

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C) No. 57/2020

IN THE MATTER OF:

SARA ABDULLAH PILOT PETITIONER

VERSUS

UNION OF INDIA AND ORS. RESPONDENTS

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REPLY ON BEHALF OF RESPONDENT

NO. 2 (DISTRICT MAGISTRATE,
SRINAGAR, JAMMU AND KASHMIR)

Advocate for the Respondent :

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MAGISTRATE, SRINAGAR, JAMMU AND KASHMIR)

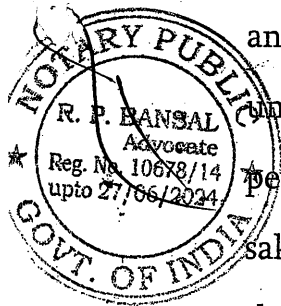
MOST RESPECTFULLY SHOWETH:

I, Shahid Iqbal Chaudhary, son of (late) Sh. A. D. Chaudhary, aged about 38 years, posted as District Magistrate, Srinagar, J&K, presently at New Delhi, do hereby solemnly affirm and state as under:

1. That I, the deponent, in my official capacity as mentioned above, am well conversant with the facts of the present case as derived from official records and as such competent to depose the instant affidavit.
2. At the outset, the deponent states and submits that the statements and averments raised in the present Applications under reply are denied unless specifically admitted herein below. It is submitted that the present petition has been preferred by the sister of the detenu however, for the sake of convenience, the detenu, Shri Omar Abdullah, on whose behalf the petition has been preferred, would be referred to as "*the Petitioner/the detenu*".

PRELIMINARY OBJECTIONS

3. That the deponent states and submits that the Detenu ought to approach the Hon'ble High Court and avail his remedy under Article 226

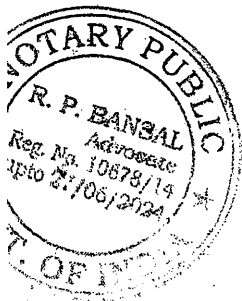


before approaching this Hon'ble Court. It is submitted that this Hon'ble court, in *Union of India v. Paul Manickam*, (2003) 8 SCC 342, has held that it is imperative to approach the Hon'ble High Courts of the country prior to approaching the Hon'ble Supreme Court in matters concerning preventive detention. The Hon'ble Court further held that it would be imperative on a Detenu approaching the Hon'ble Supreme Court directly to indicate on affidavit the reason for not approaching the jurisdictional High Court. This Hon'ble Court, held as under:

"22. Another aspect which has been highlighted is that many unscrupulous petitioners are approaching this Court under Article 32 of the Constitution challenging the order of detention directly without first approaching the High Courts concerned. It is appropriate that the High Court concerned under whose jurisdiction the order of detention has been passed by the State Government or Union Territory should be approached first. In order to invoke the jurisdiction under Article 32 of the Constitution to approach this Court directly, it has to be shown by the petitioner as to why the High Court has not been approached, could not be approached or it is futile to approach the High Court. Unless satisfactory reasons are indicated in this regard, filing of petition in such matters directly under Article 32 of the Constitution is to be discouraged."

A copy of the judgment in *Union of India v. Paul Manickam*, (2003) 8 SCC 342, is attached herewith and marked as Annexure R 2/1. [Page 13 to 27]

4. At this juncture, the deponent states and submits that it may be noted that the Hon'ble High Court of Jammu and Kashmir is seized of more than 350 habeas corpus/detention order challenge petitions. It is further submitted that the Hon'ble High Court is fully functional and has in fact quashed 68 detention orders since August, 2019 while confirming

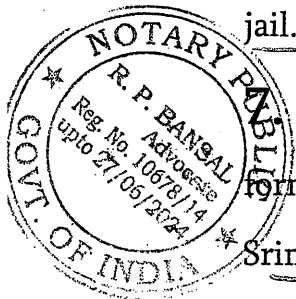


11 detention orders passed by the appropriate authority. It is submitted that the Detenu herein has failed to disclose the reason or the justification for not approaching the Hon'ble High Court of Jammu and Kashmir in the captioned petition.

5. That the deponent states and submits that no ground is raised justifying by-passing of the remedy available before the Hon'ble High Court and approaching this Hon'ble Court directly. It is submitted that entertaining one petition would open flood gates of the petitions which, in absence of any special ground to make a departure, needs to be avoided.

SUBMISSIONS ON MERITS

6. That the deponent states and submits that the present petition deserves dismissal for bypassing the effective alternative remedy that is available under the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as PSA) itself, of filing a representation before the Government and/or hearing in person before the Advisory Board. The Detenu has chosen not to file a representation before the Advisory Board. It is submitted that Mr. Omar Abdullah (the detenu) was and continues to be detained in conformity with the mandatory provisions of Public Safety Act and is kept in Hari Niwas (former Palace of the erstwhile King, located near Dal Lake) which has been temporarily declared as subsidiary jail.

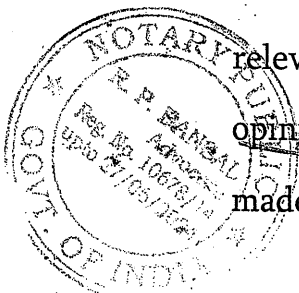


That the deponent states and submits that material record in the form of dossier were produced by Senior Superintendent of Police, Srinagar vide order no. LGL/Det-3206/2020/1251-54 dated 05.02.2020 before the Competent Authority.

8. That the deponent states and submits that the Deponent i.e. the District Magistrate, Srinagar, on a careful perusal of the aforesaid material and after applying his mind thereto and on being satisfied that it is necessary to detain the detenu with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, ordered the detention of the detenu under Section 8, PSA, vide order no. DMS/PSA/146/2020 dated 05.02.2020. A copy of the order of detention no. DMS/PSA/146/2020 dated 05.02.2020 is annexed herewith and marked as Annexure R 2/2. [Page 28 to 44]

9. That the deponent states and submits that the aforesaid order of detention along with grounds of detention, dossier and documents in English language, ^{understood by the detenu} on the basis whereof detention order was passed were supplied to the detenu in order to enable him to make an effective representation as stipulated in law. It is submitted that the aforesaid detention order dated 05.02.2020 passed by District Magistrate, Srinagar was approved by the Home Department, Government of Jammu and Kashmir vide order no. Home/PB-V/371 of 2020, dated 14.02.2020 in terms of Section 8(4) of PSA. A copy of the order no. Home/PB-V/371 of 2020, dated 14.02.2020 is annexed herewith and marked as Annexure R 2/3. [Page 45 to _____]

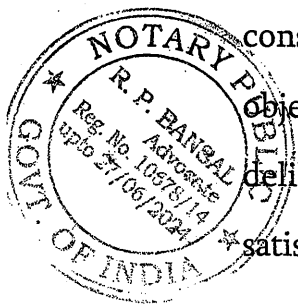
10. That the deponent states and submits that subsequent to the same, the detention order, along with the Grounds of Detention and the relevant material thereof were referred to the Advisory Board for its opinion. The Detenu herein, despite being aware of the same and being made aware of the same, purposefully failed to make a representation



before the said Advisory Board. The Advisory Board, vide its opinion dated 24.02.2020 has observed that there is sufficient cause for the detention of the Detenu. The said Advisory Board consists of a retired High Court Judge and two Principal Judges acquainted with the situation at hand and the law regarding the same. A copy of the report of the Advisory Board dated 24.02.2020 is attached herewith and marked as Annexure R 2/4. [Page 46 to 47]

11. That the deponent states and submits that thereafter, the Government of the Union Territory of Jammu and Kashmir has confirmed the detention order under Section 17(1) of the PSA vide order No. Home/PB-V/542 of 2020, dated 26.02.2020. A copy of the confirmation order No. Home/PB-V/542 of 2020, dated 26.02.2020 of the detention order under Section 17(1) of the PSA is attached herewith and marked as Annexure R 2/5. [Page 48 to _____]

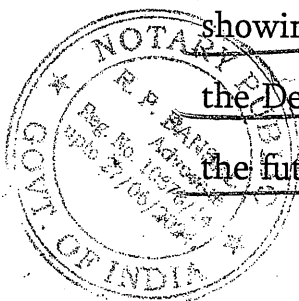
12. That the deponent states and submits that the law on preventive detention is well settled. It is submitted that Constitution Bench of this Hon'ble Court in *Hardhan Saha vs. State of W.B.*, (1975) 3 SCC 198, has held that "(T)he basis of detention is the satisfaction of the executive, of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same." Further, this Hon'ble Court in *State of Maharashtra vs. Bhimrao Punjabrao*, (2008) 3 SCC 613 has held that the matters which have to be considered by the detaining authority are not matters susceptible of objective determination and their determination is, therefore, deliberately and advisedly left by the legislature to the subjective satisfaction of the detaining authority which by reason of its special



position, experience and expertise would be best fitted to decide them. It was further observed that the Court cannot on a review of the grounds, substitute its own opinion for that of the authority, for what is made condition precedent to the exercise of the power of detention is not an objective determination of the necessity of detention for a specified purpose but the subjective opinion of the detaining authority, and if a subjective opinion is formed by the detaining authority as regards the necessity of detention for a specified purpose, the condition of exercise of the power of detention would be fulfilled.

