HIGH COURT OF JAMMU &KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 20.02.2024
Pronounced on: 13.03.2024

WP (Crl) 458/2022

Jehangir Ahmad Mir @ Manhas (age 33 years)
S/o Abdul Rahman Mir
R/o Barthana, Qamarwari, Srinagar
Through his father
Abdul Rehman Mir r/o Barthana Qamarwari, Srinagar

… Petitioner/Appellant(s)

Through: Mr. A. H. Naik, Sr. Adv. with Mr. Farhat Zia, Adv.

V/s

1. UT of Jammu and Kashmir through Financial Commissioner (Addl. Chief Secretary) to Govt. Home Department, Civil Secretariat, Jammu.
2. District Magistrate, Srinagar.
3. Superintendent, Central Jail, Jammu, Kothbarwar, Jammu

… Respondent(s)

Through: Mr. Sajad Ashraf, GA

CORAM: **HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

J U D G M E N T
13.03.2024

1. Heard learned counsel for the parties and perused the writ pleadings, reply cum counter affidavit and the documents therewith. The detention record produced from the respondents' end was also perused.

2. This is a petition under article 226 Constitution of India seeking quashment of the petitioner's preventive detention effected under the J&K Public Safety Act, 1978.

3. Before this court gears up to deal with the facts and fate of this writ petition, this court needs to serve a commemoration to itself. Whenever this court, as constitutional court on its plenary jurisdiction front under article 226 of the Constitution of India, is called upon to examine any given case of preventive detention of a person in search of his deprived personal liberty expecting and trusting it to be restored to him/her, as the case may be, then every such case registers and implies a call of self-vigilance for this court to cogitate in its judicial mind and memory the historicity of the judicial sensitivity and guidance which has got invested and accumulated in the long course of time by the efforts and energy of the Hon'ble Supreme Court of India through marathon assembly line of its judgments on the subject. Any slip of opportunity and occasion on the part of this court, when approached by a detenu with a habeas corpus writ petition, to consult the judicial wisdom settled in the reservoir of judgments infused with jurisprudential wisdom as binding precedents on the subject matter would be just dealing with a case in hand in a very mundane manner.

4. This is a petition filed by the petitioner, acting through his father, seeking to retrieve his lost personal liberty which came to be deprived by a stroke of an order No. DMS/PSA/69/2022 dated 27.06.2022 passed by the respondent no. 2 - District

Magistrate, Srinagar acting in exercise of power under section 8 of the J&K Public Safety Act, 1978.

5. The purported basis for the respondent 2 - District Magistrate, Srinagar to subject the petitioner to suffer loss of his personal liberty is the opinion of the respondent 2- District Magistrate, Srinagar that the petitioner's personal liberty is prejudicial to the maintenance of '**Security of the State**'.

6. Pursuant to this detention order DMS/PSA/69/2022 dated 27.06.2022, the petitioner came to be detained and lodged in Central Jail, Kotbhalwal, Jammu from where the petitioner has now come to be shifted to the District Jail Jhajjar, Haryana, which at present is the place of his detention being outside the UT of J&K.

7. The respondent no. 2 - District Magistrate, Srinagar came to exercise his authority and power under section 8 of the J&K Public Safety Act, 1978 on being approached by the Senior Superintendent of Police (SSP), Srinagar with a dossier No.LGL/Det-PSA/2022/12808-11 dated 26.6.2022 wherein the petitioner's alleged acts and conduct, present and antecedent, were reported to be influenced by the radical ideology bringing him in contact with active terrorists and overground workers (OGWs) of LeT/TRF (banned outfits) motivating the petitioner to work for the outfit as an over ground worker (OGW) for providing logistic support which made the petitioner rapidly motivated to work for LeT/TRF

banned outputs and sharing of sensitive information regarding movement of police and security forces in the area.

8. With this profiled presentation of and about the petitioner, the SSP Srinagar cited the report/s in the Daily Diary, Patrol Book and Beat Book of the Police Post Qamarwari and also a reference to the fact that the petitioner came to be subjected to proceedings under section 107 read with section 151 of the Code of Criminal Procedure, 1973 on 10.6.2022 by the Police Station Qamarwari.

9. The petitioner has been allegedly attributed waging of war against the security and sovereignty of India and to secede the UT of J&K from the Union of India.

10. Borrowing verbatim the said dossier served version of the SSP Srinagar, the respondent 2 - District Magistrate Srinagar, came forward with the replay of the text of the dossier and referred it to be giving him the context for nursing a subjective satisfaction to warrant the preventive detention of the petitioner so as to prevent him from acting prejudicial to the maintenance of Security of the State and preventing the Society from violence, strikes, economic adversity and social indiscipline.

11. For the facility of reference, the grounds of detention as figured out by the respondent no. 2 – District Magistrate, Srinagar are reproduced herein next:

Whereas, Senior Superintendent of Police, Srinagar vide No. LGL/Det-PSA/2022/12808-11 dated: 26-6-2022 submitted a dossier for issuance of warrant for detention under the provisions of J&K Public Safety Act. The dossier submitted by the District Police Srinagar contains a host of instances/facts making out a case for steps required for preventive detention.

Whereas SSP, Srinagar has reported in the dossier that you were deeply influenced by radical ideology and also came into contact with active terrorists and OGW's of LeT/TRF (banned outfits) who motivated you to work for the Outfits as Over Ground Worker for providing logistic support. You got rapidly motivated and worked for the LeT/TRF banned outfits and started sharing all sensitive information regarding movement of police and security forces in the area. Having radicalized thoughts inshort span of time you became a staunch OGW of your area, besides preaches/spreads/propagates terrorist ideology in the area and motivated youth for joining unlawful activities in the area. Nowadays there are strong reports of that you remained with banned terrorist organization LeT/TRF outfit. To this effect necessary report has been made in daily dairy, patrol book and respectively beat book of PP Qamarwari. You have also been bound down under section 107/151 Cr.P.C. on 10.6.2022 of P/S Qamarwari. The details are given below:

Booked under bound down on 10.6.2022
Entry in patrol book on 29.5.2022.

