

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

HCP No. 117/2024

Reserved on: 14.05.2026

Pronounced on: 02.06.2026

Uploaded on: 02.06.2026

*Whether the operative part or full
judgment is pronounced-**Full***

Talib Hussain Aged-39 Yrs. Appellant/petitioner(s)
S/O Sain Ditta
R/O Chatta Sunjwan Sainik Colony,
Chowadi, District Jammu

v/s

Through :- Mr. Rahul Pant, Sr. Advocate with
Mr. Tarun Sharma, Advocate.

1. UT of J&KRespondent(s)
2. District Magistrate, Jammu

Through :- None.

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

01. Challenge in this petition has been thrown to two orders with identical numbers and date; 27 of 2024 dated 07.06.2024, passed by District Magistrate, Jammu, under Sections 8 (1) (a) and 8 (1) (a-1) of the Jammu and Kashmir Public Safety Act, 1978, ["PSA"], vide which petitioner has been directed to be detained.

02. As factual matrix would unfold, the Divisional Forest Officer, Jammu Forest Division, ["DFO"], submitted a dossier to the District Administration alleging *inter alia* that petitioner being a habitual land grabber has been enlisted in the encroachment list of Jammu Forest Division for the encroachment of

forest land in compartments 8/Ch and 9/Ch of Bahu Forest Range, which forms part of Bahu Conservation Reserve. It was also alleged that petitioner along with his father was also enlisted in the encroachment list of forest division for the encroachment of forest land in compartment No. 6/Ch. It was further alleged that petitioner not only encroached the forest land in Khasra Nos. 1468, 1454 and 1456, but also created hindrance and created law and order issues during the demarcation. He also made several attempts of land breaking, illegal mining on forest land etc. with the intention to encroach upon more forest land and smuggling of forest resources. He would carry illegal tasks clandestinely, especially during the night hours, by adopting the routes to give a slip to the law enforcement agencies.

03. The sponsoring authority, while alleging that petitioner was found involved in illegal construction and mulba dumping on forest land and illegal mining and smuggling of forest resources, furnished the detail of following cases against him:

| Case No. | Illegal encroachment/construction in | Type of illegal activity | Remarks |
|-----------------------------------------------------|--------------------------------------|------------------------------------------------------------------------|--------------------------------------------|
| Fir No. 25/2022 of PS Channi Himmat | 8/Ch. (Khasra No. 1468) | Illegal Construction on Forest Land/Criminal Trespass over Forest Land | Prime land of Sunjwan, Chowadi |
| Ja/82 in Encroachment list of Jammu Forest Division | 6/Ch | 7 Kanal Forest Land encroachment | Encroachment done by his father Sain Ditta |
| Ja/87 in Encroachment list of Jammu Forest Division | 8/Ch | 150 Kanal Forest Land encroachment | Encroachment done by his father Sain Ditta |
| Damage Case No. 04/2024-25 Dated 05.06.2024 | 8/Ch. | Land Breaking and Illegal leveling of Forest Land | |

(Emphasis supplied)

04. It is also allegation of the sponsoring authority that petitioner was not only involved in the encroachment of forest land, but he would carve out plots by removing the material from hillocks and levelling it, so that levelled forest

land could be used for selling in the form of residential plots, keeping the citizens in dark about the status of the land and duping them of their hard-earned money, which has the potential of causing chaos and unrest among the general public.

05. On the basis of these allegations, captured in the dossier, respondent no. 2-the detaining authority has come to conclude that there was live and proximate link between past conduct of the petitioner and the imperative to detain him for the purpose of prevention and combating his activities prejudicial to the security of the State, maintenance of public safety and affording protection to society. The detaining authority propounded two orders bearing same number and date under Sections 8(1) (a) and 8(1) (a-1) of PSA, whereby petitioner has been directed to be detained.

