

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

Pronounced on: 26.11.2024

**Case No. :- HCP No. 83/2023
CM No. 7254/2023**

Mukesh Kumar, Age 34 years,
S/o Dilawar Kumar,
R/o Ward No.1, Akhnoor,
District, Jammu.

..... Petitioner(s)

Through: Mr. A.P.Singh, Advocate.

Vs

1. UT of Jammu and Kashmir
through Commissioner Secretary,
Department of Home,
Civil Secretariat,
Srinagar/Jammu.
2. Divisional Commissioner,
Jammu.
3. Deputy Commissioner, Jammu.
4. Senior Superintendent of Police,
Jammu.

..... Respondent(s)

Through: Mr. Rajesh Thappa, AAG.

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 is the order of Detention bearing No. 19 PSA of 2023 dated 01.10.2023 passed by the respondent No.3 (hereinafter referred to as the “detaining authority”, for short), while invoking his powers under Section 8(1) (a) of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as the “Act”, for short),

whereby the petitioner 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 instant petition is being filed at the pre-execution stage of the impugned order and the petitioner has *inter alia* sought for the issuance of a writ of certiorari for quashment of the impugned detention order No. 19 PSA of 2023 dated 01.10.2023.
3. The petitioner has assailed the impugned detention order on the grounds *inter alia* that he is the citizen of India and, as such, is within his rights to approach this Court for enforcement of his fundamental rights as enshrined in the Constitution of India; that he had already filed a petition bearing HCP No. 76/2023 before this Court with the prayer for issuance of a direction against the respondents for furnishing him the copy of the impugned detention order, which came to be subsequently withdrawn by him on 17.11.2023 with liberty to assail the impugned order; that he is an educated person serving in the Forest Department and was falsely implicated in certain cases but got subsequently acquitted in almost all the cases except two challans which are still pending disposal before the learned trial court; that he through his father approached the detaining authority with a representation which was not considered; that the order impugned has been passed in a mechanical manner without application of mind as the criminal cases in which he has already been acquitted have been made the basis for his detention; that there is no proximity of time

between the last FIR and the grounds of detention and that impugned order has the effect of violating the fundamental rights of the petitioner.

4. The respondents through the counter affidavit filed by the detaining authority have resisted the instant petition on the grounds that petitioner has no cause of action to file the petition for non-execution of the impugned order and the case does not fall under the exception carved out by the Hon'ble Apex Court in case titled "Additional Secretary to Government of India Vs. Smt. Alka Subash Gadia", (1992 SCC (Cri) 301). That none of the fundamental, constitutional, statutory or any legal rights of the petitioner stands violated/infringed by the respondents which may have given the cause of action to file the petition. That the subjective satisfaction drawn by the detaining authority before the detention of the petitioner under the Act cannot be questioned on the ground of insufficiency of the incriminating material against the petitioner. That the petitioner became undiscoverable and escaped the execution of the impugned detention order, which was passed by the detaining authority after deriving the subjective satisfaction from the material placed before him by the sponsoring authority. That petitioner has suppressed more and revealed less because since 2009 till 2023, he was found involved in seven different cases of varying intensity including offences of attempt to murder, illegal use of arms, theft, trespassing, intimidation etc. which have the effect of disturbing the public order and that he is a habitual criminal involved in multiple cases which have the cumulative effect of disturbing the public order.

5. I have heard learned counsel for the parties.
6. Learned counsel for the petitioner, Mr. A.P.Singh, Advocate while reiterating the stand already taken in the petition contended that the impugned detention order is the outcome of illegality and incorrectness for being devoid of non-application of mind and subjective satisfaction on the part of the detaining authority. He contended that the petitioner is alleged to be involved in a series of criminal cases but the fact is that he has already been acquitted in most of the cases and only two cases against him are pending trial in which also he is deemed to be innocent until proved guilty. The learned counsel very vehemently contended that the detaining authority has misused his power vested in him under the Act by ordering the preventing detention of the petitioner on the allegation of his criminal activities which may amount to infraction of general law and order and not the disorder in the Society. He contended that none of the allegations/involvements amount to breach of public order as defined under Section 8 (3) of the Act. He submitted that it is well settled by the Hon'ble Supreme Court in a catena of judgments that there lies a marked distinction between the acts amounting to breach of law and order and the acts prejudicial to the social order.
7. He contended that detaining authority has not mentioned in the impugned order as to how the normal criminal law is inadequate to deal with the alleged acts of the petitioner. He further contended that the petitioner is a government servant, who is subject to the service laws and, as such, it is unbelievable that a government servant can be a repeated offender. The

