

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

HCP No. 81/2025

Date of pronouncement: 06.11.2025

Date of uploading: 10.11.2025

Hasham Din, age 40 years
S/o Abdul Razak,
At present District Jail, Udhampur,
J&K
Through Brother
Maneer Ahmed, Age 29 years
S/o Abdul Razak,
R/o Tanta, Doda,
District Doda, J&K.

.....Appellant(s)/Petitioner(s)

Through: Mr. Sanchit Verma, Advocate

vs

1. UT of J&K th. Commissioner/Secy.
(Home), Civil Secretariat,
Jammu/Srinagar.
2. District Magistrate, Doda.
3. District Forest Officer (DFO), Bhaderwah.
4. Superintendent, District Jail, Udhampur,
J&K.

..... Respondent(s)

Through: Mr. Eishaan Dadhichi, GA

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE
ORDER (ORAL)

1. In the instant petition, filed under Article 226 of the Constitution of India, the petitioner herein has challenged the order of detention No. PSA/01 dated 12.03.2025 [for short “**the impugned order**”] passed by the District Magistrate, Doda-respondent No. 2 herein [for short “**the detaining authority**”] in terms of J&K Public Safety Act, 1978 [for short “**the Act**”].

2. The petitioner herein has challenged the impugned order on multiple grounds, urged in the petition, including that the petitioner came to be provided only the grounds of detention along with the dossier upon his detention and that the petitioner has been detained in terms of the impugned order while referring to various alleged forest damage activities attributed to the petitioner in the grounds of detention, the details whereof were never conveyed or made known to the petitioner and that a representation despite non-furnishing of all documents referred in the impugned order was submitted by the petitioner before the detaining authority, which was not considered and that the impugned order has been used as an instrument by the respondents to keep the petitioner under custody without his involvement in any criminal case and that if at all the alleged offences have been committed by the petitioner *qua* the forests, the respondents could not have detained the petitioner under the preventive law and as a substitute without taking recourse to the ordinary criminal law in this regard.
3. Counter affidavit to the petition has been filed by the respondents, wherein the petition is being opposed on the premise that the detention of the petitioner is not punitive, but purely preventive, ordered on the basis of dossier, furnished to the detaining authority by the District Forest Officer, Bhaderwah, which indicated that the petitioner has been involved in inflicting damage to the forests and also indulging in smuggling of timber and that after complying with all requisite

formalities, provided under the Act of 1978, the detention order came to be passed against the petitioner without violating any of the rights of the petitioner in order to secure the environment and forests and that the petitioner was furnished 24 leaves of documents, including the order of detention, notice of detention, copy of dossier and other relevant documents through the Executing Officer namely PSI Pankaj Manhas, in lieu whereof, the petitioner affixed his signatures and that the representation came to be received on 29.05.2025 through the brother of the petitioner, which representation came to be forwarded to the Home Department and consequently came to be disposed of on 18.07.2025 informing the petitioner about the disposal of the said representation through Superintendent, District Jail, Udhampur vide letter dated 21/22.07.2025.

4. A rejoinder affidavit has been filed by the petitioner in response to the counter affidavit filed by the respondents, wherein it is being stated that the respondents in the counter affidavit have annexed various documents, being annexure IV, V, VI and VII to support the case of the respondents in opposition to the case of the petitioner, which annexures were never part of the documents furnished to the petitioner at the time of the execution of the impugned, so much so, were also not even legible, thus rendered the petitioner incapable of making an effective representation against his detention.

Heard learned counsel for the parties and perused the record.

5. Before advertizing to the respective submissions of the appearing counsel for the parties made in line with their respective pleadings, it would be significant to mention here that law enjoins upon the detaining authority under a preventive law to be alive to all the facts and circumstances of a case and on proper application of mind to all those facts and circumstances, to draw subjective satisfaction that the detenu is required to be detained under preventive law and that the detaining authority has to bear in mind that detaining a person means to deprive a person of his liberty, which liberty can be curtailed only when there are grounds based on proper material and on proper subjective satisfaction, as in absence thereof, it may amount to trampling the personal liberty of a person, guaranteed under the Constitution of India.
6. Keeping in mind the aforesaid position of law and coming back to case at hand, it is the positive case of the respondents that the petitioner has been involved in multiple cases of damage to forests and smuggling of timber, however, record available on the file in general and annexed with the counter affidavit in particular, filed by the respondents, nowhere suggests that any action under relevant criminal law was ever taken by the respondents against the petitioner for commission of such alleged acts. The said position, seemingly, has been overlooked by the detaining authority and, the detaining authority has proceeded on the basis of the said allegations, levelled by the sponsoring agency against the petitioner and consequently, without its own independent

application of mind ordered the detention of the petitioner under the impugned order by ignoring the fact that the petitioner could have been proceeded against by the sponsoring agency for the commission of the offences qua the forests under relevant provisions of law.

7. Record also reveals that the respondents, while detaining the petitioner at the time of execution of the impugned order, have stated to have furnished 26 leaves of documents to the petitioner consisting of one leaf of warrant of detention, one leaf of notice of detention, six leaves of grounds of detention along with a dossier, which as per the record consists of seven leaves. No description and details of the other documents, referred in the execution report has been given. Besides the respondents have not specifically denied the plea of the petitioner that he was not given the entire material, referred and relied upon by the detaining authority, in that, no specific reply has been given in the counter affidavit in this regard.
8. Record also reveals that the petitioner submitted a representation against his detention before the respondents, claimed to have been received by them on 29.05.2025, yet the said representation is stated to have been decided on 18.07.2025 after consuming a considerable period of time, which itself vitiates the impugned order in view of the law laid down by the Hon'ble Apex Court in case titled "*K.M. Abdulla Kunhi v. Union of India*" reported in (1991) 1 SCC 476.
9. Viewed thus, for what has been observed, considered and analysed hereinabove, the impugned order is found to be legally unsustainable.

Accordingly, the instant petition is allowed and the impugned order is quashed with a direction to the respondents, including the concerned jail authority to release the petitioner from preventive detention unless he is required in array of the case.

10. **Disposed of.**

(Javed Iqbal Wani)
Judge

Jammu
06.11.2025
Vishal Sharma

Whether the order is reportable: Yes/No

Whether the order is speaking: Yes