06. Petition is aggrieved of the impugned orders *inter alia* on the following grounds:-

“a) That perusal of Jammu and Kashmir public Safety Act, 1978 will show that detention order can be passed by District Magistrate, if he is satisfied as provided under sub-section I sub-clause (i) and (ii) of section 8 or sub-clause (a-1) of sub-section (l) of section 8. Admittedly, a perusal of the facts stated in the order of detention as also the grounds of detention, does not make out any case of maintenance of public order nor it is anybody’s case that the detention order has been passed with a view to prevent the petitioners 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);

The word timber has also been defined under the Act as Fir, Kail, Chir or Deodar tree whether in logs or cut up in pieces but does not include firewood. Since there is not even an iota of allegation against the petitioner that he was in any way involved in smuggling of timber or any of the activities mentioned in Section 8, as such detention orders passed by the respondent no.2 is without jurisdiction and is therefore liable to be quashed.

b) That none of the order of detention is sustainable as the grounds of detention do not make out any case for the District Magistrate, Jammu to invoke the powers under Section 8(l)(a) and sub-clause (a-l) of sub-section (l) of Section 8 of Jammu and Kashmir public safety act, the perusal of orders will show that no ground whatsoever is made out for passing the detention orders as it refers to the petitioner as a land grabber and enlisted in the encroachment list of Jammu Forest Division for encroachment of various land in compartments in Bahu Forest Range. In so far as Bahu Forest Range is concerned, it does not have any Fir, Kail, Chir or Deodar trees and clearly the orders has been passed on misplaced grounds. The respondent no.2 has no authority or power under the Jammu and Kashmir Public Safety Act, 1978 to pass a detention order on the ground of petitioner being a land grabber. The impugned orders are bad in law which is liable to be set-aside by this Hon'ble Court.

c) That a perusal of the grounds of detention, copy whereof has been provided to the petitioner, will clearly show that it's simply refers to the encroachment of forest land. Even the two counts of encroachment attributed to the father of the petitioner, has been made a ground for detaining the petitioner. It is not understandable as to how such a draconian power to detain the person can be invoked by the District Magistrate, Jammu on such flimsy and non-existent grounds. The District Magistrate traces his powers to pass the detention order from the provisions of J&K Public Safety Act, 1978 and such power can only be exercised for the reasons as mentioned in Section 8 of the J&K Public Safety Act, 1978. This is a case where the power to detain the petitioner has been exercised by the District Magistrate, Jammu for the object, which is alien to the J&K Public Safety Act, 1978. The subjective satisfaction arrived at by the District Magistrate, Jammu as such, has very serious legal flaw and the detention order is liable to be set aside on this ground only.

d) That the petitioner has been made available two different orders bearing the same order number with the same date. One order is elaborate whereas, another order does not make the elaborate reasons. A perusal of the detention order passed under clause (a-r) of sub-section I of section 8 will show that the same has been passed with a view to prevent the petitioner from acting in any manner which is prejudicial to the encroachment of the forest, smuggling of forest resources and public order. A perusal of the order will show that the Respondent No.2 is himself not sure as to why the petitioner is being detained. Respondent No.2 has failed to draw a distinction between the grounds on which, the detention can be made under the provisions of the J&K public Safety Act, 1978 and has mixed up all the grounds to pass the detention order in question. The said approach on the part of the Respondent No.2 completely defies logic and clearly reflects the total non-application of mind on the part of the Respondent No.2. The detention order has been passed by the Respondent No.2 for wrong purposes on vague, extraneous and irrelevant grounds. The District Magistrate, Jammu has no authority whatsoever to pass the detention order on the ground, the same has been passed and it is a clear case of abuse of power on the part of the Respondent No.2, the order as such is not sustainable.

e) That passing of two different detention orders on same grounds without even justifying detention of petitioner under the provisions of Jammu and Kashmir public Safety act, 1978, shows lack of application of mind by detaining authority, rendering the detention orders unsustainable in eyes of law, therefore, required to quash by this Hon'ble Court.

