

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 6th March, 2025
Pronounced on: 27.05.2025

HCP No. 107/2024

Abdul Rashid Sheikh ...Petitioner(s)
s/o Ali Mohammad Sheikh
R/o Lalpora, Kralkhal,
Tehsil Kunzer District Baramulla
Through Ghulam Rasool Sheikh his brother.

Through: Mr. B. A. Dar, Advocate.

vs.

1. UT of J&K, through Principal Secretary to Govt.
(Home) Department Civil Sectt. Srinagar,

2. District Magistrate Baramulla,

3. Senior Superintendent of Police, Baramulla, ...Respondents.

4. Superintendent District Jail, Udhampur.

Through: Mr. Mubashir Malik, Dy. AG.

CORAM:

Hon'ble Mr. Justice Mohd. Yousuf Wani, Judge.

JUDGMENT

1) Impugned in the instant petition, filed on behalf of the petitioner/*detenu*, under the provisions of Article 226 of the Constitution of India, is the order of detention

bearing No. 14/DMB/PSA/2024 dated 4th April, 2024, issued by the respondent No. 2 i.e. District Magistrate, Baramulla (hereinafter referred to as the Detaining Authority for short), in exercise of its powers vested under Section 8 (1) (a) (i) of the Jammu and Kashmir Public Safety Act, 1978 whereby the petitioner/*detenu* was ordered to be detained and lodged in the District Jail Udhampur for a period to be specified by the Government, with a view to prevent him from acting in any manner prejudicial to the security of the State.

2) On behalf of the petitioner/*detenu*, issuance of writs in the nature of Certiorari and Mandamus, have been sought for quashment of the impugned detention order and consequent release of the petitioner/*detenu*.

3) The impugned detention order has been challenged through the medium of the instant petition on the grounds, *inter alia*, that the petitioner/*detenu* was arrested by the Police Station, Kunzar, on 24th December, 2021 from his home and after keeping him in unlawful detention, was falsely implicated in case FIR No. 18/2022 of PS Kunzar under Sections 13 and 39 of Unlawful Activities (Prevention) Act, 1967 (hereafter referred to as “ULA (P) Act” for short); that subsequently the charge sheet i.e. final police report came to be filed before the competent court i.e. Designated Special Court under ULA (P) Act,

Baramulla (Hereinafter to as the Trial Court for short); that the petitioner/*detenu* during the investigation of the case FIR remained firstly in the police custody during the police remand and thereafter in the District Jail, Baramulla, during the period of judicial remand and as an undertrial; that the learned Trial Court admitted the petitioner/*detenu* to bail in the said case FIR vide his order dated 13th March, 2024 passed on the bail application; that subsequent to the release of the petitioner/*detenu* on 14th March, 2024, pursuant to the bail order dated 13th March, 2024, he was, however, called by the SHO Police Station, Kunzar to his police station just only after three days, who accordingly appeared before the SHO on the same day, but was detained in the police station and later booked under the provisions of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as “PSA” for short), vide impugned detention order dated 4th April, 2024, issued by the learned Detaining Authority and lodged in the District Jail, Udhampur; that the petitioner/*detenu* was not furnished the copy of the communication alleged to have been furnished by the respondent No. 3 to the respondent No. 2, as well as the copies of grounds of detention, basing the impugned order, thereby preventing him from making an earliest representation before the learned Detaining Authority as well as the Government; that the grounds of detention have mainly been based on the registration of

case FIR No. 18/2022 of PS Kunzar against the petitioner/*detenu*, in which he was admitted to bail on 13th March, 2024 by the learned Trial Court, but was picked up by the police concerned only after three days of his release in the case FIR and detained by virtue of impugned detention order; that although the petitioner/*detenu* was informed about the impugned detention order, but he was not informed as to by which time he has a right to make a representation to the learned Detaining Authority and to the Government; that neither the copy of the FIR nor the copies of the statements of witnesses recorded during the investigation of the said FIR were furnished to the petitioner/*detenu*, so as to enable him to make an effective representation against his detention; that the learned Detaining Authority was under an obligation to furnish translated copies of the FIR and the statement of witnesses to the petitioner/*detenu*, so as to enable him to understand the same in his local language; that the petitioner/*detenu* is innocent and has never indulged in any activity prejudicial to the security of the State and the allegations leveled against him in the memo of grounds of detention are totally false; that the petitioner/*detenu* has never been an Over Ground Worker (OGW) of any banned outfit, nor has he ever carried out any anti-national activity; that the petitioner/*detenu* has never provided any logistic support to any terrorists or any of their associates; that the

