

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

Reserved on: 27.03.2025
Pronounced on: 15.04.2025

HCP No. 24/2025
CM No. 457/2025

Abdul Majeed @ Bittu Teli, aged 52 years
S/O Sh. Mir Ali, R/O Sunjwan,
Tehsil Bahu District Jammu.
Presently lodged in District Jail, Jammu.

...Petitioner(s)

Through: Mr. P. N. Raina, Sr. Advocate with
Mr. J. A. Hamal, Advocate.

Vs

- 1. Union Territory of Jammu & Kashmir,
through Commissioner/Secretary
to the Government, Home Department
Civil Secretariat, Jammu.**
- 2. District Magistrate, Jammu**
- 3. Senior Superintendent of Police (SSP), Jammu.**
- 4. Divisional Forest Officer, Jammu.**

Respondent(s)

Through: Mr. Rajesh Thappa, AAG

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

01. Through the medium of this Habeas Corpus Petition, the petitioner-Abdul Majeed @ Bittu Teli (hereinafter called '**detenue**') seeks quashment of Order No. PSA 26 of 2024 dated 07.06.2024 (hereinafter called '**detention order**') passed by the respondent No. 2-District Magistrate,

Jammu (hereinafter called '**detaining authority**') whereby and whereunder in terms of Section 8 (1) of the Jammu and Kashmir Public Safety Act (for short, PSA), 1978 he had been ordered to be detained and lodged in District Jail, Jammu.

- 02.** The detainee has pleaded in the petition that he has been in possession of land bearing khasra No. 371 situated at village Sunjwan ever since the year 1970 and the recorded entries of the said land stands in his name with effect from khariyf 1999; that in the year 2012, the Divisional Forest Officer, Jammu and Range Forest Officer, Bahu had lodged false and frivolous FIRs against the detainee being FIR No. 194/2012 and FIR No. 199/2013 at Police Station, Bahu Fort, Jammu under Sections 447-A RPC and 6/39 of Forest Act; that the said FIRs had been lodged without any locus standi and the said cases were later on closed in terms of section 169 CrPC; that the Divisional Forest Officer filed an application for correction of khasra girdawari of the above mentioned land which does not belong to the Forest Department before the Deputy Commissioner, Jammu, who without having jurisdiction to entertain the said application, initiated the process in glare violation of the provisions under Section 6 of the Land Revenue Act; that

the detenue invoked the writ jurisdiction of this court against the said proceedings of the respondent No. 2 in the application of the Forest Department and this Court vide order dated 9.6.2016 passed in OWP No. 891/2016 issued direction to the Deputy Commissioner, Jammu not to act upon the application filed by the Forest Department for correction of the khasra girdawari; that there are numerous reports of the revenue agency which clearly establish that the land bearing khasra No. 371 is a State land and is in the possession of the detenue over which the Forest Department has no right, title or concern; that again on the same facts, a false FIR bearing FIR No. 56/2024 has been lodged against the detenue under section 447 IPC and 26 Indian Forest Act at Police Station, Channi Himmat, Jammu in order to detain the detenue under the impugned detention order; that, pursuant to lodging of the aforementioned FIR, the demarcation of the land was sought by the IO of the case from Tehsildar Bahu and in this regard letter dated 02-06-2024 was issued by the IO of the case to Tehsildar Bahu; that acting upon the said letter the revenue agency conducted the demarcation and submitted the report stating therein, that the land in question is a State land, the possession of which is lying with the detenue since long and not the Forest Land.

03. It has been further pleaded in the grounds of the petition that the detenue has no criminal record against him; that two FIRs of the year 2012 and 2013 had been closed after thorough investigation and now in 2024, another FIR on same facts with respect to same subject has been maliciously instituted only to detain the detenue; that the respondent No. 2 instead of exercising the vast powers conferred upon him under J&K Public Safety Act, 1978, in a fair and transparent manner, exercised the same in an utmost unfair, unreasonable and arbitrary manner, only with an intent to curtail the personal liberty of the detenue; that the respondent No. 2 with an intent to grab the land of the detenue has booked the detenue under J&K Public Safety Act, 1978 without any basis for the same; that there is no whisper about the closure of the previous FIRs on the same set of allegations which are made in FIR No. 56/2024; that the relevant material has not been placed before the detaining authority for deriving satisfaction; that the detenue is not involved in any kind of encroachment or illegal smuggling of forest resources as is alleged in the dossier; that the activities of the detenue allegedly considered to be prejudicial to the maintenance of public order does not fall within the purview of 8(3)(b) of the J&K Public Safety Act.