f) That a perusal of the second order of detention will show that it does not disclose any reason to invoke the power Under Section 8(l)(a) of the J&K public Safety Act, 1978. A perusal of Section

8(l)(a) of the J&K public Safety Act, 1978 will show that power can be invoked by the District Magistrate to issue the order of detention with respect to a person in order to prevent such person from acting in any manner prejudicial to the security of the State or maintenance of public order. The grounds, which have been given to the petitioner along with the detention order clearly show that it is not a case of public order in any manner and detention order is not justified on the grounds served upon the petitioner as it is not a case of threat to the public order in any manner. The reasons mentioned in the detention order running into four pages, going by any stretch of imagination do not justify the detention order. The detention order itself is on the ground for which the detention is not permissible under Jammu and Kashmir safety act, 1978. The reading of the order as a whole will show that the allegation against the petitioner is that he had entered into the forest land, raised illegal construction into the forest land and assuming for the sake of the argument that the allegations are true though denying them vehemently, even then, passing of the detention order in question is not justified.

g) That the illegality committed by respondent no. 2 can well be seen from the fact that the detention order has been passed on the basis of a dossier submitted by the Divisional Forest officer Jammu and the perusal of order no. PSA 27 of 2024 dated 07.06.2024 will show that one order has been passed in exercise of power conferred upon respondent no. 2 by Clause (a-1) of sub-section (1) of section 8 of Jammu and Kashmir public safety Act, 1978 whereas, there is another order with the same order number and date, which has been passed by the respondent no.2 in exercise of power conferred upon him under section 8 (1) (a) of Jammu and Kashmir public Safety Act, 1978. A perusal of both the orders will show that neither under section 8(1) (a) nor under section g sub- section (1) clause (a-1), The order could have been passed as it is neither a case of security of the State nor it is a case of public order and in so far as the smuggling of timber is concerned, there is not even any whisper in this regard in the present detention order. Further the sponsoring agency for passing of the detention order is the Divisional Forest Officer, Jammu and the power of detention of the petitioner was being invoked on the ground that he has illegally encroached the forest land. Invoking of the power as such under section 8(l)(a) is absolutely without jurisdiction and it was not a case of any kind of threat to the security of the State or public order in any manner. The attempts to deprive them petitioner of his personal liberty is such a vague and unsustainable illegal order, which is serious violation of the fundamental right to liberty of the petitioner. Petitioner is being deprived of his liberty in a most casual, illegal and arbitrary manner, the orders impugned, as such, are not sustainable and liable to be set aside.

h) That the grounds of detention as specified in the order will show that there is no reason whatsoever given except registration of one F.I.R no.25/2022 with the police Station Channi Himmat, Jammu for commission of offences under Section 447 I..P.C and Section 26 of Forest Act. Section 26 of the Forest Act prescribes the acts prohibited in the forest and section 447 of IPC deals with the criminal trespass. Petitioner fails to understand as to how this F.I.R is relevant in any manner to order the detention of the petitioner in order to prevent him from acting in any manner prejudicial to the security of the state or the maintenance of public order or even preventing him from indulging into smuggling of timber. The detention of the petitioner has been ordered on totally irrelevant grounds, as such the subjective satisfaction arrived by the District magistrate before passing the order of the detention is vitiated. The impugned orders have been based on vague, extraneous and irrelevant grounds. The power of detention has been invoked for wrong purpose.

