Sr.No. 26

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP (Crl) no. 7/2022

Reserved on: 03.11.2022
Pronounced on : 16.12.2022

Royal Singh ….. Applicant/Petitioner(s)

Through: Mr. K S Johal, Sr. Advocate with
Mr. Supreet Singh Johal, Advocate
Mr. D S Saini, Advocate

Vs

UT of J & K and others ….. Respondent(s)

Through: Mr. Pawan Dev Singh, Dy. AG

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

ARGUMENTS ON BEHALF OF THE PETITIONER.

1. Through the medium of the present writ petition, the petitioner is seeking quashment of the impugned detention order bearing no. 03-PSA of 2022 dated 12.03.2022 passed by the respondent no. 2 (District Magistrate, Jammu), whereby the detenue, namely, Royal Singh @ Royal S/o Manjeet Singh R/o H.No. 354 Dalpatian Mohalla, Jammu has been placed in preventive detention under Section 8(1)(a) of the Jammu & Kashmir Public Safety Act, and detained the petitioner in Central Jail Kot Bhalwal, Jammu.

2. It is contented by learned counsel for the petitioner that the impugned detention order has been passed mechanically and without application of mind. It is further been contended that the detention authority has passed the

detention order on the basis of the criminal cases registered against the petitioner.

3. It is further pleaded by learned counsel appearing for the petitioner that the respondents have not supplied the grounds, copies of the FIRs, statement of witnesses or seizure memos, challan or any other material regarding the registration of the criminal cases against the petitioner.

4. It is submitted by learned counsel for the petitioner that the petitioner was arrested in FIR no. 247/2009 filed under Section 307/34/323 RPC 3/25 Arms Act, registered with the Police Station Gandhi Nagar, Jammu and the said offence under Section 307 was converted into Section 302 and, as such, the petitioner was arrested in 2009 in the aforesaid FIR and the said criminal challan was pending before the Court of 2nd Additional Sessions Judge, Jammu.

5. It is further urged by learned counsel for the petitioner that the petitioner was convicted and sentenced for life imprisonment vide judgment dated 10.08.2020 and against the said judgment and order of conviction and sentence, the petitioner has filed the appeal before this Court.

6. Pursuant thereto, the petitioner filed the bail application in the pending appeal before this Court and the bail application of the petitioner vide order dated 25.02.2021 was rejected by this Court.

7. It is further urged by learned counsel for the petitioner that the petitioner filed a special leave to appeal bearing no. (CRL) No.8432/2021 before the Hon'ble Supreme Court of India against the order dated 25.02.2021 passed by this Court and the Apex Court granted bail to the petitioner vide its

order dated 06.01.2022 and the petitioner was, accordingly, directed to be enlarged on bail on the terms and conditions to be imposed by the trial court.

8. It is averred in the writ petition that the petitioner was released by the trial court in terms of the aforesaid order dated 06.01.2022 passed by the Hon'ble Supreme Court of India.

9. It is contended by Mr. K S Johal, learned senior counsel appearing on behalf of the petitioner that the S.H.O. Police Station Peer Mitha, Jammu involved the petitioner in false case registered vide FIR no. 10/2022 under Section 339/382/109/34 IPC, 3/25 Arms Act only with the intention to detain the petitioner in the lockup.

10. Pursuant thereto, the petitioner was granted interim bail by the learned Sessions Judge, Jammu vide order dated 07.03.2022 subject to furnishing the bail bond and personal bond to the tune of Rs. 50,000/- each with the condition that that the petitioner shall appear before the investigating officer from 10:00 AM to 12:00 Noon daily and shall cooperate with the investigation and shall not influence the prosecution witnesses.

11. It is submitted on behalf of the petitioner that on 10.03.2022, the petitioner filed the bail application through his father to court of learned Sub-Judge Judicial Magistrate, Jammu and the court sought the report from the said Police Station and the police concerned submitted the report to the court that the petitioner is arrested in FIR No. 208/2018 under Sections 382, 401,120-B RPC, 66/IT Act, 3/25 Arms Act since 09.03.2022.

12. It is further pleaded that the petitioner (detenue) was falsely involved in all the nine FIRs registered in different Police Stations.