REPLY TO LEGAL SUBMISSIONS

13. At the outset, the deponent states and submits that the gravamen of the challenge by the Detenu relates to the fact that the Detenu had been in custody for the past six months, had no access to any form of public speech and expression and therefore there could be no reasons/material to come to a conclusion that the Detenu may act in any manner which in any manner is prejudicial to maintenance of public order. It is submitted that that the assertion is fallacious and ignore that the subjective satisfaction of the detaining authority, the grounds of detention and the dossier clearly indicate that the there exists a *live and proximate link* in the events that occurred in the past, the activities of the Detenu and the possibility of such activities being prejudicial to maintenance of public order. It is submitted that it is trite law that the past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is submitted that it is usually from prior events showing tendencies or inclinations of a person a decision can be taken by the Detaining Authority regarding the likelihood of the said person, in the future, acting in a manner prejudicial to the *maintenance of public*

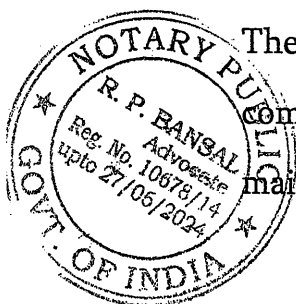


order. It is submitted that the acts, which are easily available in public domain, on the part of the detenu squarely fell within the realm of public order, as it was calculated to disturb public peace and tranquillity. It is needless to emphasise that the incitement of the public at large, pertains to public order.

14. That the deponent states and submits that the detenu was the Chief Minister of the erstwhile State of Jammu and Kashmir. In the history of the independent India, the existence and continuance of Article 370 of the Constitution has always remained a contentious and burning issue. The Detenu has been a very vocal critic of any possible abrogation of Article 370 prior to its abrogation on 5th August, 2019. It is submitted that considering the very peculiar geo-political position of Jammu & Kashmir and Ladakh and its geographical proximity with Islamic Republic of Pakistan, the concept of "public order" needs to be examined contextually.

15. That the deponent states and submits that in view of a historical decision taken to abrogate Article 370, it is the subjective satisfaction of the detaining authority that in peculiar fact situation emerging in the UT of J&K and Ladakh, the presence of detenu would pose an eminent threat of deterioration of maintaining the public order. It may not be out of place to mention that so far since 1990, 41866 persons have lost their lives in 71038 incidents throughout the erstwhile State of J&K. This includes 14038 civilians, 5292 personnel of security forces and 22536 terrorists.

These figures would satisfy this Hon'ble Court that satisfaction of the competent authority regarding that of preventive measure for maintenance of "public order" shall have to be viewed in the context of



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peculiar situation arisen in Jammu and Kashmir and Ladakh for which Jammu and Kashmir Public Safety Act, 1978 is enacted.

16. That the deponent states and submits that it is settled law that the detention order can be passed against a person who is already in custody. It is submitted that that in such a case it is bound to happen that the material and the grounds mention the activities of the detenu prior to the period of his/her custody. It is submitted that in *Kamarunnisa Vs Union of India (1991) 1 SCC 128*, this Hon'ble court laid down a three-pointer test in passing of a detention order in case of a person already in judicial custody. The relevant portion is quoted as under:

(1) if the authority passing the order is aware of the fact that he is actually in custody;

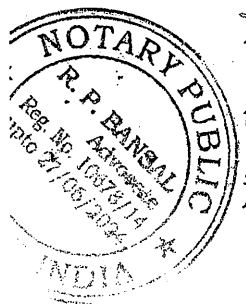
(2) if he has reason to believe on the basis of reliable material placed before him;

(a) that there is a real possibility of his being released on bail, and

(b) that on being so released he would in all probability indulge in prejudicial activity and

(3) if it is felt essential to detain him to prevent him from so doing."

17. It is submitted in such cases, it is critical that the detaining authority ought to be satisfied that the person on being so released would indulge in prejudicial activity. It is submitted that such satisfaction, can only be arrived at from the material/activities of a person prior to the time of such person being in custody and not during the custody. It is submitted that assertion of the Detenu that merely due to the efflux of time, due to the Detenu being in custody u/s 107 of the Cr.P.C., there exist no material justifying the apprehension of public order being affected, is ex-facie

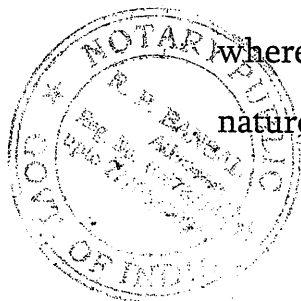


erroneous. It is submitted that the said position of law has been reiterated in the following case law:

- Vijay Kumar Vs Union of India (1988) 2 SCC 57
- Veeramani v. State of T.N., (1994) 2 SCC 337
- Abdul Sathar Ibrahim Manik v. Union of India, (1992) 1 SCC 1
- Baby Devassy Chully v. Union of India, (2013) 4 SCC 531
- Merugu Satyanarayana v. State of A.P., (1982) 3 SCC 301
- State of Gujarat v. Sunil Fulchand Shah, (1988) 1 SCC 600
- Union of India and Anr. vs. Dimple Happy Dhakad, Criminal Appeal No.1064/2019 arising out of SLP (Crl.) 5459/2019
- Union of India Versus Ankit Ashok Jalan, Special leave petition (crl.) No. 7010 of 2019

18. That the deponent states and submits that the present Detention Order is not vague or without any material facts. It is submitted that the material facts and the particular have been promptly supplied to the Detenu along with the Detention Order. It is submitted that under the Act, the detenu is entitled to make a representation against the order of detention. It is manifest from the statutory scheme that his right to represent is after the grounds are served on the detenu. It is submitted that the non-specification of the required particulars in the order of detention would not vitiate the order as long as the particulars are provided in the grounds in support of the order of detention which in quick succession of the detention order are served on the detenu.

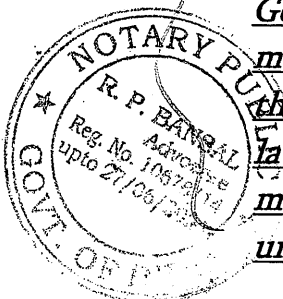
19. That the deponent states and submits that the Detention order based on the subjective satisfaction of the detaining authority and sufficiency or the adequacy of material cannot be a matter of judicial review. It is submitted that the powers of preventive detention under the Act are in addition to those contained in the Criminal Procedure Code, where preventive detention is followed by an inquiry or trial. By its very nature, preventive detention is aimed at preventing the commission of an



offence or preventing the detained person from achieving a certain end. The authority making the order therefore cannot always be in possession of full detailed information when it passes the order and the information in its possession may fall far short of legal proof of any specific offence, although it may be indicative of strong probability of the impending commission of a prejudicial act. It is submitted that the wording of the section thus clearly shows that it is the satisfaction of the detaining authority on the point which alone is necessary to be established. It is submitted that in *State of Bombay v. Atma Ram Sridhar Vaidya*, 1951 SCR 167, this Hon'ble court, held as under:

"6.

