



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

HCP No. 91/2025

Reserved on: 05.02.2026

Pronounced on : 13.02.2026

Uploaded on : 13.02.2026

Whether the operative part or full  
judgment is pronounced: Full

Makhan Lal @ Makhni

....Petitioners

Through:- Mr. Mohinder Kumar, Advocate.

**V/s**

UT of J&K & Ors

.....Respondents

Through:- Mr. Sumeet Bhatia, GA.

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

**(JUDGMENT)**

**01.** The petitioner, through the medium of the present petition, has challenged Order No. 06-PSA of 2025 dated 13.06.2025 issued by District Magistrate, Udhampur-respondent No. 2 herein whereby the petitioner, namely, Makhan Lal @ Makhni has been placed under preventive detention so as to prevent him from acting in any manner prejudicial to maintenance of public order.

**02.** The impugned order of detention has been challenged by the petitioner on the grounds that the same has been passed by the detaining authority without application of mind. It has been contended that there were no compelling



reasons with the detaining authority to pass the impugned order of detention when the petitioner was already facing prosecution in some of the FIRs registered against him. According to the petitioner, the allegations leveled against him in the grounds of detention are fabricated and concocted and even if the same are taken to be true still then having regard to the nature of these allegations, it cannot be stated that activities of the petitioners are prejudicial to the maintenance of public order. It has been further contended that the petitioner was not informed of the grounds of detention in a language which he understands. It has also been contended that representation of the petitioner against the impugned order of detention was considered belatedly by the respondents as a result of which the impugned detention order is vitiated.

**03.** The respondents have contested the writ petition by filing counter affidavit. In the counter affidavit, it has been submitted that the petitioner is a hardened criminal involved in numerous cases of bovine smuggling and assault. It has been alleged that activities of the petitioner have disrupted public order and instilled fear among local citizen. According to the respondents, the petitioner, by forming a nexus with other criminals and organizing bovine smuggling operations, posed a threat to the co-existence of the community and his being at large could lead to disturbances and exacerbate the prevailing law and order situation in Udhampur district. It has been contended that impugned order of detention has been



passed by the detaining authority after drawing subjective satisfaction from the dossier submitted by the police authorities and the material on record after proper application of mind.

**04.** It has been further contended that all the statutory and constitutional imperatives have been adhered to by the respondents while detaining the petitioner pursuant to the impugned order of detention. It has further been contended that grounds of detention were read over and explained to the petitioner in dogri language which he understands. Regarding the representation of the petitioner, it has been submitted that the same was considered and rejected by the Government, whereafter information was conveyed to the petitioner in terms of communication dated 04.08.2025. To lend support to their contentions, the respondents have produced the detention record.

**05.** I have heard learned counsel for the parties and perused record of the case including the detention record.

**06.** Learned counsel for the petitioner while seeking quashment of the impugned detention order has projected various grounds but his main thrust during the course of the arguments was on the following grounds:

**(i) That the activities in which the petitioner is alleged to have been involved cannot form a basis for passing an order of preventive detention as the same, at worst, can have an effect on law and order**



**but do not have potential to disturb the public order and**

- (ii) That the representation of the petitioner against the impugned order of detention has not been considered by the respondents with promptitude.**

**07.** So far as the first ground projected by the learned counsel for the petitioner is concerned, the grounds of detention would reveal that the petitioner is shown to have been involved in as many as four FIRs. FIR No. 177/2023 of Police Station, Rehmbal pertains to involvement of the petitioner in bovine smuggling. He is stated to have been convicted for offences under Section 188 IPC and section 11 of Prevention of Cruelty to Animals Act in the said FIR. FIR No. 207/2023 of Police Station, Rehmbal also pertains to bovine smuggling and in the said case also, the petitioner has been convicted and fine has been imposed upon him. The third and fourth FIRs bearing Nos. 76/2024 and 56/2025 of Police Station, Ramnagar pertain to alleged attack by the petitioner upon the respective complainants with sharp edged weapons. In FIR No. 76/2024, the challan is stated to have been filed while FIR No. 56/2025 is stated to be still under investigation.

**08.** The question that arises for determination is as to whether on the basis of two instances of bovine smuggling and two instances of attack by the petitioner upon the complainants, it can be stated that activities of the petitioner had potential of endangering public order.



**09.** In order to find an answer to the aforesaid question, it would be necessary to understand the concept of public order in distinction to the concept of law and order. This issue has been dealt with by the Supreme Court in the case of **K.K. Saravana Babu Vs. State of Tamil Nadu and anr** (2008) 9 SCC 89. In the said case, the Supreme Court has observed that public order would mean the tempo of the life of the community taking the country as a whole or even a specified locality whereas law and order has been set up in the hierarchy below the public order. Security of the State has been set up above the public order in the hierarchy. Thus, activities which tend to disturb the society as a whole would constitute a threat to the public order whereas, acts which are directed against an individual cannot be stated to be endangering the public order though their acts may disturb the law and order.