grounds relied upon by the learned Detaining Authority are not only obsolete, stale, ambiguous, indefinite and untrue, but also lack in essential details, thus having no nexus with the purpose sought to be achieved under the provisions of PSA; that the petitioner/*detenu* is the lone bread earner of his family and on account of his continued detention, his family members have been badly suffering for want of maintenance; that the learned Detaining Authority while passing the order impugned, has violated all the procedural safeguards guaranteed under Article 22 (5) of the Constitution of India and the petitioner/*detenu* has got no other alternate or efficacious remedy available to him, except to file the instant petition before this Court.

4) The respondents through their reply affidavit filed by the learned Detaining Authority, have resisted the instant petition on the ground that, same is not maintainable as none of the legal or constitutional rights of the petitioner/*detenu* stand violated. That the petitioner/*detenu* has not approached this Court with clean hands, as the petition has been filed on baseless and untrue grounds. That the detention order has been passed by the learned Detaining Authority in exercise of its powers vested under Section 8 (1) (a) (i) of the PSA, in order to prevent the petitioner/*detenu* from acting in any manner prejudicial to the security of the State, as there was sufficient material against him, suggesting his at large

being prejudicial to the interests of security of the State. That the detention order impugned in the petition has been passed on the subjective satisfaction and upon application of mind by the learned Detaining Authority. That preventive detention is designed to protect the society and the fundamental concept of the preventive detention is to prevent an individual from indulging in any action in future, which may prove detrimental to the security of the State. That the detention order was passed on a reasonable prediction of future behavior, considering the petitioner/*detenu*'s past conduct in the light of the surrounding circumstances. That there is a direct and immediate link between the petitioner/*detenu*'s past conduct and his apprehended future activities. That the collective assessment of the grounds of detention has led the learned Detaining Authority to reach a subjective satisfaction for placing the petitioner/*detenu* under the preventive detention. That the petitioner/*detenu* indulged in various anti-national activities, which facilitated the strengthening of the network of the LeT/TRF and carrying out of anti-national/anti-social activities on the ground. That the activities in which the petitioner/*detenu* has indulged, are highly objectionable and prejudicial, which are adversely affecting the peace and tranquility in the society. That the petitioner/*detenu* was found in close touch with the terrorists of different organizations for the

purpose of carrying out subversive activities. That the petitioner/*detenu* was working as OGW of banned outfit and, as such, his preventive detention was imperative. That he is involved in the case FIR No. 18/2022 under Section 13 and 39 ULA (P) Act, 121 RPC of Police Station Kunzar. That the details of the illegal activities of the petitioner/*detenu* are delineated in the grounds of detention as also in the dossier. That the learned Advisory Board constituted under Section 14 of the PSA upon examination of the case of the petitioner/*detenu*, accorded approval as per its opinion on reference.

The learned Detaining Authority in its reply affidavit has also placed reliance on the authoritative judgments of the Hon'ble Apex Court delivered in ***“Hardhan Saha vs State of West Bengal (1975) 3 SCC 198; Gautam Jain vs Union of India & Anr 2017 (1) J&K Law Times Vol. 1 (SC) P.1; Maneka Gandhi vs Union of India, 1978 AIR SC 597; and State of Bombay vs Atma Ram Shridhar Vaidya AIR 1951 SC 157.”***

5) I have heard the learned counsel for the petitioner Mr. B. A. Dar, Advocate and Mr. Mubashir Malik, learned Deputy Advocate General for the respondents.

6) Learned counsel for the petitioner while reiterating his stand taken by him as per the averments of

the petition, contended that the petitioner/*detenu* is innocent and has never been involved in the alleged activities. That the petitioner/*detenu* has never been an OGW of any banned outfit and he has also never provided any support or assistance to any terrorist(s) as alleged. He contended that the petitioner/*detenu* was taken from his home and involved in case FIR No. 18/2022 by the Police Station, Kunzar. That the learned Trial Court granted him bail in the case FIR on 13th March, 2024, whereafter he was called to the Police Station, Kunzar, after three days of his release in the said case FIR and was again detained under the garb of the impugned detention order dated 4th April, 2024.

