

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

HCP No. 137/2024

Reserved on 06.02.2025.
Pronounced on:22.05.2025

**Royal Singh @Royal
s/o Manjeet Singh,
r/o H No. 354, Dalpatian
Mohalla, Jammu
Through his father Manjeet Singh
s/o late Shri Dalip Singh.**

Petitioner(s)

Through: Mr. Pridarshi Manish, Advocate
Ms. Anjali Jha, Advocate
Mr. Mandeep Singh, Advocate.

vs.

**1. UT of J&K
Through Pr. Secetary to the Govt
Home Department, Jammu & kashmir.**

**2.District Magistrate, Jammu, Wazarat Road,
Jammu-180001**

3. Senior Superintedent of police, Jammu.

4.Superintendent Cental Jail Kot-Bhalwal, 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, is the order of detention bearing No. PSA 29/2024 dated 03.09.2024 issued by the respondent No. 2, i.e., District Magistrate, Jammu (hereinafter referred to as the detaining authority for short), in exercise of its powers vested under Section 8(1)(a)(ii) of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as the PSA for short), whereby, the petitioner-*detenu* has been ordered to be detained with a view to prevent him from acting in any manner pre-judicial to the maintenance of the

public order for a period to be decided by the Government and detained immediately in Central Jail, Kot Bhalwal.

2. The petitioner-*detenu* has sought the issuance of writs in the nature of certiorari and mandamus for quashment of the impugned detention order and his immediate release from alleged illegal custody.
3. The order impugned has been assailed by the petitioner on the grounds, *inter-alia*, that he was already in judicial custody in connection with the case FIR No. 77 of 2024 of PS Gandhi Nagar when the same was passed against him; that his bail application in the aforementioned case FIR had been rejected by the Court vide order dated 29.08.2024 and, as such, there was no requirement for passing the same as the ordinary law of the land under PSA was sufficient to tackle with him; that the copy of the impugned detention order was served upon the petitioner on 07.09.2024 whilst his being in judicial custody and the documents furnished to him were all in the Urdu language unknown to the petitioner and, as such, he was prevented from making a representation against his detention order at an earliest; that the copies of the statements of the witnesses recorded in criminal cases at the trial and basing the police dossier and the grounds of detention were not also furnished to him translated in his local understandable language, which tantamounts to infraction of the mandatory procedure/rules under Article 22 (5) of the constitution, adversely affecting his right to make an early representation to the learned detaining authority or to the Government; that he was alleged to be involved in as many as 12 case FIRs pertaining to the years 2005, 2007, 2018, 2021, 2022 and 2023 out of which, the he stands already acquitted in two case FIRs

viz. 171/2005 and 44/2009; that case FIR Nos 31/2018, 2008/2018 and 91/2021 came to be registered when he was already under judicial custody thus, exposing the frivolity of the same; that he was arrested in connection with case FIR 247/2009 under Sections 307/34/323 RPC along with Section 3/25 Arms Act of Police Station Gandhi Nagar, Jammu and during the investigation in the said case FIR, offence under Section 302 RPC was added in the case FIR which was finally challaned before the competent court with the petitioner as a co-accused; that the petitioner was convicted and sentenced to imprisonment for life at the conclusion of the trial in the aforesaid case vide judgment dated 10.08.2002; that the petitioner-*detenu* preferred an appeal against the judgment of conviction and order of sentence before this Court during the proceedings of which the main accused Jitender Singh died and petitioner's bail application came to be rejected by this Court vide order dated 25.02.2021; that aggrieved by the rejection of the bail order dated 25.02.2021, he preferred a Special Leave Petition (Criminal) bearing SLP No. 8432/2021 before the Hon'ble Supreme Court which was pleased to admit him to bail vide order dated 06.01.2022 on the ground of his long incarceration of more than 12 years coupled with the unlikelihood of the appeal being heard in near future; that pursuant to his release in the aforesaid case FIR No. vide order dated 06.01.2022 of the Hon'ble Apex Court, he was again frivolously involved by the Police Station Peermitha, Jammu in case FIR No. 10/2022 under Sections 339/382/109/34 of IPC read with 3/25 of the Arms Act with the intention to detain him again; that he was admitted to pre-arrest bail in the said case FIR by Police Station Peermitha Jammu on