Whereas your aim and object is to wage war against the security and sovereignty of India and to secede UT of J&K from Union of India. You remained active in terrorist related activities and started organizing unlawful activities working as an OGW. Besides started regrouping your cadre to wage war against the UT of J&K and motivating/ organizing seminar so as to recruit more youth for joining the terror activities. It has become expedient to curb your unlawful activities for which ordinary law has not proved to

be sufficient to deter you from preventing doing such unlawful activities.

Whereas your aim and objective is to create havoc atmosphere within the Kashmir Valley and your activities are highly objectionable and a threat to the security of U.T of J&K. You are always looking for opportunity to keep UT of J&K on boil by way of your unlawful activities within the Kashmir Valley and do not leave any stone unturned for the cause. You are a known troublemaker and are instigating/abetting/aiding local youth of your area for unlawful activities.

Whereas; it may be pertinent to mention here that in recent past, whereas SSP, Srinagar has also reported in the dossier that it may be pertinent to mention here that in recent past, terrorists have devised a strategy of recruiting terrorists/OGWs to maintenance to security UT of J&K so as to create a surcharged and chaotic atmosphere, conducive for propagating the secessionist ideology. In order to carry out nefarious designs, terrorists have formed smaller groups in various areas of Valley especially city Srinagar.

Whereas, your audacity can be gauged from the activities you have carried out is a potent threat to the maintenance of security of UT of J&K, if you are allowed to remain at large, there is a well-founded apprehensions that once you are allowed to remain at large at this point of time, you are going to indulge in activities which are prejudicial to the maintenance of security of UT of J&K.

Whereas, taking a wholesome view of the likely impact of your activities upon the overall scenario, in case you remain at large at this point of time, there is every chance that you will conspire with terrorist organizations for plan some major act of terror in District Srinagar in coming time.

In order to stop you from indulging in above activities, your detention under Public Safety Act, at this stage has become

> imperative as the normal law has not been found sufficient to stop you from indulging in above activities.
>
> Therefore, it is clear that your activities are highly prejudicial to the maintenance of security of state and warrant immediate preventive measures to be taken against you to prevent the society from violence, strikes, economic adversity and social discipline.
>
> On the basis of pre-paras I have reached to the conclusion that it would be expedient to detain you under the provisions of J&K Public Safety Act, 1978 for which orders are being issued separately.

12. Although ritual like rendition of the Advisory Board's opinion and barren consideration of the petitioner's representation has been carried out to exhibit that the preventive detention of the petitioner is justified, this court is called upon to consider the challenge to the petitioner's preventive detention, as posed in the writ petition inter alia on the ground of vague and sham grounds of detention.

13. Now, before this court undertakes the examination of the grievance of the petitioner against his preventive detention which has lasted now for more than twenty (20) months in running leaving only over three (3) months' remainder detention period, it is at this juncture that this court first needs to bear in perspective as a reminder how personal liberty, preventive detention and judicial review have been seen and examined by the Hon'ble Supreme Court of India.

Personal Liberty and Preventive Detention:

14. In the case of **"Ayya alias Ayub versus State of UP and another"-1989 AIR SC 364,** the Hon'ble Supreme Court has summed up the handling of the personal liberty of an individual vis-à-vis preventive detention in para 7-9 in the following manner:

> "**7. Personal liberty protected under article 21 of the Constitution is held so sacrosanct so high in the scale of constitutional values that this court has shown great anxiety for its protection and wherever a petition for writ of habeas corpus is brought up it has been held that the obligation of the detaining authority is not confined just to meet specific–grounds of challenge but it is one of showing that the impugned detention meticulously accords with the procedure established by law. Indeed the English Courts a century ago echoed stringency and concern of this judicial vigilance in matters of personal liberty in the following words:**
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> **"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"**
> **(Thomas Pelham Dales case (6) QBD 376 at page 461).**
>
> **It has been said that the history of liberty has largely been the history of observance of procedural safeguards. The procedural sinews strengthening the substance of the right to move the court against executive invasion of personal liberty and the dispatch of judicial business touching the violations of this great right is stressed in the words of Lord Denning:**
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> **"Whenever one of the King's Judges takes his seat, there is one application which by long tradition has priority over all others. Counsel has but to say "My Lord, I have an application which**

concerns the liberty of the subject and forthwith the judge will put all other matters aside and hear it. It may be an application for a writ of habeas corpus, or an application, for bail, but, whatever it takes, it is heard first."
[Freedom under the Law, Hamlin Lectures, 1949]

8-9. Personal liberty is by every reckoning, the greatest of human freedoms and the laws of preventive-detention are strictly construed and a meticulous compliance with the procedural safeguards, however, technical, is strictly insisted upon by the courts. The law on the matter did not start on a clean slate. The power of court against the harsh incongruities and unpredictabilities of preventive detention is not merely 'Page of history but a whole volume'. The compulsions of the primordial need to maintain order in society, without which the enjoyment of all rights, including the right to personal liberty, would lose all their meaning are the true justification for the laws of preventive detention. The pressures of the day in regard to the imperatives of the security of the State and of public order might, it is true, require the sacrifice of the personal liberty of the individuals. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State provides grounds for satisfaction for a reasonable prognostication of a possible future manifestations of similar propensities on the part of the offender. The jurisdiction has been called as jurisdiction of suspicion; but the compulsion of the very preservation of the values of freedom, of democratic society and of social order might compel a curtailment of individual liberty. "To lose our country by a scrupulous adherence to the written law" said Jefferson "would be to lose the law itself, with life, liberty and all those who are enjoying with us, thus absurdly sacrificing the end to the needs". This is, no doubt, theoretical justification for the law enabling preventive detention.

