

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

Pronounced on: 26.11.2024

**Case No. :- HCP No. 29/2024
CM No. 1025/2024**

Zafar Iqbal Choudhary,
Age 36 years,
S/o Bagh Hussain Choudhary,
R/o Salwa, Tehsil Mendhar,
District Poonch, 185101.
At present Central Jail, Jammu
(Kot Bhalwal).
Through his father
Bagh Hussain, Age 72 years,
S/o Mir Mohd. R/o Kasablari,
Tehsil Mankote, District Poonch,
185101.

..... Petitioner(s)

Through: Mr. Sunil Sethi, Sr. Advocate with
Mr. Zeeshan Rana, Advocate.

Vs

1. UT of Jammu and Kashmir
through Financial Commissioner,
(Addl. Chief Secretary),
Home Department, J&K.
2. District Magistrate,
Bandipora.
3. Director General of Police,
Prisons Department, J&K.
4. Special Director General of
Police, CID, J&K.
5. Senior Superintendents of Police
CID, CIK, Srinagar.
6. Senior Superintendent of Police,
Bandipora
7. Superintendent Central Jail,
Jammu.

..... Respondent(s)

Through: Mr. Pawan Dev Singh, Dy.A.G.

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

1. Impugned in the instant petition, filed under the provisions of Article 226
of the Constitution of India, by the petitioner through his father, is the

order of Detention bearing No. 01/DMB/PSA of 2024 dated 15.02.2024 passed by the respondent No.2 i.e. District Magistrate, Bandipora (hereinafter referred to as the “detaining authority”, for short), while invoking his powers under Section 8(1) (a) (i) of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as the “Act”, for short), whereby the petitioner/detenu has been ordered to be detained with a view to prevent him from acting in any manner prejudicial to the maintenance of public order and lodged in Central Jail, Kot Bhalwal, Jammu.

2. The petitioner has sought for the issuance of the writs of certiorari and mandamus for quashment of the impugned detention order and his immediate release from the alleged unlawful custody.
3. The order impugned has been assailed on the grounds *inter alia* that the petitioner is a Citizen of India and a domicile of UT of Jammu and Kashmir, as such, entitled to all legal and fundamental rights guaranteed under the Constitution; that he is filing the petition through his father on account of his inability to do the same in person as being under detention; that the dossier submitted by respondent No.6 to the detaining authority bearing No. Lgl/PSA-02/2024/5422-28 dated 07.02.2024, the impugned detention order bearing No. 01/DMB/PSA of 2024 dated 15.02.2024 issued by the detaining authority and the consequent detention notice bearing No. DMB/PSA/2024/16-18 15.02.2024 are illegal, arbitrary and violative of the principles of natural justice; that an FIR was registered with Police Station, Bandipora bearing No. 12/2024 under Sections 420, 506 IPC against the petitioner on 18.01.2024 in which he has already been granted bail by the competent court on 06.02.2024; that unfortunately

immediately after the petitioner's being bailed out in the said case FIR, the respondent No.6 owing to his hostile attitude towards the petitioner framed a dossier and submitted the same under his No. Lgl/PSA-02/2024/5422-28 dated 07.02.2024 to the detaining authority; that no notice of the detention order as required under Section 13 of the Act was served upon the petitioner; that the impugned order suffers from non-application of mind and is devoid of the subjective satisfaction of the detaining authority being the replica of the police dossier; that the petitioner is alleged, as per the police dossier and the grounds of detention, a repeated offender when only one case FIR stands registered against him on false and frivolous grounds; that the allegations against the petitioner in the case FIR registered against him are not so grave and heinous as to attract the invocation of the Act against him; that the complainant of the case FIR No. 12/2024 registered against the petitioner in Police Station, Bandipora has sworn an affidavit to the effect that petitioner has returned the money to him and there is nothing outstanding from him; that the impugned order is violative of the principles of natural justice and the fundamental right of the petitioner guaranteed under Article 21 of the Constitution; that even if the grounds of detention are supposed to be true yet they do not amount to a situation prejudicial to the maintenance of public order as mentioned in para 8 (3) of the Act and that the detaining authority has not mentioned the period of detention when as per the provisions of the Act, the detention period in the circumstances of the instant case could have been three months in the first instance extendable for a total period of 12 months.