13. The brief case of the petitioner is that respondent no. 2 has passed the impugned order of detention without application of mind in lieu of the fact that the petitioner has already stood acquitted and the respondents have not appreciated the fact that the petitioner was in judicial lockup since September 2009 to January 2022, as such, FIR no. 31/2018, FIR no. 208/2018 & FIR no. 91/2021 were registered falsely, when the petitioner was already in judicial lockup and respondent no. 2 should have considered the said facts before passing the impugned detention order against the petitioner and detaining him in the Central Jail Kot Bhalwal, Jammu which shows total non-application of mind on behalf of the detaining authority.

14. The further case of the petitioner is that the order impugned has been issued by respondent no. 2 without appreciating the true material facts and without recording its grounds of satisfaction and, thus, the petitioner's liberty has been curtailed illegally and unconstitutionally.

15. It is submitted that the respondents have not provided the grounds on which the impugned detention order was passed and the respondents have also not supplied copy of all the FIRs. Statement of witnesses, copies of the challan of each FIR, seizure memos or any other material which was required to be supplied/communicated to the petitioner so that the petitioner could make the effective representation to the Government.

16. It is contended by learned counsel for the petitioner that since the petitioner has not been provided the relevant material on the basis of which the impugned order was passed, he has been denied of effective representation and the action of the respondents, as such, is in contravention to the Section 13 of

the Public Safety Act, 1978. Learned counsel for the petitioner has pleaded that the respondents have passed the impugned order without adhering to the provisions of the Public Safety Act and, as such, the order impugned cannot sustain the test of law and is liable to be quashed.

17. It is the specific stand on behalf of the petitioner that the procedural and constitutional safeguards have not been followed by the respondents while issuing the impugned order of detention.

18. Mr. D S Saini, learned counsel for the petitioner contends that the grounds urged in the order of detention is the reproduction of the grounds urged in the dossier and, thus, detaining authority has not applied its mind before passing the said order.

19. It is further pleaded by learned counsel for the petitioner that no time has been specified in the order of detention and, accordingly, the order of detention is liable to be quashed as no time has been specified in the aforesaid order.

20. Mr. Saini has further contended that the action of the respondents is violative of Section 13 of the Public Safety Act. He further contends that the respondents were under legal obligation to supply/provide the impugned detention order alongwith all FIRs, grounds of detention. statements of the witnesses in all FIRs, copies of Challans in all the FIR, seizure memos/recovery memos in each FIR and dossier within 05 days from the date of detention order or in exceptional circumstances and for reasons to be recorded in writing not later than 10 days from the date of detention so that the petitioner could be afforded the earliest opportunity to make the effective

representation to the Government against the impugned detention order but herein the present case, the petitioner was detained on 12.03.2022 under section 8 (1)(a) of the Public Safety Act on the basis of the impugned detention order dated 12.03.2022 whereas the fact is that on the said date, the petitioner was already arrested by the police in FIR no. 208/2018 with Police Station Trikuta Nagar (Bahu Fort), Jammu.

21. As per learned counsel for the petitioner, order of detention was passed on 12.03.2022 and the same was supplied to the petitioner on 23.03.2022 i.e. after 11 days from the date of passing of the detention order and, thus, the aforesaid action of the respondents is violative of Public Safety Act.

ARGUMENTS ON BEHALF OF THE RESPONDENTS.

22. *Per contra,* Mr. Pawan Dev Singh, learned Dy.AG appearing for the respondents vehemently argued that the petitioner (detenue) being a very dreaded criminal, desperate character and habitually indulging in act of violence, as such, falls under the category of being a threat to the public order, peace and stability in the society and, accordingly, was detained after following due process of law and all the procedural formalities as envisaged under the Public Safety Act.

23. It has been further urged by learned counsel for the respondents that the ordinary law has not proved adequate in order to deter the petitioner from indulging in repeated acts of aforesaid nature, therefore, the law enforcing agency has been left with no other option but to request for invoking the provisions of the Public Safety Act for detaining the petitioner so that he is

prevented from indulging in the activities which are prejudicial to the peace and the public order.

24. It is contended by the learned counsel for the respondents that the detaining authority has passed the detention order well within the parameters of law as the petitioner was having a criminal bent of mind and has not mended himself, therefore, authorities were left with no other option but to issue the order of detention.

25. It has been further urged by counsel for the respondents that the impugned order of detention does not suffer from any malice or legal infirmity, as such challenge thrown to it is totally misdirected and misconceived, hence, on this score also, the respondents have sought dismissal of the writ petition.