But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by the genuineness of its administration so as to strike the right

balance between individual liberty on the one hand and the needs of an orderly society on the other. But the realities of executive excesses in the actual enforcement of the law put quotes on the alert, ever ready to intervene and confine the power within strict limits of the law both substantive and procedural. The paradigms and value judgements of the maintenance of a right balance or not static but vary according as the "pressures of the day" and according as the intensity of the imperative that justify both the need for and the extent of the curtailment of individual liberty. Adjustments and re-adjustments are constantly to be made and reviewed. No law is an end in itself. The "inn that shelters for the night is no journey's end and the law, like the traveler, must be ready for the morrow."

As to the approach to such laws which deprive personal liberty without trial, the libertarian judicial faith has made its choice between the pragmatic view and the idealistic or doctrinaire view. Approach to the curtailment of personal liberty which is an axiom of democratic faith and of all the civilised life is an idealistic one for, loss of personal liberty deprives a man of all that is worth living for and builds up deep resentments. Liberty belongs what correspond to man's inmost self. Of this idealistic view in the judicial traditions of the free world Justice Douglas said:

"Faith in America is faith in her institutions, or it is nothing. The Constitution we adopted launched a daring and bold experiment. Under that compact we agreed to tolerate even ideas we despise. We also agreed never to prosecute people mainly for their ideas or beliefs…"
[See: on Misconception of the Judicial Function and the Responsibility of the Bar, Columbia law review, Vol. 59, p 232]

Judge Stanley H. Fuld of the New York Court of appeals said: "It is a delusion to think that the nation's security is advanced by the sacrifice of the individual's basic liberty. The fears and doubts of the moment may loom large, but we lose more than we

gain if we counter with a resort to alien procedures all the denial of essential constitutional guarantees." [quoted by Justice Douglas at p. 233 – On Misconception of the Judicial Function and the Responsibility of the Bar, Columbia Law Review, Vol. 59]

It was a part of the American judicial faith that the Constitution and Nation are one and that it was not possible to believe National security did require what the Constitution appeared to condemn.

Under our Constitution also the mandate is clear and anyone is left under no dilemma. The constitutional philosophy of personal liberty is idealistic view, the curtailment of liberty for reasons of State's security, public order disruption of national economic discipline etc. being envisaged as a necessary evil to be administered under strict constitutional restrictions.

In Ichhudevi v. Union of India, AIR 1980 SC 1983 Bhagwati J. spoke of this judicial commitment: "The court has always regarded personal liberty as the most precious position of mankind and refuse to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade." Page 1988.

In Vijay Narain. Singh. V. State of. Bihar, AIR 1984 SC 1334 Justice Chinnappa Reddy J. In his concurring majority view said:

"…… I do not agree with the view that those who are responsible for the national security for the maintenance of public order must be the sole judges of what the national security or public order requires. It is too perilous a proposition. Our Constitution does not give a carte blanche to any organ of the State to be the sole arbiter in such matter…."

"There are two sentinels, one at either end. The legislature is required to make the law circumscribing the limits within which persons may be preventively detained and providing for the safeguards prescribed by the Constitution and the courts are

required to examine when demanded, whether there has been any excessive detention, that is, whether the limit set by the Constitution and the legislature have been transgressed….."

In Hem Lall Bhandari v. State of Sikkim, AIR 1987 SC 762 at p. 766 it was observed: "It is not permissible in matters relating to the personal liberty and freedom of citizen to take either a liberal generous view of the lapses on the part of the officers….."

10. There are well recognised objective and judicial tests of the subjective satisfaction for preventive detention. Amongst other things, the material considered by the detaining authority in reaching the satisfaction must be susceptible of the satisfaction both in law and in logic. The tests are usual administrative law tests where is power couched in subjective language. There is, of course, the requisite emphasis in the context of personal liberty. Indeed the purpose of public law and the public law courts is to discipline power and strike at the illegality and unfairness of Government wherever it is found. The sufficiency of the evidentiary material or the degree of probative criteria for the satisfaction for detention is of course in the domain of the detaining authority."

15. In the case of **Rameshwar Lal Patwari versus State of Bihar, 1968 AIR SC 1303,** the Hon'ble Supreme Court has, in para 7 of its judgment, read the court's responsibility in the manner as follow:

"**7. Now the law on the subject of Preventive Detention has been stated over and over again and it is not necessary to refer to all that has been decided by this Court on numerous occasions. We shall refer to what concerns this case. The formation of the opinion about detention rests with the Government of the officer**

authorised. Their satisfaction is all that the law speaks of and the courts are not constituted an appellate authority. Thus the sufficiency of the grounds cannot be agitated before the court.However, the detention of a person without a trial, merely on the subjective satisfaction of an authority however high, is a serious matter. It must require the closest scrutiny of the material on which decision is formed, leaving no room for errors or at least avoid errors. The very reason that the courts do not consider the reasonableness of the opinion formed all the sufficiency of the material on which it is based, indicates the need for the greatest circumspection on the part of those who wield this power over others."