4. The respondents through the counter affidavit filed by the detaining authority have resisted the instant petition on the grounds that same is not maintainable for want of a cause of action as none of the fundamental, constitutional, statutory or legal rights of the petitioner stands violated/infringed. That the subjective satisfaction drawn by the detaining authority before the detention of the petitioner under the Preventive Detention Act cannot be questioned on the ground of insufficiency of the incriminating material against the detenu and the observance of the procedural safeguards by the detaining authority leaves a little scope for the detenu to assail the impugned order. That the impugned order was passed with a view to prevent detenu from acting or indulging in activities prejudicial to the public order. That the impugned order does not suffer from any malice or infirmity and, as such, the challenge thrown to it is misdirected and misconceived. That the petitioner has not approached this Court with clean hands and has tried to mislead this Court by sheer misrepresentation of facts. That the writ petition raises pure disputed question of facts, which cannot be adjudicated upon in a writ petition. That the writ petition is not maintainable as the detenu has not availed the alternate remedy by filing representation against his detention despite communication of such right to him. That all the procedural safeguards enshrined in Article 22 (5) of the Constitution of India as well as the provisions of the Act, while directing the detention of the detenu have been observed in full. That the liberty of the petitioner is subservient to the welfare, safety and interests of the society at large and the detaining authority has exercised the power within the ambit of law. That the

petitioner is a habitual offender and has defrauded a large chunk of population of the District, Bandipora. That 08 complaints have been received against the petitioner to the effect that he has received huge amount from the public upon cheating and deception by projecting a highly influential person, who can provide them government jobs and get their pending matters with the government solved. That the impugned detention order has been passed on the subjective satisfaction of the detaining authority, who applied its mind to the material brought against the detenu. That the copies of the detention record were furnished to the petitioner who was also informed of his right to make a representation against his detention. That the petitioner was found involved in case FIR No. 12/2024 under Sections 420, 506 IPC registered with Police Station, Bandipora. That the petitioner was ordered to be detained by way of a preventive measure as his activities were highly prejudicial to the maintenance of public order. That the impugned detention order does not suffer from any illegality or incorrectness.

5. I have heard the learned counsel for the parties.
6. The learned counsel for the petitioner/detenu while reiterating his stand taken in his petition contended that order impugned is not sustainable under law as the same suffers from patent illegality and perversity. He contended that the allegations leveled against the petitioner even if supposed to be true for the sake of arguments do not amount to a conduct which can be termed as prejudicial to the maintenance of the public order as denied under Section 8 (3) of the Act. That the grounds of detention are just the replica of the police dossier and, as such, the impugned detention

order is devoid of application of mind on the part of detaining authority. That the procedural safeguards mandated under Article 22 (5) of the Constitution have not been observed by the detaining authority. That the copies of the detention record were not furnished to the detenu in full and in time, thus, preventing him from making an effective representation in respect of his detention before the Government. That the petitioner/detenu was falsely and frivolously involved in a case FIR bearing No. 12 of 2024 registered with Police Station, Bandipora in which he was granted bail by the competent court and despite his being on bail he was detained by misusing the provisions of the Act. The learned counsel contended that there was no material at all available with the detaining authority to take a view that the petitioner is a habitual offender. The learned counsel in support of his contentions placed reliance on the authoritative judgments cited as **Surya Prakash Sharma Vs. State of U.P and others, WP (Crl) No. 117 of 1994**, decided on 09.08.1994, **Javaid Ahmad Najar Vs. UT of J&K and others, LPA No. 40/2022**, decided on 23.05.2022, **Muhmmad Lateer Dar Vs. UT of J&K and another, WP (Crl) No. 134/2021**, decided on 01.02.2022, **Amjad Khan Vs. State and others, WP (Crl) No. 71 of 2019**, decided on 19.03.2020 and **Sajad Ahmad Bhat Vs. UT of J&K and another, WP (Crl) No. 127/2022**, decided on 07.11.2022.