02.03.2022 subject to some terms and conditions; that the SHO Police Station concerned, instead of complying with the interim pre-arrest bail order dated 07.03.2022 of the competent court, detained him in his police station; that the impugned order has been passed all most on the same grounds/allegations of his involvement in the different case FIRs as were basing his earlier detention order bearing No. 03 PSA of 2022 dated 12.03.2022; that he, as hereinbefore mentioned, was in custody in connection with case FIR 77/2024 when the impugned detention order was passed; that the learned detaining authority has passed the impugned detention order, inter-alia, on the ground of his involvement in case FIR Nos. 171/2005 and 44/2009 regardless of the fact that he had already been acquitted in the said cases, thus, depicting the clear non-application of mind; that the impugned order is arbitrary, vague and contrary to the provisions of the PSA; that the impugned detention order is the second in line against him which is contrary to the provisions of the PSA as contained under Section 19(2); that there is no live-link or proximity between the alleged case FIRs and the need for passing of the impugned detention order as the relied-upon case FIRs are stale and old-pending in some of which he stands already either acquitted or admitted to bail; that the impugned detention order and the earlier detention order which was suffered in full by him are overlapping as regards the allegations basing the two; that his subsequent detention order is violative of the law laid down by the Hon'ble Apex Court in **“Banka Sneha Sheela vs. State of Telangana (2021) 9 SCC 415”**; that the impugned detention order is violative of the law laid down by the Hon'ble Apex Court in **“Sama Aruna vs. State of Telangana**

(2018) 12 SCC 150” to the effect that in any case, the incidents which are said to have taken place 9 to 14 years earlier, cannot form basis for being satisfied in the present that the *detenu* is going to engage in or make preparation for engaging in illegal activities; that again the impugned detention order is violative of the law laid down by the Hon’ble Apex Court in “**Mallada K Shri Ram vs. State of Telangana and Ors. (2022) SCC On Line SC 424**”; that the apprehension of the UT/respondents that petitioner-*detenu* may repeat the acts/allegations that led to the registration of the case FIRs against him is not justified to sustain the issuance of the detention order, as such, an apprehension pertains to breach of “**law and order**” and not the “**public order**”; that the non-communication of the grounds of detention and the documents basing the same in the language understandable by him leads to the observance of the mandatory procedural requirements guaranteed under Article 22(5) of the Constitution in breach, thereby preventing him from making an effective representation at an earliest against his detention order; that the ordinary law of the land was sufficient in the backdrop of the allegations against him to tackle with him and there was no justification for detaining him under PSA; that the impugned order in the facts and circumstances of the case appears to be punitive rather than preventive as alleged; that it is settled legal position that preventive detention is to be resorted to in the rarest of rare cases as the same has the effect of depriving the liberty of a person and that he is left with no other remedy but to approach this Court through the medium of the instant petition.

4. The learned detaining authority through its reply affidavit has resisted the petition on the grounds that same is not maintainable as none of the fundamental, constitutional, statutory or any legal rights of the petitioner stand violated. That the subjective satisfaction drawn by it in respect of the issuance of the impugned detention order cannot be questioned on the ground of insufficiency of the incriminating material against the *detenu* and the observance of the procedural safeguards by it i.e. the detaining authority leaves a little scope for the *detenu* to assail the impugned order. That the impugned order has been issued as a preventive measure to deter the petitioner from indulging in activities pre-judicial to the maintenance of the social order as the same got necessitated keeping in view the *detenu*'s past conduct. That the writ petition raises pure disputed questions of fact, which cannot be adjudicated upon in a writ petition before this Court. That the writ petition is liable to be dismissed also on the ground that the petitioner did not avail the alternate remedy of filing the representation against his detention order despite being communicated in time. That all the procedural safeguards enshrined under Article 22(5) of the Constitution of India as well as under the provisions of PSA were fully observed while directing the detention of the *detenu*. That the liberty of the *detenu* is subservient to the welfare, safety and interest of the society at large and the detention of the petitioner has been ordered in exercise of the powers vested in it under the PSA. That the respondent No. 3 vide his dossier bearing No. CRB/Dossier/2024/62/DPOJ dated 24.08.2024 communicated to it i.e Respondent No.2 regarding the petitioner being a notorious criminal involved in various offences like assault,