- 04.** Pursuant to notice, various State/Govt. counsel appeared on behalf of the respondents, however, they have not filed counter affidavit despite several opportunities.
- 05.** Learned senior counsel for the detainee, reiterating the submissions made in the petition, has argued that the detainee had been detained illegally by the detaining authority without application of mind and based only on the dossier prepared by the police; that two cases based on FIRs of the year 2012 and 2013 had been closed after thorough investigation and now in 2024, another FIR on same facts with respect to same subject has been maliciously instituted only to detain the detainee, as such, the detainee has no criminal record against him; that the respondent No. 2 instead of exercising the vast powers conferred upon him under J&K Public Safety Act, 1978 in a fair and transparent manner, has exercised the same in an utmost unfair, unreasonable and arbitrary manner only with an intent to curtail the personal liberty of the detainee; that the respondent No. 2 with an intent to grab the land of the detainee has booked the detainee under J&K Public Safety Act, 1978 without any basis for the same.
- 06.** He further argued that there is no whisper about the closure of the previous cases/FIRs on the same set of

allegations which are made in FIR No. 56/2024; that the relevant material has not been placed before the detaining authority for deriving satisfaction with regard to passing of detention order; that the detainee is not involved in any kind of encroachment or illegal smuggling of forest resources as is alleged in the dossier; that the activities of the detainee allegedly considered to be prejudicial to the maintenance of public order does not fall within the purview of 8(3)(b) of the J&K Public Safety Act. Lastly, he has argued that the detention order be quashed.

- 07.** Mr. Rajesh Thappa, learned AAG appearing for the respondents submits that the detainee had been a habitual offender of encroaching upon forest land illegally in Jammu Forest Division particularly in Sunjwan, Chata/Rati Sarari, which is a part of Bahu Conservation Reserve and that he had been instigating his associates to adopt the same path to encroach upon the forest land; that the Divisional Forest Officer, Jammu, vide his communication dated 25.05.2024, had taken up the matter with the detaining authority, alleging that the detainee had encroached the forest land in khasra No. 371 and also created hindrance in execution of the fencing work by Forest Department to protect the forest

land, abused the labourers on work site and created law and order problem.

- 08.** He further argued that detainee had made several attempts of illegal mining of forest land, with the intention to encroach upon more forest land and smuggling of forest resources; that the Deputy Commissioner, Jammu had cancelled the illegal entries of the detainee over khasra No. 371 in the year 2016 on a report filed by the Jammu Forest Division and that a case has also been registered against him vide FIR No. 56/2024 at Police Station, Channi Himmat, Jammu for having encroached upon forest land at Sunjwan and that the matter was also being enquired into by the Crime Branch Jammu with regard to the illegal construction and encroachment in different compartments of the Jammu Forest Division; that the detainee is a habitual criminal and the substantive law was proving insufficient to deter him or curb his criminal activities as can be judged from his consistent involvement; that with the commission of the repeated offences, the detainee was promoting mischief in the community, detrimental to the peace and tranquility of the society and that the detaining authority by invoking Section 8(1)(a) of the Jammu and Kashmir Public Safety Act, 1978 had ordered

09. It was finally submitted that in view of the aforesaid reasons, there was no illegality in the impugned detention order, which is sustainable having been passed by the detaining authority in accordance with law and prayed that the petition be dismissed.

11. The detainee has been detained by the detaining authority, invoking Clause (a-1) of sub-section (1) of Section 8 of the Jammu and Kashmir Public Safety Act, 1978, which reads as under:

(1) The Government may-

(a-1) if satisfied with respect to any person that with a view to preventing him from-

- (i) Smuggling [timber or liquor] or**
- (ii) Abetting the smuggling of [timber or liquor]; or**
- (iii) Engaging in transporting or concealing or keeping smuggled timber; or**
- (iv) Dealing the smuggled timber otherwise than by engaging in transporting or concealing or keeping in smuggled [timber or liquor] or**
- (v) Harbouring persons engaged in smuggling of [timber or liquor] or abetting the smuggling of [timber or liquor].”**

(b) ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

- (i)
- (ii) 

(2) Any of the following officers, namely:-

- (i) Divisional Commissioner,**
- (ii) District Magistrate,**

May, if satisfied as provided in sub clauses (i) and (ii) of clause [(a) or (a-1)] of sub section (1), exercise the powers conferred by the said sub section.

