



2026:AHC:203069-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 1371 of 2026

Ravi Chaurasiya And Another

.....Petitioner(s)

Versus

State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Devesh Kumar Shukla
Counsel for Respondent(s)	:	G.A.

Court No. - 42

**HON'BLE ATUL SREEDHARAN, J.
HON'BLE ACHAL SACHDEV, J.**

1. Heard on behalf of the petitioner, Mr. Imran Ullah, learned Senior Advocate, assisted by Mr. Devesh Kumar Shukla, and learned AGA for the State.

2. Present petition has been filed by the petitioner who has raised the grievance of illegal detention by the police. According to the petitioner/corpus, he was taken into custody by the police of P.S. Soraon, District Prayagraj, on 14.09.2026 at 9.00 pm from Ayodhya. He was brought to the police station Soraon on 14.09.2026 itself. However, no arrest was shown. Thereafter, on 15.09.2026, it is the case of the petitioner that the petitioner/corpus's mother went to police station to ascertain the wellbeing of the corpus, and on 15.09.2026 itself, the petition for habeas corpus was filed before this Court. On the very next day i.e., 16.09.2026, the police formally arrested the corpus, and recorded the same in G.D. Entry No. 15 and after conducting his medical examination, produced the corpus before the Magistrate who remanded the corpus to judicial custody on 16.09.2026 itself. The arrest memo reflects that the corpus was arrested on 16.09.2026 at 10.45 am.

3. This Court on the last date of hearing had called for the CCTV footage of the Thana. However, going through the counter affidavit of Mr. Deen Dayal Singh, who is the S.H.O. of Police Station Soraon and also the Investigating Officer in this case, a clear admission relating to illegal arrest has been made in paragraph-8 of the counter affidavit. In paragraph-8, it is stated by the deponent "that by inadvertent mistake the G.D. Entry regarding bringing the Petitioner to P.S. Soraon on 15.03.2026 at 03.40 A.M. was not entered in the G.D. Entry".

4. In view of the candid admission made by the deponent in the counter affidavit, this Court has not perused the CCTV recording as it is no longer required.

5. This Court, however, is unable to appreciate the averment made in paragraph-8 of the counter affidavit that the detention of the corpus was not shown on 15.09.2026, on account of an error on the part of the I.O./deponent. The deponent has sought to show the same as an act of negligence rather than of malice. However, in law, gross negligence is an intentional wrong doing which is based the maxim "***culpa lata dolo aequiparatur***".

6. The application of the maxim in this case would disclose the gross negligence on the part of the S.H.O., who is also the Investigating Officer in this case, as a person so experienced, ought not to have failed to make a G.D. Entry on 15.09.2026 at 3.40 am disclosing, either himself or through another upon his directions, that the corpus was brought to the P.S. Soraon and lodged in the lockup on 15.09.2026 at 3.40 am. The arrest of the corpus is on 16.09.2026 at 10.45 am which means that the corpus was in the custody of the police beyond twenty four hours without producing him before a Judicial Magistrate for remand. The sequence of events go to show that the formal arrest was made on 16.09.2026 at 10.45 am only to

escape liability of an illegal detention after coming to know about this petition filed by the petitioner/corpus.

7. Whenever a citizen is apprehended by the police, there is a legal and a constitutional duty on the police apprehending a suspect for the purpose of investigation/interrogation to ensure that his custody time is reflected in the G.D from the time he is taken into custody. It is not acceptable to this Court that the deponent forgot to make an entry in the General Diary for more than twenty four hours after taking the corpus into custody. This Court is unable to accept that the omission to show that the corpus was in their custody was merely an inadvertent mistake, and instead was a conscious omission by the Respondent to escape the charge of illegally detaining the corpus. This view gains credence by the fact that the formal arrest of the corpus was made by the Respondent on 16.09.2026 upon coming to known that this petition was filed on behalf of the corpus on 15.09.2026

8. Therefore, in view of the candid admission by the police, with regard to the allegations of illegal custody made in the petition, **this Court allows the petition by awarding compensation of Rs. 30,000/-**, to be paid to the petitioner, which shall be recovered from those responsible.