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i) That in communication bearing no. 978IDMJ/Judicial/2024-25 dated 07.06.2024 as has been sent by respondent no.2 to the government, he has mentioned that the detention order has been passed on the basis of detailed report received from the Superintendent of police Jammu, where as it is only a dossier given by the respondent no. 2 by the Divisional Forest officer, Jammu and this speaks volumes about the non-application of mind, on part of respondent no.2 before passing the detention order. There is not even a single incident mentioned in the grounds to justify the detention of the petitioner under Jammu and Kashmir public Safety Act, 1978 and entire exercise has been conducted illegally and without jurisdiction.

i) That the detention order could not have been passed on totally non-existent grounds. Not even a single ground exists to support any of the detention order. It appears that the District Magistrate himself was unaware of the grounds on which the detention order was to be passed, as such, he has passed two separate orders with the same number and date, whereas detention orders will show that neither there is ground of public order nor allegation of timber smuggling on the petitioner. The order is outcome of malice in law and no satisfaction whatsoever could have been arrived at the material placed, before passing the detention order it appears that the respondent no.2 has failed to realize the distinction between the law and order and public order.

k) That there is yet another important aspect of the matter and the perusal of the grounds will show that the same refers to F.I.R no.2512022. The said F.I.R is a stale F.I.R for the purpose of passing the detention order. There is no live link between the FIR in question and passing of the detention order dated 07.06.2024. The detention order passed against the petitioner as such is in complete violation of Jammu and Kashmir public Safety Act, 1978 and also the rights guaranteed to petitioner under the Article 21 and 22 of the Constitution.

l) That it appears that Respondent No.2 has failed to understand the distinction between the law and order and public order. As a matter of fact, Hon'ble Supreme court has already explained the aforesaid distinction in the following manner:

"It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting, security of State", "law and order" also comprehends disorders of less

gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of state. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

The perusal of the grounds of detention will show that the case neither falls under the public order nor under the security of the state but unfortunately, unmindful of the aforesaid legal position, the detention order has been, passed against the petitioner on totally vague, extraneous and irrelevant grounds.

m) That it is unheard of that on same grounds, two different detention orders are passed. perhaps it is for the first time that a District Magistrate has passed two separate orders of detention on the same set of grounds of detention on the asking of the sponsoring agency, Divisional Forest Officer which is Divisional Forest Officer.

n) That keeping in view the fact that detention orders are absolutely illegal, without jurisdiction and have been passed for extraneous reasons, petitioner is invoking the jurisdiction of this Hon'ble Court at the pre-execution stage as every citizen has been held to be entitled to save his liberty by invoking the jurisdiction of the Hon,ble High Court under Article 226 of the Constitution even at the pre-execution stage."

07. The respondents, at the foremost, have questioned maintainability of the petition at the pre-execution stage.

08. According to the respondents, to entertain a petition of Habeas Corpus, it is mandatory that a person is under illegal detention and since petitioner is evading the due process of law, petition is liable to be summarily dismissed.

09. It is contention of the respondents that since petitioner is a habitual land grabber, enlisted in the encroachment list of Jammu Forest Division for encroachment of forest land in different compartments, and ordinary law of the land failed to deter him, impugned order came to be passed by the detaining authority to prevent him from indulging in similar activities.

10. It is also contention of the respondents that mention of Section 8(1) (a-1) PSA was a clerical error and was inadvertently made, but impugned order was passed under Section 8(1) (a) of PSA.

11. Respondents have prayed for dismissal of the petition.

12. Having heard arguments, I have gone through the file and the detention record.

13. Mr. Rahul Pant, learned senior counsel appearing for the petitioner, has relied upon **Additional Secretary to the Government of India vs. Alka Subash Gadia; 1992(1) SCC 496** to reiterate the grounds urged in the petition.

14. *Per contra*, Mr. P.D Singh, learned counsel for respondents has emphasized his stand taken in the counter affidavit.

15. Before we proceed to dilate upon the grounds urged in the memo of petition, it shall be proper to have a look at Section 8(1) (a) and clause (a-1) of sub-section (1) of Section 8 of PSA, which for the facility of reference, are extracted below:-

“8. Detention of certain persons:- (1) The Government may—

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to-

(i) the security of the State or the maintenance of the public order; or

(ii).....