The satisfaction of the Government however must be based on some grounds. There can be no satisfaction if there are no grounds for the same. There may be a divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction required by the section. One person may think one way, another the other way. If, therefore, the grounds on which it is stated that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of mala fides cannot be challenged in a court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government or the State Government, is ruled out by the wording of the section. It is not for the court to sit in the place of the Central Government or the State Government and try to determine if it would have come to the same conclusion as the Central or the State Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a Court of law. Such detention orders are passed on information and materials which may not be strictly admissible as evidence under the Evidence Act in a court, but which the law,



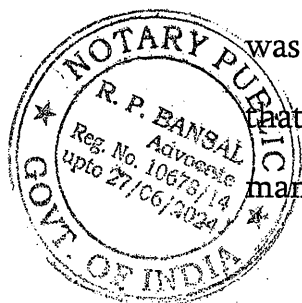
taking into consideration the needs and exigencies of administration, has allowed to be considered sufficient for the subjective decision of the Government."

In *State of NCT of Delhi v. Sanjeev*, (2005) 5 SCC 181, this Hon'ble Court, held as under:

"24. It is true that some material must exist but what is required is not an elaborate decision akin to a judgment. On the contrary the order directing externment should show existence of some material warranting an order of externment. While dealing with the question mere repetition of the provision would not be sufficient. Reference is to be made to some material on record and if that is done, the requirements of law are met. As noted above, it is not the sufficiency of material but the existence of material which is sine qua non."

20. In light of the above, the deponent states and submits that there was ample material and grounds to issue the impugned order of detention against the Detenu considering the past conduct and the possibility of such conduct being repeated on release and thereby prejudicing the public order in the Union Territory of Jammu and Kashmir. It is submitted that the right of the Detenu to make an effective representation before the Board was in no manner prejudiced as material on the basis of which the detention order has been passed was supplied to the Detenu.

21. That the deponent states and submits that invocation of jurisdiction of this Hon'ble Court to issue high prerogative writ in the present case is unjustified and unwarranted in as much as the detention of the Detenu was neither illegal nor unlawful as alleged in the Petition. It is submitted that the detention of the Detenu was legal and strictly in accord with the mandatory provisions of the Act, as adumbrated hereinabove.



That the deponent seeks leave of this Hon'ble Court to make additional submissions, if required, during the course of proceedings before this Hon'ble Court. It is most respectfully submitted that in view of the submissions made herein above, this Hon'ble Court may be pleased to dismiss the present Petition. The present affidavit is made bonafide and in the interest of justice.

DEPONENT

VERIFICATION

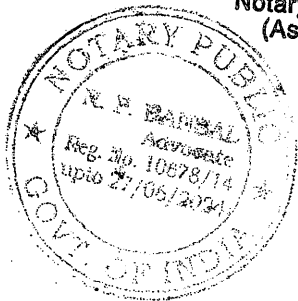
Verified at New Delhi on this 28 day of March, 2020 that the contents of the above affidavit from Para 1 to Para are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

IDENTIFIED BY

ATTESTED

DEPONENT

Notary Public, Delhi
(As Presented)



28/03/2020

ANN. R211

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13. Regarding denial of back wages to the respondents, in our view, no interference is called for having regard to the facts and circumstances of the case including the circumstance of the financial position of the appellant and the proceedings before the Board for Industrial and Financial Reconstruction. a

14. For the foregoing reasons, we find no merit in the appeal. The same is accordingly dismissed. Special Leave Petition No. 18267 of 2003 (CC No. 3847 of 2000) is also dismissed. The respondents are directed to be reinstated from November 2003. They shall be paid wages from the month of November 2003. There shall be no order as to costs. b

(2003) 8 Supreme Court Cases 342

(BEFORE DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.)

UNION OF INDIA

Appellant; c

Versus

PAUL MANICKAM AND ANOTHER

Respondents.

Criminal Appeal No. 21 of 2002†, decided on October 13, 2003

A. Preventive Detention — Representation to appropriate authority/ Govt. — Delay in disposal of — Representation to wrong authority by detenu causing delay — Effect — Representation made to President of India and Governor would amount to representations to Union of India and the State Govt. — But when order (grounds) of detention indicated the authorities of the Central and State Govts. to whom the representations could be sent, detenu must state why representations were instead made to President and Governor — In the writ petition challenging the detention, it was stated that representations had been made to the authorities concerned of the Union of India and State of T.N. but after dismissal of the writ petition, in the review petition it was disclosed that representation was sent to the President of India — Held, this is a dubious device to create a situation for delay in consideration of the representation and then seek relief on that ground d e

B. Constitution of India — Art. 226 — Review — New case — Writ petition against order of preventive detention stating that representations had been made to Union of India and the State represented by Secretaries concerned as indicated in the grounds of detention, but after dismissal of the writ petition it was stated in the review petition that representation had been sent to President of India — This was done deliberately to create a situation for delay in considering the representations and then seek relief on that ground — Held, in the review petition an entirely new substratum of the issues having been presented, High Court was not justified in entertaining it f g

In the writ petition there was no mention that the representation was made to the President; instead it was specifically stated therein that the representation was made by registered post to the first and second respondents [described as State of

† From the Judgment and Order dated 13-2-2001 of the Madras High Court in HCMP No. 264 of 2000 in HCP No. 860 of 2000 h.

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T.N., represented by its Secretary, Govt. of T.N., Public (SC) Deptt., Fort St. George, Chennai and Union of India, represented by its Secretary, Ministry of Finance, Deptt. of Revenue, New Delhi] in the writ petition before the High Court. But for the first time in the review application it was disclosed that the representation was made to the President of India and no representation was made to the State of Tamil Nadu or the Union of India who were arrayed in the writ petition as parties.

Held :

This appears to be a deliberate attempt to create confusion and reap an undeserved benefit by adopting a dubious device. The High Court also transgressed its jurisdiction in entertaining the review petition with an entirely new substratum of issues. Considering the limited scope for review, the High Court ought not to have taken into account factual aspects which were not disclosed or were concealed in the writ petition. (Para 19)

The representation made to the President of India or the Governor would amount to representation to the Central Government and the State Government. But this cannot be allowed to create a smokescreen by an unscrupulous detenu to take the authorities by surprise, acting surreptitiously or with ulterior motives. In the present case, the order (grounds) of detention specifically indicated the authority to whom the representation was to be made. Such indication is also a part of the move to facilitate an expeditious consideration of the representations actually made. Whenever a representation is made to the President and the Governor instead of the indicated authorities, it is but natural that the representation should indicate as to why the representation was made to the President or the Governor and not the indicated authorities. It should also be clearly indicated as to whom the representation has been made specifically, and not in the manner done in the case at hand. The President as well as the Governor, no doubt are constitutional Heads of the respective Governments but the day-to-day administration at respective levels is carried out by the Heads of the Departments/Ministries concerned and the designated officers who alone are ultimately responsible and accountable for the action taken or to be taken in a given case. If really the citizen concerned genuinely and honestly felt or was interested in getting an expeditious consideration or disposal of his grievance, he would and should honestly approach the real authorities concerned and would not adopt any dubious devices with the sole aim of deliberately creating a situation for delay in consideration and cry for relief on his own manipulated ground, by directing his representation to an authority which is not directly immediately concerned with such consideration. (Paras 17 and 19)

Raghavendra Singh v. Supdt., District Jail, (1986) 1 SCC 650 : 1986 SCC (Cri) 60; Rumana Begum v. State of A.P., 1993 Supp (2) SCC 341 : 1993 SCC (Cri) 551, relied on

It was nowhere indicated in the representation by the respondent as to why the representation was not being made to the indicated authorities and instead was being made to the President of India. This appears to be with a deliberate view to take advantage of the concern shown by the Supreme Court in protecting personal liberty of citizens. Where, however, a person alleging infraction of personal liberty tries to act in a manner which is more aimed at deflecting the course of justice than for protection of his personal right, the court has to make a deliberate balancing of the fact situation to ensure that the mere factum of some delay alone is made use of to grant relief. If a fraud has been practised or perpetrated, that may in a given case nullify the cherished goal of protecting

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personal liberty, which obligated the Supreme Court to devise guidelines to ensure such protection by balancing individual rights and the interests of the nation, as well.