9. The affidavit of the S.H.O. does not reflect that there was any kind of communication between the Police Station and the Commissioner, Prayagraj, in order to intimate the presence of the corpus in the police station from 15.09.2026 onwards till his arrest on 16.09.2026. Incidentally, the F.I.R. has been registered against the corpus for having been the purchaser of a property belonging to a gangster under the Gangsters Act. No further details are required with regard to the criminal case pending against the petitioner.

10. The Commissioner, Prayagraj is also requested to conduct an

inquiry in this case and affix responsibility and liability of those who are guilty of keeping the corpus under illegal detention, and take appropriate steps under the law. This Court records its displeasure with regard to the conduct of the S.H.O. of Police Station Soraon. If, in the inquiry conducted against the deponent, the Commissioner is satisfied that there has been negligence on his part, in such an eventuality, the displeasure which is recorded in this order, be entered in his service record.

11. Additionally, the learned Sr. Counsel appearing for the petitioner has submitted that the petitioner be released from custody as the initial detention itself was unlawful as has been held by this Court. It is his contention that the subsequent arrest which was carried out at 10.45 am on 16.09.2026, does not attain legitimacy as his initial detention itself was unlawful and violative of his constitutional rights under Articles 21 and 22 of the Constitution.

12. Learned counsel for the State, on the other hand, has submitted that it is Impermissible to release the petitioner without an order of bail from a Court of competent jurisdiction, as now the petitioner is a co-accused in a criminal case and that he is in judicial custody pursuant to a legitimate order of remand passed by the Judicial Magistrate on 16.09.2026. He has further stated that the petitioner is only eligible for compensation which this Court is inclined to grant for the period that he was under unlawful detention. He has further submitted that there is no precedent to support the view of the petitioner that where the detention was unlawful, the subsequent arrest and the detention as an under trial in judicial custody can also be set aside by any Court on the grounds of illegality of the original detention itself.

13. This Court has considered the views put forth by both the parties.

14. A doctrine which has its genesis in American criminal

jurisprudence being "**Fruit of the Poisonous Tree**", may be examined in a different context altogether. Undoubtedly, the Indian Courts including the Supreme Court has held that this doctrine cannot be considered in its application to the law of evidence. The Fruit of the Poisonous Tree doctrine in the United States of America is a doctrine which prohibits the appreciation of any evidence gathered unlawfully. Illustratively, where the police enter a dwelling premises without a search warrant and drugs are recovered from the premises, in such a situation, there can be no prosecution of the defendant for the offence of possessing drugs as the search itself was unlawful, being conducted without a search warrant. There are certain exceptions making such discovery amenable to judicial scrutiny which are not required to be gone into in this case. Literally, the doctrine means that where the tree itself is poisonous every fruit it bears is also poisonous.

15. In India, however, the law of evidence rests entirely on relevance. The manner in which a piece of evidence is recovered during the investigation, becomes immaterial if the same has relevance to a fact in issue or a material fact. However, the only restrictions are those which are specifically mentioned in the Evidence Act and now in the BSA.

16. In the case under judgment, this Court examined the Fruit of the Poisonous Tree doctrine, not in the context of the law of evidence, but in its application to constitutional law, with specific reference to civil liberties protected under Part III of the Constitution of India. This doctrine is applicable to the law relating to detention and arrest. In a situation where the subsequent arrest follows an unlawful detention of the corpus, the arrest is rendered unlawful as so are the proceedings of remand by the judicial magistrate as the genesis leading to the arrest was the unlawful detention of the accused violating his right under Art 22. In order to appreciate the doctrine, the poisonous tree is

basically the primary act, which is unlawful by itself. The fruit of that poisonous tree relates to all subsequent acts by the police or the Judicial Magistrate, which otherwise may be legitimate but must be considered illegitimate on account of the principal act by which the corpus came into the custody of the police itself being illegal. In this regard, it would be beneficial to refer to a recent land mark judgement by the Supreme Court in **Jaskaran Jeet Singh Deol Vs. State of Punjab [MANU/Supreme Court/1054/2026]**. The question before the Supreme Court related to the re-arrest of a person who was released on account of his arrest being violative of Art 22. In paragraph 19.3, the Supreme Court held that where the arrest itself is unconstitutional being violative of Art 22(1), the orders of remand are also vitiated and the filing of the chargesheet and cognisance taken by the Magistrate, will not validate such an arrest.