learned counsel in support of his arguments placed reliance on the authoritative judgments 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, "**Sk. Serajul Vs. State of W.B**", 1975 CriLJ 1328 decided on 09.09.1974, "**Deepak Bajaj Vs. State of Maharashtra and another**", (2008) 16 SCC 14 and the judgments of this Court titled "**Jaffar Ahmad Parray Vs. UT of J&K and another**", WP (Crl) No. 209/2023 decided on 22.03.2024, "**Abdul Majeed Dar Vs. UT of J&K and another**", LPA No. 19/2023 in [WP (Crl) No. 514/2022] decided on 09.06.2023, "**Harvinder Pal Singh alias Rambo Vs. UT of J&K and others**", LPA No. 33/2020, decided on 14.12.2022, "**Mohd. Yousuf & anr. Vs. UT of J&K & Ors.**", 2023 (4) JKH [HC] 370 and "**Roshan Lal Vs. UT of J&K and Ors.**", decided on 07.03.2024.

8. The learned counsel for the petitioner on the support of the afore-referred cases also contended that a pre-execution petition for quashment of the detention order shall lie under the circumstances where the court is satisfied that the impugned detention order suffers from non-application of mind.
9. Per contra, the learned State counsel submitted that the petition is liable to be dismissed as being not maintainable because no exceptional case has been carved out for filing the pre-execution petition. He submitted that such petitions shall have an adverse affect on the criminal justice system because the pre-execution quashment of detention orders shall encourage

the habitual offenders to continue with their illegal activities disturbing the social order. Learned counsel submitted that the Hon'ble Apex Court in case titled "**Additional Secretary to Government of India Vs. Smt. Alka Subash Gadia (1992 SCC (cri) 301)**" has held that an exceptional circumstance shall be made out for interfering with a detention order at pre-execution stage.

The learned State counsel submitted that the petitioner is involved in a series of criminal acts that have led to the registration of case FIR No. 95/2009 under Sections 307/147/148 RPC of Police Station, Kanachak, FIR No. 71/2012 under Sections 279/337 RPC of Police Station, Akhnoor, FIR No. 48/2015 under Sections 341/323 RPC of Police Station, Kanachak, FIR No. 87/2015 under Sections 307/341/147/148/323 RPC of Police Station, Akhnoor, FIR No. 88/2015 under Sections 307/341/147/148/323 RPC & 4/25 Arms Act of Police Station, Akhnoor, FIR No. 41/2018 under Sections 341/323/382/147 RPC & 3/25 Arms Act of Police Station, Akhnoor, FIR No. 173/2021 under Sections 452/504/506 IPC & 3/25 & 4/25 Arms Act of Police Station, Akhnoor. He also contended that DDR No. 09 dated 11-08-2023 came to be maintained in the Police Station Akhnoor pursuant to the information regarding the petitioner's continuous involvement in criminal activities as a drug peddler and property dealer. The learned State counsel prayed for the dismissal of the petition as being premature and not maintainable.

10. I have perused the instant petition, the reply affidavit and have also gone through the detention record produced by the learned State counsel.