(Para 20)

R. Keshava v. M.B. Prakash, (2001) 2 SCC 145 : 2001 SCC (Cri) 289, *relied on*

C. Preventive Detention — Representation to appropriate authority/ Govt. — Detenu's right to make representation and the same to be considered speedily is a constitutional right — Art. 22(5) obligates the authority to dispose of the representation expeditiously — Constitution of India, Art. 22(5)

In case of preventive detention of a citizen, Article 22(5) of the Constitution enjoins the obligation of the appropriate Government or the detaining authority to accord the detenu the earliest opportunity to make a representation and to consider that representation speedily. The right to make a representation implies the right of making an effective representation. It is the constitutional right of the detenu to get all the grounds on which the order has been made. Article 22(5) imperates the authority to whom the representation is addressed to deal with the same with utmost expedition. The representation is to be considered in its right perspective keeping in view the fact that the detention of the detenu is based on the subjective satisfaction of the authority concerned, and infringement of the constitutional right conferred under Article 22(5) invalidates the detention order.

(Paras 7 and 12)

D. Preventive Detention — Detention order — Detenu already in jail — Validity of detention order — Principles restated

Even in the case of a person in custody, a detention order can be validly passed subject to the following principles: (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility of release on bail.

(Para 14)

N. Meera Rani v. Govt. of T.N., (1989) 4 SCC 418 : 1989 SCC (Cri) 732 : AIR 1989 SC 2027; *Dharmendra Suganchand Chelawat v. Union of India*, (1990) 1 SCC 746 : 1990 SCC (Cri) 249 : AIR 1990 SC 1196; *Kamarunnissa v. Union of India*, (1991) 1 SCC 128 : 1991 SCC (Cri) 88 : AIR 1991 SC 1640, *relied on*

E. Constitution of India — Arts. 226 & 32 and 21 — Habeas corpus — Nature — When can issue — Detention shown to be prima facie illegal, writ of habeas corpus has to be issued — Preventive detention

Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely needed to examine the question of illegal detention with utmost promptitude. The writ of habeas corpus is a device of this nature. The writ has been described as a writ of right which is grantable ex debito justitiae. Though a writ of right, it is not a writ of course. The applicant must show a prima facie case of his unlawful detention. Once, however, he shows such a cause and the return is not good and sufficient, he is entitled to this writ as of right. While dealing with a habeas corpus application undue importance is not to

be attached to technicalities, but at the same time where the court is satisfied that an attempt has been made to deflect the course of justice by letting loose red herrings the court has to take serious note of unclean approach.

a

(Paras 15 and 19)

Cox v. Hakes, (1890) 15 AC 506, referred to

F. Constitution of India — Arts. 21 & 22 — Personal liberty — Deprivation of — Preventive detention — Compliance with procedural safeguards is a must

b

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 due dispatch of judicial business touching violations of this great right is of great importance. 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. However, the constitutional philosophy of personal liberty is an idealistic view, the curtailment of liberty for reasons of the 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 a case of preventive detention no offence is proved, nor is any charge formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. But at the same time, a person's greatest of human freedoms i.e. personal liberty is deprived, and, therefore, the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however technical, is mandatory. (Paras 8, 12, 9 and 16)

c

d

e

Ichhu Devi Choraria v. Union of India, (1980) 4 SCC 531 : 1981 SCC (Cri) 25 : AIR 1980 SC 1983; *Vijay Narain Singh v. State of Bihar*, (1984) 3 SCC 14 : 1984 SCC (Cri) 361 : AIR 1984 SC 1334; *Hem Lall Bhandari v. State of Sikkim*, (1987) 2 SCC 9 : 1987 SCC (Cri) 262 : AIR 1987 SC 762; *Thomas Pacham Dale's case*, (1881) 6 QBD 376 : 50 LJ QB 234; *R. v. Halliday*, 1917 AC 260 : (1916-17) All ER Rep Ext 1284 : 86 LJ KB 1119 : 116 LT 417 (HL); *Kubic Darusz v. Union of India*, (1990) 1 SCC 568 : 1990 SCC (Cri) 227 : AIR 1990 SC 605; *Ayya v. State of U.P.*, (1989) 1 SCC 374 : 1989 SCC (Cri) 153 : AIR 1989 SC 364, relied on

f

G. Preventive Detention — Grounds of detention — Interpretation of — Expression "grounds" includes conclusions of fact as well as basic facts on which those conclusions were founded but does not include subsidiary facts — Constitution of India, Art. 22(5) — Words and phrases — "grounds"

The concept of grounds used in the context of detention in Article 22(5) has to receive an interpretation which will keep it meaningful, in tune with contemporary notions of the realities of the society, and the purposes of the Act in the light of concepts of liberty and fundamental freedoms. While the expression "grounds" for that matter includes not only conclusions of fact but also all the basic facts on which those conclusions were founded; they are different from subsidiary facts or further particulars of the basic facts. The detenu is entitled to obtain particulars as to the grounds which will enable him to make an effective representation against the order of detention. (Para 7)

g

h

H. Constitution of India — Art. 22 — Preventive detention — Safeguards provided under, stated (Para 7)

I. Preventive Detention — Nature — Anticipatory, precautionary, preventive and not punitive

Preventive detention is an anticipatory measure and does not relate to an offence while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the executive is convinced on the materials available and placed before it that such detention is necessary in order to prevent the person detained from acting in a matter prejudicial to certain objects which are specified by the law. The action of the executive in detaining a person being only precautionary, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct, the failure to conform to which alone should lead to detention. (Para 7)

J. Constitution of India — Arts. 32 & 226 — Habeas corpus petition against preventive detention — Detenu must first approach the High Court — For approaching Supreme Court directly under Art. 32, petitioner must state reasons for not approaching the High Court first — Practice and procedure — Alternative remedy

It was highlighted that many unscrupulous petitioners are approaching the Supreme Court under Article 32 challenging the order of detention directly without first approaching the High Courts concerned.

Held :

It is appropriate that the High Court concerned under whose jurisdiction the order of detention has been passed by the State Government or Union Territory should be approached first. In order to invoke the jurisdiction under Article 32 to approach the Supreme Court directly, it has to be shown by the petitioner as to why the High Court has not been approached, could not be approached or it is futile to approach the High Court. Unless satisfactory reasons are indicated in this regard, filing of petition in such matters directly under Article 32 is to be discouraged. (Para 22)

In view of the fact that the detenu has suffered detention for about the whole period of detention, it is not a fit case for interference with judgment of the High Court. (Para 23)

Appeal dismissed

R-M/29100/CR

Advocates who appeared in this case :

L. Nageswara Rao, Additional Solicitor General (C.V. Subbarao, Rajeev Sharma and B.K. Prasad, Advocates, with him) for the Appellant;
P.B. Suresh, Vipin Nair and Nikilesh R., Advocates, for Temple Law Firm, Advocates and P.N. Ramalingam, Advocate, for the Respondents.

