates the impugned order of detention.

12. So far as the fourth ground raised by the learned counsel for the petitioner is concerned, it is an admitted fact as emerges from the record that the detainee herein had been previously detained by the respondents in terms of Detention Order No.PSA/117 dated 25.11.2023, which was challenged by the petitioner by way of filing HCP No.106/2023 titled „Bhupinder Kumar @ Pappu v. UT of J&K & Ors" before this court, in which Detention Order No.PSA/117 dated 25.11.2023 came to be quashed by this court in terms of judgment dated 25.04.2024. Perusal of the record available on the file as also the detention record produced by counsel for the respondents would manifestly demonstrate that the respondents in general and the detaining authority in particular has remained oblivious to the said fact, thus, rendering the impugned order legally un-sustainable, more so, in view of the judgment of the Apex Court passed in case titled as "C. B. Kahar vs. N. L. Kalna" reported in AIR 1989 SC 1234, wherein it has been held that grounds of detention of the earlier detention order should not be taken into consideration, either as a whole or in part even along with the fresh grounds of detention, for drawing the requisite subjective satisfaction to pass a fresh order of detention. Para 12 of the judgment (supra) being relevant is reproduced as under:-

"12. It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the court strikes down an earlier order by issuing rule it nullifies the entire order."

13. So far as the last ground is concerned, that the detaining authority did not make mention of previous preventive detention order issued against the detainee so as to take into consideration the grounds of detention and the FIRs/Cases of the year 2023, on the basis of which, he was taken into preventive detention vide Order No.PSA/117 dated 25.11.2023, is a plausible ground. In the considered opinion of this court, when a detention order is quashed by the court, issuing a high prerogative writ, like habeas corpus or certiorari, the grounds of said detention order should not be taken into consideration, either as a whole or in part, even along with fresh grounds of detention for drawing subjective satisfaction to pass a fresh detention order. In the present case, the respondents have not referred to the earlier detention order passed against the petitioner, nor its quashment, so as to use the same cases/FIRs to form basis and to pass the impugned detention order. In that view of the matter, the impugned detention order is vitiated and cannot sustain in the eye of law.

14. On a perusal of the grounds of detention, it is apparent that the detainee has been accused of being involved in the commission of illegal transportation of bovines and cruelty against the animals regarding which 4 FIRs had been registered at Lakhanpur Police Station viz FIR No. 126/2023, u/s 188 IPC, 11 PCA Act; FIR No. 48/2023, u/s 188 IPC, 11 PCA Act; FIR No. 51/2024 u/s 233 BNS, 11 PCA Act and FIR No. 142/2024 u/s 233 BNS, 11 PCA Act . The detainee has been ordered to be detained in preventive custody, preventing him from indulging into the activities prejudicial to the maintenance of the "public order."

15. The detention order nowhere states that on registration of any of the case right from the year 2023 and 2024, there had been any case of public outrage so as to bracket the case to be of „public order" warranting the detention of the detainee under the Public Safety Act. An offence under section 188 IPC provides that a person is to be punished for disobedience to order duly promulgated by a public authority.

16. It appears that the detainee was charged for having contravened the order issued by the District Magistrate to have transported the bovine animals without permission, therefore, simply registering a case under section 188 IPC does not „ipso facto" constitute an offence of „bovine smuggling". Transportation without permission can be a disobedience of an order issued by public authority which does not necessarily mean that it amounts to bovine smuggling of which the detainee has been alleged. For example a person who transports his own animals or purchased animals from one district to another without permission cannot be stated to have smuggled such bovine animals and such an offence if committed by a person can be dealt with under the penal law for which invoking the preventive detention of a person for a period of one year, without affording him an opportunity of being heard or without being tried would be a travesty of justice. The detaining authority in this case has, thus, exceeded its jurisdiction to state that the detention order was required to be passed so as to prevent the detainee from carrying on the activities prejudicial to the public order. Public order is a form of development, which erupts due to public anger and is something beyond the failure of the law and order, therefore, without any such development, it cannot be stated that the detainee was a threat to the maintenance of public order, so as to attract his detention.

17. Instead of being contended with, investigation into, prosecution therefor, with regard to penal offences, the State should not take recourse to preventive detention of an accused of such offences, without there being any right to bail, as during trial. Preventive detention is a strong arm tactic of the State to divest a citizen, from his most cherishable fundamental right of „personal liberty“. The State should not resort to take recourse to preventive detention, on drop of a hat, but reserve this option for exceptionally grave cas8es, which may call for the same, having regard to the prejudicial activities to public order or national security. Public order is a grave situation, much beyond the law and order situation. In the detainee"s case, no such instance or activity on his part has been shown that there was any problem of law and order even, the State had to tackle with, not to talk of public order.

18. 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."

19. Having regard to the facts, firstly, that not informing the detainee that he can make representation to the detaining authority, against the detention order besides time frame not specified in the detention order, within which detainee can file representation against the detention order and secondly, non-supply of whole of the material to the petitioner, which incapacitated him to file effective and meaningful representation to the detaining authority as well as government; thirdly, no communication to the petitioner vis-à-vis fate of the representation filed by the petitioner against his order of detention; fourthly, non application of mind on the part of the detaining authority vis-à-vis no mention of earlier detention order and its quashment by this court; fifthly, taking into consideration of the grounds of the earlier detention order in passing the impugned detention order; it can safely be held that the detainee was disabled to exercise his right to file a representation against his detention, in terms of Article 22(5) of the Constitution of India; that the detaining authority has passed the impugned detention order arbitrarily and mechanically, without application of mind and the constitutional and statutory safeguards available to the detainee were also observed in breach and trampled, vitiating the impugned detention order, which render it unsustainable and liable to be quashed.

20. Viewed thus, the petition is allowed and the impugned detention Order No.PSA/137 dated 16.01.2025, passed by respondent No. 2, District Magistrate, Kathua, is hereby quashed. The detainee- Bhupinder Kumar @ Pappu, is directed to be released from the preventive custody forthwith, if not required in any other case(s). No costs.

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

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

Chowdhary)	((M A	
Jammu	03.09.2025	Raj Kumar	Judge
		Whether the order is speaking?	:Yes
		Whether the order is reportable?	:Yes

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