

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

**CM 6797/2023 in**  
**WP (Crl) 34/2023**

**Jahangeer Ahmad Mugloo**

.....Petitioner(s)

**Through:** Mr. Ateeb Kanth, Advocate

V/s

**UT of J and K through Commissioner Secretary Home and Ors.**

.....Respondent(s)

**Through:** Mr. Sajad Ashraf, GA

**CORAM:**

**HON'BLE MR JUSTICE RAHUL BHARTI, JUDGE**

**ORDER**  
**04.11.2023**

1. Applicant/petitioner is at the fag end of his preventive detention period after having come to suffer preventive detention custody with effect from the date of issuance of order of detention dated 27-12-2022. The period of preventive detention of the applicant/petitioner is said to be for one year while the writ petition preferred by the applicant/petitioner for seeking quashment of his preventive detention is awaiting adjudication with effect from the date of institution i.e., 31-01-2023.
2. A contingency has accrued for the applicant/petitioner to come forward with the application CM 6797/2023 seeking indulgence of this Court to allow the applicant/petitioner a short duration release from his preventive detention custody on account of said demise of his brother namely Reyaz Ahmad Magloo who came to expire on 3<sup>rd</sup> November,

2023 in a hospital as is borne out from the temporary death certificate annexed with the application.

3. The application CM 6797/2023 has been preferred by the applicant/petitioner acting through his father. The application is supported by an affidavit of the applicant/petitioner's father namely Abdul Rashid Magloo.

4. The very fact that the applicant/petitioner's father is on record to say that he has lost his son is good enough fact for this Court to believe that the petitioner-applicant has lost his brother and he intends to be with his grieving parents so as to share with them moment of solace and to attend to post burial religious rituals with respect to demise of his brother.

5. The rigor of section 13 sub-section 7 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 will not come in the way of a constitutional court exercising jurisdiction under Article 226 of the Constitution of India to direct release of a detainee. In a constitutional Bench judgment titled "*Sunil Fulchand Shah vs. Union and Ors*" 2000 AIR SC 1023 a similarly provision obtaining with respect to preventive detention under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 came up for scrutiny before a constitutional bench wherein the Hon'ble Supreme Court came up with the take that the bar of judicial intervention as mandated under section 12 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 will not come in the way of constitutional court's jurisdiction under Article 226 of the Constitution of India to direct temporary release of a detainee where the request of the

detenue to be released on parole is for a specified reason and/ or for a specified period has been in the opinion of the court unjustifiably refused or where in the interest of justice such an order of temporary release is required to be made. The Hon'ble Supreme Court has however put a caveat that the power to order temporary release is to be sparingly exercised by the court and even when it is exercised it is appropriate that the court leaves it to be administrative or jail authorities to prescribe the conditions and terms on which the parole is to be availed of by the detenue.

6. In view of this position of law, this Court has a power vesting in it in exercise of its constitutional jurisdiction under article 226 of the constitution of India, relatable to the present pending petition of the petitioner seeking quashment of his preventive detention, to attend to the situation which has come to confront the applicant/petitioner warranting him to be with his parents in the time of distress and grief.

7. Accordingly, application filed by the applicant/petitioner through his father is allowed and the petitioner is directed to be released for a period of five days with effect from the date of his actual release upon service of this order unto the Superintendent District Jail Rajouri.

8. From the date of his release from the custody of the District Jail Rajouri till his return by surrender to SHO Police Station Budgam for enabling transportation of the petitioner back to the District Jail Rajouri, the petitioner shall not leave village Putli Bagh District Budgam without permission of the SHO Police Station Budgam.

9. SHO Police Station Budgam to apprise the Lambardar of the village Putli Bagh about the petitioner allowed to remain in village Putli

Bagh for a period of 5 days on account of temporary release of the applicant/petitioner pursuant to this order.

10. A copy of this order be sent to Superintendent, District Jail Rajouri for notice and compliance by the Registrar Judicial Srinagar.

11. CM no. 6797/2023 is *disposed of*.

12. List on 8<sup>th</sup> November, 2023.

**SRINAGAR**  
01.11.2023  
**MUBASHIR**



**(RAHUL BHARTI)**  
**JUDGE**