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	13. (1890) 15 AC 506, <i>Cox v. Hakes</i>	349h
c	14. (1881) 6 QBD 376 : 50 LJ QB 234, <i>Thomas Pacham Dale's case</i>	352e-f

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J.— An order of detention under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short “the Act”) was passed on 26-4-2000 by the Secretary to the Government of Tamil Nadu, Public (Law and Order) Department. As a consequence of such mittimus, Smt Ratnamala (hereinafter referred to as “the detenu”) was interned in the Special Jail for Women, Vellore. In the grounds of detention it was, inter alia, stated that on 26-2-2000 she was found to be in possession of a huge quantity of contraband articles. On her personal search as well as search of her baggages it was found that she was carrying gold in addition to the other articles like cellular phones etc. without any valid permission or documents for importation of goods and she was attempting to smuggle these articles by concealing them in an emergency lamp and by wearing crude gold on her person and there was no declaration made. The articles were seized under the provision of the Customs Act, 1962 (in short “the Customs Act”) read with the Foreign Trade (Development and Regulation) Act, 1992. The detenu made voluntary statements on 26-2-2000 which were recorded under Section 108 of the Customs Act. The order of detention was passed purportedly with an idea of preventing her from carrying out smuggling activities in the future. On 11-5-2000 the respondent who is the detenu’s father addressed a representation on behalf of his daughter to the President of India. Four days thereafter i.e. on 15-5-2000 a habeas corpus petition was filed before the Madras High Court challenging the detention order. When the matter was listed on 8-6-2000 a notice was issued. It had been indicated in the writ petition filed by the respondent that a representation by registered post was sent to the State of Tamil Nadu and another was sent to the Union of India represented by the Secretary to Government, Ministry of Finance (Department of Revenue) by speed post. They were the two respondents in the writ petition. A grievance was made in the writ petition that the said respondents were duty-bound to explain to the court that the representation had been considered without any delay and in

accordance with the constitutional requirements. It was also indicated that though in the representation a request was made to supply various documents and details, nothing had in fact been furnished. The delay and the failure indicated above constituted violation of constitutional safeguards. It was brought to the notice of the High Court by the respondents before it that there was no representation made as claimed when the matter was taken up on 28-9-2000. Only three grounds were urged by the present respondent before the High Court. It was first contended that there was no material to support the conclusion that the detenu is a remand prisoner as was contended by the present appellant. Secondly, the materials/documents furnished to the detenu were illegible and this disabled the detenu from making an effective representation resulting in violation of the protection guaranteed under Article 22(5) of the Constitution of India, 1950 (in short "the Constitution"). Finally, it was contended that the documents supplied were illegible and, therefore, the detention order was vitiated and there was no necessity of going into the question whether the documents were relied upon or material documents or otherwise. The High Court did not find any merit in the aforesaid three contentions and since no other point was pressed, the writ petition was dismissed. An application for review was filed on 8-12-2000. Notice was issued in the review application. For the first time it was stated by the respondent in the review petition that in fact no representation was filed before the State Government concerned i.e. the State of Tamil Nadu or the Union of India. In fact the representation was made to the President of India. The Court considered the periods spent from the date the representation reached the President's Secretariat till its final disposal, and held that there was an unexplained delay from the stage of dispatch from the President's Secretariat till it reached the Government of Tamil Nadu and the Union of India. This, according to the High Court, constituted violation of the imperative requirement of dealing with the representation with utmost expedition. Accordingly, the order of detention was quashed.

2. In the present appeal, the Union of India has raised several issues which need to be carefully considered. Firstly, it is submitted that in the order (grounds) of detention it was specifically indicated to the detenu that she had a right to make a representation to the detaining authority/State Government and also to the Government of India, if she so desired, in writing against the order under which she was kept in detention. It was also indicated that in case she wanted to make a representation the same was to be addressed to the Secretary to the Government of Tamil Nadu, Public (Law and Order) Department, Secretariat, Chennai or to the Government of India, Ministry of Finance, Department of Revenue, (COFEPOSA Unit), Central Economic Intelligence Bureau, New Delhi, as the case may be, and it should be forwarded through the Superintendent of Prison, Special Prison for Women, Vellore in which she was confined.

3. Strangely, the representation was not made to the authorities clearly indicated in the order (grounds) of detention. For the first time in the review petition a stand was taken that representation was filed before the President

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- of India, though in the writ petition it was stated that representations were made to the Government of Tamil Nadu as well as to the Union of India. This clearly constituted a suppression of fact and the High Court was not approached with clean hands and fraud was practised. Secondly, it was not open to the High Court to substitute its original order by a fresh order which is impermissible in a review application particularly on such grounds. Thirdly, the High Court having accepted that there was no delay in dealing with the representation by the State Government and the Union of India after it reached them, it ought not to have held that there was an unexplained delay in dealing with the representation. A person should not be allowed to take advantage of the concern shown by the courts to protect personal liberty resorting to dubious and fraudulent methods to gain undeserved benefits by such manipulations. He should not be permitted to gain any advantage from such acts. It was further submitted that renegades who disturb peace and tranquillity of citizens are like termites which corrode the financial stability of the country with vicious designs, file petitions full of falsehood and at times approach this Court under Article 32 even without approaching the jurisdictional High Court. It was in essence submitted that prerogative writs should not be issued in such cases to encourage the deceivers from gaining any advantage.
4. In response, the learned counsel for the respondent submitted that the detinue was really arrested on 27-2-2000 and the order of detention was passed after two months i.e. on 26-4-2000 and the High Court's order on review is dated 13-2-2001. Therefore, the detinue has undergone the detention for about the whole period. On that score alone, the appeal has practically become infructuous and no decision should be rendered on academic issues. It was submitted with emphasis that representation to the President of India was sufficient and merely because the representation was not sent to any of the indicated authorities that cannot alter the position in law.
5. It was further submitted that the detinue was already in custody and on presumption and surmises that she may be released on bail the order of detention was passed without proper application of mind regarding her incarceration in custody.
6. Though technically speaking the detinue has suffered detention for almost the whole period for which she was directed to be detained, yet considering the several important issues which have been raised by the parties, we think it appropriate to deal with them.
7. The writ of habeas corpus called by Blackstone as the great and efficacious writ in all manner of illegal confinement, really represents another aspect of due process of law. As early as 1839 it was proclaimed by Lord Denman that it had for ages been effectual to an extent never known in any other country. Lord Halsbury, L.C. stated in *Cox v. Hakes*¹ that the right to an instant determination as to the lawfulness of an existing imprisonment

¹ (1890) 15 AC 506

is the substantial right made available by this writ. Article 22 of the Constitution confers four fundamental rights on every person, except in two cases mentioned in clause (3), as essential requirements and safeguards to be followed when it is necessary to deprive any person, for any cause whatsoever and for, however brief, a period of his personal liberty by placing him under arrest or keeping him in detention. Those are: (i) to be informed, as soon as may be, of the grounds of such arrest; (ii) not to be denied the right to consult and to be defended by a legal practitioner of his choice; (iii) to be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate; and (iv) not to be detained in custody beyond the said period of twenty-four hours without the authority of a Magistrate; clauses (1) and (2) contain the guarantee of the four fundamental rights enumerated above, clause (3) contains two exceptions and provides that the constitutional guarantees do not apply to: (a) enemy aliens, and (b) persons arrested or detained under any law providing for preventive detention. Clauses (4) and (7) are devoted to laying down certain fundamental principles as to preventive detention and guaranteeing certain fundamental rights to persons who are arrested under any law for preventive detention. The fundamental rights guaranteed by clauses (4) to (7) to persons detained under any law for preventive detention relate to the maximum period of detention, the provision of an Advisory Board to consider and report on the sufficiency of the cause for detention and the right to have the earliest opportunity of making a representation against the order of detention. Preventive detention is an anticipatory measure and does not relate to an offence while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the executive is convinced on the materials available and placed before it that such detention is necessary in order to prevent the person detained from acting in a matter prejudicial to certain objects which are specified by the law. The action of the executive in detaining a person being only precautionary, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct, the failure to conform to which alone should lead to detention. In case of preventive detention of a citizen, Article 22(5) of the Constitution enjoins the obligation of the appropriate Government or the detaining authority to accord the detenu the earliest opportunity to make a representation and to consider that representation speedily. The right to make a representation implies the right of making an effective representation. It is the constitutional right of the detenu to get all the grounds on which the order has been made. As has been said by Benjamin Cardozo, "A Constitution states or ought to state not rules for the passing hour but the principles for an expanding future." The concept of grounds used in the context of detention in Article 22(5) has to receive an interpretation which will keep it meaningful, in tune with contemporary notions of the realities of the society, and the

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a purposes of the Act in the light of concepts of liberty and fundamental freedoms. While the expression "grounds" for that matter includes not only conclusions of fact but also all the basic facts on which those conclusions were founded; they are different from subsidiary facts or further particulars of the basic facts. The detenu is entitled to obtain particulars as to the grounds which will enable him to make an effective representation against the order of detention.

b 8. 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 due dispatch of judicial business touching violations of this great right is stressed in the words of Lord Denning as follows:

c "Whenever one of the King's Judges takes his seat, there is one application which by long tradition has priority over all other, 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 form it takes, it is heard first." (*Freedom under the Law*, Hamlyn Lectures, 1949.)

d 9. The constitutional philosophy of personal liberty is an idealistic view, the curtailment of liberty for reasons of the 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 *Ichhu Devi Choraria v. Union of India*² this judicial commitment was highlighted in the following words: (SCC p. 538, para 5)

e "The Court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade.