16. In the case of **Moti Lal Jain Versus State of Bihar, 1968 AIR SC 1509,** the Constitution Bench of the Hon'ble Supreme Court has stated its concern in para 12 in the manner as follow: ". . . **Individual liberty is a cherished one; one of the most valuable fundamental rights guaranteed by our Constitution to the citizens of this country. If that right is invaded, excepting strictly in accordance with law the party is entitled to appeal to the judicial power of the state relief. We are not unaware of the fact that the interest of the society is no less important than that of the individual. Our Constitution has made provision for safeguarding the**

interest of the society. Its provisions harmonise the liberty of the individual with social interests. The authorities have to act solely on the basis of those provisions. They cannot deal with the liberty of the individual in a casual manner as has been done in this case. Such an approach does not advance the true social interest. Continued indifference to individual liberty is bound to erode the structure of democratic society."

17. In the case of **Narendra Purshotam Umrao versus B. B. Gujral & Others, 1979 (2) SCC 637,** the Hon'ble Supreme Court of India has observed in para 17 as under:

> "17. **We have no doubt in our mind that when liberty of the subject is involved, under a Preventive Detention Act or Maintenance of Internal Security Act or the Conservation of Foreign Exchange and Protection of Smuggling Activities Act, it is the bounden duty of the court to satisfy itself that all the safeguards provided by the law have been scrupulously observed and that the subject is not deprived of his personal liberty otherwise than in accordance with law**."

In this very judgment in para 20 it has further been observed as follow: "**The Constitution is all pervasive. All laws made by a State must, therefore, yield to constitutional limitations and**

restrictions. The citizen's right to personal liberty is guaranteed by Article 22 irrespective of his political beliefs class, creed or religion. This court has forged certain procedural safeguards in the case of preventive detention of citizens. These safeguards must be designated as a regulative "Postulate of Respect", that is, respect for the intrinsic dignity of the human person."

18. With respect to role of court in the cases of preventive detention, the Hon'ble Supreme Court of India in the case of **"Frances Coralie Mullin versus W.C. Khambra&Others" 1980 (2) SCC 275** has also observed as follow: "**We have no doubt in our minds about the role of the court in cases of preventive detention; it has to be one of eternal vigilance. No freedom is higher than personal freedom and no duty higher than to maintain it unimpaired.The Court's writ is the ultimate insurance against illegal detention.**"

19. The Hon'ble Supreme Court of India in the case of **Shafin Jahan versus Asokan K.M. & Others , 2018 (16) SCC 368** in para 18 of its judgment with respect to writ of habeas corpus has considered it to be a "**great constitutional privilege"** or the "**first security of civil liberty"** meant to provide an expeditious and effective remedy against illegal detention, for such detention affects the liberty and freedom of the person who is in confinement.

20. In the case of **"Umm Sabeena versus State of Kerala & Others" 2011(10) SCC 781,** with respect to writ of habeas corpus, the Hon'ble Supreme Court has in para 16 counted it to be of the highest constitutional importance being a remedy available to the lowliest citizen against the most powerful authority and the writ of habeas corpus being a key that unlocks the door to freedom.

21. "**Detention is a hard physical fact**" is an observation of the constitutional bench of the honourable Supreme Court of India in the case of "**S Krishnan and Others versus the State of Madras and another" (1951 AIR SC 301)** while dealing with the certain provisions of the Preventive Detention Amendment Act, 1951 purporting to amend the Preventive Detention Act 1950 so as to authorise detention of a person to be continued beyond the expiry of one year.

22. Given the constitutional sanctity granted to and acknowledged in the fundamental right to personal liberty under article 21 of the COI and sensitivity to its violation in an unauthorised and illegal manner as echoed in the afore cited judgments, this court now proceeds to examine that when dealing with a challenge to preventive detention posed by a detenu under article 226 of COI through a writ of habeas corpus, how much is the scope for examining the vagueness of the grounds of

detention framed and served by the detention order making authority.

Judicial Revenue of Preventive Detention:

23. In the case of **State of Bombay versus Atma Ram Shridhar Vaidya, 1951 SCC 43,** the Hon'ble Supreme Court has dealt with as to what constitutes grounds of detention. The Hon'ble Supreme Court of India through its Constitution Bench came to deal extensively with various legal facets of the Preventive Detention Act (4 of 1950). In this case, the respondent Atma Ram Shridhar Vaidya had come to be arrested on 18/12/1948 under the Bombay Public Security Measures Act, 1948 getting released on 11/11/1949 but then came to be detained again on 24/04/1950 under the Preventive Detention Act, 1950 on the ground of detention with respect to his alleged activities in promoting acts of sabotage on the railway and railway property in Greater Bombay.

The detention came to be challenged by the respondent Atma Ram Shridhar Vaidya on the plea that the ground of detention was vague without mentioning when, where or what kind of sabotage or how he promoted it and that the ground gave no particulars and therefore was not a ground as required to be furnished under the Preventive Detention Act, 1950. The Division Bench of the Bombay High Court came to allow the petition and set aside the preventive detention holding that that the ground cited was not a ground which would enable the

detenu to make a representation to which he was entitled both under the Act and under the Constitution.

Against this judgment of the Division Bench of the Bombay High Court, an appeal came to be preferred before the Hon'ble Supreme Court of India thereby affording the legal examination of the issues including the vagueness of grounds of detention. The appraisal of the matter by the Constitution Bench of the Hon'ble Supreme Court of India came to take place by bearing in perspective the nature of preventive detention law in its constitutional essence and statutory effects by observing in its para 14 as under:

> **"By its very nature, preventive detention is aimed at preventing the commission of an offence or preventing the detained person from achieving certain. 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 strong probability of the impending commission of a prejudicial act."**

In the context of interplay of the ground of detention and satisfaction of the Government in ordering a preventive detention, the Hon'ble Supreme Court of India came forth with the text and context as obtaining in paragraphs 16 to 19.1 and which are reproduced as under :

> **"16. 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 deter- mine if it would have came 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.