7. The learned counsel for the petitioner prayed for the quashment of the impugned detention order and release of the detenu.
8. Per contra, the learned State counsel for the respondents vehemently submitted that the learned detaining authority was compelled to invoke

the provisions of the Act and to detain the petitioner whose activities were highly prejudicial to the maintenance of the public order. He contended that the detenu was repeatedly cheating and deceiving the people of Bandipora by projecting a highly influential person having access to the Government machinery and thereby he used to extract huge amounts of money from the innocent people of far flung areas of District, Bandipora under the pretext that providing government jobs for their children and managing to get through their pending matters with the Government. That an FIR was registered against the petitioner on 18.01.2024 with the Police Station, Bandipora under Sections 420/506 IPC in which the Investigating Officer collected sufficient evidence to the involvement of the detenu. That so many persons filed complaints against the detenu upon knowing his conduct and from which it was learnt that he had duped a sizeable population of Bandipora by extracting money from them. The learned State counsel submitted that the impugned order was passed by the detaining authority after proper application of mind in the light of the material brought before him by the District Police Superintendent. He contended that all the procedural requirements mandated under the Constitution as well as under the Act were fully observed. The learned counsel further submitted that it is settled law that it is not the quantity of the incriminating material which is required for invoking the provisions of the Act but the gravity of the actions of the detenu. He contended that having regard to the conduct of the detenu, there was every reasonable apprehension that the detenu if kept at large will likely disturb the social

order in the locality. The learned State counsel prayed for the dismissal of the writ petition.

9. I have perused the record of the instant petition and the counter affidavit filed by the detaining authority. I have also gone through the detention record produced by the learned State counsel.
10. Keeping in view the aforementioned perusal and the consideration of rival arguments advanced on both the sides, in the light of the law on the subject, this Court is of the opinion that impugned detention order suffers from illegality and incorrectness, thus, deserving its quashment.
11. It is undisputed that only one case FIR No. 12/2024 under Sections 420, 506 IPC stood registered against petitioner with the Police Station, Bandipora at the time of passing of the impugned detention order. The allegation as per the said case FIR appears to be that the detenu had cheated the complainant and extracted money from him where-after he had also intimidated the complainant. The said FIR was registered against the petitioner on 18.01.2024, who came to be subsequently bailed out in the case FIR by the competent criminal court on 06.02.2024. Besides the aforesaid FIR, some 8 persons are also alleged to have filed complaints with the Police Station, Bandipora alleging extraction of money by the petitioner from them on account of providing of government jobs and facilitating them in other matters. The police dossier as well as the grounds of detention are silent as to what action was taken on the 8 complaints received against the petitioner.
12. In the light of the definitions of the public order as given under Section 8 (3) of the Act together with the interpretations accorded to the term,

“public order” by the Hon’ble Apex Court and various authoritative High Courts of the Country, this Court is of the view that the allegations against the petitioner/detenu which were brought before the detaining authority through the police dossier were not amounting to breach of public order. It is profitable to reproduce the provisions of Clause (3) of Section 8 of the Act for ready reference:-

“8. Detention of certain persons

(3) For the purposes of sub-section (1

[(a) omitted.

(b) “acting in any manner prejudicial to the maintenance of public order” means –

(i) promoting, propagating or attempting to create, feelings of enmity or hatred or disharmony on ground of religion, race, caste, community, or region;

(ii) making preparations for using, or attempting to use, or using, or instigating, inciting, provoking or otherwise, abetting the use of force where such preparation, using, attempting, instigating, inciting, provoking or abetting, disturbs or is likely to disturb public order;

(iii) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of, mischief within the meaning of section 425 of the Ranbir Penal Code where the commission of such mischief disturbs, or is likely to disturb public order;

(iv) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment of a term extending to seven years or more, where the commission of such offence disturbs, or is likely to disturb public order;

[(c) “smuggling” in relation to timber or liquor means possessing or carrying of illicit timber or liquor and includes any act which will render the timber or liquor liable to confiscation under the Jammu and Kashmir Forest Act, Samvat, 1987 or under the Jammu and Kashmir Excise Act, 1958, as the case may be;]

[(d) “timber” means timber of Fir, Kail, Chir or Deodar tree whether in logs or cut up in pieces but does not include firewood;]

[(e) “Liquor” includes all alcoholic beverages including beer]”.

