

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

HCP No. 19/2026

Reserved on: 13.08.2026

Pronounced on: 21.08.2026

Uploaded on: 21.08.2026

Operative part or full judgment: Full

Sabeer Ahmed

S/O Bashir Ahmed

R/O Bakhar

Tehsil Siot, District Rajouri

...Petitioner(s)

A/P lodged in District Jail, Poonch

Through his brother Mohd. Sajid

Through: Mr. Nitin Mohan, Advocate.

Vs.

1. UT of Jammu & Kashmir through

Principal Secretary to Govt., Home Department,
Civil Secretariat, Jammu/Srinagar.

2. District Magistrate, Rajouri.

**3. Senior Superintendent of Police,
Rajouri.**

Respondent(s)

Through: Mr. Dewakar Sharma, Dy. AG

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

JUDGMENT

01. Through the medium of this Habeas Corpus Petition, filed through his brother Mohd. Sajid, the petitioner-Sabeer Ahmed (hereinafter called '**detenue**') seeks quashment of Order No. DMR/PSA/03 of 2026 dated 03.03.2026

(hereinafter called '**detention order**') passed by the respondent No. 2-District Magistrate, Rajouri (hereinafter called '**detaining authority**') whereby and whereunder, in terms of Section 8 of the Jammu & Kashmir Public Safety Act (for short, PSA), he had been ordered to be detained under preventive detention in order to prevent him from acting in any manner which is highly prejudicial to the maintenance of public order.

02. The impugned detention order has been challenged mainly on the grounds, firstly that the grounds of detention are vague, mechanical and based merely upon registration of FIRs which do not disclose any activity prejudicial to the maintenance of public order; secondly that there is no proximate link between the prejudicial activities and the detention order and the same was based on stale reference of FIRs of 2023 and 2025, thirdly that the detenue has not been informed about his right to make effective representation to the Government as well as to the detaining authority.

03. Pursuant to notice, the respondent No. 2 has filed the counter affidavit, asserting therein that the detention order has been passed on the basis of relevant material including multiple FIRs and police records showing the petitioner to be involved in bovine smuggling cases and his continuous

criminal/anti-social activities are posing a threat to public order; that the activities of the detainee are not merely law and order issues but have a direct bearing on public order; that the detainee was duly informed of grounds of detention and was provided opportunity to make representation; that the detention of the detainee was necessitated to prevent him from acting in a manner highly prejudicial to the maintenance of public order; that the respondent No. 2 after carefully perusing the dossier submitted by the respondent No. 3-Senior Superintendent of Police, Rajouri and evaluating the material facts, reached a subjective satisfaction that routine legal proceedings were insufficient to curb the detainee's activities; that all the relevant documents have been provided to the detainee and he has also been informed about his right to make a representation. Lastly, he has argued that the impugned detention order be upheld and the petition filed by the detainee, being devoid of any merit and substance, be rejected.

- 04.** Heard learned counsel for the parties, perused the detention record and considered.
- 05.** The impugned detention order was passed by District Magistrate to prevent the detainee from the criminal activities, highly prejudicial to the maintenance of public

order, while making reference to his earlier involvement in FIR No. 163/2023 under section 188 IPC and 11 PCA Act registered at Police Station, Nowshera, FIR No. 47/2025 under section 223 BNS & 11 PCA Act and FIR No. 62/2025 under section 223 BNS and 11 PCA Act registered at Police Station, Sunderbani, with the accusation that he was found transporting the bovines without any valid permission from the District Magistrate.

06. So far as the first ground of challenge that the grounds of detention are vague, mechanical and based merely upon registration of FIRs which do not disclose any activity prejudicial to the maintenance of public order is concerned, in this regard, it is to be noted that in the grounds of detention, reference is made to three FIRs viz., FIR No. 163/2023 under section 188 IPC and 11 PCA Act registered at Police Station, Nowshera, FIR No. 47/2025 under section 223 BNS & 11 PCA Act and FIR No. 62/2025 under section 223 BNS and 11 PCA Act both registered at Police Station, Sunderbani, with the accusation that he was indulging in transportation of bovine animals without any valid permission from the District Magistrate thereby violating the notification issued in this behalf.

07. It has been contended by learned counsel for the respondents that the fact that the petitioner has indulged

in as many as three cases of bovine smuggling shows that he has no respect for the law and his continuous criminal/anti-social activities are prejudicial to the maintenance of public order in the district and his repeated involvement in such offences clearly demonstrates his criminal propensity and disregard for the law.

08. 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 detenue 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 detenue 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 detainee 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 detainee'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.

- 09.** 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 detainee 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.

10. So far as second ground of challenge, as pleaded in the petition that there is no proximate link between the alleged prejudicial activities and the detention order, is concerned, it is apparent from the record that the detention order was passed on 03.03.2026 based on three cases, first registered in the year 2023 at Police Station, Nowshera and second in the year 20225 at Police Station, Sunderbani, therefore, even by no stretch of imagination, the alleged prejudicial activities regarding which the FIRs were registered in the year 2023 and 2025 can be stated to be remote in any manner snapping live link between the prejudicial activities and the detention order based thereon by the detaining authority early 2026. This ground, in the considered opinion of this Court, does not merit any consideration and is liable to be rejected.

11. So far as third ground of challenge that the detainee has not been informed about his right to make effective representation to the Government as well as to the

detaining authority, it is established from the perusal of record that detaining authority, vide communication dated 03.03.2026, informed the detainee that he may make representation to the Government, but omitted to inform that such a representation can be made to the detaining authority also.

- 12.** Detenue was ordered to be detained in preventive custody vide impugned order, conveyed to him vide communication dated 03.03.2026, informing him that he can make a representation against the detention order to the Government, if he so desired. The constitutional guarantee of making a representation is meaningful only when the detainee is clearly informed of the authorities before whom such representation can be made and the earliest opportunity to exercise that right. Non-communication of this valuable constitutional right deprives the detainee of an effective opportunity to challenge the detention at the earliest stage, thereby vitiating the detention order. The same constitutes a violation of Article 22(5) of the Constitution. Since the procedural safeguards governing preventive detention are mandatory and must be strictly complied with, such omission vitiates the detention order illegal and liable to be set aside.

- 13.** As a sequel to the aforementioned discussion and observations made hereinabove, the present petition is **allowed**. Consequently, impugned detention order is quashed. The detenue is directed to be released forthwith if not required in any other case(s). The detention record be returned to the learned counsel for the respondents.
- 14.** Disposed of accordingly along with connected application(s), if any.

JAMMU
21.08.2026
Naresh/Secy.

(M A CHOWDHARY)
JUDGE

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

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