



IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 95/2025

Reserved on: 05.03.2026

Pronounced on : 12.03.2026

Uploaded on : 12.03.2026

Whether the operative part or full
judgment is pronounced: Full

Tariq Hussain

....Petitioners

Through:- Mr. Muzaffar Iqbal Khan, Advocate.

V/s

UT of J&K & Ors

.....Respondents

Through:- Mr. Dewakar Sharma, Dy. AG

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

(JUDGMENT)

01. The petitioner, through the medium of the present petition, has challenged order No. DMR/PSA/08 of 2025 dated 05.06.2025 (hereinafter to be referred to as ("**impugned order of detention**") issued by respondent No. 2-District Magistrate, Rajouri whereby he has been placed under preventive detention with a view to prevent him from acting in any manner, prejudicial to the maintenance of public order.

02. The petitioner has challenged the impugned order of detention on the ground that whole of the material, forming basis of grounds of detention, has not been furnished to him,



which has deprived him from making an effective representation against the impugned order of detention.

03. It has been contended that the detaining authority has not informed the petitioner about his right to make a representation against the impugned order of detention before the detaining authority. It has been contended that the impugned order of detention has been passed by respondent No. 2 with a view to put the petitioner behind the bars despite having been bailed out by the competent court of law in FIR No. 125/2020 registered against him. It has also been contended that the petitioner even after being bailed out in the said FIR was again taken into custody under the garb of the impugned detention order, which clearly shows that the action of the respondents is tainted with malafides and the same constitutes colourable exercise of power on the part of the detaining authority.

04. The petition has been contested by the respondents by filing counter affidavit of the detaining authority viz respondent No. 2. In the counter affidavit, it has been submitted that whole of the material, on the basis of which grounds of detention have been formulated, has been provided to the petitioner and contents of the same have been explained to the detenu in Hindi/urdu language, which he understands. It has been further submitted that the petitioner was informed about his right to make representation before the Government as well as before the detaining authority. It has been



submitted that all the statutory and legal requirements were followed by the respondents while executing the detention order against the petitioner. The respondents have also produced detention record to lend support to their contentions.

05. I have heard learned counsel for the parties and perused record of the case including the detention record which has been produced by the respondents.

06. Although the petitioner has raised a number of grounds for assailing the impugned order of detention yet much emphasis has been laid by learned counsel for the petitioner on the ground that the petitioner was not informed about his right to make a representation against the impugned order of detention before the detaining authority.

07. In the above context, if we have a look at the contents of the notice of detention dated 05.06.2025 that has been served upon the petitioner, it provides that the petitioner may make a representation against the detention order to the Government if so desired. It does not in any manner inform the petitioner about his right to make a representation before the detaining authority.

08. The legal position with regard to options available to a detenué for making representation against the order of detention is well settled. Not only the Government, even the detaining authority has the power to consider the representation against the order of detention. In this regard,



the Supreme Court has, in **A.C. Razia Vs. Govt. of Kerala and Ors, (2004) 2 SCC 621** in the context of the COFEPOSA Act, held as under:

“12. The combined effect of the constitutional and statutory provisions from the point of view of the detenu’s right to make the representation is to provide more than one forum to re-examine or review the case of the detenu and to afford him various means of redressal of his grievance. Thus, the matter could be examined by (i) the Advisory Board (ii) the detaining authority and (iii) the State or Central Governments acting under Section 11 or on receipt of Advisory Boards opinion. This is apart from the power of the Central Government to examine the validity of detention acting suo motu on receipt of report under Section 3(2). Under Section 11 - which is of immediate relevance in the present case, the Central Government has the power to revoke the orders made by (i) the State Government, (ii) an officer specially empowered by the State Government and (iii) an officer specially empowered by the Central Government. The order passed by an officer specially empowered by a State Government can be revoked by the State Government as well.

“The conferment of this power on the Central and the State Governments does not, however, detract from the power that is available to the authority that has made the order of detention to revoke it.” This is ensured by the words without prejudice to the provisions of [Section 21 of the General Clauses Act](#)” in sub-section (1) of Section 11 (vide observations of the Constitution Bench in paragraph 22 in the case of *Kamlesh Kumar vs. Union of India*).”

09. Again the Supreme Court has, in the case of **Ankit Ashok Jalan Vs. Union of India and Ors, (2020) 16 SCC 127**, clearly held that detaining authority has to consider representation independently without waiting for report of the Advisory Board. The Supreme Court further held that it is a



well settled law that representation can be made to the detaining authority and the said authority is vested with power to consider the representation.

10. From the aforesaid position of law, it is clear that right to make a representation to the detaining authority or to the Government is an integral part of Article 22(5) of the Constitution and, therefore, once it is shown that the representation made by a detenu to the detaining authority has not been considered at all, it amounts to infringement of right of a detenu guaranteed under Article 22(5) of the Constitution and the same results in making the impugned order of detention unsustainable in law.

11. In the face of aforesaid legal position, the question arises as to what would be the effect upon the legality of the order of detention in a case where the detenu has not been informed about his right to make a representation before the detaining authority. This question has been answered by a Division Bench of this Court in **Tariq Ahmed Dar Vs. State of J&K and Ors, 2017 II SLJ 665 (HC)**. In the said case, the Division Bench while relying upon the ratio laid down by the Supreme Court in **Kamlesh Kumar Ishwardas Patel Vs. Union of India, (1995) 4 SCC 51** has observed as under:

“15. From a reading of [the said decision](#), it is abundantly clear that non-communication of the fact that the detenu can make a representation to the Detaining Authority, till the detention order is not approved by the Government, would constitute an infraction of a valuable Constitutional right



guaranteed under [Article 22\(5\)](#) of the Constitution of India as also of the right under [Section 13](#) of the Jammu and Kashmir Public Safety Act, 1978. Failure of such non-communication would invalidate the order of detention.

16.

17. In view of the foregoing, we need not to consider any of the other pleas sought to be raised by the learned counsel for the appellant, inasmuch as the detention order has been invalidated because of non-communication of the fact that the detenu could make a representation to the Detaining Authority. The detention order having become invalid, the detenu is liable to be released forthwith insofar as this detention order is concerned.

12. From the foregoing position of the law, it is clear that if a detenu has not been informed about his right to make a representation against the detaining authority, the detention order would become invalid.

13. In the present case, the record clearly goes on to show that the petitioner has not been informed about his right to make a representation before the detaining authority as a result of which the petitioner has not made any representation before the detaining authority, as a consequence whereof his right guaranteed under Article 22(5) of the Constitution of India stands violated. The impugned order of detention, therefore, becomes unsustainable in law on this ground alone.

14. For what has been discussed hereinbefore, the petition is allowed and the impugned order of detention is quashed. The respondents are directed to release the petitioner from the



preventive custody forthwith, provided he is not required in connection with any other case.

17. The record be returned to learned counsel for the respondents.

**(SANJAY DHAR)
JUDGE**

**JAMMU
12.03.2026
Naresh/Secy.**

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **No**