11. Keeping in view the aforementioned perusal and the consideration of the rival arguments advanced on both the sides in light of the law on the subject, this Court is of the opinion, that a ground is made out for interfering with the impugned detention order even at this pre-execution stage as the same is lacking the application of mind on the part of the detaining authority.
12. The main issues for addressal in the instant case are (1) Whether the allegations against the petitioner culminating into registration of case FIRs have tendency to be prejudicial to the social order and if the answer is in negative whether the impugned detention order suffers from non-application of mind and (2) Whether a writ petition seeking quashment of the detention order is maintainable at the pre-execution stage.
13. **Taking the first issue for determination, the Court in the facts and circumstances of the case is of the opinion that although the criminal acts of the petitioner which have culminated into the registration of FIR(s) and the consequent final reports/Challan in terms of Section 173 of the Code corresponding to Section 193 of BNSS, no doubt amount to infraction of law and order by falling within the definitions of the relevant offences under IPC/BNS yet the same have not the implication of disturbing the “social order”. The police concerned has already filed the final reports/Challans in all the cases before the competent trial courts and it is also reported that most of the cases stand disposed of with the acquittal of the petitioner. The learned detaining authority has not mentioned in the grounds of detention as**

to why the normal criminal law is inadequate to deal with the petitioner. Further the petitioner being a government servant is subject to the service laws of the government and it is very difficult for a government servant to retain his employment if he is a habitual offender of heinous crimes.

14. It is apt to reproduce the provisions of Section 8 (3) of the Act which defines the social order for the purposes of Section 8 (1) (a) (i) of the Act.

“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]”.

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 also referred to by the learned counsel for the petitioner 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 was 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.

Pushkar Mukherjee Vs. State of West Bengal: A more recent decision at the time, this case further clarified the judiciary's view on

maintaining the balance between State security and individual liberties, reinforcing stringent checks on detention orders.

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, Jammu 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 in place was already pressed into service. The invocation of the provisions of the Act to detain the petitioner rather than to pursue the prosecution against him 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 sustain under law.

26. Now coming to the second issue as to whether a writ petition will lie to challenge a detention order under the Act at the pre-execution stage?
27. This court is of the opinion that if a detention order suffers from patent non-application of mind and is devoid of the subjective satisfaction of the detaining authority, there is no bar for a writ court to quash the same even at the pre-execution stage.

In its opinion, this Court is fortified with the authoritative law laid down by the Hon'ble Apex Court in "**Deepak Bajaj Vs. State of Maharashtra and another**", (2008) 16 SCC 14 in which it has been authoritatively held that although entertaining a petition against preventive detention order at pre-execution stage should be an exception and not a general rule yet if a person against whom the preventive detention order is passed comes to court at pre-execution stage and satisfies the court that such order is clearly illegal, there is no reason why the court should shut its hands and compel him to go to Jail, even though he is bound to be released subsequently because of illegality of such order. It has been held in the case that if a person is sent to Jail, then even if he is subsequently released, his reputation may be irreparably tarnished. Liberty of a person is a precious fundamental right under Article 21 of the

Constitution and should not be likely trespassed. It has been further held in the said case that five grounds mentioned in Alka Subash Gadia's case 1992 1 SCC 496 on which the Court can set aside detention order at pre-execution stage, held illustrative and not exhaustive.

28. The contention of the learned State counsel to the effect that a writ of Habeas Corpus shall not lie unless the petitioner is in detention as in the instant case is not having any substance. This Court in terms of its powers vested under Article 226 of the Constitution is fully competent to issue writs in the appropriate and justified circumstances in the nature of certiorari and mandamus for quashing a detention order found illegal and for restraining the respondents from arresting the petitioner. Since the petition relates to a detention matter, as such, the petition has been labeled as a Habeas Corpus Petition. However, the petitioner has sought the reliefs of quashment of the impugned detention order and the restraint upon the respondents regarding his arrest. It is profitable to reproduce the paras 19 to 22 of the above referred judgment in Deepak Bajaj's case (supra), as under:-

“19. Learned counsel for the respondent submitted that a writ of habeas corpus lies only when there is illegal detention, and in the present case since the petitioner has not yet been arrested, no writ of habeas corpus can be issued. We regret we cannot agree, and that for two reasons. Firstly, Article 226 and Article 32 of the Constitution permit the High Court and the Supreme Court to not only issue the writs which were traditionally issued by British Courts but these Articles give much wider powers to this Court and the High Court. This is because Article 32 and Article 226 state that the Supreme Court and High Court can issue writs *in the nature of* habeas corpus, mandamus, certiorari, etc. and they can also issue orders and directions apart from issuing writs.

