S. No: 1
Supplementary List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

HCP No. 17/2023

Reserved on 20.02.2025.
Pronounced on: 21.04.2025

Irshad Ahmad Dar ….. Petitioner(s)

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

vs.

UT of Jammu and Kashmir and Others ….Respondents

Through: Mr. Mubashir Majid Malik, Dy. AG.

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 through his father, is the order of detention bearing No. 47/DMB/PSA/2023 dated: 21.07.2023 passed by the respondent No. 2 i.e., the District Magistrate Baramulla (hereinafter referred to as the Detaining Authority for short), while invoking his powers under Section 8(1)(a)(i) 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 pre-judicial to the security of the state, for a period to be specified by the Government and lodged in the Central Jail, Srinagar.

2. The petitioner has sought the issuance of writs/directions in the nature of certiorari and mandamus for quashment of the impugned detention order and his immediate release from the alleged unlawful custody.

3. The order impugned has been assailed on the grounds, *inter-alia*, that the petitioner as well as his father are the domiciles of the UT of Jammu and

Kashmir and citizens of India, thus, having a legal right to approach this Court for seeking the redressal of their grievances and protection of their rights under law; that the copies of the order and grounds of detention have not been supplied to the petitioner-*detenu* and it was only due to the personal hard efforts of the petitioner's family members that they could lay hands on the copies of said documents and that too on 01.08.2023; that the impugned order was passed when the petitioner-detenu was already in custody of the police and no information about the order of detention was given to him; that the petitioner-detenu was involved in the alleged FIR No. 104/2023 under Section 13 of the Unlawful Activities Prevention Act, (UAPA), 506 IPC, of Police Station Sopore and he had not filed any bail application in the said case FIR, meaning thereby that there was no likelihood of his immediate release in the case, that the earlier preventive detention order against the petitioner on the similar allegations bearing No. 142/DMB/PSA/2019, dated 30.03.2019 was quashed by this Court on HCP No. 161/2019 c/w HCP No. 160/2019 decided on 27.12.2019; that the non-supply of the copies of the detention record and other documents has violated the constitutional right of the petitioner-detenu as guaranteed under Article 22(5) of the Constitution; that the grounds of detention constitute the replica/ditto of the police dossier and as such the detaining authority appears to have not applied his mind before issuing the impugned detention order; that the petitioner-detenu by not furnishing with the copies of the detention record at an earliest was prevented from making an earliest representation to the detaining authority or to the Government and the passing of the impugned order appears to have been chosen by the respondents as a shortcut measure for their own convenience at the cost of the precious and valuable constitutional rights of the petitioner.

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4. The respondents through the counter affidavit filed by the respondent No. 2, i.e. the detaining authority, resisted the instant petition on the grounds that same is not maintainable as being devoid of any cause of action because none of the legal, statutory or fundamental rights of the petitioner appear to have been infringed by the respondents. That the provisions of Article 22(5) of the Constitution of India and Section 13 of the Act were fully complied with as the grounds of detention were communicated to the petitioner-detenu immediately upon his arrest in pursuance of the detention order. That the petitioner-accused being a hard-core Over Ground Worker (OGW) of HM Outfit was providing logistic support to the local/foreign terrorists of HM and was also instigating/motivating the youth of Zainageer Sopore for joining militancy. That two case FIR Nos'. 10/2019 of PS Bomai and 104/2023 of PS Sopore were registered against the petitioner and another. That the detention order was passed upon the application of mind by the detaining authority who, on the basis of the police dossier and other inputs was convinced that the preventive detention of the petitioner is imperative with a view to prevent him from indulging in any act pre-judicial to the security of the state. That the detention warrant was executed on 22.07.2023 with the arrest of the petitioner who was handed-over to the Assistant Superintendent, Central Jail, Srinagar and was informed about the grounds of detention. That the detention order was also approved by the Government and the finding of the learned Advisory Board supported the detention order whereafter the Government Home Department determined the initial period of the detention of the petitioner-accused as Six (6) Months. That the grounds of detention are precise, proximate, pertinent and relevant. That the grounds of detention sufficiently connect the detenu with the activities which, on the face of it, are highly pre-judicial to the security of the state.