**10.** A Single Bench of this Court in HCP No. 4/2024 decided on 06.08.2024 while dealing with the issue as to in what circumstances, a person can be detained for endangering the public order has made the following observations:-

**“Maintenance of Public Order as being one of the grounds of subjecting a person to preventive detention is not to be easily assumed to be readily available by a just reference to series of FIRs reporting crimes against a particular individual which would at the most render him to be branded as a habitual offender for which the Code of Criminal Procedure, 1973 in itself has conceived a preventive measure under section 110 which enlists a number of**



**categories for an Executive Magistrate to take cognizance and bind a person so as to prevent him from indulging in repeat of the alleged activities. What is meant to be effectively cured and dealt with under section 110 of the Code of Criminal Procedure, 1973 cannot be diverted to be dealt with by the application of prevention detention mode of J&K Public Safety Act, 1978 by depriving a person of his personal liberty for any given period of time. A preventive detention cannot be resorted to by the debunking ordinary criminal procedure and trial of cases.”**

**11.** In view of the foregoing analysis of the legal position, it is clear that it is only if the activities of a person sought to be detained under J&K Public Safety Act are of such a degree as would endanger the public order meaning thereby disturb the society to the extent of causing disturbance to the public tranquility, that preventive detention order can be passed against such person.

**12.** In the instant case, as already noticed, the allegations against the petitioner are that he has indulged in bovine smuggling on two occasions. Both these instances pertain to the year 2023 and there is nothing on record to suggest that anybody has complained about the apprehension of breach of public order on account of these two incidents. In any case, both these incidents are stale in nature when read in context of the date of passing of the impugned order of detention.

**13.** So far as the other two incidents in which the petitioner is stated to be involved, which are more recent in



time, the same relate to alleged attack on the complainants by the petitioner. These activities of the petitioner cannot be bracketed in the category of activities endangering the public order. These activities of the petitioner are directed against a particular individual and not against the society as a whole. Therefore, by no stretch of reasoning, it can be stated that the recent activities of the petitioner have the potential of endangering the public order.

**14.** While this Court is conscious of the legal position that subjective satisfaction of the detaining authority cannot be a subject matter of judicial review but at the same time, the detaining authority cannot pass an order of preventive detention on flimsy grounds, which appear to be irrational and extraneous to the object sought to be achieved. In the present case, the recent activities of the petitioner can, by no stretch of reasoning, be stated to be a danger to the public order. Therefore, the impugned order of detention passed by the detaining authority is not sustainable in law.

**15.** So far as the second ground urged by learned counsel for the petitioner is concerned, it is to be noted that the petitioner has posted the representation against the impugned order of detention on 28.06.2025. The detention record produced by the respondents would reveal that upon receipt of the said representation by the Government, vide communication dated 03.07.2025, the Home Department of the Government sought comments of Additional Director of



Police, CID. It was only on 04.08.2025 that the representation of the petitioner was rejected by the Government and a communication was sent to the District Magistrate, Udhampur informing about the result of consideration. The petitioner, it appears, has been informed about the disposal of his representation thereafter. Thus, the respondents have consumed more than one month in deciding the representation of the petitioner.

**16.** The Supreme Court in the case of **Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur and others**, (2021) 20 SCC 98 has held that failure to decide the representation of a detenu within a reasonable time in an expeditious manner strikes at the valuable right of the detenu. This position of law has been consistently followed by this Court in a number of judgments and in this regard, observations made by this Court in **Mohd. Tahir Pall Vs. UT of J&K & ors (HCP No. 114/2025)** are quoted below:

**“From the foregoing analysis of law on the subject, it is manifest that delaying of decision on the representation of the detenu amounts to an infringement of a valuable right which is available to a detenu in terms of provisions contained in Section 13 of the Jammu & Kashmir Public Safety Act, which makes it obligatory on the detaining authority to communicate to the detenu the grounds on which the order of detention has been made within a maximum period of ten days from the date of detention and to afford him the earliest opportunity of making representation against the order of detention. The purpose of furnishing the grounds of detention within a maximum period of ten days is to**



enable a detinue to make a representation against the order of detention at the earliest opportunity. Thus, a duty is cast upon the detaining authority or the government to consider the said representation at the earliest opportunity. Failure to decide the representation of a detinue within a reasonable time in an expeditious manner strikes at the valuable right of a detinue emanating from the provisions of Section 13 of the Jammu & Kashmir Public Safety Act.”

16. In the present case, the respondents have decided the representation of the petitioner after more than one month. This slackness on the part of the respondents to decide the representation of the petitioner renders the impugned order of detention illegal.

17. Viewed in the aforesaid context, the impugned order of detention becomes unsustainable in law and the same is accordingly 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 petition stands **allowed** in the above terms. The record be returned to learned counsel for the respondents.

**(SANJAY DHAR)**  
**JUDGE**

**JAMMU**  
**13.02.2026**  
Naresh/Secy.

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **Yes**