That the same case FIR bearing No. 18/2022 registered with Police Station, Kunzar, in which the petitioner/*detenu* was released on bail by the competent Trial Court on 13th March, 2024, has been made the main basis for passing of the impugned detention order. He further contended that the case FIR No. 18/2022 was investigated for the commission of the alleged offences punishable under Section 13 and 39 of the ULA(P) Act and the final police report/charge sheet was also produced by the police concerned before the competent Trial Court, in which the petitioner/*detenu* was granted bail on 13th March, 2024. The learned counsel for the petitioner further contended that since offence under Section 39 ULA(P) Act

falling under Chapter VI of the ULA(P) Act attracted the bar under the provisions of Section 43 (D) (5) of the Act, as such, it is understood that the competent Trial Court granted the concession of bail to the petitioner/detenu for the said offence along with the offence punishable under Section 13 of the Act upon his satisfaction to the effect that accusation against him is not *prima facie* true.

The learned counsel further contended that there appears to be no livelink or proximity between the alleged act of the petitioner/detenu dated 10th February, 2022 leading to the registration of case FIR No. 18/2022 of PS Kunzar and the need for issuance of the impugned detention order dated 4th April, 2024, having a gap of more than two years. He also contended that since his arrest in the case FIR No. 18/2022 on 10th February, 2022, the petitioner/*detenu* remained continuously under detention in the said case FIR, until he was released on 14th March, 2024 in pursuance to bail order dated 13th March, 2024 and was again called to the police station after three days of his release and detained under the impugned detention order dated 4th April, 2024. The learned counsel also contended that the charge against the petitioner/*detenu* as per case FIR No. 18/2022 of PS Kunzar, is totally baseless and fabricated, as no objectionable posters came to be recovered pursuant to his disclosure and identification, which fact is clear from the evidence recorded at the trial

of the case FIR No. 18/2022 of PS, Kunzar, pending disposal before the learned Trial Court.

The learned counsel for the petitioner/*detenu* also contended that the procedural guarantees under Article 22 (5) and Section 13 of the PSA were observed in breach as the copies of FIR and the statements of witnesses recorded during the investigation of the case as well as the grounds of detention, were not furnished to the petitioner/*detenu* in time, thus disabling him to make an earliest representation against his detention. He also argued that while the criminal case was pending trial against the petitioner/*detenu*, there was no justification for his preventive detention in parallel and the respondents even if aggrieved, could have assailed the bail order, which has not been done.

The learned counsel in support is his arguments, placed reliance on the judgments of this Court passed in **“Bashir Ahmad Dar vs Union Territory of J&K and Anr, WP(Crl) No. 06/2021 decided on 15th July, 2022; Imtiyaz Ahmad Chikla vs Union Territory of J&K and Anr, WP (Crl) No. 150/2021, decided on 18th July, 2022; and Sajjid Zahoor Khan vs Union Territory of J&K and Anr, WP(Crl) No. 35/2023, decided on 25th August, 2023.”**

While placing reliance on the aforesaid judgments of this Court, the learned counsel for the petitioner/*detenu* submitted that it has been held in WP (Crl) No. 06/2021 and WP (Crl) No. 150/2021 cited supra that, **“An order of preventive detention becomes unsustainable in law, if the detenu has not been provided with all the material that has formed the basis of detention.”**

The learned counsel for the petitioner prayed for setting aside of the impugned order of detention and release of the petitioner/*detenu*.