17. An order having been so permitted to be made, the next step to be considered is, has the detained person any say in the matter? In the chapter on Fundamental Rights, the Constitution of India, having given every citizen a right of freedom of movement, speech, etc. with their relative limitations prescribed in the different articles in Part III, has considered the position of a person detained

under an order made under a Preventive Detention Act. Three things are expressly considered:

17.1. In article 22 (5) it is first considered that the man so detained has a right to be given as soon as may be the grounds on which the order has been made. He may otherwise remain in custody without having the least idea as to why his liberty has been taken away. This is considered an elementary right in a free democratic State.

17.2. Having received the grounds for the order of detention, the next point which is considered is, "but that is not enough; what is the good of the man merely knowing grounds for his detention if he cannot take steps to redress a wrong which he thinks has been committed either in belief in the grounds or in making the order." The clause therefore further provides that the detained person should have the earliest opportunity making a representation against the order. The representation has to be against the order of detention because the grounds are only steps for the satisfaction of the Government on which satisfaction the order of detention has been made.

17.3. The third thing provided is in clause (6). It appears to have been thought that in conveying the information to the detained person there may be facts which cannot be disclosed in the public interest. The authorities are therefore left with a discretion in that connection under clause (6).

17.4. The grounds which form the basis of satisfaction when formulated are bound to contain certain facts, but mostly they are themselves deductions of facts from facts. That is the general structure of article 22, clauses (5) and (6), of the Constitution.

18. The question arising for discussion is what should be stated in the grounds. It is argued that whatever may be stated or omitted to be stated, the ground cannot be vague; that the Constitution envisages the furnishing of the grounds once and therefore there is no occasion for furnishing particulars or

supplemental grounds at a later stage; and that article 22 (5) does not give the detained person a right to ask for particulars, nor does it give the authorities any right to supplement the grounds, once they have furnished the same.

19. In our opinion much of the controversy is based on a somewhat loose appreciation of the meaning of the words used in the discussion. We think that the position will be clarified if it is appreciated in the first instance what are the rights given by article 22 (5). 'The first part of article 22, clause (5), gives a right to the detained person to be furnished with "the grounds on which the order has been made" and that has to be done "as soon as may be." The second right given to such persons is of being afforded "the earliest opportunity of making a representation against the order."

19.1. It is obvious that the grounds for making the order as mentioned above, are the grounds on which the detaining authority was satisfied that it was necessary to make the order. These grounds therefore must be in existence when the order is made. By their very nature the grounds are conclusions of facts and not a complete detailed recital of all the facts. The conclusions drawn from the available facts will show in which of the three categories of prejudicial acts the suspected activity of the particular person is considered to fall. These conclusions are the "grounds" and they must be supplied. No part of such "grounds" can be held back nor can any more "grounds" be added thereto. What must be supplied are the "grounds on which the order has been made" and nothing less.

21. This however does not mean that all facts leading to the conclusion mentioned in the grounds must be conveyed to the detained person at the same time the grounds are conveyed to him. The facts on which the conclusion mentioned in the grounds are based must be available to the Government, but there may be cases where there is delay or difficulty in collecting the exact data or it may not be convenient to set out

all the facts in the first communication. If the second' communication contains no further conclusion of fact from facts, but only furnishes all or some of the facts on which the first mentioned conclusion was rounded it is obvious that no fresh ground for which the order of detention was made is being furnished to the detained person by the second communication which follows some time after the first communication. As regards the contents of that communication therefore he test appears to be whether what is conveyed in the second communication is a statement of facts or vents, which facts or events were already taken into consideration in arriving at the conclusion included in the ground already supplied. If the later communication contains facts leading to a conclusion which is outside the ground first supplied, the same cannot be looked into as supporting the order of detention and therefore those grounds are "new" grounds. In our opinion that is the more appropriate expression to be used. The expression "additional grounds" seems likely to lead to confusion of thought.

27. The conferment of the right to make a representation necessarily carries with it the obligation on the part of the detaining authority to furnish the grounds, i.e., materials on which the detention order was made. In our opinion, it is therefore clear that while there is a connection between the obligation on the part of the detaining authority to furnish grounds and the right given to the detained person to have an earliest opportunity to make the representation, the test to be applied in respect of the contents of the grounds for the two purposes is quite different. As already pointed out, for the first, the test is whether it is sufficient to satisfy the authority. For the second, the test is, whether it is sufficient to enable the detained person to make the representation at the earliest opportunity.

29. The contention that the grounds are vague requires some clarification. What is meant by vague? Vague can be considered as the antonym of 'definite'. If the ground which is supplied is incapable of being understood or defined with

sufficient certainty it can be called vague. It is not possible to state affirmatively more on the question of what is vague. It must vary according to the circumstances of each case. It is however improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it. That is a matter of detail which has to be examined in the light of the circumstances of each case. If on reading the ground furnished it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention it cannot be called vague. The only argument which could be urged is that the language used in specifying the ground is so general that it does not permit the detained person to legitimately meet the charge against him because the only answer which he can make is to say that he did not act as generally suggested. In certain cases that argument may support the contention that having regard to the general language used in the ground he has not been given the earliest opportunity to make a representation against the order of detention. It cannot be disputed that the representation mentioned in the second part of article 22 (5) must be one which on being considered may give relief to the detained person.

32. In numerous cases that have been brought to our notice, we have found that there has been quite an unnecessary obscurity on the part of the detaining authority in stating the grounds for the order. Instead of giving the information with reasonable details, there is a deliberate attempt to use the minimum number of words in the communication conveying the grounds of detention. In our opinion, this attitude is quite deplorable.