[(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 in 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);

*.....
.....”*

16. It is evident from a plain reading of Clause (A-1) of sub-section (1) of Section 8 PSA that it can be invoked with a view to prevent a person from smuggling timber or liquor or abetting the same, or engaging in the transportation or concealing or keeping the smuggled timber or dealing in the smuggled timber, or otherwise engaging in the transportation or concealment or keeping or harboring persons engaged in the smuggling or abetting the smuggling of timber or liquor, which are not allegations against the petitioner.

17. Allegation against the petitioner is that he is a habitual land grabber and enlisted in the encroachment list of Jammu Forest Division for the encroachment of forest land in various compartments along with his father. He became a hindrance in the demarcation of the forest land and made several attempts of land breaking, illegal mining of forest land etc. with an intention to encroach upon the forest land and smuggle forest resources. Another allegation against him is that he was involved in carving out plots on the forest land and selling them in the form of residential plots, duping the citizens of their hard-earned money, which has the potential of causing chaos and unrest in the general public.

18. It is evident from a bare perusal of aforesaid allegations that impugned orders have been passed by the detaining authority on misplaced and non-existent grounds. No ground whatsoever is made out for passing the detention orders, in terms of clause (A-1) of sub-section (1) of Section 8 PSA. The allegations merely refer to the petitioner as a land grabber enlisted in various encroachments of Jammu Forest Division. Therefore, subjective satisfaction arrived at by the detaining authority is found legally flawed and impugned orders are liable to be quashed on this ground alone.

19. Be that as it may, the sponsoring authority furnished a list of cases against the petitioner including FIR No. 25/2020 of Police Station Channi Himmat and Damage Case No. 04 of 2024 regarding land breaking and illegal levelling of forest land. Surprisingly, in addition to these two cases, the other two cases reported are with respect to the encroachment of seven kanals of forest land and 150 kanals of forest land only by his father-Sain Ditta. It is apparent from the list of cases provided by the detaining authority that petitioner is sought to be detained under PSA for an activity alleged to have been committed by his father, which clearly reflects total non-application of mind on the part of the detaining authority.

20. Countervailing the stand of the petitioner, present petition is sought to be resisted by the respondents on the predominant premise that it is not maintainable at the pre-execution stage. According to the respondents, to entertain a petition for Habeas Corpus, it is a pre-requisite that a person should have been under illegal detention and since petitioner is evading the due process of law, the petition in the present form is not maintainable.

21. Hon'ble Supreme Court in **Alka Subash Gadia**, has held that it is not correct to say that writ court has no power to entertain grievances against any detention order prior to its execution. It was held that such power could be used in proper cases, though such cases have been few and the grounds on which Courts could interfere at the pre-execution stage are limited in scope, however, Court cannot decline to entertain such writ petition at the pre-execution stage if it is *prima facie* satisfied (i) that impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong person, (iv)

that it is passed on vague, extraneous and irrelevant grounds (v) and that the authority which passed it had no authority to do so.

Relevant excerpts, for the facility of reference, are extracted below:-

“.....

(30).....The courts have the necessary power and they have used it in a proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use then extraordinary powers of Judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.

(31).....

(32) This still leaves open the question as to whether the detenu is entitled to the order of detention prior to its execution at least to verify whether it can be challenged at its pre-execution stage on the limited grounds available. In view of the discussion aforesaid, the answer to this question has to be firmly in the negative for various reasons. In the first instance, as stated earlier, the Constitution and the valid law made there-under do not make any provision for the same. On the other hand, they permit the arrest and detention of a person without furnishing to the detenu the order and the grounds thereof in advance. Secondly, when the order and the grounds are served and the detenu is in a position to make out prima facie the limited grounds on which they can be successfully challenged, the courts, as pointed out earlier, have power even to grant bail to the detenu pending the final hearing of his petition. Alternatively, as stated earlier, the court can and does hear such petition expeditiously to give the necessary relief to the detenu. Thirdly, in the rare cases where the detenu, before being served with them, learns of the detention order and the grounds on which it is made, and satisfies the Court of their existence by proper affirmation, the court does not decline to entertain the writ petition even at the pre-execution stage, of course, on the very limited grounds stated above. The court no doubt even in such cases is not obliged to interfere with the impugned order at that stage and may insist that the detenu should first submit to it. It will, however, depend on the facts of each case. The decisions and the orders cited above show that in some genuine cases, the courts have exercised their powers at the pre-execution stage, though such cases have been rare. This only emphasises the fact that the courts have power to interfere with the detention orders even at the pre-execution stage but they are not obliged to do so nor will it be proper for them to do so save in exceptional cases. Much less can a detenu claim such exercise of power as a matter of right. The discretion is of the court and it has to be exercised judicially on well settled principles.”