7) *Per contra*, the learned counsel representing the respondents Mr. Mubashir Malik, learned Deputy Advocate General also reiterated his stated taken in the reply affidavit. He contended that the detention order impugned in the petition does not suffer from any illegality or perversity, as the same was passed by the learned Detaining Authority in exercise of its powers vested in it, in terms of the provisions of Section 8 (1) (a) (i) of the PSA, upon his due application of mind, having regard to the conduct of the petitioner/*detenu* and his apprehension of repeating the commission of unlawful activities. He submitted that the object of the preventive detention is to prevent an individual from committing any illegal activity prejudicial to the security of the State or the maintenance

of the social order and not to punish him. He further contended that the preventive detention is not the parallel proceeding of a trial, which is held by a court and is concluded on the basis of the evidence. He further contended that the petitioner/*detenu* was working as an upper ground worker of banned outfits, who were carrying out anti-national activities including transportation of terrorists and providing shelter to them. It was also contended by the learned Deputy Advocate General that the learned Advisory Board constituted under Section 14 of the PSA on reference, examined the case against the petitioner/*detenu* and made its opinion as conveyed vide order dated 22nd April, 2024 that the preventive detention of the petitioner/*detenu* appears to be imperative, with a view to prevent him from acting in any manner prejudicial to the security of the State.

He further contended that the procedural formalities as mandated under Article 22(5) of the PSA were complied with by furnishing to the petitioner/*detenu* copies of detention order and the grounds of detention immediately upon his arrest and the grounds of detention were read over and explained to him in his local language. The learned UT counsel further contended that it is admitted by the learned counsel for the petitioner that the petitioner/*detenu* was apprised that he has a right to make a representation to the Government in respect of his

detention. He contended that even the grant of bail in criminal offence cannot debar the Detaining Authority to order the preventive detention of an individual, which appears to be imperative and unavoidable. He also contended that the preventive detention is aimed at to protect the society and that there is immediate and direct link between the petitioner/*detenu*'s past conduct and likelihood of his repetition of the same.

The learned UT counsel while placing reliance on the authoritative judgment of the Hon'ble Apex Court cited as **"Hardhan Saha vs State of West Bengal (1975) 3 SCC 198"** submitted that it has been observed in the said case that, *there is no parallel between the prosecution in a court of law and a detention order under the PSA. That one is punitive action and the other is preventive act. That in one case, a person is punished to prove his guilt and the standard is proof beyond reasonable doubt, whereas in preventive detention, a man is prevented from doing something, which it is necessary for the reasons mentioned in the Act, to prevent.*

On the basis of his reliance placed on the case titled as **"Gautam Jain vs Union of India & Anr 2017 (1) J&K Law Times Vol. 1 (SC) P.1"** the learned UT counsel argued that the personal liberty of an individual may be curtailed, where a person faces a criminal charge

or is convicted of an offence and sentenced to imprisonment. That where a person is facing trial on a criminal charge and is temporarily deprived of his personal liberty owing to criminal charge framed against him, he has an opportunity to defend himself and to be acquitted of the charge, in case prosecution fails to bring home his guilt. That, however, where such a person is convicted of offence, he still has satisfaction of having been given adequate opportunity to contest the charge and also to adduce evidence in his defense. That, however, framers of the Constitution have, by incorporating Article 22(5) in the Constitution, left room for detention of a person without a formal charge and trial. That its aim and object is to save the society from the activities that are likely to deprive a large number of people of their right to life and personal liberty. That in such a case, it would be dangerous for the people to wait and watch, as by the time, the person having dangerous designs, would execute his plans, exposing general public to risk and causing colossal damage to the life and property.

The learned UT counsel while placing reliance on another authoritative judgment of the Hon'ble Apex Court cited as "***State of Bombay vs Atma Ram Shridhar Vaidya AIR 1951 SC 157***" contended that it was *inter alia* observed by the Hon'ble Apex Court in the referred case that, "**As has been generally observed, this is a matter**

for the subjective decision of the Government and that cannot be substituted by an objective test in a court of law. Such detention orders are passed on information and materials which may not be strictly admissible as evidence under the Evidence Act in a court, but which the law, taking into consideration the needs and exigencies of administration, has allowed to be considered sufficient for the subjective decision of the Government.”

The learned UT counsel in support of his contentions also placed reliance on the authoritative judgment of the Hon’ble Apex Court cited as **“Union of India & Anr vs Dimple Happy Dhakad, Criminal Appeal No. 1064/2019 decided on 18th July, 2019”** as also the judgments of this Court passed in **“WP(Crl) No. 251/2019 decided on 7th February, 2020; LPA No. 164/2021 decided on 27th April, 2024.”**

On the strength of the reliance placed on the above referred judgments, the learned UT counsel contended that it has been held in the cited judgments that preventive detention is devised to afford protection to the society. That Court must be conscious that the satisfaction of the Detaining Authority is “subjective” in nature and the court cannot substitute its opinion for the

subjective satisfaction of the Detaining Authority and interfere with the order of detention.

