

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

HCP No. 110/2024

**Muneer Ahmad**

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

Through :- Mr. Gagan Oswal, Advocate

V/s

**UT of J&K and Ors.**

....Respondent(s)

Through :- Mr. Rajesh Thappa, AAG.

**CORAM: HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE**

**ORDER**

**31.10.2024**

**ORAL**

1. Through the medium of this writ petition, the petitioner prays for quashment of the Order No.28 of 2024 dated 22.07.2024 issued vide letter No. 1120-24/DMJ/Judicial/2024-25 ( for short '*impugned detention order*') passed by District Magistrate, Jammu - respondent no.2 (for short "*detaining authority*"), whereby detenu, namely, *Muneer Ahmad S/o Mohd Sadiq R/o Khui Pangali Nagrota, Jammu* has been detained under the provisions of Section 8 of the Jammu and Kashmir Public Safety Act, 1978 with a view to prevent him from committing any act which is prejudicial to encroachment of forest land, smuggling of forest resources and public order.
2. The Detention order dated 22.07.2024, passed by the detaining authority reads as under:-

***"Subject : Detention under J&K Public Safety Act, 1978***

*Whereas, I, District Magistrate, Jammu am satisfied that in order to prevent on the basis of dossier placed before me by the Divisions Forest Officer, Jammu Forest Division, vide his No. DFO/j/1435-37 dated 27.06.2024 am satisfied that with a view to prevent Munner Ahmed S/o Mohd Sadiq R/o Khuli Pangali Nagrota Jammu from acting in any manner which is prejudicial to encroachment of forest land, smuggling of forest resources and public order, it is necessary so to do*

*Now, therefore, in exercise of power conferred by clause (a-1) of Sub Section (1) of Section 8 of J&K Public Safety Act, 1978, I District magistrate, Jammu hereby direct that the said Munner Ahmad S/o Mohd Sadiq R/o Khui Pangali Nagrota jammu be detained and lodged in central jail Kot bhalwal Jammu.*

3. Quashment of the impugned detention order is sought on the grounds that the petitioner/detenu has been implicated in a false and frivolous cases; the petitioner/detenu made an representation to the respondents for revoking of the impugned detention order, but the respondents refused to consider the said representation and the impugned detention order has not been revoked; the ground for which he has been detained were not read or explained to him in the language which he understands; copies of the documents relied upon by the respondents while passing impugned detention order have not been provided to the petitioner/detenu in the language which he understand i.e., 'Urdu' and 'Gojjari' languages; petitioner/detenu has been deprived of making effective representation, the impugned detention order, as such, passed by the detaining authority is illegal and deserves to be quashed;
4. Learned counsel for the petitioner/detenu further submits that petitioner/detenu has been detained in order to prevent him from committing any act which is prejudicial to encroachment of forest land, smuggling of forest resource without there being any material to support

such allegations, report of the Forest Officer on the basis of which he has been detained was not provided to him. He was only provided the order of detention without any FIR.

5. Learned counsel for the petitioner further submits that perusal of the impugned detention order passed under Section 8 (1) (a) of J&K Public Safety Act, 1978, shows total non- application of mind on the part of detaining authority while passing the said order of detention, as such, in that view of matter, impugned detention order is vitiated. He further submits that the grounds of detention nowhere mentions disturbance to the public order when his detention has been ordered not only under Section 8(i) (a) but also 8(a-1)(i) of the Act, as such, the grounds of detection alleged by the respondents are not sufficient to pass such an detention order against the petitioner/detenu.
6. **Per contra** learned counsel for the respondents submits that there is no illegality in passing of the impugned detention order. He submits that sufficient ground were existing which have been taken into consideration by the detaining authority while passing the detention order. He further submits that it was only after perusal of the material on record and other connected documents in respect of detenu the impugned detention order has been issued by detaining authority with proper application mind.
7. When it was pointed out to the learned counsel respondents that the order of detention shows that detention has been passed in order to prevent the petitioner/detenu from acting in any manner prejudicial to encroachment of the forest land, smuggling of forest resources and public order, he submitted that after passing of the order of detention

dated 22.07.2024, a corrigendum was issued on 29.07.2024, i.e, after impugned detention order was executed and petitioner/detenu was lodged in District Jail, Kot-Bhalwal, Jammu and he was provided with the copy of the order of detention before corrigendum was issue, i.e., after the detenu was detained. The order of corrigendum has been issued by the District Magistrate, Jammu after passing of the order of detention, which makes it clear that the impugned detention order dated 22.07.2024, by virtue of which petitioner/detenu was detained was passed by the detaining authority without proper application of mind.

8. It appears that the District Magistrate, Jammu while passing the impugned detention order dated 22.07.2024 has not gone through the grounds of detention nor has he gone through the provisions contained which authorize him to pass such order. Therefore, the order of detention makes it clear that the District Magistrate, Jammu at the time of passing the impugned detention order was of the opinion that the Act of the petitioner/detenu was prejudicial to the encroachment of the forest land, smuggling of forest resources and public order.
9. Perusal of the record produced by Mr. Rajesh Kuma Thappa, learned AAG nowhere shows that the petitioner/detenu was provided documents which were relied upon by the respondents while passing the impugned detention order, as such, he was not in a position to make an effective and meaningful representation either to the detaining authority or to the Government against his detention because he was not provided the material by the detaining authority, thus, there is violation of provisions of Article 22 (5) of the Constitution of India.

10. The material, relied upon by detaining authority, thus, assumes significance in the facts and circumstances of the case. It needs no emphasis, that the detenu cannot be expected to make a meaningful exercise of his Constitutional and Statutory rights guaranteed under Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 1978, unless and until the material on which the detention order is based, is supplied to the detenu. It is only after the detenu has all the said material available that he can make an effort to convince the detaining authority and thereafter the Government that their apprehensions concerning the activities of detenu are baseless and misplaced. If detenu is not supplied the material, on which detention order is based, he will not be in a position to make an effective representation against his detention order. Failure on the part of detaining authority to supply the material relied at the time of making the detention order to detenu, renders detention order illegal and unsustainable. While saying so, I draw the support from the law laid down in *Thahira Haris Etc. Etc. v. Government of Karnataka*, AIR 2009 SC 2184; *Union of India v. Ranu Bhandari*, 2008, Cr. L. J. 4567; *Dhannajoy Dass v. District Magistrate*, AIR, 1982 SC 1315; *Sofia Gulam Mohd Bham v. State of Maharashtra and others* AIR 1999 SC 3051; and *Syed Aasiya Indrabi v. State of J&K & others*, 2009 (I) S.L.J 219.

11. For the foregoing reasons, the petition is disposed of and detention Order No. 28 of 2024 dated 22.07.2024 issued vide letter No. 1120-24/DMJ/Judicial/2024-25 passed by District Magistrate, Jammu - respondent no.2, is quashed. Respondents are directed to release the

petitioner/detenu *Muneer Ahmad S/o Mohd Sadiq R/o Khui Pangali Nagrota, Jammu* forthwith from the preventive custody, provided he is not required in any other case.

12. Record has been returned back to Mr. Rajesh Kumar Thappa, learned AAG

13. The instant petition is, accordingly, disposed of along with connected CM(S).

**(Vinod Chatterji Koul)**  
**Judge**

**Jammu:**  
**31.10.2024**  
Javid Iqbal