22. The petitioner, as stated, is sought to be detained on the allegations of encroachment of the forest land and that too with respect to two instances of alleged encroachments done by his father. There is no allegation with respect to smuggling or abetting the smuggling, or engagement in transportation or

concealment or keeping of smuggled timber, or otherwise dealing with smuggled timber, or harbouring persons engaged in smuggling or abetting the smuggling of timber or liquor, within the meaning of Clause (A-1) of subsection (1) of Section 8 PSA. Therefore, present case is squarely covered under grounds (ii), (iii) & (iv) of **Alka Subash Gadia**, because impugned orders under Sections 8(1) (a) and 8 (1) (A-1) have been passed by the respondent detaining authority, for a wrong purpose, against a wrong person and on absolutely vague, extraneous and irrelevant grounds.

23. It appears that, realizing the mistake and taking a cue from the grounds of challenge urged in the present petition, respondents have come forward with the plea that there was a clerical error and impugned order, in essence, has been passed under Section 8(1) (a) and not 8(1) (A-1) of PSA. If it is so, then impugned order of detention, purported to have been passed by the detaining authority under Section 8(1) (a), runs in patent contradiction to the grounds of detention that petitioner is a habitual land grabber. It appears from the tone and tenor of the impugned order and the grounds of detention that detaining authority is oblivious to decide as to under which provision, petitioner is to be detained; viz. under Section 8(1) (a), which is relatable to the security of the State and maintenance of public order, or Section 8(1) (A-1), relating to smuggling of (timber or liquor) or abetting the smuggling of (timber or liquor) or matters related thereto.

24. It is a matter of common experience that grounds of detention furnished to a detenu in Habeas Corpus matters would often contain generic allegations forming part of the dossier submitted by the sponsoring authority, without any independent application of mind. Such a “copy-paste” culture on the part of detaining authorities would fundamentally infringe upon fundamental rights of

citizens guaranteed under the Constitution. Personal liberty of a person cannot be trifled in such a cavalier fashion. The detaining authorities are expected to act neutrally between the State and the individual liberty of a citizen and cannot afford to act as a rubber stamp of sponsoring authorities. Preventive detention is a drastic precautionary measure intended to intercept future crimes, but it cannot be invoked to punish a citizen for unsubstantiated claims. Therefore, detention orders which merely “copy-paste” the dossiers of sponsoring authorities, without independent evaluation of the detaining authorities, are illegal.

25. Viewed from any angle, it is manifest from the grounds of detention supplied to the petitioner in the present case that it is neither a case involving threat to the security of the State, nor a case relating to the maintenance of public order, or a case relatable to Clause (A-1) of sub-section (1) of Section 8 of PSA.

26. For the foregoing reasons, present petition is allowed, impugned orders are quashed and petitioner is directed to be immediately released from the detention.

27. However, since there are serious allegations against the petitioner, regarding encroachment over a huge chunk of forest land, respondents shall be at liberty to work out and avail appropriate civil and criminal remedies against him.

28. Disposed of.

(Rajesh Sekhri)
Judge

JAMMU
02.06.2026
Abinash

Whether the judgment is speaking? Yes
Whether the judgment is reportable? Yes