13. The allegations against the petitioner were of such a nature which could have been taken care of under the normal criminal law as was already done by the Police Station, Bandipora on a complaint which led to the registration of FIR No. 12/2024.
14. **There is a marked difference between disturbance relatable to “law and order” and disturbance caused to “public order”. It is well settled that breach of law in all cases does not lead to “public disorder”.**
15. The Hon’ble Apex Court has in a catena of judgments noted the difference between, “law and order” and “public order”.
16. In **Ram Manohar Lohia Vs. State of Bihar (1966) 1 SCR 709**, it was held by the Hon’ble Apex Court through Hon’ble M. Hidayatullah. J. (as the Chief Justice then was) at para 54 as under:-

“54. *** Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are.”
17. In **Arun Ghosh Vs. State of West Bengal (1970) 1 SCC 98** again Hon’ble M. Hidayatullah, (CJ) observed that it is not the every case of a general disturbance to public tranquility which can be termed as public disorder and the test to be applied in such cases is whether the alleged act

leads to the disturbance of the current of life of the community so as to amount to disturbance of the public order. That if the alleged act affects some individual or individuals leaving tranquility of the society undisturbed, the act cannot be termed as amounting to public disorder. In that case the petitioner/detenu was detained by an order of a district magistrate since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioner/detenu could be reprehensible, it was further held that it (read: the offending act) “does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order”.

The observations made by the Hon’ble Apex Court in the said case at para 3 are reproduced as under:-

“3.*** Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. ... It is always a question of degree of the harm and its affect upon the community....This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.”

18. In **Kuso Sah Vs. The State of Bihar (1974) 1 SCC 195**, the Hon’ble Apex Court through Hon’ble Y.V. Chandrachud, J. (as the Chief Justice then was) speaking for the Bench held at paras 4 & 6 as under:-

“4. *** The two concepts have well defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. ***

6. *** The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised. ***”

19. In **Rekha Vs. State of Tamil Nadu, (2011) 5 SCC 244**, the observations made by the Hon’ble Apex Court at its paras 21, 29 & 30 deserve a needful mention :-

“21. It is all very well to say that preventive detention is preventive not punitive. The truth of the matter, though, is that in substance a detention order of one year (or any other period) is a punishment of one year’s imprisonment. What difference is it to the detenu whether his imprisonment is called preventive or punitive?

(italics in original)

29. Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the Rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.”

“30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired

drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal.”

20. In **Vijay Narain Singh Vs. State of Bihar, (1984) 3 SCC 14**, the Hon’ble Apex Court has held at para 32 of the judgment through Hon’ble E.S.Venkataramiah, J. (as the Chief Justice then was) as under:-

“32....It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardized unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an Accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorizing such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinizing the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court.”

21. In **A.K.Roy Vs. Union of India, (1982) 1 SCC 271** it was held at para 70 of the judgment as under:-

70. *** We have the authority of the decisions in ... for saying that the fundamental rights conferred by the different articles of Part III of the Constitution are not mutually exclusive and that therefore, a law of preventive detention which falls within Article 22 must also meet the requirements of Articles 14, 19 and 21.”