33. We agree with the High Court of Bombay in its observation when it says: (Atmaram case, AIR p. 266, para 1)

> "1. In all the matters which have come up before us we have been distressed to find how vague and unsatisfactory the grounds are which the detaining

> authority furnished to the detenue; and we are compelled to say that in almost every case we have felt that the grounds could have been ampler and fuller without any detriment to public interest."
>
> **34.** While the Constitution gives the Government the privilege of not disclosing in public interest facts which it considers undesirable to disclose, by the words used in article 22 (5) there is a clear obligation to convey to the detained person materials (and the disclosure of which is not necessary to be withheld) which will enable him to make a representation. It may be noticed that the Preventive Detention Act may not even contain machinery to have the representation looked into by an independent authority or an advisory board. Under these circumstances, it is but right to emphasize that the communication made to the detained person to enable him to make the representation should, consistently with the privilege not to disclose facts which are not desirable to be dis- closed in public interest, be as full and adequate as the circumstances permit and should be made as soon as it can be done. Any deviation from this rule is a deviation from the intention underlying article 22 (5) of the Constitution. The result of this attitude of some detaining authorities has been that, applying the tests mentioned' above, several communications to the detained persons have been found wanting and the orders of detention are pronounced to be invalid.

24. In the case of **Dr Ram Krishan Bhardwaj vs. State of Delhi and others, 1953 AIR SC 318** the Constitution Bench of the Hon’ble Supreme Court of India came to examine the challenge to the preventive detention person arrested under an order of the District Magistrate of Delhi under section 3 of the Preventive Detention Act 1950 in its the then amended state. The grounds of detention framed in the case against the detenu

read **"the Jan Sangh, Hindu Mahasabha and Ram Rajya Parishad have started an unlawful campaign in sympathy with the Praja Parishad movement of Kashmir for defiance of the law, involving violence and threat to the maintenance of public order."** In the detention order passed in the case, the incidents happening from 4th to 10th March 1953 on which date the detenu was arrested were narrated but not directly implicating the detenu.

Defending the grounds of detention, the learned Attorney General had argued that the petitioner was an active member of the Jan Sangh and other political bodies and was justly detained.

In dealing with the case, the Constitution Bench came forward with the observations found in para 2 which read as follow "**The explanation is hardly convincing and we cannot regard this lapse in chronology as a mark of carelessness**. Notwithstanding repeated admonition by this court that due care and attention must be bestowed upon matters involving the liberty of the individual it is distressing to find that such matters are dealt with in a careless and casual manner."

In coming to deal with the challenge to the ground of detention on the point of vagueness, the Constitution Bench examined the statements made in the ground of detention which read as follow:

> **"The following facts show that you are personally helping and actively participating in the above mentioned movement which has resulted in violence and threat to maintain public order."**
>
> **"You have been organising the movement by enrolling the volunteers among the refugees in your capacity as President of the Refugee Association of Bara Hindu Rao."**

By rebutting the argument of the learned Attorney General, in defence on the grounds of detention the Hon'ble Supreme Court held that it though plausible, that the grounds of detention read as a whole would reasonably be taken to mean that that detenu was organising the movement but the Constitution Bench came up with reasoning that the detenu being a layman not experienced in the interpretation of documents, could hardly be expected without legal aid to him, to interpret the ground in the sense as explained by the Attorney General. The Constitution Bench rested the onus unto the detaining authority to make its meaning clear beyond doubt without leaving the person detained to his own resource for interpreting the grounds of detention.

By applying this reason, the Constitution Bench came to hold the ground of detention vague in the sense explained in the judgment. The detention of the detenu, inter alia, was held on the ground of vagueness not to be in accordance with the procedure established by law within the meaning of article 21 of the Constitution of India and the detenue was set free to his liberty."

25. In the case of **Shibban Lal Saksena versus State of UP and others, 1954 AIR SC 179,** the Hon'ble Supreme Court to draw the understanding with respect to the grounds of detention in the manner that sufficiency of the particulars conveyed to a detenu in accordance with the provisions embodied article 22(5) of the COI is a justiciable issue, the test being whether they are sufficient to enable the detenu to make an effective representation or those are really inadequate and fall short of the constitutional requirement. It was held that the sufficiency of the grounds, upon which subjective satisfaction purports to be based, provided they have a rational probative value and are not extraneous to the scope or purpose of the legislative provision, cannot be challenged in a court of law except on the ground of mala fides.

It has been held in this case by reference to the judgment of the Constitution Bench in the case of **State of Bombay versus Atmaram, 1951 AIR SC 157,** that court of law is not even competent to enquire into the trueness or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenu. An illusory ground of detention was reckoned to be vitiating the detention based thereupon. The detention of the petitioner in this case was held to be illegal and was quashed.

26. In the case of **Ujagar Singh versus State of Punjab, 1951 SCC 170,** the grounds of detention served to the detenu were

"You tried to create public disorder among us tenants in Una Tehsil by circulating and distributing objectionable literature issued by underground Communists". The Other petitioner detenu Jagjit Singh was served with the grounds of detention " In pursuance of the policy of the Communist party, you are engaged in preparing the masses for a violent revolutionary campaign and attended secret party meetings to give effect to this program".

With these grounds of detention, the Hon'ble Supreme Court of India examined the nature of said grounds of detention vague being not in the light of the principles laid down by the majority of the judges in Atma Ram case (supra) and came to hold in para 16 that as the petitioners were given only vague grounds which were not particularized or made specific so as to afford them the earliest opportunity of making representations against their detention orders, and there having been inexcusable delay in acquainting them with particulars of what was alleged, the petitioners have to be released.