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That even the grant of bail in a criminal offence cannot debar the detaining authority to order preventive detention of an individual whose such detention has become imperative in the interest of security of the state.

5. I have heard the learned counsel for the parties.

6. The learned counsel for the petitioner-detenu while reiterating his stand taken in his petition contended that the order impugned is not sustainable under law as the same suffers from patent illegality and perversity. That the grounds of detention are just a replica of the police dossier and, as such, the impugned detention order is devoid of the application of mind on the part of the detaining authority. That the procedural safeguards mandated under Article 22(5) of the Constitution read with Section 13 of the Act have been observed in breach by the detaining authority. That the copies of the detention order and other documents basing the same were not furnished to the petitioner-detenu immediately upon his arrest and the family members of the petitioner due to their personal efforts could lay their hands on the copies of detention record on 01.08.2023. That the petitioner-accused has already suffered preventive detention ordered by the respondent No. 2 vide order No. 142/DMB/PSA/2019, dated 30.03.2019 on the similar alleged grounds, which came to be quashed by this Court vide order dated 27.12.2019, that the petitioner-accused has already been released on bail in case FIR No. 10/2019 of Police Station Bomai. He further contended that after the release of the petitioner-detenu in case FIR No. 10/2019 of PS Bomai, the impugned detention order was slapped on him so as to keep him continuously under detention and was not released from custody pursuant to the aforesaid bail order dated 04.07.2023. He also contended that the fresh case FIR No. 104/2023 under Section 13 of the Unlawful Activities Prevention Act, (UAPA), 506 IPC of Police Station Sopore was

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manipulated only to justify the impugned detention order as the petitioner-accused already being in Central Jail, Srinagar, cannot be believed to be allowed by the prison authorities to indulge in alleged illegal activities.

7. Per-contra, the learned UT Counsel for the respondents vehemently submitted that the detaining authority was compelled to invoke the provisions of the Act and to detain the petitioner-detenu whose activities were highly pre-judicial to the security of the state and, as such, his apprehended release was seriously viewed in the light of the security of the state. He contended that the petitioner-detenu was a hard-core Over Ground Worker (OGW) who was providing logistic support to the terrorists of the HM Outfit and, as such, there was every apprehension on the basis of the reliable inputs that his release may prove seriously pre-judicial to the interest of the security of the state. He also contended that the copies of the detention order and other records were furnished to the petitioner in due time enabling him to make a representation to the Government in respect of his detention. The learned State Counsel further contended that the detenu was heard by the learned Advisory Board. The learned UT Counsel prayed for the dismissal of the writ petition.

8. I have perused the record of the instant petition and the copies of documents enclosed with the same. The counter affidavit filed by the detaining authority has also been perused.

9. I have also gone through the xerox copy of the detention record produced by the learned UT Counsel.

10. Keeping in view the aforesaid perusal and the consideration of the rival arguments advanced on both the sides, in the light of the law on the subject, this Court is of the opinion that the impugned detention order suffers from illegality and incorrectness, thus deserves its quashment.