extortion, as well as in heinous offences like murder, attempt to murder, committing crimes by carrying arms/ammunition. That petitioner has earned name of being notorious and hardcore criminal who does not follow rule of law and his activities are detrimental to the public order. That 12 FIRs and 01 istigasa have already been registered against the petitioner as per the details contained in police dossier. That the said case FIRs bear Nos. 171/2005 U/S 341/323 RPC PS Gandhi Nagar, 264/2005 US 382/34/201 RPC P/S Gandhi Nagar, 75/2007 U/S 341/323/34/382 RPC PS Pacca Danga, 44/2009 US 307/341 RPC, 4/25 Arms Act of P/S Peermitha, Jammu, 247/2009 U/S 307/302/34/323 RPC, 3/25/A Act PS Gandhi Nagar, 31/2018 U/S 307 RPC, 3/25 A Act Gandhi Nagar, 208/2018 U/S 382/401/120-B, 666/IT Act, 3/25 A Act PS Bahu Fort Jammu, 91/2021 U/S 307/120-B/149 IPC and 3/25 Arms Act PS Gandhi Nagar, 10/2022 U/S 341/382/109/34 IPC 3/25 Arms Act, PS Peermitha Jammu, Complaint U/S 107/117 (3) Cr.PC P/S Peermitha (Istagasa), FIR No. 186/2023 U/S 457, 380, 506, IPC Chhani Himmat, Jammu, 44/2024 U/S 399, 400, 34 IPC PS Gandhi Nagar, and FIR No. 46/2024 U/S 7/25 Arms Act of PS Peermitha, Jammu.

That the involvement of the petitioner in a series of criminal cases clearly depicts his being a habitual criminal in respect of whom the substantive law is likely to prove insufficient to restrain him from continuing his criminal activities. That the essence of the preventive detention is to prevent a person from doing something illegal rather than to punish him for something he has done. That the Hon'ble Supreme Court in **“Haradhan Saha vs. State of West Bengal (1975) 3 SCC 198”** has laid down that the preventive detention is not

penal in nature aimed at to punish a person but its object is preventive. That preventive detention cannot be considered as parallel to criminal proceedings. That one is punitive action and the other is preventive act. That the petitioner is a habitual criminal and the substantive law is proving insufficient to deter him or curb his criminal activities. That liberty of a citizen is undoubtedly important, but same is to be balanced with the safety of community. That a balance is required to be maintained between the personal liberty of the petitioner and the peace and tranquility of the society. That it has been observed by the Hon'ble Supreme Court in **“Khudi Ram Das vs. State of West Bengal”** that the power of detention is clearly a preventive measure which is taken by way of precaution to prevent mischief in the community. That the satisfaction of the detaining authority has been arrived at, bearing in mind the existence of a live and proximate link between the past conduct of the petitioner and the imperative need to detain him. That after considering all the facts and the information furnished, a satisfaction was arrived at to the effect that petitioner is a grave threat to the society and public order. That the Hon'ble Supreme Court in case titled **“Subharta vs. State of West Bengal (1973) 3 SCC 250”** ruled that the PSA creates in the authority concerned new jurisdiction to make orders for preventive detention on their subjective satisfaction on grounds of suspicion of commission of any future acts pre-judicial to the community in general. This jurisdiction is different from that of judicial trial in courts for offences and of judicial orders for prevention of offences. Even unsuccessful judicial trial or proceeding would, therefore, not operate as a bar to a detention order or render it malafide. The

purpose of preventive detention being different from conviction and punishment and subjective satisfaction being necessary in the former case, while proof beyond reasonable doubt being necessary in the latter.

