

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR**Case No. HCP No. 175/2024**Reserved on 27.02.2025
Pronounced on: 02. 04.2025

Irfan Nazir aged (33) yrs
(alias Veerapan)
s/o Nazir Ahmad Dar
r/o Dar Mohalla, Rawalpura, Srinagar
through Brother Ishfaq Nazir Dar
aged (30) yrs.

..... Petitioner(s)

Through: Mr. Mujeeb Andrabi, adv.

Vs.

1. UT of Jammu and Kashmir through
Commissioner Secretary,
Department of Home, Civil
Secretariat, Srinagar/Jammu.
2. District Magistrate, Srinagar.
3. Sr. Superintendent of Police,
Srinagar.

Through: Mr Mubashir Malik Dy AG

..... Respondent(s)

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. DMS/PSA/07/2024 dated 04.04.2024 passed by the respondent No.2 (hereinafter referred to as the “detaining authority”, for short), while invoking his powers under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as the “Act”, for short), whereby the petitioner/detenu has been ordered to be detained with a view to prevent him from acting in any manner prejudicial to the maintenance of public order and lodged in Central Jail, Srinagar.

2. The petitioner/detenu has sought the issuance of writs 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 on the grounds *inter alia*, that petitioner is a citizen of India and domicile of UT of J&K and as such entitled to legal and fundamental rights guaranteed under the Constitution of India; that he is filing the petition through his brother on account of his inability to do the same in person as being under detention; that the petitioner-detenu is alleged to be involved in criminal cases out of which three case FIRs were already registered against him in the year 2016 and the last one has been falsely and frivolously registered against him in the year 2024 under petty offences i.e 341, 323 IPC; that all the case FIRs have been registered only in one Police Station i.e P/S Saddar; that the petitioner /detenu has been already admitted to bail in all case FIRs, which as such have no nexus or proximity with the impugned detention order; that the impugned detention order appears to have been passed against the wrong person as the petitioner/detenu is a peace loving citizen having never indulged in any sort of anti-social offenses or the offences under NDPS Act, thus alleging him as “Veerapan” is highly condemnable; that the Detaining Authority has not applied its mind before passing the impugned detention order and has just acted upon the police dossier submitted by the concerned Superintendent of Police; that the grounds of detention appear to be replica of police dossier, thus again speaking of non application of mind by the detaining authority; that the petitioner/detenu has not been furnished with the record/documents relied upon by the detaining authority, thus observing in breach the mandatory procedural requirements under Article 22 clause (5) of

the Constitution and that the representation made by him has not been considered.

4. The respondents through the counter affidavit filed by the respondent no.2 being the detaining authority have resisted the instant petition on the grounds that none of the legal or fundamental rights of the petitioner-detenu stand violated by the respondents and as such the petition deserves dismissal for want of any cause of action. That the petitioner/detenu has not approached the court with clean hands and the pleas raised by him in the petition are baseless and concocted. That the entire process of detention right from the initial decision to detain the petitioner-detenu has been carried out with the utmost fairness and in accordance with the procedure as laid down by Act. That the petitioner/detenu has been furnished with the copies of the documents and as such there is no violation of the provisions of Article 22 (5) of the Constitution as alleged. That the petitioner/detenu was found repeatedly committing the anti-social offences which prompted the respondents to decide his preventive detention in the interest of the society. That the petitioner/detenu was instigating the youth of the society to get involved in the menace of drug addiction. That the petitioner's/detenu's detention was ordered after a proper and in-depth scrutiny and perusal of the record appearing against him and as such there is no non-application of mind as alleged. That the objective sought to be achieved by preventive detention is to detain a person and not to punish him for something he has done. The satisfaction of the detaining authority includes a requisite probability or likelihood of the detenu acting in any manner prejudicial to the interest of the society. That the Hon'ble Apex Court in "***Haradhan Saha v. State of W.B* (1975) 3 SCC 198; *Secretary to Govt, Public (Law and order) and anr vs. Nabila and anr* (2015) 12 SCC 127; *Debu Mahato v. State*, 1974 AIR (SC) 816; *Ashok Kumar vs. Delhi Administration and ors* AIR 1982 SC**

1143,” 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.

5. I have heard learned counsel for the parties.
6. Learned counsel for the petitioner, Mr. Mujeeb Andrabi, 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 application of mind and subjective satisfaction on the part of the detaining authority. He contended that the petitioner is alleged to be involved in four FIRs but the fact is that he has already been enlarged on bail and is facing the trial. That the police authorities called him and detained him unnecessarily without reflecting any cause for his illegal detention. The learned counsel very vehemently contended that the detaining authority has misused its power vested in it under the Act by ordering the preventive detention of the petitioner/detenu on the allegation of his prejudicial activities which may amount to infraction of general law and order 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. Learned counsel for petitioner also 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. 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 CriL J 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 anr”, (writ petition crl No. 209/2023) decided on 22.03.2024 “ Ab. Majid Dar vs. UT of J&K and anr”, LPA No. 19 of 2023 (in writ petition criminal No. 514 of 2022) decided on 09.06.2023,” “Harvinder Paul (alias Rambo) vs. UT of J&K and ors”, LPA 33 of 2020, decided on 14.12.2022, “Mohd Yousuf and another vs. UT of J&K and ors”, 2023 (4) JKH [HC] 370 and “Roshan lal vs. UT of J&K and ors”, decided on 07.03.2024.”