26. It is further urged by the respondents that the petitioner has not availed alternate remedy of filing representation despite his detention and providing all the material to him well within time The petitioner, as such, is estopped under law to assail the order of detention by passing the alternate remedy.

27. It is specifically pleaded by the respondents that the detention order which came to be executed on the same day i.e. 12.03.2022 has been served to the petitioner which is evident from the execution report along with the grounds of detention and all the material was read over and explained to the petitioner in Urdu/Kashmiri language which he fully understood and the said material comprising of 188 leaves which formed the basis of detention was furnished to him against proper receipt.

28. It has further been contended by learned counsel for the respondents that the petitioner was informed that he can make a representation against the detention order, if he so desires but the petitioner failed to avail the said remedy deliberately and on the other hand, the petitioner has approached this Court by way of filing the present writ petition.

29. Learned counsel for the respondents further submit that the detenue is a very dreaded criminal with a desperate character and **habitually indulging in act of violence** such **as murder, attempt to murder, assault, carrying illegal arms/ammunition, extortion etc and is also a history sheeter in the records of Police Station Peer Mitha, Jammu** and is involved in **numerous activities of serious and heinous nature over a period of time and has spread a reign of terror among the peace loving people of the area and his anti-social activities are prejudicial to the maintenance of the public order.** It has further been urged by the respondents that keeping in view all these facts and circumstances, the order of detention came to be passed by the detaining authority after arriving at a subjective satisfaction.

30. Learned counsel for the respondents has given a detailed list of the criminal cases which have been registered against the petitioner in different police stations of Jammu Zone which is reproduced as under:-

1) Case FIR no. 171/2005 U/S 341/323 RPC, registered at P/S Gandhi Nagar, Jammu

2) Case FIR no. 264/2005 U/S 382 RPC, registered at P/S Gandhi Nagar, Jammu

3) Case FIR no. 75/2007 U/S 341/323/382/34 RPC, registered at P/S Pacca Danga, Jammu

4) Case FIR no. 44/2009 U/S 307/341 RPC 4/25 Arms Act,, registered at P/S Peer Mitha, Jammu

5) Case FIR no. 247/2009 U/S 302/34 RPC 3/25/27 Arms Act, registered at P/S Gandhi Nagar, Jammu

6) Case FIR no. 31/2018 U/S 307 RPC 3/25 Arms Act, registered at P/S Gandhi Nagar, Jammu

7) Case FIR no. 208/2018 U/S 382/401/120-B RPC, 66-D IT Act, registered at P/S Bahu Fort, Jammu

8) Case FIR no. 91/2021 U/S 307/120-B 149 RPC 3/25 Arms Act, registered at P/S Bahu Fort, Jammu

9) Case FIR no. 10/2022 U/S 341/382/109/34 IPC 3/25 Arms Act, registered at P/S Peer Mitha, Jammu

31. As per record, on the basis of dossier submitted by the SSP Jammu, the District Magistrate Jammu after having satisfied, passed the impugned order of detention against the detenue under Section 8(1)(a) of J & K Public Safety Act 1978. The District Magistrate requested the Principal Secretary to Government, Home Department, J & K Government, Jammu to consider and approve the impugned detention order. The impugned order of detention was executed and the detenue was lodged in Central Jail Kot Bhalwal Jammu by Inspector Nayat Ali of Police Station Bahu Fort. The detenue was supplied the copy of detention order, notice of detention, grounds of detention, dossier of detention, copies of FIR, statements of witnesses and other related relevant documents (188 leaves in total) by the executing officer against the proper receipt. The contents of detention warrant and grounds of detention has been read over to the said detenue in English and explained him in Urdu/Kashmiri language which he understood fully. The detenue was apprised about his right to make representation to the Government as well as detaining authority

against the detention order. The Government vide order no. 339 dated 16.03.2022 confirmed the detention of the detenue with the plea that detention shall be determined on the basis of Advisory Board. Further three months detention period from 12.03.2022 onwards was granted by the government vide order no. 890 of 2022 dated 04.05.2022. Learned counsel submits that second quarter (3 months) further detention was granted by the Govt. vide OB no. 1109/2022 dated 04.06/2022. He further contends that three months further detention was directed by the Govt. vide no. 2112 of 2022 dated 06.09.2022 which expired on 11.12.2022.

