

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on 27.03.2025
Pronounced on 07.04.2025

HCP No. 118/2024

Mumtaz Ahmed th. Nisar AhmedAppellant(s)/Petitioner(s)

Through: Mr. K. M. Bhatti, Adv.

vs

Union Territory of J&K and others Respondent(s)

Through: Mr. Pawan Dev Singh, Dy.AG

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioner has challenged order bearing No. 17/DMP/PSA of 2024 dated 26.07.2024 passed by the District Magistrate, Poonch(hereinafter to be referred as the Detaining Authority), whereby he has been taken into preventive custody with a view to prevent him from acting in any manner prejudicial to the security of the State.
2. The petitioner has challenged impugned order of detention on the grounds that the same has been passed in a mechanical manner in utter disregard of the constitutional and statutory safeguards. It has been contended that the impugned order of detention has been passed without application of mind and without drawing subjective satisfaction simply on the basis of dossier submitted by the Police. It has been contended that the petitioner has not been informed as regards the period within which he was entitled to make a representation against the impugned

order of detention to the Detaining Authority as well as to the Government. It has been further submitted that the allegations levelled against the petitioner in the grounds of detention are without any basis and that the grounds of detention are replica of the Police dossier. It has also been contended that the petitioner has not been furnished whole of the material forming basis of the grounds of detention. According to the petitioner, the allegations made in the impugned order of detention are absolutely false and frivolous and that the same are vague.

3. The Detaining Authority has filed its counter affidavit in which, it has been submitted that all the constitutional and statutory safeguards have been adhered to by the respondents while detaining the petitioner. It has further been submitted that the whole of the material forming basis of the grounds of detention has been furnished to the petitioner. According to the respondents, the petitioner has been actively involved in separatist and secessionist ideologies within District Poonch and he has been working as Over Ground Worker for Jaish-e-Mohammad, a banned outfit. It has further been submitted that the petitioner has been aiding the movement of terrorists in District Poonch and facilitating their evasion of security forces. It has been submitted that the petitioner's constant engagement in terror related activities have created disturbance, fear and atmosphere of insecurity in the UT of Jammu and Kashmir. It has also been submitted that the petitioner has been providing logistic support to the terrorists and he is also harbouring such elements.

4. Thus according to the respondents, the petitioner poses a great threat to the safety and security of the State. It has also been submitted that the Detaining Authority has after examining the dossier submitted by the Senior Superintendent of Police, Poonch, analysed the material and drawn its subjective satisfaction after due application of mind. It has also been submitted that contents of the material supplied to the petitioner have been read over and explained to him in Urdu/Pahari languages, which he understands. In order to support their contentions, the respondents have produced the detention record.
5. I have heard learned counsel for the parties and perused the record including the detention record produced by learned counsel for the respondents.
6. Learned counsel for the petitioner during the course of arguments has restricted his arguments only to two grounds. One that the petitioner has not been furnished whole of the material forming basis of the grounds of detention which has prevented him from making an effective representation against the impugned order of detention and second that the grounds of detention is replica of the Police dossier which indicates that there has been non application of mind on the part of the Detaining Authority while drawing its subjective satisfaction in the matter. In support of the aforesaid contention, the learned counsel has relied upon the following judgments:
 - i) Rameez Ahmed Lone vs. U. T of J&K and others, 2024(1) JKJ 145

(ii) Abdul Hameet Khan vs. U. T. of J&K and others, Law finder Doc ID 2619379.