27. In the case of Naresh Chandra Ganguly versus state of West Bengal and others, 1959, AIR SC 1335, the Constitution Bench of the Hon'ble Supreme Court of India has held that the grounds for making an order of detention, which have to be communicated to the detenu as soon as practicable, are conclusions of facts and are not a complete recital of all the relevant facts and therefore the grounds that is to say those

conclusions of facts must be in existence, when an order of detention is made and those conclusions of facts have to be communicated to the detenu as soon as may be. It is further held by the Constitution Bench that an order of detention may also contain recital of facts upon which it is based. If an order of detention also contains the recital of facts upon which it is founded, no further question arises, but if it does not contain the recital of facts which form the basis of the conclusions of facts, justifying an order of detention, then as soon as may be by reference to section 7 of the Preventive Detention Act, 1950, the person detained has to be informed of those facts which are the basic facts or the reasons on which the order of detention has been made.

28. Thus, the Constitution Bench in its judgment Naresh Chandra (supra) is acknowledging the legal requirement that ground of detention has to have a correlation with the facts upon which a given ground of detention is supposed to be resting for the purpose of lending so to say a subjective satisfaction to the detention order making authority.

29. In the case of Rameshwar Lal Patwari versus State of Bihar, 1968 AIR SC 1303, the Hon'ble Supreme Court has, in para 7 of its judgment, stated the position of law with respect to the grounds of detention examination by court of law in the pronouncement as follow: **"Since the detenu is not placed before a Magistrate and has only a right of being supplied**

the grounds of detention with a view to his making a representation to the advisory board, the grounds must not be vague or indefinite and must afford a real opportunity to make a representation against the detention. Similarly, if a vital ground is shown to be non-existing so that it could not have and ought not to have played a part in the material for consideration, the court may attach some importance to this fact."

Further in para 12 of the said judgment, the Hon'ble Supreme Court has confirmed that **"if the grounds are not sufficiently precise and do not furnish details for the purpose of making effective representation the detention can be questioned."** In this case also, the detention of the petitioner was held to have been carried out by disregard to truth and accuracy.

30. In the case of Mishri Lal Jain versus district magistrate 1971 (3) SCC 693, the Hon'ble Supreme Court by drawing reference from the precedents reaffirmed the position of law that if the grounds of detention are vague then an order of detention is rendered bad.

31. Bearing in mind the edicts forthcoming from aforecited judgments of the Hon'ble Supreme Court, the first filter test for a preventive detention order's validity and legality is the grounds on which the given detention order rests. The legality or illegality of a preventive detention order, *inter alia*, first

rests on the grounds of detention which portray the application of mind on the part of the detention order making authority, be it Government or the Officers authorised. Ground/s of detentionis/are formulated to form support base to an order of preventive detention to be passed, be it by the Government itself or by the Divisional Commissioner/District Magistrate concerned acting under the J&K Public Safety Act, 1978. Ground/s of detention, thus, is/are meant to exhibit and evidence on application of mind lending a subjective satisfaction to the authority passing a detention order and announcing to the petitioner as to what he has to respond and represent against.

32. This essentiality of formulating the grounds of detention subserves an assurance from the end of the preventive detention order making authority that the exercise of such a far-reaching authority of depriving a person of his fundamental right to personal liberty, otherwise fully guaranteed under article 21 of the Constitution of India, has taken place not on a surfing of surmises and *ipsi dixit* of the authority proposing and ordering the preventive detention but upon due satisfaction, even though subjective but surely contemplative one, that a person under preventive detention scanner, in a guaranteed state of his civic and constitutional personal liberty, is most likely to be active in acts of omission or commission which fall within the mischief of defined

situations under the relevant preventive detention sanctioning section/s of a preventive detention statute as is the J&K Public Safety Act, 1978.

33. If a non-objective situation presented by the law and enforcement authority seeking an identified person desired to be detained by preventive detention mode leads to the detention authority passing a preventive detention order against a given person, then the subjective satisfaction at the end of the preventive detention making/ordering authority is nothing but the supplementing of surmises.

34. It is the ground/s of detention which essentially come to explain and explicate the subjective satisfaction of the preventive detention order making authority whenever an aggrieved detenu exercises his/her constitutional right to approach a constitutional court be it the High Court or the Hon'ble Supreme Court of India to challenge his/her preventive detention by assailing the very purported cause of it and to retrieve his/her lost personal liberty.

35. The ground stated with respect to a preventive detention order contextualizes the facts which have impressed upon an independent mindset of a detention order making authority to have a subjective satisfaction, be it either in subjecting a person to suffer preventive detention for a given period or even not granting the detention order as solicited by the sponsoring authority.

36. Now when this court makes a perusal of the grounds of detention the only fact discernable related to the petitioner is that the petitioner came to be subjected to proceedings under section 107/151 of the Code of Criminal Procedure, 1973 in June 2022 but without divulging anything further worth the name of facts. Even this factual aspect is half presented in the grounds of detention meaning thereby that even in the dossier submitted by the SSP Srinagar, the situation was and is on the same note that is half presentation of facts. It is nowhere disclosed in the grounds of detention as to whether the Executing Magistrate ever called upon the petitioner to furnish a bond for maintenance of peace or not and what are the terms and conditions of the said bond accompanied with or without sureties.

37. Now, if any of the purported acts and conduct of the petitioner were picked up by the Police Post Qamarwari to be objectionable warranting proceedings under section 107/151 Cr.P.C only, then that meant that for the very said act and omission the petitioner was not having any such antecedents of inviting the SSP Srinagar to reckon the petitioner to be a case deserving slapping of preventive detention.