That it was also held in one of the relied upon cases that, **“However, where an individual’s liberty comes in conflict with the interests of the Security of the State or maintenance of public order, then the liberty of the individual must give way to the larger interest of the nation.”**

8) The learned UT counsel prayed for dismissal of the petition.

9) I have perused the instant petition, reply affidavit filed by the respondents and the copies of documents enclosed with the petition. I have also gone through the xerox copy of the detention record produced by the learned counsel for the respondents.

10) It appears from the perusal of the record that admittedly the registration of case FIR No. 18/2022 under Sections 13 and 39 of ULA (P) Act, with Police Station, Kunzar, constitutes as the main basis for issuance of the impugned detention order by the respondents, in addition to the other allegations/inputs against the petitioner/detenu regarding his involvement in the commission of unlawful activities. Perusal of the documents relating to the case FIR No. 18/2022 of PS Kunzar reveals that the petitioner/*detenu* was brought

under formal arrest along with one person, namely, Mohammad Akbar Malik S/o Abdul Gani Malik on 11th February, 2022 within the premises of Police Station, Kunzar, as he had appeared pursuant to the direction of the police concerned in connection with his questioning. So, it is clear that the petitioner/*detenu* remained under detention right from 11th February, 2022 until he was released on bail on 14th March, 2024 pursuant to the bail order dated 13th March, 2024 of the competent Trial Court. It is admitted case of the respondents that the petitioner/*detenu* was arrested in execution of PSA warrant on 6th April, 2024 and lodged in the District Jail, Udhampur. It is the case of the petitioner/*detenu* that after his release pursuant to the bail order dated 13th March, 2024, he was called to the Police Station, Kunzar after three days and was detained thereunder, until he was removed to District Jail, Udhampur on 6th April, 2024. So, he is again continuously under detention since 6th April, 2024 under the authority of the impugned preventive detention order dated 4th April, 2024.

11) It was contended by the learned counsel for the petitioner/*detenu* that the petitioner/*detenu* was bailed out in the case FIR No. 18/2022 of PS Kunzar under Sections 13 and 39 of the ULA(P) Act, only after the competent Trial Court was convinced in the light of the evidence that the allegations/charge against the petitioner/*detenu* does not

seem to be *prima facie* true. However, such an opinion of the learned Trial Court is deemed to have been made for the limited purpose of consideration of his bail order and is always subject to the outcome of the trial. The learned counsel for the petitioner/*detenu* during his arguments *inter alia* contended that no disclosure was made by the petitioner/*detenu* in respect of the objectionable posters and, as such, nothing was recovered at his instance. The learned counsel also contended during his arguments that the petitioner/*detenu* was picked up from his home and booked in the case FIR No. 18/2022 by PS Kunzar, only on the apprehension of his misconduct during the then forthcoming assembly elections in the UT of Jammu and Kashmir.

In the opinion of this Court, there appears to be no proximate or livelink between the circumstances/allegations leading to the registration of case FIR No. 18/2022 of PS Kunzar and need for issuance of the impugned detention order, maintaining a gap of more than two years. The impugned detention order on this account, appears to be suffering from illegality. This Court feels fortified in its opinion by the authoritative judgment of the Hon'ble Supreme Court reported in ***“Rajinder Arora Vs. Union of India and others” AIR 2006 (4) SCC 796, decided on 10.03.2006***”. The relevant paras of the judgment are reproduced as hereunder:-

“The conspectus of the above decisions can be summarized thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the livelink between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinize whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.

Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner.”

12) The learned Detaining Authority has not addressed the aspect as to how a normal criminal law is inadequate to deal with the petitioner/detenu. The petitioner/detenu was admitted to bail by the competent Trial Court after a period of more than two years on 13th March, 2024, with strict conditions appended to the bail order. Said conditions seem to be sufficient to regulate and keep a surveillance on the activities of the petitioner/*detenu*. It is not the case of the learned Detaining Authority that the bail order dated 13th March, 2024 was assailed before any competent forum and prayer

of the UT for cancellation of the bail was not allowed. It is also not the case of the respondents that the petitioner/*detenu* immediately after his release in the case FIR No. 18/2022 of PS Kunzar pursuant to the bail order dated 13th March, 2024, indulged in any illegal activity, with any specific allegation. On this account also, the issuance of the impugned detention order was not unavoidable.