That it was authoritatively laid down by Hon'ble Supreme Court in case titled **“Secretary to Government (Law & Order) and Anr. vs. Nabila and Another (2015) 12 SCC 127”**, that “in a democratic government run by the rule of law, the drastic power to detain a person without trial for security of the state and/or maintenance of public order must be strictly construed, however, where individual liberty comes into conflict with the interest of the security of the state or maintenance of public order, then the liberty of the individual must give way to the larger public interest of a nation.”

That it was also held by the Hon'ble Apex Court in case titled **“Naresh Kumar Goyal vs. Union of India and Ors. (2005) 8 SCC 276”** that, “an order of detention is not a curative or reformatory or punitive action, but a preventive action avowed object of which being to prevent anti-social and subversive elements from imperiling welfare of the country or security of the nation or from disturbing public tranquility etc., the object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so.

That the law laid down by the Hon'ble Supreme Court in **“Hardaran Saha vs. State of West Bengal”** was followed by this Court in the case titled **“Mian Abdul Qayoom vs. State of J&K and Ors decided on 07.02.2020”**.

5. The petitioner in response to the reply affidavit of the learned detaining authority also filed his rejoinder thereby assailing the grounds taken in the reply affidavit. As per the rejoinder memo, the petitioner, inter-alia, submitted that the preliminary objections taken in the reply affidavit are denied and the contents of the writ petition are reiterated and reaffirmed. That the subjective satisfaction for passing the impugned detention order has been drawn by the learned detaining authority on irrelevant grounds by relying on the cases in which the petitioner had either been acquitted or bailed out. That the old cases have been referred to in the grounds of detention and with regard to the present pertinent case, stringent bail conditions have already been imposed by the competent court. That the impugned detention order has been passed by the respondent No. 2 in violation of the provisions of Section 19(2) of the PSA. That even the cases i.e., FIR No. 171/2005 and FIR No. 44/2009 in which petitioner has been acquitted have been referred and made basis of the impugned order. That the writ petition is the only remedy against the detention order and that too against an order which has been passed on irrelevant grounds contrary to the provisions of PSA. That the non-furnishing of the copies of the detention order in Hindi tantamounts to infraction of the mandatory provisions of Article 22(5) of the Constitution. That the Hon'ble Supreme Court in case of **“Ram Manohar Lohia vs. State of Bihar and Anr reported in (1966) 1 SCR 709”** held that every breach of peace does not lead to public disorder. That when a person can be dealt with in exercise of powers to maintain the law and order, a resort to preventive detention, which is a harsh measure, would not be permissible. That it is settled legal

position that old cases of more than 7 to 8 years cannot be made basis for being satisfied that *detenu* is acting to engage in or make preparation for engaging in such activities. That it was also held by the Hon'ble Apex Court in “**Mallada K Shri Ram vs. State of Telangana and Ors. (2022) SCC Online SC 424**” that old and stale material cannot be made basis for issuance of a preventive detention order and there should be a proximate and live link between the past case and the need to detain the *detenu*. That the impugned detention order has been based on the allegation of involvement of the petitioner in 12 criminal cases. He has already been acquitted in 2 case FIR Nos. 171/2005 and 44/2009. That most of the cases pertain to the years 2005, 2007, 2018, 2021, 2022 and 2023. That three cases are under investigation and three cases bearing Nos. 31/2018, 208/2018 and 91/2021 came to be registered when petitioner was already in lock-up. That the fact of acquittal of the petitioner in the two case FIRs has not been disclosed in the reply affidavit. That the allegation as per case FIR No. 10/2022 of Police Station Peermitha Jammu is totally false as itself stated by the complainant Subash Sangotra on affidavit. That the petitioner was earlier detained in pursuance to the order No. 03 of 2022 dated 12.03.2022 by respondent No. 2 which came to be executed on **02.03.2023**. That petitioner suffered the full period of detention of one year and was released on 11.03.2023. So, there was no justification for passing of the impugned detention order which is hit by the provisions of Section 19(2) of PSA. That the petitioner was already under detention since September, 2009 to January, 2022 and in addition to the same, he also suffered the full preventive detention period of one

year pursuant to the earlier detention order dated 12.03.2022. The learned counsel for the petitioner through the rejoinder affidavit prayed for the quashment of the impugned detention order.