22. This Court is also fortified in its opinion with the recent authoritative judgment of the Hon’ble Apex Court cited as **Ameena Begum Vs. The State of Telagana & Ors., Criminal Appeal arising out of SLP No. 8510 of 2023** decided on 04.09.2023 in which it has been held at para 40 of the judgment as under:-

“40. On an overall consideration of the circumstances, it does appear to us that the existing legal framework for maintaining law and order is insufficient to address like offences under consideration, which the Commissioner anticipates could be repeated by the Detenu if not detained. We are also constrained to observe that preventive detention laws—an exceptional measure reserved for tackling emergent situations—ought not to have been invoked in this case as a tool for enforcement of “law and order”. Thus, for the reason that, the Commissioner despite being aware of the earlier judgment and order of the High Court dated 16th August, 2021 passed the Detention Order ostensibly to maintain “public order” without once more appreciating the difference between maintenance of “law and order” and maintenance of “public order”. The order of detention is, thus, indefensible.”

23. In the above referred case, the allegation against the detenu was that he was **“habitually committing the offences including outraging the modesty of women, cheating, extortion, obstructing the public servants from discharging their legitimate duties, robbery and criminal intimidation along with his associates in an organized manner in the limits of ... and he is a ‘Goonda’ as defined in clause (g) of Section 2”** of the relevant Statute invoked by the Commissioner. The Commissioner, with a view to prevent the Detenu from acting in a manner prejudicial to maintenance of public order, recorded not only his satisfaction for invoking the provisions of the Act but also recorded a satisfaction that “the ordinary law under which he was booked is not sufficient to deal with the illegal activities of such an offender who has no regard for the society. Hence, unless he is detained under the detention laws, his unlawful activities cannot be curbed”.
24. The Hon’ble Apex Court in the landmark judgment cited as Sushanta Goswami, In Re ([1968] Supreme Court of India) addressed the critical issue of preventive detention under Article 32 of the Indian Constitution.

The said case involved a collective petition by Sushanta Goswami and 46 others challenging their detention under Section 3 (2) of the Prevention of Detention Act, 1950. The central question revolved around was whether the grounds for detention genuinely pertained to maintaining public order or were merely related to general law and order? The Hon'ble Supreme Court meticulously examined each petitioner's grounds for detention, categorizing them based on their relevance to "public order." The Court invalidated detention orders where the activities alleged did not directly threaten public order but were instead typical criminal offences such as theft, assault and property damage. Conversely, detention was upheld only where the activities posed a significant threat to the community's overall peace and satiability.

A pivotal aspect of the judgment was the Court's insistence that detention under the guise of preventing actions prejudicial to public order must be substantiated by concrete evidence showing a direct impact on societal harmony. The Court emphasized the necessity of a clear and direct correlation between the detainee's actions and the maintenance of public order.

The Court referenced two significant cases to support its stance:

Dwarka Das Bhatia Vs. State of Jammu & Kashmir (1956 SCR 945): This case underscored the importance of relevance in grounds for preventive detention, rejecting arbitrary detentions based on vague or unrelated reasons.

The Court's legal reasoning hinged on interpreting "public order" with precision. It delineated between general disturbances of law and

order and actions that genuinely threaten societal peace. The judgment clarified that not every act disrupting law and order qualifies as being “prejudicial to public order.” For instance, petty thefts or assaults without broader societal implications do not meet the threshold for preventive detention under the Act.

Further more, the court critiqued the authorities’ tendency to conflate individual criminal acts with threats to public order, thereby undermining the very essence of preventive detention. By setting aside detention orders lacking direct relevance, the court reinforced the principle that such extreme measures must be reserved for genuine threats to societal harmony.”

25. So it is reiterated that the material brought before the learned detaining authority by the District Superintendent of Police, Bandipora was not of such a nature which could have been understood and apprehended as prejudicial to the “public order”. The alleged actions of the petitioner no doubt amount to infraction of laws for which the legal mechanism was all sufficient to deal with. The invocation of the provisions of the Act to detain the petitioner rather than to deal with him under the general criminal law appears to be an unjustified exercise tantamounting to violation of the fundamental rights of the petitioner. Under these circumstances, the non-application of the mind is discernible in the matter.

It is a settled legal position that a detention order suffering from non-application of mind of the detaining authority cannot be sustained under law.