* * *

f This is an area where the Court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the Court has not hesitated to strike down the order of detention...."

10. In *Vijay Narain Singh v. State of Bihar*³ Justice Chinnappa Reddy in his concurring majority view said: (SCC p. 19, para 1 : AIR p. 1336)

g "... I do not agree with the view that 'those who are responsible for the national security or 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 matters."

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2 (1980) 4 SCC 531 : 1981 SCC (Cri) 25 : AIR 1980 SC 1983
3 (1984) 3 SCC 14 : 1984 SCC (Cri) 361 : AIR 1984 SC 1334

“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 limits set by the Constitution and the legislature have been transgressed.” (SCC p. 19, para 1) a

11. In *Hem Lall Bhandari v. State of Sikkim*⁴ (AIR at p. 766) it was observed: (SCC p. 14, para 12) b

“It is not permissible, in matters relating to the personal liberty and freedom of a citizen, to take either a liberal or a generous view of the lapses on the part of the officers.”

12. So far as the pivotal question whether there was delay in disposal of the representation is concerned, the same has to be considered in the background of Article 22(5) of the Constitution. A constitutional protection is given to every detenu which mandates the grant of liberty to the detenu to make a representation against detention, as imperated in Article 22(5) of the Constitution. It also imperates the authority to whom the representation is addressed to deal with the same with utmost expedition. The representation is to be considered in its right perspective keeping in view the fact that the detention of the detenu is based on the subjective satisfaction of the authority concerned, and infringement of the constitutional right conferred under Article 22(5) invalidates the detention order. 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 the judicial vigilance that is needed was aptly described in the following words in *Thomas Pacham Dale's case*⁵: c

“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.” d

13. One of the points raised by the respondent was that the detenu being in custody, the anticipated and apprehended acts were practical impossibilities. e

14. So far as this question relating to the procedure to be adopted in case the detenu is already in custody is concerned, the matter has been dealt with in several cases. Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authorities should f

⁴ (1987) 2 SCC 9 : 1987 SCC (Cri) 262 : AIR 1987 SC 762 g

⁵ (1881) 6 QBD 376 : 50 LJ QB 234 h

apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of

a keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and the decision in this regard must depend on the facts of the particular case. Preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic

b stability etc. ordinarily, it is not needed when the detenu is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. If the detaining authority is reasonably satisfied with cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent

c him from indulging in such prejudicial activities, the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated. (See *N. Meera Rani v. Govt. of T.N.*⁶ and *Dharmendra Suganchand Chelawat v. Union of India*⁷.) The point was gone

d into detail in *Kamarunnissa v. Union of India*⁸. The principles were set out as follows: even in the case of a person in custody, a detention order can be validly passed: (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability

e indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility of release on bail.

f 15. Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely needed to examine the question of illegal detention with utmost promptitude. The writ of habeas corpus is a device of this nature. Blackstone called it "the great and efficacious writ in all manner of illegal confinement". The writ has been described as a writ of right which is grantable ex debito justitiae. Though a

g writ of right, it is not a writ of course. The applicant must show a prima facie case of his unlawful detention. Once, however, he shows such a cause and the return is not good and sufficient, he is entitled to this writ as of right.

16. In a case of preventive detention no offence is proved, nor is any charge formulated and the justification of such detention is suspicion or

h 6 (1989) 4 SCC 418 : 1989 SCC (Cri) 732 : AIR 1989 SC 2027
7 (1990) 1 SCC 746 : 1990 SCC (Cri) 249 : AIR 1990 SC 1196
8 (1991) 1 SCC 128 : 1991 SCC (Cri) 88 : AIR 1991 SC 1640

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reasonability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. (See *R. v. Halliday*⁹ and *Kubic Darusz v. Union of India*¹⁰.) But at the same time, a person's greatest of human freedoms i.e. personal liberty is deprived, and, therefore, the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however technical, is mandatory. The compulsions of the primordial need to maintain order in society, without which enjoyment of all rights, including the right of personal liberty would lose all their meanings, are the true justifications for the laws of preventive detention. This jurisdiction has been described as a "jurisdiction of suspicion", and the compulsions to preserve the values of freedom of a democratic society and social order sometimes merit the curtailment of the individual liberty. (See *Ayya v. State of U.P.*¹¹) To lose our country by a scrupulous adherence to the written law, said Thomas Jefferson, would be to lose the law, absurdly sacrificing the end to the means. No law is an end in itself and the curtailment of liberty for reasons of the State's security and national economic discipline as a necessary evil has to be administered under strict constitutional restrictions. No carte blanche is given to any organ of the State to be the sole arbiter in such matters.

17. Coming to the question whether the representation to the President of India meets with the requirement of law, it has to be noted that in *Raghavendra Singh v. Supdt., District Jail*¹² and *Rumana Begum v. State of A.P.*¹³ it was held that representation to the President of India or the Governor, as the case may be, would amount to representation to the Central Government and the State Government respectively. Therefore, the representation made to the President of India or the Governor would amount to representation to the Central Government and the State Government. But this cannot be allowed to create a smokescreen by an unscrupulous detenu to take the authorities by surprise, acting surreptitiously or with ulterior motives. In the present case, the order (grounds) of detention specifically indicated the authority to whom the representation was to be made. Such indication is also a part of the move to facilitate an expeditious consideration of the representations actually made.

18. The respondent does not appear to have come with clean hands to the court. In the writ petition there was no mention that the representation was made to the President; instead it was specifically stated in paragraph 23 that the representation was made by registered post to the first respondent on 11-5-2000 and a similar representation was made to the second respondent.

9 1917 AC 260 : (1916-17) All ER Rep Ext 1284 : 86 LJ KB 1119 : 116 LT 417 (HL)

10 (1990) 1 SCC 568 : 1990 SCC (Cri) 227 : AIR 1990 SC 605

11 (1989) 1 SCC 374 : 1989 SCC (Cri) 153 : AIR 1989 SC 364

12 (1986) 1 SCC 650 : 1986 SCC (Cri) 60

13 1993 Supp (2) SCC 341: 1993 SCC (Cri) 551

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Before the High Court in the writ petition the first and the second respondents were described as follows:

- a "1. State of Tamil Nadu,
rep. by its Secretary,
Government of Tamil Nadu,
Public (SC) Department,
Fort St. George,
Chennai, 600 009.
- b 2. Union of India,
rep. by its Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi."

c 19. As noted supra, for the first time in the review application it was disclosed that the representation was made to the President of India and no representation was made to the State of Tamil Nadu or the Union of India who were arrayed in the writ petition as parties. This appears to be a deliberate attempt to create confusion and reap an undeserved benefit by adopting such dubious device. The High Court also transgressed its jurisdiction in entertaining the review petition with an entirely new substratum of issues. Considering the limited scope for review, the High Court ought not to have taken into account factual aspects which were not disclosed or were concealed in the writ petition. While dealing with a habeas corpus application undue importance is not to be attached to technicalities, but at the same time where the court is satisfied that an attempt has been made to deflect the course of justice by letting loose red herrings the court has to take serious note of unclean approach. Whenever a representation is made to the President and the Governor instead of the indicated authorities, it is but natural that the representation should indicate as to why the representation was made to the President or the Governor and not the indicated authorities. It should also be clearly indicated as to whom the representation has been made specifically, and not in the manner done in the case at hand. The President as well as the Governor, no doubt are constitutional Heads of the respective Governments but the day-to-day administration at respective levels is carried on by the Heads of the Departments/Ministries concerned and the designated officers who alone are ultimately responsible and accountable for the action taken or to be taken in a given case. If really the citizen concerned genuinely and honestly felt or was interested in getting an expeditious consideration or disposal of his grievance, he would and should honestly approach the real authorities concerned and would not adopt any dubious devices with the sole aim of deliberately creating a situation for delay in consideration and cry for relief on his own manipulated ground, by directing his representation to an authority which is not directly immediately concerned with such consideration.

g 20. It was nowhere indicated in the representation by the respondent as to why the representation was not being made to the indicated authorities and

instead was being made to the President of India. This appears to be with a deliberate view to take advantage of the concern shown by this Court in protecting personal liberty of citizens. Where, however, a person alleging infraction of personal liberty tries to act in a manner which is more aimed at deflecting the course of justice than for protection of his personal right, the court has to make a deliberate balancing of the fact situation to ensure that the mere factum of some delay alone is made use of to grant relief. If a fraud has been practised or perpetrated, that may in a given case nullify the cherished goal of protecting personal liberty, which obligated this Court to devise guidelines to ensure such protection by balancing individual rights and the interests of the nation, as well.