20. The words “in the nature of” imply that the powers of this Court or the High Court are not subject to the traditional restrictions as on the powers of the British Courts to issue writs. Thus the powers of this Court and the High Court are much wider than those of the British Courts vide *Dwarka Nath vs. Income-tax Officer, Special Circle, D Ward, Kanpur & Anr.* AIR 1966 SC 81 (vide AIR para 4), *Anadi Mukta Sadguru Shree Muktajee Vandas swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. vs. V.R. Rudani & Ors.* AIR 1989 SC 1607 (vide AIR paras 16 to 18), etc.

21. Secondly, what the petitioner really prays for is a writ in the nature of certiorari to quash the impugned detention order and/or a writ in the nature of mandamus for restraining the respondents from arresting him. Hence even if the petitioner is not in detention, a writ of certiorari and/or mandamus can be issued.

22. The celebrated writ of habeas corpus has been described as “a great constitutional privilege of the citizen” or “the first security of civil liberty”. The writ provides a prompt and effective remedy against illegal detention and its purpose is to safeguard the liberty of the citizen which is a precious right not to be lightly transgressed by anyone. The imperative necessity to protect those precious rights is a lesson taught by all history and all human experience. Our founding fathers have lived through bitter years of the freedom struggle and seen an alien government trample upon the human rights of our citizens. It is for this reason that they introduced Article 21 in the Constitution and provided for the writs of habeas corpus, etc.”

29. The respondent-detaining authority has not during the pendency of this writ petition apprised this Court that the alleged illegal activities of the petitioner are continuing even after the passing of the impugned detention order. A period of more than one year has elapsed since the passing of the impugned detention order and the proximity and live link between the past activities of the petitioner and the object of his detention may have withered down. This Court in its opinion is also fortified with the authoritative judgment of the Hon’ble Supreme Court cited as (2008) 16

SCC 31 in which it has been *inter alia* held, “detention order was in respect of activities allegedly indulged in by appellant as far back as in 2002 – Fair submissions on behalf of respondent-Union of India that since detention order was passed, appellant has not indulged in similar activities – Hence, continuing of detention order today is an exercise in futility and the same should not, therefore, be given effect to any further – However, this will not prevent respondents in future to pass any similar order in the event similar allegations are raised against appellant.”

30. This court is also fortified in its opinion with the authoritative law laid down by a larger Bench of the Hon’ble Supreme Court of India in “**Sk. Serajul Vs. State of W.B**”, 1975 AIR SC 1517, to the effect that undue delay after the alleged incidents before the order of detention was passed and again after order of detention and before actual arrest of the petitioner raises a reasonable suspicion as regards the genuineness of the alleged subjective satisfaction of the detaining authority.
31. This Court is also supplemented in its opinion with an authoritative judgment of the Division Bench of this Court passed in **Mohd. Yousuf & anr. Vs. UT of J&K and Ors. 2023 (4) JKH [HC] 370** in which the impugned detention order was quashed at the pre-execution stage.
32. There is record on the file suggestive of the fact that father of the petitioner had also filed a representation on behalf of the petitioner, which was not considered.
33. 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.

34. For the foregoing discussion, there appears to be merit in the instant petition, which is allowed and consequently the impugned detention order bearing No. 19 PSA of 2023 dated 01.10.2023 passed by the respondent No.3 is quashed. The respondents are restrained to take the petitioner in custody on the basis of the impugned order, set aside. However, this will not prevent the respondents in future to pass any similar order in justified circumstances.

35. The detention record is directed to be returned back to the office of the learned Additional Advocate General concerned against proper acknowledgment.
36. 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