13) In **“*Rekha Vs. State of Tamil Nadu, (2011) 5 SCC 244*”**, the observations made by the Hon’ble Apex Court at 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.”

14) 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.”

15) 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.”

16) It is the case of the petitioner/detenu that he was working as a labourer for sustenance of his family and the said fact of his being laborer is also borne out from the grounds of detention. The continued detention of the

petitioner/detenu may have affected his family in terms of maintenance.

17) This Court is also in full agreement with the authoritative law relied upon by counsel for the respondents Mr. Mubashir Malik, learned Deputy Advocate General to the effect that the object of the preventive detention of an individual is preventive in nature and not punitive. Admittedly, the preventive detention cannot be supposed to be a parallel proceeding. The object of the preventive detention is to deter a person in advance from indulging in any anti-national or anti-social activities prejudicial to the security of the State and/or interests of the society. Admittedly, where an individual liberty and the right of the entire society to a peaceful life are pitted together, the individual liberty has to give way to the social interest or the interest of the State, as the case may be. However, as hereinbefore mentioned, there does not appear to be a livelink between the alleged acts of February, 2022, resulting in the registration of case FIR No. 18/2022 with Police Station Kunzer and the need for issuance of the impugned detention, order with a gap of more than two years. It is also not the case of the respondents that the petitioner/detenu upon his release pursuant to the bail order, repeated the alleged unlawful activities.

18) The perusal of the record reveals that the petitioner/detenu was detained under preventive detention immediately after his release in the case FIR.

19) The preventive detention needs 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.

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 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.”

21) For the foregoing discussion, this Court is of the opinion that it may meet the ends of justice in case the impugned detention order bearing No. 14/DMB/PSA/2024 dated 4th April, 2024, issued by the respondent No. 2, is set aside and the petitioner/*detenu* is ordered to be released from his preventive detention under the aforesaid order.

22) **It is accordingly ordered.**

23) Copy of this judgment be forwarded to the Superintendent Jail concerned, with the direction to release of petitioner/*detenu* from his custody under the

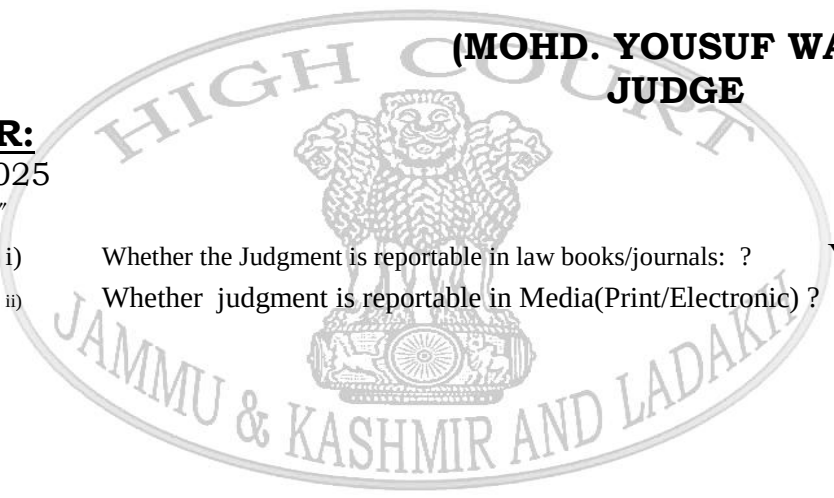
aforesaid order, set aside, provided he is not involved in any other case.

24) Xerox copy of the detention record is ordered to be returned to the learned Deputy Advocate General concerned.

25) **Disposed** of.

SRINAGAR:
27th May, 2025
"Ayaz/TF Hamid"

- i) Whether the Judgment is reportable in law books/journals: ? Yes.
- ii) Whether judgment is reportable in Media(Print/Electronic) ? No



(MOHD. YOUSUF WANI)
JUDGE