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11. It is borne out from the record of the petition in hand as well as from the detention record, that the petitioner-detenu was earlier also kept under preventive detention pursuant to the order bearing No. 142/DMB/PSA/2019, dated 30.03.2019 issued by the respondent No. 2 which came to be challenged before this Court through the writ petition bearing No. HCP No. 161/2019 and was quashed by this Court vide order dated 27.12.2019 passed on the said petition. The Case FIR No. 10/2019 registered with Police Station Bomai, was the main basis of the said earlier detention order and the petitioner-detenu was released on bail by the competent Court in the said case FIR, as itself admitted by the detaining authority in the grounds of detention. Immediately after the petitioner-accused was admitted to bail in the said case FIR No. 10/2019 of Police Station Bomai by the competent Court on 04.07.2023, the respondents proceeded to pass the impugned detention order only two weeks thereafter i.e. on 21.07.2023. The impugned detention order dated 21.07.2023 appears to have been passed on almost the similar grounds of the earlier detention order dated 30.03.2019. The reference of the registration of the case FIR No. 10/2019 of PS Bomai Sopore was made in the earlier detention order as the main basis for passing of the same. The registration of the case FIR No. 104/2023 under Section 13 of the Unlawful Activities Prevention Act, (UAPA), 506 IPC of PS Bomai Sopore has come into being whilst the petitioner-detenu was in custody and lodged in the Central Jail, Srinagar.

12. The grounds of detention appear to be the replica of the police dossier which leads to an inference that the learned Detaining Authority has not applied its mind before passing the impugned order. Since the preventive detention of a person is without a supporting FIR or a criminal complaint, as such, the preventive detention orders need to be passed with great care and caution

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upon proper application of mind as the detenu under such circumstances has a limited defense.

13. This Court in its opinion is fortified with the law laid down by the Hon'ble Supreme Court of India in "**Jahangirkhan, Fazalkhan Pathan vs. Police Commissioner Ahmedabad and Another (1989) 0 Supreme(SC) 367", "Abdul Latif Abdul Wahab Sheikh vs. B.K. Jha (1987) 2 SCC 22"** and in "**Chhagan Bhagwan Kahar Vs. N.L. Kalna 1989 1 JT 572"** to the effect, *"*it is clear that an order of detention cannot be made after considering the previous grounds of detention when the same had been quashed by the Court and if such previous grounds of detention are taken into consideration while forming the subjective satisfaction by the detaining authority in making the detention order, the said detention order will be vitiated. That it is of no consequence if the further fresh facts disclosed in the grounds of impugned detention order have been considered."

14. 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 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 requiring for application of mind, subjective satisfaction, inevitability of the detention

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order, proper 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 requirements for passing of a detention order.

15. The Hon'ble Supreme Court in case **"Rekha Vs. State of Tamil Nadu through Secretary to Government and another"**, reported in **(2011) 5 SCC 244** has laid emphasis on the fundamental right to life and personal liberty of a citizen of India guaranteed under Article 21 of our Constitution and has, accordingly, stressed for taking great care and caution while passing any preventive detention orders so that same are issued in case of genuine and inevitable need only without any misuse or abuse of the powers. The relevant provisions of the said authoritative judgment are reproduced as hereunder: -

> "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?
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> 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 (Indian Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.
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> 35. It must be remembered that in cases of preventive detention no offence is proved and the justification of such detention is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. Preventive detention is often described as a 'jurisdiction of suspicion', (Vide State of Maharashtra Vs. Bhaurao Punjabrao Gawande. The detaining authority passes the order of detention on subjective satisfaction. Since clause (3) of Article 22 specifically excludes

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the applicability of clauses (1) and (2), the detenu is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest. To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however, technical, is, in our opinion, mandatory and vital.

36. It has been held that the history of liberty is the history of procedural safeguards. (See: Kamleshkumar Ishwardas Patel Vs. Union of India and others). These procedural safeguards are required to be zealously watched and enforced by the court and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu. As observed in Rattan Singh Vs. State of Punjab, (1981) 4 SCC 1981: -

"4. May be that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them, and if freedom and liberty are to have any meaning in our democratic set-up, it is essential that at least those safeguards are not denied to the detenus.

“39. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. The stringency and concern of judicial vigilance that is needed was aptly described in the following words in Thomas Pelham Dale's case, (1881) 6 QBD 376:

"Then comes the question upon the habeas corpus. It is a general rule, which has always been acted upon by the Courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue.”