17. This Court extends the same principal and holds that where the detention in police custody itself is violative of Art 21 and 22, the subsequent arrest, even where valid grounds of arrest are provided, and the remand proceedings before the Magistrate may otherwise appear legitimate, all stand vitiated by the application of the Fruit of the Poisonous Tree doctrine as actions subsequent to an illegal detention are also per se illegal and violative of Art 21 and 22 of the Constitution and that illegality perpetuates in all subsequent actions and proceedings.

18. In this case, it is an admitted position that the corpus was in unlawful detention of the respondent-State from 15.09.2026 at 3.45 am till his arrest memo was prepared on 16.09.2026 at 10.45 am. More so, the arrest appears to have been made on account of the petitioner having filed a writ of habeas corpus before this Court in the morning of 15.09.2026. Under the circumstances, applying the said doctrine, the unlawful detention of the corpus from 15.09.2026 at 3.45 am till 16.09.2026 at 10.45 am, when the arrest memo was prepared

and he was formally arrested, is the poisonous tree as the corpus was not produced before the Magistrate within twenty four hours. The subsequent fruit that tries to legitimize the entire action is the arrest of the petitioner on 16.09.2026 at 10.40 am. Thus, the police cannot be permitted to legitimize an arrest, where it was subsequent to an act of unlawful detention. The subsequent arrest memo and the remand does not legitimize the initial unlawful detention of the corpus. Therefore, where the initial action of unlawful detention itself was violative of the right of the corpus under Article 22, the same cannot be set right by a subsequent action of the police by formally arresting the corpus on 16.09.2026 at 10.45 am.

19. It is also necessary to state here that during the period the corpus was in illegal detention, Section 38 of the BNSS was never complied with, which requires the police to intimate the corpus about his right to legal advice of an advocate of his choice as required also under Art 22.

20. It is also an admitted position that the right of the accused under Section 38 of the BNSS to have a counsel of his choice present during investigation, was never provided by the police and neither was he informed of that right. Section 38 no doubt says that the right is available upon arrest and interrogation of a person. However, this Court cannot allow a process whereby the police in order to escape the rigors of the same, does not arrest an accused/suspect, calls him to police station, interrogates him for 5-6 hours, and on the basis of self-incriminatory statements of the suspect makes him an accused because that would be violative of his right against self-incrimination, which was made on account of the absence of a counsel.

21. Under the circumstances, this Court makes it clear that the duty of the police under Section 38 of the BNSS also arises when a suspect is taken for interrogation to the police station, he must be

informed even before he is arrested or made an accused about his right to have a counsel of his choice present in the police station during interrogation, but not throughout the interrogation as mentioned under Section 38 of the BNSS. Failure to do so, would vitiate all information given by the said suspect, especially self-incriminatory statements, which even otherwise given to a police officer are not relevant under the Evidence Act.

22. Learned counsel for the State has also submitted that the right of the police to re-arrest the petitioner has been protected by various judgments of the Supreme Court.

23. Undoubtedly, the right to re-arrest the petitioner shall be available, subject to the strict compliance of the judgment by the Supreme Court in **Jaskaran Jeet Singh Deol Vs. State of Punjab** *supra* whereby the Supreme Court has held that where, after a person is released on account of his arrest/detention being held unlawful, the prospective arrest can only be carried out upon a warrant of arrest issued by the Magistrate concerned. In such a situation, **Jaskaran Jeet Singh Deol's** judgment also says that the police officer who had carried out initial detention/arrest, shall be proceeded against departmentally.

24. Under the circumstances, this Court having held the initial detention of the corpus as unlawful, applying the doctrine of the fruit of the poisonous tree in the context hereinabove, directs that he be released forthwith, if not wanted in any other case. The pen drive that was produced by the State is returned.

25. With the above directions, the petition stands **disposed of**.

September 28, 2026
Noman

(Achal Sachdev,J.) (Atul Sreedharan,J.)