32. Mr. Pawan Dev Singh, learned Dy. AG vehemently argued that the detenue is a habitual criminal having a criminal background, with repeated indulgences in criminal, heinous offences and anti-social activities that disturbs the psyche of society and if he is set free in the society, he would again indulge in such activities and, thus, possesses a serious threat to the public peace and tranquility in the society.

33. It has been further urged by learned counsel for the respondents that the ordinary law has not proved adequate in order to deter the petitioner from indulging in repeated acts of aforesaid nature, therefore, the law enforcing agency has been left with no option but to request for invoking the provisions of the Public Safety Act for detaining the petitioner, so that, he is prevented from indulging in the activities which are prejudicial to the peace and the public order. Accordingly, the respondent no. 2, i.e., District Magistrate, Jammu after going through the report of the sponsoring agency and while exercising the powers under Section 8(1)(a) of the Public Safety Act issued the

order of detention, whereby the detenue was directed to be lodged in the Central Jail Kot Bhalwal, Jammu for a maximum period with a view to prevent him from indulging in such activities and also to maintain peace in the society.

34. The further case of the respondents is that on 29.01.2022, Police Station Peer Mitha Jammu lodged a complaint under Section 107/117 (3) Cr.P.C. against the detenue, because the detenue who was granted bail was violating the terms and conditions of the bail as he started threatening the people of area of dire consequences in order to make his presence felt and to create a sigh of fear amongst the local public of the area.

35. It is further submitted that respondent no. 2 after going through the report of the sponsoring agency and after applying its mind, decided to issue the order of detention detaining the petitioner under the J & K Public Safety Act with a view to check his illegal/criminal activities which were posing continuing threat to the communal harmony of all the areas of the Jammu Division.

LEGAL ANALYSIS

36. Right of personal liberty is most precious right, guaranteed under the Constitution. It has been held to be transcendental, inalienable and available to a person independent of the Constitution. A person is not to be deprived of his personal liberty, except in accordance with procedures established under law and the procedure as laid down in **Maneka Gandhi v. Union of India, (1978 AIR SC 597),** is to be just and fair. The personal liberty may be curtailed, were a person faces a criminal charge or is convicted of an offence and sentenced to imprisonment. Where a person is facing the trial on a criminal charge and is

temporarily deprived of his personal liberty because of the criminal charge framed against him, he has an opportunity to defend himself and to be acquitted of the charge in case the prosecution fails to bring home his guilt. Where such a person is convicted of offence, he still has satisfaction of having been given the adequate opportunity to contest the charge and also adduce the evidence in his defence.

37. The incorporation of Article 22 in the Constitution left a room for detention of person without a formal charge and trial and without such person held guilty of an offence and sentenced to imprisonment by a competent court. Its aim and object are to save the society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case, it would be dangerous for the people at large, to wait and watch as by the time ordinary law is set into motion, the person, having the dangerous designs, would execute his plans, exposing the general public to risk and causing colossal damage to life and property. It is, for that reason, necessary to take preventive measures and prevent the person bent upon to perpetrate the mischief from translating his ideas into action. Article 22 of the Constitution of India, therefore, leaves scope for enactment of preventive detention laws. Therefore, where individual liberty comes into conflict with an interest of the security of the State or public order, then the liberty of the individual must give way to the larger interest of the nation. I am fortified by the observations made by the Hon'ble Supreme Court in **Sunil Fulchand v. Union of India (2003)3 SC C 409.**

> "33(1) Personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. It was for this reason that the Founding Fathers enacted the safeguards in Article 22 in the Constitution so as to limit the power of the State to detain a person without trial, which may otherwise pass the test of Article 21, by humanizing the harsh authority over individual liberty. In a democracy governed 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 an interest of the security of the State or public order, then the liberty of the individual must give way to the larger interest of the nation."

38. In **"Mohd. Subrati alias Mohd. Karim v. State of West Bengal (1973)3 SCC 250",** the Hon'ble Supreme Court has held as under:-

> "7.No doubt, the right to personal liberty of an individual is jealously protected by our Constitution but this liberty is not absolute and is not to be understood to amount to licence to indulge in activities which wrongfully and unjustly deprive the community or the society of essential services and supplies. The right of the society as a whole is, from its very nature, of much greater importance than that of an individual. In case of conflict between the two rights, the individual's right is subjected by our Constitution to reasonable restrictions in the larger interest of the society."