6. I have heard the learned counsel for the parties, who reiterated their respective stands already taken in their respective pleadings.
7. I have perused the instant petition, the reply affidavit filed by the respondent No. 2, the rejoinder filed by the petitioner and the copies of the documents placed on the record. I have accorded an in-depth consideration to the arguments advanced on both the sides.
8. Keeping in view the aforementioned perusal and consideration, in the light of the law on the subject, this Court is of the opinion that it may meet the ends of justice in case the impugned detention order bearing No. PSA 29/2024 dated 03.09.2024 issued by the learned detaining authority is quashed and the petitioner is directed to be released from his preventive detention under the said order.
9. The challenge thrown to the impugned detention order by the petitioner is mainly based on the point of the registration of 12 case FIR Nos. against the petitioner, when in two of the cases, he had already been acquitted of his charge, the maximum of the same being the old stale cases of the years 2005, 2007, 2008, 2018, 2021, 2022 and 2023, three cases being under investigation, three cases bearing Nos. 31/2018, 208/2018 and 91/2021 having been registered when the petitioner was already in the lock-up and in some cases he had already been admitted to bail. That in case FIR No.247/2009 of Police Station Gandhi Nagar, Jammu, the petitioner was convicted and sentenced to life imprisonment as a co-accused/convictee, against which judgment of conviction and order of sentence, he

preferred an appeal before this Court during the pendency of which a bail application on behalf of the petitioner came to be rejected vide order dated 25.02.2021, but, the Hon'ble Supreme Court on SLP(Crl) No. 8432/2021 admitted him to bail subject to some terms and conditions keeping in view his long incarceration for a period of more than 12 years. That the earlier detention order was passed almost on the same grounds/registration of case FIRs and, as such, the impugned detention order is hit by Section 19 (2) of the PSA. That the copies of the detention order and other documents were not furnished to the petitioner written in the language understandable by him which amounts to the infraction of the provisions of Article 22(5) of the Constitution of India and Section 13 of the PSA. That it is not the case of the respondents that petitioner violated the terms and conditions of any bail order. That the ordinary criminal law had already started dealing with the petitioner and the learned detaining authority has not addressed to itself as to how the normal criminal law was insufficient to tackle with the petitioner. That the impugned detention order appears to have been passed in violation of the provisions of Section 19(2) of the PSA and the allegations against the petitioner can be considered of breach of law and order and not of social order.

10. The respondents through the reply affidavit filed in detail by the learned detaining authority supported the impugned detention order on the grounds:-

- I. That petitioner accused was notorious and habitual criminal involved in serious of criminal activities.
- II. That as many as 12 case FIR Nos. stand registered against him and his preventive detention was very imperative in the interest of the society.

- III. That the preventive detention is not in parallel of the criminal proceedings and its aim is only to prevent a person from the commission of an illegal act and not to punish him.
- IV. That the liberty of an individual has to be balanced against the liberty of the entire society and since the repeated illegal acts of the petitioner were detrimental to the society, as such, his preventive detention is very much justified.
- V. That the impugned detention order was passed after proper application of mind by the detaining authority.

11. This court in the facts and circumstances of the case is of the opinion that the allegations of indulgence in the criminal activities against the petitioner are, no doubt, supported by the registration of a series of criminal case FIRs (about 12) against him, but all the allegations covered by the aforementioned case FIRs hereinbefore mentioned can be supposed to constitute **breach of law and order as distinguished from breach of "social order"**.