- 12.** Smuggling has been defined in Clause-C of Section 3 of the Public Safety Act, 1978 in relation to timber or liquor means possessing or carrying of illicit timber or liquor and includes any act which will render the timber or liquor liable to confiscation under the Jammu and Kashmir Forest Act, Samvat, 1987 or under the Jammu and Kashmir Excise Act, 1958, as the case may be.
- 13.** From a bare reading of the aforesaid provision, it is clear that the authorities may pass detention order in order to prevent any person from smuggling timber or liquor or abetting the smuggling of timber or liquor or engaging in transporting or concealing or keeping smuggled timber or liquor or dealing the smuggled timber otherwise than by engaging in transporting or concealing or keeping in smuggled timber or liquor or harbouring persons engaged in smuggling of timber or liquor or abetting the smuggling of timber or liquor.
- 14.** This provision under (a-1) of sub section (1) of PSA which has been invoked by the detaining authority is only with regard to smuggling, its abetment, transporting or

concealing or keeping the smuggled timber or liquor or dealing with the smuggled timber otherwise than by engaging in transporting or concealing or keeping in smuggled timber or liquor or harbouring persons engaged in smuggling of timber or liquor or abetting thereof.

15. From the facts and the grounds, which have been made the basis to pass the impugned detention order, nothing has been alleged with regard to smuggling of timber or liquor as enumerated in the provision, which has been invoked to detain the detainee.

16. The main allegation against the detainee is that he is a land grabber. The Apex Court in '**K.K. Saravana Babu Vs. State of Tamil Nadu**' reported as (2008) 9 SCC 89 while examining the validity of land grabbing, has observed as under:

"4.....The modus operandi of the detenu in both the cases is land grabbing in a clandestine manner. The detaining authority had considered the said aspect and came to the conclusion that in case the detenu is let out on bail he would again indulge in similar type of offences and, therefore, it is imperative to detain him. The order of detention came to be passed keeping in mind the welfare of public who are owning lands as well as the prospective buyers.

32. In the instant case, in the grounds of detention, two cases have been enumerated, one of which pertains to the offences punishable under sections 420, 465, 468 read with 471 and 120(B) [IPC](#) in Crime No.70 of 2006. Another case pertains to Crime No.364 of 2007 registered under sections 420, 465, 466, 467, 468 read with 471 and 120(B) [IPC](#). The facts of these cases have been carefully examined and even assuming the allegations of these cases as true,

even then by no stretch of imagination, the offences committed by the detenu can be called prejudicial to public order. The detenu can be dealt with under the ordinary criminal law if it becomes imperative.”

- 17.** In view of the decision of the Apex Court, the argument of Mr. Rajesh Thappa, learned AAG that land grabbing/encroachment would fall within the meaning of **‘mischief’** loses its force. Thus, this Court is of the considered view that the alleged activities as mentioned above, even if are considered as true, still the said activities do not fall within the purview of the activities prejudicial to the maintenance of public order as defined under Section 8(3) (b) of the Act.
- 18.** From the perusal of the record, it transpires that the detenu was provided thirty leaves including copy of notice, detention order, grounds of detention, and dossier, which had been acknowledged by the detenu to the Executing Officer PSI Prince Jasrotia,. The respondents have, however, failed to substantiate with regard to the detailed documentation made available to the detenu so as to enable him to file a meaningful and effective representation to the detaining authority or the Government of Jammu and Kashmir, so much so that no whole of the record pertaining to FIR No. 56/2024 has been provided to the detenu, in the absence whereof, it

could never be expected of the detainee to make an effective and meaningful representation against the order of detention either to the Govt., or to the detaining authority itself.

19. In **Thahira Haris v. Government of Karnataka & Ors,** **AIR 2009 SC 2184**, the Apex Court after noticing various judgments on similar issue held that it was imperative for a valid continuance of detention that the detainee be supplied all documents, statements and other materials relied upon in the grounds of detention, failing which the right of the detainee of making an effective representation as enshrined under Article 22(5) of the Constitution, would be violated.
20. The impugned detention order, for the aforesaid reasons, is vitiated, particularly, for lack of foundational basis and non-supply of all the documents based to pass the same and is not sustainable.
21. As a sequel to the aforementioned discussion and observations made hereinabove, impugned detention order is vitiated, as such, the present petition is allowed. Consequently, impugned detention order is quashed. The detainee is directed to be released from the custody forthwith, if not required in any other case. The

detention record be returned to the learned counsel for the respondents.

22. HCP is, thus, disposed of accordingly, accordingly connected applications. No order as to costs.

(M A CHOWDHARY)
JUDGE

JAMMU
15.04.2025
Naresh/Secy

Whether order is speaking: Yes
Whether order is reportable: Yes

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