39. The essential concept of the preventive detention is that the detention of a person is not to punish him for something he has done, but to prevent him from doing it. The basis of the detention is satisfaction of the Executive of a reasonable probability of likelihood of the detenue acting in a manner similar to his past acts and preventing him by detention from doing the same. It is pertinent to mention here that the preventive detention means the detention of a person without trial in such circumstances that the

evidence in possession of the authority is not sufficient to make a legal charge or to secure conviction of the detenue by legal proof, but may still be sufficient to justify his detention. **[Sasthi Chouwdhary v. State of W.B (1972) 3 SCC 826].**

40. While the object to the punitive detention is to punish a person for what he has done, the object of the preventive detention is not to punish an individual for any wrong done by him, but curtailing his liberty with a view to preventing him from committing certain injurious activities in future. Whereas the punitive incarceration is after the trial on the allegations made against a person, the preventive detention is without trial into the allegations made against him. **[Haradhan Saha v. State of W.B. (1975) 3 SCC 198].**

41. In the present case, main assertion of learned senior counsel for petitioner is that the material, relied upon by detaining authority for issuance of impugned order of detention, has not been furnished to detenue. At the time of passing of impugned order of detention, the detenue was already in police custody and grounds of detention were not provided to the petitioner due to which the petitioner could not make an effective representation to the Government. The learned senior counsel appearing for the petitioner in support of his arguments has placed reliance on "**Jai Singh and others v. State of Jammu & Kashmir 1985 AIR (SC) 764", "Zakir Maqbool Khan v. State of J & K and others 2011 (2) JKJ 323", "Mohammad Maqbool Beigh v. State of J & K and others 2007 (3) JKJ 106", "Mohd. Yousuf Malla v. State of J & K and another 2006 (2) JKJ 538", "Mohd. Iqbal Banday v. State & others" 2011 (1) JKJ 74, "Mohd. Rafiq v. State and**

others 2009 (1) JKJ 18", "Mohd. Javed Naik v. State and others", "Gulshad Ahmad v. State of J & K and others 2008 (1) JKJ 503", "Gh. Nabi Thoker @ Shaheen v. State and others 2010 (4) JKJ 930", "Paramjeet Singh v. State of J & K and others 2017 (1) JKJ 209", "Amjad Khan v. State and others 2020 legal eagle (J&K) 161". These judgments do not apply in the present case.

42. As per the execution report dated 12.03.2022, it is evident that detention order (01 leaf), notice of detention (01 leaf), grounds of detention (05 leaves), dossier of detention (09 leaves), copies of F.I.R., statement of witnesses and other related relevant documents (172 leaves) (total 188 leaves) were supplied to petitioner and in acknowledgement thereof, the petitioner signed in English and simultaneously, he was also informed about his right to make representation before the detaining authority as well as the Government against the said order of detention. Further, the petitioner was also briefed about the grounds of detention in the language which he understood fully. Thus, it is clear that the detenue has chosen not to make representation, therefore, the fault if any, is attributable to the detenue and not to the detaining authority. Thus, the ground raised vis-à-vis non-furnishing of material to the detenue is rejected.

43. Further from the record, it is evident that the detenue has been uncontrollable despite having been framed in nine different FIRs allegedly for committing various serious and heinous offences. The detailed grounds of detention and the records referred to the Detaining authority were sufficient to derive satisfaction as regards the detention of detenue under the

provisions of the Act. Thus, the order does not appear to be suffering from non-application of mind.

44. It is the settled position of law that if a detention order is issued on more than one grounds independent of each other, the detention order will survive even if one of the grounds is found to be unfounded or legally unsustainable. In the present case, the detention order is issued on more than one ground independent of each other, therefore, the detention order does not get vitiated, even if one of the grounds taken in support of the petition turns affirmative.

45. I am fortified by the law laid down by the Supreme Court in case titled **"Gautam Jain v Union of India and another" (2017) 3 SCC 133.**

> "18.A glimpse of the nature of issue involved, and the arguments which are advanced by both the parties thereupon, makes it crystal clear that insofar as the legal position is concerned, there is no dispute, nor can there be any dispute in this behalf. Both the parties are at ad-idem that if the detention order is based on more than one grounds, independent of each other, then the detention order will still survive even if one of the grounds found is non-existing or legally unsustainable (See Vashisht Narian Karwaria). On the other hand, if the detention order is founded on one composite ground, though containing various species or sub-heads, the detention order would be vitiated if such ground is found fault with (See A. Sowkath Ali). Thus, in the instant case, outcome of the appeal depends upon the question as to whether detention order is based on one ground alone or it is a case of multiple grounds on which the impugned detention order was passed."