8. That the learned counsel further contended that admittedly four case FIRs are alleged to have been registered against the petitioner-detenu which are pending trial and in which he has already been released on bail. Three out of the case FIRs pertaining to same police station Sadder having been registered in the year 2016. Last FIR was registered in the year 2024 by the concerned police station for some petty offences and as such the petitioner should not have been detained under the Act as his detention violates his fundamental rights especially guaranteed to him under Article 21 of the Constitution.
9. The learned counsel for the petitioner prayed for the quashment of the impugned detention order and release of the detenu.
10. Per contra, the learned UT counsel for the respondents vehemently submitted that the learned detaining authority was compelled to invoke the provisions of the Act and to detain the petitioner whose activities were highly prejudicial to the maintenance of the public order. He contended that all the procedural requirements mandated under the Constitution as well as under the Act were fully observed. The learned counsel further submitted that it is settled law that it is not the quantity of the incriminating material which is required for

invoking the provisions of the Act but the gravity of the actions of the detenu. He contended that having regard to the conduct of the detenu, there was every reasonable apprehension that the detenu if kept at large will likely disturb the social order in the locality. The learned State counsel prayed for the dismissal of the writ petition.

11. I have perused the instant petition, the reply affidavit and have also gone through the detention record produced by the learned UT counsel.
12. 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 as the same is lacking the application of mind on the part of the detaining authority.
13. The main issue for redressal in the instant case is (1) whether the allegations against the petitioner culminating into registration of case FIR(s) 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.
14. Taking the 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/detenu which have culminated into the registration of case FIR(s) and the consequent final reports/Challans 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 final report/challan in all four case FIRs before the competent trial courts and it is also reported that the petitioner stand already enlarged on bail in all the case FIR numbers. The learned detaining authority has not mentioned in

the grounds of detention as to how the normal criminal law is inadequate to deal with the petitioner, when he was already facing trial in the FIRs framed against him.

15. It is apt to reproduce the provisions of Section 8 (3) of the Act which define the social order for the purposes of Section 8 (1) (a) (i) of the Act for ready reference:-

“8. Detention of certain persons

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

[(a) omitted.

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

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

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

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

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

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

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

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

16. The Hon’ble Apex Court has in a catena of judgments noted the difference between, “law and order” and “public order”.

17. 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.”

18. 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 a 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.”

19. 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. ***”

20. 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 observed 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.”

21. 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) observed 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.”

22. 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.”

23. This Court is also fortified in its opinion with the recent authoritative judgment of the Hon’ble Apex Court cited as **Ameena Begum vs. The State of Telagana**

& Ors., Criminal Appeal arising out of SLP No. 8510 of 2023 decided on 04.09.2023 in which it has been held at para 40 of the judgment as under:-

“40. On an overall consideration of the circumstances, it does appear to us that the existing legal framework for maintaining law and order is sufficient 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”. This, 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.”

24. 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 Act (bold in original). 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”.
25. 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 preventing detention under Article 32 of the Indian Constitution. The said case involved a collective petition filed 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 whether the grounds for detention genuinely pertained to maintaining public order or were merely related to general law and order. The Hon'ble Supreme Court meticulously examined each petitioner's grounds for detention, categorizing them based on their relevance to "public order." The Court invalidated detention orders where the activities alleged did not directly threaten public order but were instead typical criminal offences such as theft, assault and property damage. Conversely, detention was upheld only when 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 relevant 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 threatened 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.

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.

26. So it is reiterated that the material brought before the learned detaining authority by the Senior Superintendent of Police, Srinagar 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 amounted to infraction of laws for which the legal mechanism was all sufficient to deal with. The invocation of the provisions of the Act to detain the petitioner rather than to deal with the petitioner under the general criminal law appears to be an unjustified exercise tantamounts 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.

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

This Court in cases titled “**Naba Lone Vs. District Magistrate, 1988 SLJ 300**” and “**Mohd. Farooq through Mohd. Yousuf Vs. UT of J&K and others, WP (CrI) No. 17/2023**”, decided on 03.09.2024 has laid down the law to the effect, “the grounds of detention supplied to the detenu is a copy of dossier, which was placed before the District Magistrate for his subjective

satisfaction in order to detain the detenu. This shows total non-application of mind on the part of the Detaining Authority as he has **dittoed** the Police directions without applying his mind to the facts of the case.”

28. The preventive detentions need to be passed with great care and caution keeping in mind that a citizen's 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.

29. For the foregoing discussion, there seems to be merit in the instant petition, which is allowed and consequently the impugned detention order bearing No. DMS/PSA/07/2024 dated 04.04.2024 passed by the respondent No.2 i.e. District Magistrate, Srinagar is quashed. The petitioner/detenu is directed to be released forthwith from his preventive detention in the instant case.

30.The detention record is directed to be returned to the Dy Advocate General concerned against proper acknowledgment.

31.Disposed off.

(Mohd. Yousuf Wani)
Judge

Srinagar
02/04/2025
Ayaz Secy.

Whether the Judgment is speaking: Yes/No
Whether the Judgment is reportable: Yes/No