26. The learned detaining authority appears to have followed the police dossier without application of mind.

This Court in cases titled “**Naba Lone Vs. District Magistrate, 1988 SLJ 300**” and “**Mohd. Farooq through Mohd. Yousuf Vs. UT of J&K and others, WP (Crl) No. 17/2023**”, decided on 03.09.2024 has laid down the law to the effect, “the grounds of detention supplied to the detenu is a copy of dossier, which was placed before the District Magistrate for his subjective satisfaction in order to detain the detenu. This shows total non-application of mind on the part of the Detaining Authority as he has **dittoed** the Police directions without applying his mind to the facts of the case.”

27. **The preventive detentions need to be passed with great care and caution keeping in mind that a citizens most valuable and inherent human right is being curtailed. The arrests in general and the preventive detentions in particular are an exception to the most cherished fundamental right guaranteed under Article 21 of the Constitution of India. The preventive detentions are made on the basis of subjective satisfaction of the detaining authority in relation to an apprehended conduct of the detenu by considering his past activities without being backed by an immediate complaint as in the case of the registration of the FIR and, as such, is a valuable trust in the hands of the trustees. The provisions of Clauses (1) and (2) of Article 22 of our Constitution are not applicable in the case of preventive detentions. So, the provisions of Clause (5) of the Article 22 of our Constitution, with just exception as mentioned in Clause (6),**

together with the relevant provisions of the Section 8 of PSA requiring for application of mind, subjective satisfaction, inevitability of the detention order, proper and prompt communication of the grounds of detention and the information of liberty to make a representation against the detention order, are the imperative and inevitable conditions rather mandatory requirements for passing of a detention order.

28. It was submitted by learned counsel for the petitioner during his arguments that the copies of the detention record were not in entirety and in time furnished to the detenu which prevented him from making an effective representation to the detaining authority or to the government. It is being repeatedly observed that signatures of the detenus are taken on previously computerized/cyclostyled receipts mentioning the title of the documents and the number of pages. A detenu is deemed to be under undue influence at the time he is required to sign on the receipt. The same is also true in case of the document disclosing that detenu was informed of his right to move a representation to the detaining authority or the government. Such receipts in view of the involvement of the infringed right of the detenu to his liberty ought to be obtained under the own handwriting of the detenu or in case of his inability to do so on account of his illiteracy, the same can be required to be written preferably by any available public servant or a civilian at the instance of the detenu and signed by him.
29. The contention of the learned counsel for the petitioner to the effect that the detention order is bad on account of non-mention of the period of the

detention by the detaining authority is not justified because there is a set mechanism under the Act for determining the period by the government after the opinion of the Advisory Board. A detention order under the Act shall not be valid unless approved by the government within a period of 12 days. Secondly, the detention order has necessarily to be referred for the opinion of the Advisory Board by the government within four weeks from the date of the detention of the detenu. Under Section 17 of the Act, the Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit provided the Advisory Board reports that there is in its opinion sufficient cause for the detention of the person. In case the Advisory Board is of the opinion that there is no sufficient cause for detention of the person concerned, the government shall revoke the detention order and cause the person to be released forthwith. The mention of the detention period as such comes after the opinion of the Advisory Board as is evident from the provisions of Section 18 of the Act. The government has the power to revoke or modify the detention order even at any earlier time.

30. For the foregoing discussion, there seems to be merit in the instant petition, which is allowed and consequently the impugned detention order bearing No. 01/DMB/PSA of 2024 dated 15.02.2024 passed by the respondent No.2 i.e. District Magistrate, Bandipora is quashed. The petitioner/detenu is directed to be released forthwith from his preventive detention in the instant case.

31. The detention record is directed to be returned back to the office of the learned Deputy Advocate General concerned against proper acknowledgment.
32. Disposed off.

(Mohd. Yousuf Wani)
Judge

JAMMU :
26.11.2024
Pawan Chopra

- i) Whether the Judgment is speaking: Yes
ii) Whether the Judgment is reportable: Yes