46. Further, it is important to mention that the order of preventive detention can be issued on the basis of one solitary incident also. Reliance in

this regard is placed on the case titled as **"Shiv Ratan Makim v. Union of India, (1981)1 SCC 404)".**

47. The next ground taken by the detenue that there is gross failure of application of mind by the detaining authority to the fact that the petitioner-detenue was already under arrest when the detention order was passed, does not survive. The law in this aspect is settled that the very object of passing a detention order being to prevent the person from acting in any manner prejudicial to maintenance of public order or from smuggling goods or dealing in smuggled goods etc, normally there would be no requirement or necessity of passing such an order against a person who is already in custody in respect of a criminal offence where there is no immediate possibility of his being released. But in law there is no bar in passing a detention order even against such a person, if the detaining authority is subjectively satisfied from the material passed before him that a detention order should be passed. **[T.P. Moideen Koya v. Govt. of Kerala & others (2004) 8 SCC 106.]**

48. I am fortified by the view of the Hon'ble Supreme Court in the case titled as **"Rameshwar Shaw v. District Magistrate, AIR 1964 SC 334".** The relevant portion is reproduced as under.

> "As an abstract position of law, there may not be any doubt that Section 3(1)(a) does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail; but the relevant facts in connection with the making of the order may differ and that may make a difference in the application of the principle that a detention order can be passed against a person in jail."

49. It is settled preposition of law that the Court cannot go behind the subjective satisfaction of the detaining authority. In **"Abdul Latif Abdul Wahas Sheikh v. B. K. Jha (1984) 2 SCC 22",** it has been held by the Apex Court that the procedural requirements are the only safeguards available to a detenue since the Court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural requirements are, therefore, to be strictly complied with, if any, value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in this regard.

50. In **"Haradhan Saha v. State of West Bengal (1975) 3 SCC, 198",** the Apex Court has held as under:-

> "19.The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenue acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. 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 reasons mentioned in section 3 of the Act to prevent."

> "34…….The principles which can be broadly stated are these. First, merely because a detenue is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Govt. from taking action for his detention under the Act. Second, the fact that Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be

> no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardize the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behavior of a person based on his past conduct in the light of the surrounding circumstances."

51. In **"Naresh Kumar Goyal v. Union of India (2005) 8 SCC 276",** the Court observed:-

> "It is trite law that an order of detention is not a curative or reformative or punitive action, but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperilling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. 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."

52. It would be apt to refer to the observation made by the Constitution Bench of the Supreme Court in the case of **"State of Bombay v. Atma Ram Shridhar Vaidya AIR 957 SC 157".** The paragraph 5 of the judgment is lays law on the point, which is advantageous to be reproduced infra:-

> "5. It has to be borne in mind that the legislation in question is not an emergency legislation. The powers of preventive detention under this Act of 1950 are in addition to those contained in the Criminal Procedure Code, where preventive detention is followed by an inquiry or trial. By its very

nature, preventive detention is aimed at preventing the commission of an offence or preventing the detained person from achieving a certain end. The authority making the order therefore cannot always be in possession of full detailed information when it passes the order and the information in its possession may fall far short of legal proof of any specific offence, although it may be indicative of a strong probability of the impending commission of a prejudicial act. Section a of the Preventive Detention Act therefore requires that the Central Government or the State Government must be satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to (1) the defence of India, the relations of India with foreign powers, or the security of India, or (2) the security of the State or the maintenance of public order, or (8) the maintenance of supplies and services essential to the community ..... it is necessary So to do, make an order directing that such person be detained. According to the wording of section 3, therefore, before the Government can pass an order of preventive detention it must be satisfied with respect to the individual person that his activities are directed against one or other of the three objects mentioned in the section, and that the detaining authority was satisfied that it was necessary to prevent him from acting in such a manner. The wording of the section thus clearly shows that it is the satisfaction of the Central Government or the State Government on the point which alone is necessary to be established. It is significant that while the objects intended to be defeated are mentioned, the different methods, acts or omissions by which that can be done are not mentioned, as it is not humanly possible to give such an exhaustive list. The satisfaction of the Government however must be based on some grounds. There can be no satisfaction if there are no grounds for the same. There may be a divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction required by the section. One person may think one way, another the other way. If, therefore, the grounds on which it is stated that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of mala fides cannot be challenged in a court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government or the State Government, is ruled out by the wording of the section. It is not for the court to sit in the place of the Central

> Government or the State Government and try to determine if it would have come to the same conclusion as the Central or the State Government. 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."