38. Excising the reference to the petitioner vis-à-vis the case of 107/151 Cr.P.C, the rest of the stuff purportedly forming basis of preventive detention render itself just a repeat of hearsay-based version as served by the SSP Srinagar with respect to

the petitioner admitting of no factual basis of confirmation by any stretch of reasoning and rationale by virtue of which "Rule of Law" warrants a decision to be conceived and delivered from the end of the authorities bearing the authority and position of law to deal with the person and property of a citizen.

39. From the reading of the grounds of detention, this court is not in a position to figure out chalk and cheese as to with respect to which inputs from the end of the SSP Srinagar *qua* the petitioner, the respondent no. 2 - District Magistrate, Srinagar came to address and apply his mind to fetch the purported grounds of detention, which, in fact, are relaying of the very dossier itself, to exhibit his subjective satisfaction thereto.

40. Preventive detention jurisdiction by every stretch of contemplation is fact/s attentive and sensitive. A preventive detention order deprives a person of his personal liberty by an act/order of the State and its authorities. A preventive detention gets vitiated in a case submitted by the sponsoring authority for seeking a preventive detention of a person before preventive detention making/ordering authority, where the facts are lacking, deficient, diversionary or illusionary. Facts for sure, make a statement but the converse is not true that every statement can make facts.

41. Therefore, when a sponsoring authority makes use of fact-less statement with respect to a detenu and presents a case for

his/her preventive detention and it gets responded by an order of preventive detention passed by the detaining authority the very said preventive detention of a person is rendered seriously questionable at any given point of time by a writ of habeas corpus issuance of which is warranted by article 226 of the Constitution of India.

42. The habeas corpus as a legal panacea has always remained a judge guarded and guided wherever and in whatever legal system it continues to be in service. It is for this reason that writ of habeas corpus was celebrated in its description by Charlas James Fox in 1977 as "palladium of the liberties of the subject." Law with respect to habeas corpus traces its definitive origin and evolution from 1600 AD onwards and taking seat in the Indian legal environment in 1861 with the creation of Indian High Courts.

43. Personal liberty of a person is a sanctified fundamental right under the Constitution of India and thus as and when a person's personal liberty is illegally infringed/wronged by or under the aegis of the State, time becomes the essence of justice as to how soon the said personal liberty deprived person gets it restored to him or her so as to ensure minimization of the deleterious effects of the injury inflicted qua the subject and the society and that is the reason that the Hon'ble Supreme Court of India in the case of **Rupesh Kantilal Savla versus State of Gujarat and others, 2000 (9)**

SCC 201 has held that disposal of a habeas corpus petition shall be endeavored as early as possible even if there is no rule in a given High Court prescribing timeline within which the habeas corpus petition is to be disposed of.

44. In the case of **Dr Ram Krishan Bhardwaj versus the State of Delhi and others, 1953 AIR SC 318,** the Constitution Bench of the Hon'ble Supreme Court of India came to hold in paras 2 & 5 as follow:

> "2. **Notwithstanding repeated admonition by this Court that due care and attention must be bestowed upon matters involving the liberty of the individual , it is distressing to find that such matters are dealt with in a careless and causal manner…**"
>
> "5. **The question, however, is not whether the petitioner will in fact be prejudicially affected in the matter of securing his release by his representations, but whether his constitutional safeguard has been infringed as preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court."**

45. Adequacy of particulars in ground of detention save a ground of detention from being called out as being vague vitiating a detention order. In the case of **Prabhu Dayal Deborah versus District Magistrate Kamrup and others 1974 AIR SC 183,** the Hon'ble Supreme Court of India came to hold that if a ground communicated to the detenu is vague, the fact that the detenu could have, but did not, ask for further particulars is in

material as that would be relevant only for considering the question whether the ground is vague or not.

46. In the case of **Mr. Kubic Dariusz versus Union of India, 1990 AIR SC 605,** the Hon'ble Supreme Court has emphasised importance of expression "Communicate" to be a strong word requiring that sufficient knowledge of the basic facts constituting the grounds should be imparted effectively and fully to the detenu for enabling him to make a full and effective representation.

47. Thus, the grounds of detention are reckoned to be fact stating and/or related for the sake of making it known to the detenu why and for what he is being detained and his right to represent against the basis of his preventive detention. A dossier by the sponsoring authority for seeking preventive detention of a person if obtaining in the form of just name-calling against a given person without bearing supporting factual inputs will only lead to a detention order, if passed by the detention authority, against a person a very fragile detention order amenable to suffer quashment. The quashment of such a preventive detention order will be a declaration from the court that the fundamental right to personal liberty of a detenu has been infringed by the State and its authorities.

48. In the light of the aforesaid, the detention order no. DMS/PSA/69/2022 dated 27.06.2022 passed by respondent 2 – District Magistrate, Srinagar against the petitioner is

seriously afflicted with fallacy without any factual basis and, therefore, cannot be allowed to sustain itself any longer and calls for its quashment so as to restore to the petitioner his personal liberty.

49. Accordingly, the detention order no. DMS/PSA/69/2022 dated 27.06.2022 passed by the respondent no. 2 - District Magistrate, Srinagar is hereby quashed and the petitioner is ordered to be set free. The Superintendent of the Jail concerned, where the petitioner is being detained, is directed to set the petitioner free. It is mandated upon the District Magistrate, Srinagar, to ensure that the petitioner is released from the jail concerned wherever the petitioner is presently lodged.

50. Disposed of.

(RAHUL BHARTI)
JUDGE

Srinagar
13.03.2024
N Ahmad

Whether the order is speaking: Yes
Whether the order is reportable: Yes