21. In *R. Keshava v. M.B. Prakash*¹⁴ it was observed by this Court as follows: (SCC p. 154, para 17)

“17. We are satisfied that the detenu in this case was apprised of his right to make representation to the appropriate Government/authorities against his order of detention as mandated in Article 22(5) of the Constitution. Despite knowledge, the detenu did not avail of the opportunity. Instead of making a representation to the appropriate Government or the confirming authority, the detenu chose to address a representation to the Advisory Board alone even without a request to send its copy to the authorities concerned under the Act. In the absence of representation or the knowledge of the representation having been made by the detenu, the appropriate Government was justified in confirming the order of detention on perusal of record and documents excluding the representation made by the detenu to the Advisory Board. For this alleged failure of the appropriate Government, the order of detention of the appropriate Government is neither rendered unconstitutional nor illegal.”

22. Another aspect which has been highlighted is that many unscrupulous petitioners are approaching this Court under Article 32 of the Constitution challenging the order of detention directly without first approaching the High Courts concerned. It is appropriate that the High Court concerned under whose jurisdiction the order of detention has been passed by the State Government or Union Territory should be approached first. In order to invoke the jurisdiction under Article 32 of the Constitution to approach this Court directly, it has to be shown by the petitioner as to why the High Court has not been approached, could not be approached or it is futile to approach the High Court. Unless satisfactory reasons are indicated in this regard, filing of petition in such matters directly under Article 32 of the Constitution is to be discouraged.

23. In view of the fact that the detenu has suffered detention for about the whole period of detention, we do not consider this a fit case for interference. We dismiss it subject to the observations made above.

ANN. R2/2
28
IN THE COURT OF DISTRICT MAGISTRATE SRINAGAR

ORDER NO : DMS/PSA/196/2020
DATED : 05-02-2020

Whereas, Senior Superintendent of Police, Srinagar vide No. LGL/Det-3206/2020/1251-54 3 dated: 05-02-2020 has produced material record, such as dossier and other connecting documents in respect of **Shri Omer Abdullah S/o Farooq Abdullah R/o Gupkar Road Srinagar.**

Whereas, I, District Magistrate, Srinagar have perused the record carefully after it was produced before me in respect of the said person.

Whereas, after perusal of records submitted by the Senior Superintendent of Police, Srinagar and after applying my mind carefully and having regard to the requirements of law, I am satisfied that with a view to prevent **Shri Omer Abdullah S/o Farooq Abdullah R/o Gupkar Road Srinagar** from acting in any manner prejudicial to the maintainance of public order, it is necessary to detain the said person under the Provisions of J&K Public Safety Act.

Now, therefore, in exercise of powers conferred under Section (8) of the J&K Public Safety Act, 1978, I, District Magistrate, Srinagar hereby direct that the said **Shri Omer Abdullah S/o Farooq Abdullah R/o Gupkar Road Srinagar** be detained under PSA and is ordered to be lodged at **Subsidiary Jail, Hari Niwas, Srinagar** which I order accordingly. In terms of Section 8 (4) of the J&K PSA, this order will remain in force for a period so notified unless confirmed by the Government.

Law
ALL ABOUT LAW Srinagar
District Magistrate,
Srinagar.

Forwarded in duplicate to the Senior Superintendent of Police, Srinagar for execution as provided u/s (9) of the J&K PSA 1978. Notice of this order shall be given to **Shri Omer Abdullah S/o Farooq Abdullah R/o Gupkar Road Srinagar** by reading over and explaining the same to him in the language he understands. It shall also be ensured that the entire material relied upon is supplied to the detinue. A copy of this order duly executed be forwarded to the Home Department under intimation to this office.

District Magistrate,
Srinagar.

Dated: 05-02-2020

No: DMS/PSA/ **Jud/905-909/20**

Copy to the:

1. Principal Secretary to Govt. Home Department J&K Civil Secretariat, Srinagar.
2. Divisional Commissioner, Kashmir for information.
3. Addl. Director General of Police, CID, J&K Srinagar.
4. Spl. Secretary to Govt. Home Department New Secretariat, Srinagar
5. Senior Superintendent of Police, Srinagar for information.
6. Superintendent, **Subsidiary Jail, Hari Niwas, Srinagar** for information and necessary action.

District Magistrate,
Srinagar.
District Magistrate,
Srinagar

OFFICE OF THE DISTRICT MAGISTRATE SRINAGAR

29

The Principal Secretary,
to Govt. Home Department,
J&K Civil Secretariat,
Srinagar.

Sir,

Vide order DMS/PSA/146/2020 Dated: 05-02-2020
Shri Omer Abdullah S/o Farooq Abdullah R/o Gupkar Road
Srinagar has been ordered to be detained under Section (8) of the J&K Public
Safety Act, 1978. The detention order has been issued after examining carefully
a detailed report from Senior Superintendent of Police, Srinagar, a copy of which
is enclosed for your perusal.

The detention order mentioned above has been issued on the grounds
specified in the annexure hereto.

The activities of the subject are highly pre-judicial to the maintenance of
public order and his remaining at large involves a great risk to the maintenance
of peace and tranquility in Srinagar.

It is, therefore, requested that the detention order alongwith the
lodgement in Subsidiary Jail, Hari Niwas, Srinagar may kindly be
approved.

Yours faithfully,

District Magistrate,
Srinagar.
District Magistrate
Srinagar

No: DMS/PSA/Jud/919-920/20.
Dated: 05-02-2020

Copy to the:

1. Spl. Secretary to Govt. Home Department New Secretariat, Srinagar.

OFFICE OF THE DISTRICT MAGISTRATE SRINAGAR

30

Shri Omer Abdullah.
S/o Farooq Abdullah.
R/o Gupkar Road Srinagar.

Upon perusal of record provided by Senior Superintendent of Police, Srinagar and after carefully examining the said record the undersigned issued detention Order No. DMS/PSA/146/2019 Dated: 05-02-2020 under Section (S) of the J&K Public Safety Act 1978.

Now, therefore, in pursuance of Sub Section (1) of Section 13 of the said Act, you are hereby informed that your detention was ordered on the grounds specified in the annexure to this letter, you may also inform the Home Department, if you would like to be heard in person by the Advisory Board.

You may make a representation against the order of detention mentioned above to the undersigned and to the Government, if you so desire.

Live Law in
ALL ABOUT
District Magistrate,
Srinagar.

No: DMS/PSA/Jud/915-918/20.
Dt. 05-02-2020

Copy to the:

1. Principal Secretary to Govt. Home Department J&K Civil Sectt, Srinagar.
2. Spl. Secretary to Govt. Home Department New Secretariat, Srinagar.
3. Copy along with grounds of detention / copy of FIR and letter addressed to the detenu viz above forwarded to the Superintendent **Subsidiary Jail, Hari Niwas, Srinagar** which may please be communicated and delivered to him against proper receipt under an intimation to this office and explain the same to him in the language he understands.

