

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

HCP No. 137/2025

Reserved on: 03.03.2026
Pronounced on : 12.03.2026
Uploaded on : 12.03.2026
Whether the operative part or full
judgment is pronounced: Full

Kamal @ Kaka

....Petitioners

Through:- Mr. Jagpaul Singh, Advocate.

V/s

UT of J&K & Ors

.....Respondents

Through:- Mr. Suneel Malhotra, GA.

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

(JUDGMENT)

01. The petitioner, through the medium of the present petition, has challenged order No. PSA/165 dated 16.06.2025 (hereinafter to be referred to as **“impugned order of detention”**) issued by respondent No. 2-District Magistrate, Kathua whereby he has been placed under preventive detention with a view to prevent him from continuing his criminal activities and to maintain public peace and order.

02. The petitioner has challenged the impugned order of detention on the ground that whole of the material, forming the 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. It has also been contended that the grounds of detention are replica of the dossier of SSP, Kathua. It has also been contended the grounds of detention have not been explained to the petitioner in a language which he understands. It has also been contended that activities alleged to have been committed by the petitioner cannot form a basis for passing of impugned order of detention on the ground that the same are prejudicial to the public order.

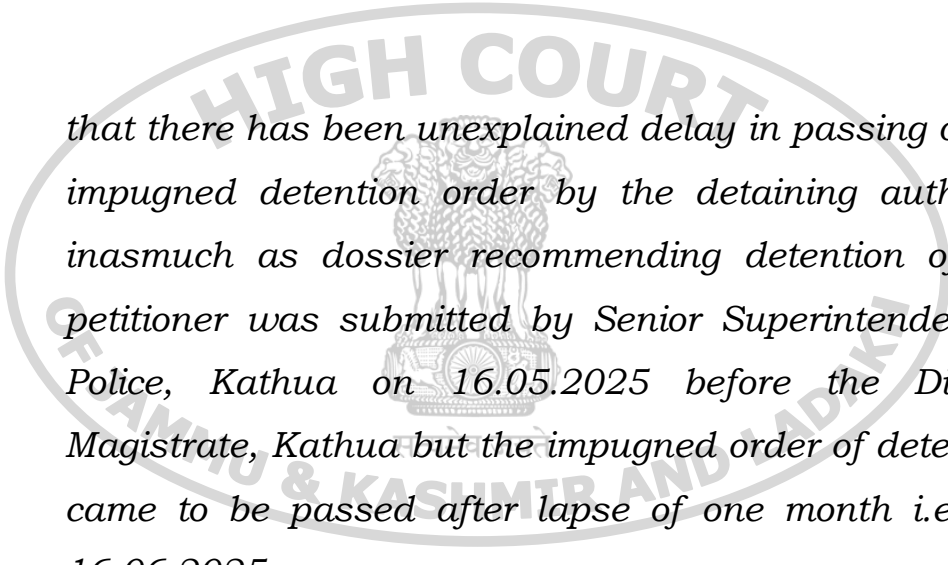
03. It has further been contended that that there has been unexplained delay in passing of the impugned detention order by the detaining authority inasmuch as dossier recommending detention of the petitioner was submitted by Senior Superintendent of Police, Kathua on 16.05.2025 before the District Magistrate, Kathua but the impugned order of detention came to be passed after lapse of more than one month i.e., 16.06.2025.

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 detinue in Hindi/Urdu language, which he understands. It has been further 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 challenged the impugned order of detention on several grounds but main thrust of learned counsel for the petitioner for challenging the impugned order of detention was on following two grounds:

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- (i) *that there has been unexplained delay in passing of the impugned detention order by the detaining authority inasmuch as dossier recommending detention of the petitioner was submitted by Senior Superintendent of Police, Kathua on 16.05.2025 before the District Magistrate, Kathua but the impugned order of detention came to be passed after lapse of one month i.e., on 16.06.2025;*
 - (ii) *that activities alleged to have been committed by the petitioner cannot be termed as the activities prejudicial to the public order.*

07. In the context of the first ground urged by the petitioner, it is to be noted that dossier, recommending detention of the petitioner, was forwarded by Senior Superintendent of Police, Kathua vide his communication dated 16.05.2025 whereas, the impugned order of detention has been passed by the District Magistrate, Kathua on

16.06.2025. No explanation much less satisfactory explanation has been furnished by the detaining authority in his counter affidavit for the delay of one month in passing the impugned order of detention. The detention record also does not furnish any explanation in this regard. There has been no correspondence between the detaining authority and the sponsoring agency during this period of one month either to seek clarification or to seek further information with regard to the present case.