16. In the case of **“Francis Coralie Mullin Vs Administrator, Union Territory of Delhi and others,”** reported in **(1981) SCC 608**, it has been inter alia authoritatively laid down: -

“4. Now it is necessary to bear in mind the distinction between 'preventive detention' and punitive detention', when we are considering the question of validity of conditions of detention. There is a vital distinction between these two kinds of detention. 'Punitive detention' is intended to inflict punishment on a person, who is found by the judicial process to have committed an offence, while 'preventive detention' is not by way of punishment at all, but it is intended to pre-empt a person from indulging in conduct injurious to the society. The power of preventive detention has been recognized as a necessary evil and is tolerated in a free society in the larger

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interest of security of the State and maintenance of public order. It is a drastic power to detain a person without trial and there are many countries where it is not allowed to be exercised except in times of war or aggression. Our Constitution does recognize the existence of this power, but it is hedged-in by various safeguards set out in Articles 21 and 22. Art. 22 in clauses (4) to (7), deals specifically with safeguards against preventive detention and any law of preventive detention or action by way of preventive detention taken under such law must be in conformity with the restrictions laid down by those clauses. But apart from Art. 22, there is also Art. 21 which lays down restrictions on the power of preventive detention. Until the decision of this Court in Maneka Gandhi. v. Union of India, a very narrow and constricted meaning was given to the guarantee embodied in Art. 21 and that article was understood to embody only that aspect of the rule of law, which requires that no one shall be deprived of his life or personal liberty without the authority of law. It was construed only as a guarantee against executive action unsupported by law. So long as there was some law, which prescribed a procedure authorising deprivation of life or personal liberty, it was supposed to meet the requirement of Art. 21. But in Maneka Gandhi's case (supra), this Court for the first time opened-up a new dimension of Art. 21 and laid down that Art. 21 is not only a guarantee against executive action unsupported by law, but is also a restriction on law making. It is not enough to secure compliance with the prescription of Article 21 that there should be a law prescribing some semblance of a procedure for depriving a person of his life or personal liberty, but the procedure prescribed by the law must be reasonable, fair and just and if it is not so, the law would be void as violating the guarantee of Art. 21. This Court expanded the scope and ambit of the right to life and personal liberty enshrined in Art. 21 and sowed the seed for future development of the law enlarging this most fundamental of Fundamental Rights. This decision in Maneka Gandhi's case became the starting point-the-spring board-for a most spectacular evolution the law culminating in the decisions in M. H. Hoscot v. State of Maharashtra, Hussainara Khatoon's case, the first Sunil Batra's case and the second Sunil Batra's case. The position now is that Art. 21 as interpreted in Maneka Gandhi's case (supra) requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful and it is for the Court to decide in the exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure, which is reasonable, fair and just or it is otherwise. The law of preventive detention has therefore now to pass the test not only of Art. 22, but also of Art. 21 and if the constitutional validity of any such law is challenged, the Court would have to decide whether the procedure laid down by such law for depriving a person of his personal liberty is reasonable, fair and just. But despite these safeguards laid down by the Constitution and creatively evolved by the Courts, the power of preventive

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> detention is a frightful and awesome power with drastic consequences affecting personal liberty, which is the most cherished and prized possession of man in a civilized society. It is a power to be exercised with the greatest care and caution and the courts have to be ever vigilant to see that this power is not abused or misused. It must always be remembered that preventive detention is qualitatively different from punitive detention and their purposes are different. In case of punitive detention, the person concerned is detained by way of punishment after he is found guilty of wrong doing as a result of trial where he has the fullest opportunity to defend himself, while in case of preventive detention, he is detained merely on suspicion with a view to preventing him from doing harm in future and the opportunity that he has for contesting the action of the Executive is very limited. Having regard to this distinctive character of preventive detention, which aims not at punishing an individual for a wrong done by him, but at curtailing his liberty with a view to pre-empting his injurious activities in future."