12. The Hon'ble Apex Court has in a catena of judgments noted the difference between, **"law and order"** and **"public order"**.

13. 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."

14. 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.”

15. 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.”

16. 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.

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.”

17. 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.”

18. 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.

19. 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.”

20. 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||.
21. 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 piece. 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.

Furthermore, 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.

22. **As per the material brought before the learned detaining authority by the Senior Superintendent of Police, Jammu, the alleged activities of the petitioner could have been understood and apprehended as prejudicial to "law and order" and not to "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 mind is discernible in the matter.**

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

23. The earlier detention order bearing No. 3/2022 dated 12.03.2022 was passed on the alleged involvement of the petitioner in a series of criminal case FIRs which are 9 out of 12 case FIRs basing the impugned order. It is an undisputed case of the petitioner that he

suffered the full period of detention under the earlier detention order dated 12.03.2022 i.e., upto 11.03.2023. The petitioner-accused who was convicted in the case FIR No. 247/2009 of PS Gandhi Nagar, Jammu was granted bail by the Hon'ble Apex Court vide order dated 06.01.2022 passed on SLP(Crl). Thereafter, the detention order was passed against him on 12.03.2022 which was fully undergone by him as his challenge to the same before the learned Single and Division Benches of this Court failed. He was released from his first preventive detention order on 11.03.2023. So, it is clear that from the date when he was arrested in case FIR No. 247/2009 of PS Gandhi Nagar, Jammu up to 11.03.2023, he was generally under detention except for some intervening days. So, there appears to be substance in the arguments of the learned counsel for the petitioner that case FIR Nos. 31/2018, 2008/2018 and 91/2021 came to be registered when the petitioner was still under detention. It is appropriate to say that even after release from earlier detention order, case FIR Nos. 77/2024 and 46/2024 came to be registered against the petitioner. So, this Court cannot fully accept the contention of the learned counsel for the petitioner that the impugned detention order was passed wholly on the grounds of earlier detention order. But, this Court is of the opinion on the strength of the afore-detailed cases that the illegal activities of the petitioner even committed after the expiry of the period under previous detention order amount to infraction of law and order and not the public order and, as such, the invocation of powers under Section 8(1)(a) of the PSA does not appear to be proper and illegal.

24. This court is also of the firm opinion that the preventive detention cannot, under all circumstances, be considered as violative of the fundamental right to personal liberty of an individual. The personal liberty of an individual has to be balanced against the collective liberty of the citizens who have an equal fundamental right to live peacefully in the society. Admittedly, the object of the preventive detention is not punitive but preventive meant to be invoked as a quick measure in good faith.
25. In the opinion of the Court, the ordinary criminal law and order machinery was sufficient to deal with the petitioner. The character of the accused and his antecedents is of predominant consideration while considering the bail application on his behalf in a criminal case. It is expected that Criminal Courts, before which the cases against the petitioner are pending trial, will consider such a governing principle while considering any application for bail or cancellation of bail.
26. In *Vijay Narain Singh Vs. State of Bihar*, (1984) 3 SCC 14, the Hon'ble Apex Court has held at Para 32 of the judgments 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.”

27. It is the stand of the petitioner that he was not provided with the copies of the detention order, grounds of detention and other documents in his local language which prevented him from making an early representation against the detention order same appears to be in violation of the *detenu*'s fundamental right under Article 22(5) of the Constitution as well as the infraction of the provisions of Section 13 of the PSA.
28. For the foregoing discussion, the impugned detention order bearing No. PSA 29 of 2024 dated 03.09.2024, passed by respondent No.2 i.e., (District Magistrate) Jammu, is quashed and the petitioner-detenu is ordered to be released from his preventive detention under the aforesaid order now quashed provided he is not involved in any other case.
29. Disposed of.

Srinagar
22.05.2025.

“Ayaz -”

- i) Whether the order is speaking ? yes
- ii) Whether the order is reportable ? Yes