08. The issue as to what would be the effect of unexplained delay in passing the impugned order of detention by the detaining authority in such circumstances came to be considered by this Court in the case of **Javed Iqbal Itoo Vs. UT of J&K & ors [WP(Crl) No. 153/2022, decided on 06.12.2022]**. While considering this issue, this Court has observed as under:

“7. The detention of a person under the special legislation, such as Public Safety Act, necessarily presumes the immediacy and urgency of curtailing the liberty of a particular person to preclude him from acting in any manner prejudicial to the security of the State or public order, as the case may be. The fact that the respondents did not feel it necessary to detain the petitioner even after the lapse of more than three months of submission of the dossier, shows that the situation was not of such an emergent nature as would have warranted taking resort to preventive detention of the petitioner. On this ground alone, the impugned order of detention gets vitiated.”

09. From the foregoing analysis of legal position on the subject, it is clear that unexplained delay in passing the impugned order of detention gives rise to an inference that situation was not of such an emergent nature as would have warranted preventive detention of the detainee. In the present case, as already stated, the detaining authority did not act upon the dossier submitted by the sponsoring agency for good one month, which clearly shows that there was no urgent need to put the petitioner behind the bars. The impugned order of detention, therefore, gets vitiated.

10. So far as second ground urged by the petitioner is concerned, in this regard, it is to be noted that in the grounds of detention, reference is made to as many as eight FIRs viz., FIR No. 117/2022 of Police Station Rajbagh, FIR No. 129/2022 of Police Station Kathua, FIR No. 222/2022 of Police Station Rajbagh, FIR No. 21/2023 of Police Station Hiranagar, FIR No. 257/2023 of Police Station Kathua, FIR No. 353/2023 of Police Station Kathua, FIR No. 16/2024 of Police Station Ghagwal and FIR No. 07/2025 of Police Station, Lakhanpur. In all these FIRs, the allegation against the petitioner is that he was indulging in transportation of bovine animals thereby violating the prohibitory orders issued by the concerned District Magistrate.

11. It has been contended by learned counsel for the respondents that the fact that the petitioner has indulged in as

many as eight cases of bovine smuggling shows that he has no respect for the law and because bovine animals include cows, which are held in reverence by a particular community, the activities of the petitioner have the potential of creating communal tension, hence a threat to public order.

12. At first blush, the contention raised by learned counsel for the respondents appears to be attractive but when examined closely, in the light of what has been recorded by the District Magistrate in the grounds of detention, it becomes clear that while drawing subjective satisfaction for need to pass the impugned order of detention against the petitioner, he has nowhere stated that the activities of the petitioner have the potential of causing hurt to feelings of any particular community. While recording the grounds of detention, the District Magistrate has recorded that activities of the petitioner create widespread fear, insecurity and terror among public and disrupt public peace, order and tranquility as also communal harmony. It is not indicated in the grounds of detention as to whether there was an apprehension of causing hurt to the religious feelings of any particular community in the face of alleged activities of the detainee. In the absence of any such satisfaction having been recorded by the detaining authority while formulating the grounds of detention, it cannot be stated that the alleged activities of the petitioner had the potential of disturbing the communal harmony or causing hurt to the religious feelings of any particular community.

13. In somewhat similar circumstances, a Coordinate Bench of this Court in the case of **Bhupinder Kumar alias Pappu Krishan Lal Vs. UT of J&K & ors, AIR Online 2025 J&K 499** has, while dealing with the effect of allegations relating to transportation of bovine animals and cruelty against animals and considering the issue as to whether such allegations would have the potential of disturbing the public order, made the following observations:

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 detenue 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 cases, 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 detenue'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.

14. From the foregoing analysis of legal position, it is clear that merely because the petitioner is alleged to be involved in the offences relating to transportation of bovine animals without permission is not a sufficient ground to invoke the remedy of preventive detention, particularly, in a case where the detaining authority has not recorded any subjective satisfaction that such activities of the detenue have either resulted or have the potential to lead to public outrage. The impugned order of detention is, therefore, unsustainable in law on this ground as well.

15. 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: **Yes**