17. In the case of **"Nand Lal Bajaj Vs State of Punjab and another,"** reported in **(1981) 4 SCC 327**, the Hon'ble Supreme Court has stated the position as under: -

> "9. Among the concurring opinions, Krishna Iyer, J., although he generally agreed with Bhagwati, J., goes a step forward by observing: Procedural safeguards are the indispensable essence of liberty. In fact, the history of procedural safeguards and the right to a hearing has a human-right ring. In India, because of poverty and illiteracy, the people are unable to protect and defend their rights: observance of fundamental rights is not regarded as good politics and their transgression as bad politics. In short, the history of personal liberty is largely the history of procedural safeguards. The need for observance of procedural safeguards, particularly in cases of deprivation of life and liberty is, therefore, of prime importance to the body politic."

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18. 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 (Crl) 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."

19. In the facts and circumstances of the case, this Court is of the opinion that the impugned detention order has been passed by the detaining authority without proper application of mind. The detaining authority appears to have followed the dossier of the police concerned in verbatim. There also appears to be no proximate or live link between the last case FIR bearing No. 104/2023 and the impugned detention order dated 21.07.2023.

20. The Hon'ble Apex Court in case titled **"Jai Singh and ors. Vs. State of J&K", AIR 1985 SC 764** decided on **24.01.1985** has laid down the law, relevant portion whereof is reproduced as under: -

> "First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited "The subject is an important member of ……" Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, S/o Ram Singh, resident of village Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find greater proof of non-application of mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner."

21. The Hon'ble Apex Court also inter alia laid down in case titled **"Rameshwar Shaw Vs. District Magistrate, Burdwan and another", AIR 1964 SC, 334** as under: -

> "In deciding the question as to whether it is necessary to detain a person, the authority has to be satisfied that the said person if not detained may act in a prejudicial manner and this conclusion can be reasonably reached by the authority generally in light of evidence about past prejudicial activities of the said person. When evidence is placed, the Detaining Authority has to examine the said evidence and decide whether it is necessary to detain the said person in order to prevent him from acting in a

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prejudicial manner. Thus, it was held that the past conduct or antecedent history of a person can be taken into account in making the detention order and it is largely from prior events showing tendencies or inclinations of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order. Further the past conduct or history of the person on which the authority purports to act should ordinarily be proximate in point of time and should have the rational connection with the conclusion that the detention of the person is necessary, that it would be irrational to take into account the conduct of a person which took the place years before the date of detention".

22. In Rajammal v. State of Tamil Nadu and others, 1999(1) SCC **417**, it has been held as follows:-

> "It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest."

23. In **K. M. Abdulla Kunhi v. Unio of India (1991) 1 SCC 476**, it has been held as follows: -

> ".... it is settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be breach of the constitutional imperative and it would render the continued detention impermissible and ille*gal."*

24. In **Shalini Soni Vs. Union of India (1980) 4 SCC 544: 1981 SCC (Ori) 38**, the Hon'ble Apex Court has laid down as under: -

> "The Article 22 (5) has two facets : (1) communication of the grounds on which the order of detention has been made; (2) opportunity of making a representation against the order of detention. Communication of the grounds pre-supposes the formulation of the grounds and formulation of the grounds requires and ensures the application of the mind of the detaining authority to the facts and materials before it, that is to say to pertinent and proximate matters in regard to each individual case and excludes the elements of arbitrariness and automatism (if one may be permitted to use the word to describe a mechanical reaction without a conscious application of the mind). It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory

functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only eschewing the irrelevant and the remote. Where there is further an express statutory obligation to communicate not merely the decision but the grounds on which the decision is founded. It is a necessary corollary that the grounds communicated, that is, the grounds so made known, should be seen to pertain to pertinent and proximate matters and should comprise all the constituent facts and materials that went in to make up the mind of the statutory functionary and not merely the inferential conclusions. Now, the decision to detain a person depends on the subjective satisfaction of the detaining authority. The Constitution and the statute cast a duty on the detaining authority to communicate the grounds of detention to the detenu. From what we have said above, it follows that the grounds communicated to the detenu must reveal the whole of the factual material considered by the detaining authority and not merely the inferences of fact arrived at by the detaining authority. The matter may also be looked at from the point of view of the second facet of Article 22(5). An opportunity to make a representation against the order of detention necessarily implies that the detenu is informed of all that has been taken into account against him in arriving at the decision to detain him. It means that the detenu is to be informed not merely, as we said, of the inferences of fact but of all the factual material which have led to the inferences of fact. If the detenu is not to be so informed the opportunity so solemnly guaranteed by the Constitution becomes reduced to an exercise in futility. Whatever angle from which the question is looked at, it is dear that "grounds" in Article 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The 'grounds' must be self-sufficient and self-explanatory. In our view copies of documents to which reference is made in the 'grounds' must be supplied to the detenu as part of the 'grounds'."

25. **The preventive detentions need to be passed with great care and caution keeping in mind that a citizens most valuable and inherent human right is being curtailed. The arrests in general and the preventive detentions in particular are an exception to the most cherished fundamental right guaranteed under Article 21 of the Constitution of India. The preventive detentions are made on the basis of subjective satisfaction of the detaining authority in relation to an apprehended conduct of the detenu by considering his past activities without being backed by an**

immediate complaint as in the case of the registration of the FIR and, as such, is a valuable trust in the hands of the trustees. The provisions of Clauses (1) and (2) of Article 22 of our Constitution are not applicable in the case of preventive detentions. So, the provisions of Clause (5) of the Article 22 of our Constitution, with just exception as mentioned in Clause (6), together with the relevant provisions of the Section 8 of PSA requiring for application of mind, subjective satisfaction, inevitability of the detention order, proper and prompt communication of the grounds of detention and the information of liberty to make a representation against the detention order, are the imperative and inevitable conditions rather mandatory requirements for passing of a detention order.

26. The petitioner-detenu as reported by the respondents is involved in two case FIR No's. 10/2019 of Police Station Bomai and 104/2023 of Police Station Sopore. He has been released on bail in the first Case FIR No. 10/2019. It is not the case of the respondents that they being aggrieved of the bail order favouring the petitioner-detenu in the earlier case FIR No. 10/2019 of PS Bomai had thrown a challenge to the same. The respondents have not convinced this Court as to how the normal criminal law is inadequate in the case of the petitioner to deal with him. The earlier case FIR No. 10/2019 of Police Station Bomai appears to have no proximity with the impugned detention order.

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27. 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."

28. 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."

29. It is needful to mention that while ordering a preventive detention, **the alleged past history of an individual cannot be always considered and apprehended in the perspective of the same past guilty mind of the individual, save under some exceptional circumstances evidenced by the fresh incriminating material/data**, **but the same is required to be subsequently understood and considered with the probability of the individual having changed his mindset** for living as a law abiding citizen in future.

30. Thus, while summarizing the observations of the Court, it appears that the grounds of detention basing the impugned order, being the replica of the police dossier are bereft of the application of mind on the part of the detaining authority displaying a casual approach in respect of the most cherished fundamental right of the detenu guaranteed under Article 21 of the Constitution of our country. The grounds of detention also appear to be the same which were the subject matter of the earlier detention order in respect of the petitioner-detenu bearing No. 142/DMB/PSA/2019, dated 30.03.2019.

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31. It appears that the petitioner-detenu is still as an under-trial in the Case FIR No. 104/2023 of Police Station, Bomai in which he has not been bailed out.

32. For the foregoing discussion, the petition is allowed and the impugned detention order bearing no. 47/DMB/PSA/2023 dated: 21.07.2023 issued by the respondent No. 2, i.e. learned District Magistrate, Baramulla, is quashed and the detenu is directed to be released from his preventive detention under aforesaid order having been quashed. The Xerox copy of the detention record is directed to be returned back to the office of the learned Deputy Advocate General, concerned.

33. Disposed of

(Mohd Yousuf Wani)
Judge

Srinagar
21/04/2025
"Shahid-SS"

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