(iii) Khurshid Ahmed vs. U. T of J&K and others (HCP No. 91/2024, decided on 19.12.2024)

7. So far as the first ground urged by the learned counsel for the petitioner is concerned, it appears from the detention record that the petitioner has been provided with detention order (1 leaf), notice of detention (1 leaf), grounds of detention (3 leaves) and dossier of detention (5 leaves). The receipt executed by the petitioner clearly indicates that he has received copies of all the aforesaid documents upon his detention.
8. Learned counsel for the petitioner has contended that the dossier of detention submitted by the SSP to the concerned District Magistrate comprises (6) pages which includes Annexure-(1) to the said dossier but the petitioner has been provided only five leaves of the dossier of detention meaning thereby that Annexure-(1) to the said dossier has not been provided to the petitioner. On this ground, it is being urged that the petitioner has not been provided whole of the material which formed basis of the grounds of detention.
9. It is true that as per the record produced by the respondents, the petitioner has been furnished only five pages of dossier of detention and it appears that the annexure thereto has not been furnished to the petitioner. The annexure to the dossier, which it appears has not been furnished to the petitioner, is the special report prepared by the District Special Branch. A perusal of the detention record would reveal that the

said document pertains to intelligence report relating to the petitioner. The question arises as to whether it was mandatory for the respondents to furnish a copy of the intelligence report to the detainee.

10. The aforesaid issue has been considered by the Supreme Court in the case of **Wasi-ud-din Ahmed vs. D. M. Aligarh (1981) 4 SCC 521**. It was held by the Supreme Court that the District Magistrate was not bound to disclose the intelligence report and it was also not necessary for him to supply the history sheet, if any. The aforesaid ratio laid down by the Supreme Court has been followed by a Division Bench of this Court in the case of **Mian Abdul Qayoom vs. U. T of J&K and others 2020(4) JKJ(HC) 127**.
11. Thus, it is clear that the detaining authority is not required to disclose those facts to a detainee, disclosure whereof it considers to be against the public interest. The copy of the intelligence report submitted by the District Special Branch could not have been supplied to the petitioner without compromising the public interest. The statutory provision contained in Sub Section (2) of Section 13 of the J&K Public Safety Act clearly vests power with the Detaining Authority to withhold the facts which it considers to be against the public interest to disclose. Similarly clause(6) of the Article 22 of the Constitution also vests power with the Detaining Authority to withhold those facts from a detainee which is considers to be prejudicial to the public interest to disclose.
12. In view of the aforesaid legal position, it was not mandatory for the Detaining Authority to furnish a copy of the intelligence report to the

petitioner. Merely because confidential information was not provided to the petitioner, which in the circumstances, would have been against the public interest, it cannot be stated that constitutional and statutory rights of the petitioner have been violated so as to entail quashment of the impugned order.

13. So far as the second contention of learned counsel for the petitioner is concerned, the same also appears to be without any substance. A perusal of grounds of detention and their comparison with the dossier of detention does not lead us to the conclusion that the grounds of detention are replica of the dossier. Merely because there is reproduction of the certain factual aspects narrated in the Police dossier in the grounds of detention does not necessarily prove non application of mind by the Detaining Authority. The grounds of detention clearly indicate that the Detaining Authority has applied its mind after noticing the facts mentioned in the dossier of detention. The Detaining Authority has noted that the petitioner is receiving instructions from wanted terrorist operative namely, Haq Nawaz, who is based in Saudi Arabia. It has also been noted by the Detaining Authority that the petitioner is working for PAFF a frontal terror proxy outfit of Jaish-e-Mohammad and he has been assisting the said organization to carry out terror activities in District Poonch. Upon noticing all these facts, the Detaining Authority has drawn its subjective satisfaction that in order to uphold the security interests of the UT of J&K and the Indian State, it is imperative to detain the petitioner. The case law referred to and relied

upon by the learned counsel for the petitioner is not applicable to the facts of the case, as in the present case, the grounds of detention clearly reflect application of mind on the part of the Detaining Authority. Thus, it cannot be stated that there has been any mechanical exercise of power on the part of the Detaining Authority while passing the impugned order of detention.

14. For what has been discussed hereinabove, I do not find any merit in the present petition. Accordingly the same is dismissed.
15. The record of detention be returned to learned counsel for the respondents.

Jammu:
07.04.2025
Rakesh PS

Whether the order is speaking: Yes/Nb
Whether the order is reportable: Yes/Nb

(SANJAY DHAR)
JUDGE