53. In case titled **"Farhat Mir v. UT of J & K 2022 SCC Online J & K 103",** the observation made by this Court in paragraph 19 is reproduced as under:

> "19.What emerges from the above is that preventive detention is aimed at preventing prejudicial activities or preventing the detained person from achieving a certain end. The authority making the order, therefore, cannot always be in possession of full detailed information when it passes the order of detention and the information in its possession, may fall far short of legal proof of any specific offence, although it may be indicative of a strong probability of the impending commission of a prejudicial act. Preventive Detention Act, therefore, requires that the Government must be satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or maintenance of public order or the maintenance of supplies and services essential to the community, it is necessary so to do make an order directing that such person be detained. The Act, therefore, implies that the Government can pass an order of preventive detention it must be satisfied with respect to the individual person that his activities are directed against objects mentioned in the Act and that detaining authority was satisfied that it was necessary to prevent him from acting in such a manner. Thus, it clearly shows that it is the satisfaction of Government on the point which alone is necessary to be established. It is significant that while the objects intended to be defeated are mentioned, the different methods, acts or omissions by which that can be done are not mentioned as it is not humanly possible to give such an exhaustive list. The satisfaction of the Government, however, must be based on some grounds. There can be no satisfaction if there are no grounds for the same. There may be a divergence of opinion

> as to whether certain grounds are sufficient to bring about the satisfaction required by the Act. It also emerges from above quoted judgment that one person may think one way, another the other way. If, therefore, the grounds on which it is stated that the Government was satisfied, are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of mala fides cannot be challenged in a court. Whether in a particular case, the grounds are sufficient or not, according to the opinion of any person or body other than the Government, is ruled out by the language of the Act. It is not for the Court to sit in the place of the Government and try to determine if it would have come to the same conclusion as Government. 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, the Supreme Court has said, 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."

54. The District Magistrate while passing the order of detention cannot describe the period of detention of the detenue, because it is the Government which after approving the detention provide the period till the detenue would be detained. Section 17(1) of J & K Public Safety Act empowers the Government to confirm the detention order and may direct the continuation of the detention of a person concerned for such period as it thinks fit. As per Section 18 of the J&K Public Safety Act, the maximum period of detention of the detenue is subject to the confirmation of Advisory Board. Reliance in this regard is placed on the case titled as **"Jahangir Ahmad Khan v. State and others 2010 (2) JKJ 667",** whereby this Court held as under:-

> "6. The District Magistrate while issuing the order impugned has himself fixed the period of detention as 24 months which is absolutely impermissible because the period of detention

has to be fixed by the Government on confirming the action of the District Magistrate….."

55. It seems that the petitioner-detenue instead of mending his ways has continuously been indulging in criminal activities and has not shown any respect for law of the land, as such the petitioner-detenue has created a feeling of fear and insecurity in the minds of the public of the area.

56. It is apposite to mention that our Constitution has given the highest priority to the individual liberty. It is the most valuable and cherished right recognized by the Constitution. However, the inherent need to curtail the right to freedom in certain circumstances has been recognized as emerging from the Constitutional scheme itself. The right of society as a whole is, from its very nature, of much greater importance than that of an individual. In case of conflict between the two rights, the individual's right is subjected by our Constitution to reasonable restrictions in the larger interest of the society. By providing for preventive detention the framers of the Constitution have recognized certain restraints on the right to individual liberty and in certain cases the individual liberty is required to be subordinated to the larger social interest. The main object of the preventive detention is the security of a State, maintenance of public order and of supplies and services essential to the community demand, effective safeguards in the larger interest of sustenance of peaceful democratic way of life. Thus, for achieving a bigger cause, the preventive detention laws provide a mode of depriving an individual of his personal liberty.

57. For all what has been said hereinbefore and having regard to the law laid down and noted hereinabove, the petition fails and is ***dismissed*** as such. The impugned Detention order, accordingly, sustains and is maintained.

58. Record produced by the respondents is returned in the open Court.

(Wasim Sadiq Nargal)
Judge

Jammu
16.12.2022
Sahil Toga

Whether the order is speaking? Yes
Whether the order is reportable? Yes