GROUNDS OF DETENTION

31

Name : Sh Omer Abdullah
S/o : Dr Farooq Abdullah
R/o : Gupkar Road Srinagar
Category : Political Activist NC

Whereas, Senior Superintendent of Police, Srinagar vide No. LGL/Det-3206/2020/1251-54 dated: 05-02-2020 has submitted a dossier for issuance of warrant for detention under the provisions of J&K Public Safety Act. The dossier has been examined in light of several grounds which include:-

1. The District Police, Srinagar has presented reports and documents pertaining to apprehension of potential disturbance to public order by sensitive statements of some political leaders aimed at inciting violence which could be detrimental to maintenance of public order. In the instant case the Police have stated about instances in this regard.
2. Whereas, Executive Magistrate submitted a case file pertaining to proceedings under section 107 CrPC which are still pending a series of reports have been filed by the police. The matter needs further careful examination at the level of concerned agencies. The matter of detention under the J&K Public Safety Act of a person already in detention, completing the statutory period, as laid down in Judgements of Hon'ble High Court, was also examined in view of police report.
3. Whereas, the Chief Prosecution Officer, Srinagar was heard in person who stated that in view of sensitive law and order situation and a host of steps taken by the stakeholders for ensuring normalcy in the region, including safeguarding public life and property from any incident of disturbance to public order, it would be expedient to avoid any such statement(s) by a political leader which may incite violence or create public disorder. He presented various statements made by the subject on earlier occasions, and explained the rationale behind the case submitted by District Police in wake of attempts made from many corners to destabilise public order. The arguments made by the Chief Prosecution Officer contested for steps required in order to prevent any such incident which may lead to disturbance in public order.
4. The dossier submitted by police further states that on the eve of re-organisation of the J&K state; in order to secure support of common people the subject made attempts of instigating and provoking general masses against the polices of Central government especially the decision regarding revocation of Article 370 and 35-A; these attempts, given the political cadre in the region, could lead to incidences disturbing public order in the region.
5. The police dossier further states that the subject has been creating an environment of public disorder within the District and other parts of Kashmir valley fanning the

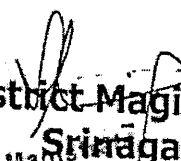
- emotions of general masses against the Union of India, by way of instigating public with twitter posts / facebook against the unity and integrity of the Nation.
6. The district police and concerned agencies have also highlighted some incidences in the recent past i.e July-2019 while addressing the party workers at residence of of his father, the subject stated that if Article 370 & 35 (A) is abrogated they will unite and raise protests as already been decided by National Conference, besides informed party workers about series of programmes against the State. It was also learnt through credible sources that he impressed upon party workers who attended meeting that youth of Sonawar Constituency be informed regarding the meeting and ask them to be ready for mass agitation if Article 370 is revoked.
 7. Posted many provoking and instigating comments / ideas on social networking sites, so as to instigate common people against the decision of Parliament which had the potential of inciting violence and disturbing public order in the region which is already faced with several security challenges.
 8. The police dossier also highlighted activities highly prejudicial to the maintenance of Public order and which have a significant effect and influence upon the ideology of common people. The concerned agencies have underlined apprehensions of encouraging mass agitation by provocative statements, as an influencer.
 9. In light of the facts and gravity of the situation in order to ford strong apprehensions which are augured by profile and actions in the instant case and in order to stop the subject from indulging in activities which are aimed at disturbing public order, the detention under the provisions of PSA at this stage has become imperative.

In order to prevent the subject from indulging in above activities, detention under the provisions of J&K Public Safety Act, at this stage has become imperative as the normal law has not been found sufficient to stop the subject from indulging in above activities.

Therefore, in view of potential activities highly prejudicial to the maintenance of public order which warrant immediate preventive measures to be taken in the instant case to prevent any kind of violence, strikes, economic, such agitations or activities may risk the public order, the preventive action is required.

The dossier of the police has been examined in light of the provisions of the Act, legal aspects and points made out in the dossier apart from the statements made by the Chief Prosecution Officer and the Executive Magistrate.

On the basis of grounds mentioned above, I have reached to the conclusion that it would be expedient to detain Sh Omar Abdullah S/O Dr Farooq Abdullah, required for maintenance of public order in the region, under the provisions of J&K Public Safety Act, 1978, for which orders are being issued separately.


District Magistrate,
Srinagar.
District Magistrate,
Srinagar.

DOSSIER.

33

Name : Omer Abdullah
S/o : Farooq Abdullah
R/o : Gupkar Road Srinagar
Category : Political Activists NC

The subject was born on 10th March 1970. The subject is a politician who inherited politics from his father and grandfather. The subject became 11th and youngest Chief Minister of erstwhile State of Jammu and Kashmir and formed a government in coalition with congress party, on 05th January 2009. The subject was functioning as leader of opposition in the erstwhile legislative assembly of J&K State (Member of the Legislative Assembly from Beerwah Constituency Kashmir) which ceased to exist on 6th August 2019. The subject is patron of National Conference, a Political Party based in J&K whose founder was Grandfather of the subject namely Shiekh Mohammad Abdullah. After death of Shiekh Mohammad Abdullah, father of subject namely Dr. Farooq Abdullah held position of President in said party and became its patron and is still holding the said position.

Over the years, subject achieved a prominent identity in the politics of erstwhile J&K State and became a popular figure among general masses, especially among youth. The subject possess a considerable influence over people. The subject has a tremendous potential for diverting energies of common people for any cause. An overview upon the activities of subject suggest that ideology of subject is favouring radical thoughts which he has also turned into actions. Despite of the fact that subject has been a mainstream politician, he has been planning and projecting his activities against the Union of India under the guise of politics and while enjoying the support of gullible masses he has been successful in execution of such activities.

Handwritten signature/initials

34

However, after revocation of Article 370 and 35-A, in order to secure support of common people the subject removed all covers/curtains and while resorting to his dirty politics has adopted a radical methodology by way of instigating and provoking general masses against the policies of Central Government especially the decision regarding revocation of Article 370 and 35-A.

The subject has been creating an environment of public disorder within the District and other parts of Kashmir valley. The conduct of subject has resulted in fanning the emotions of general masses against the Union of India, by way of instigating public with twitter posts/facebook against the unity and integrity of the Nation.

The subject is a known political figure in Srinagar City and enjoys good popularity in Sonawar Constituency which is part of civil lines area of Srinagar City, besides subject is having a good liaison with respectables of the area. The subject in recent past i.e July-2019 while addressing his party workers at residence of his father stated that if Article 370 & 35 (A) are abrogated we will unite and raise voice against Union of India as has already been decided by National Conference, besides informed his party workers about series of programmes against Union of India which his party will undertake. It was also learnt through credible sources that subject impressed upon his party workers who attended meeting that youth of Sonawar Constituency be informed regarding the meeting and ask them to be ready for mass agitation if Article 370 is revoked.

Has

The subject has been very vocal against abolishing of Article 370 and 35 (A) of Constitution of India and also against bifurcation of erstwhile J&K State. The subject has posted many provoking and instigating comments/ideas on social networking sites, so as to instigate common people against the decision of Union of India.

35

These activities of subject are highly prejudicial to the maintenance of Public order and have a significant effect and influence upon the ideology of common people. This capacity of subject of influencing people for any cause could be gauged from this fact that he was able to convince his electorate to come out and vote in huge numbers even during peak militancy and poll boycotts. The activities of subject are aiming to raise a voice against union of India by way of encouraging mass agitation, thus it could be safely said that subject by way of influence in Beerwah/Sonwar Constituency can get large numbers to protest against decision taken by Government of India .

After the historical decision taken by the Union of India for abrogation of Article 370 and 35-A of Indian Constitution. The subject has undertaken efforts for stoking public anger so as to cause violent protests, thus effecting public order e.g on 6th August 2019.

The main aim and objective of subject is to create an atmosphere of fear and chaos, so as to create mass agitation against the Union of India. However in light of the facts and gravity of the situation in order to ford strong apprehensions which are augured by his profile and actions and in order to stop the subject from indulging in activities which are aimed at disturbing public order, his detention under the provisions of PSA at this stage has become imperative.

It is pertinent to mention that subject was already under preventive detention under section 107 Cr. PC and if released there is a serious apprehension that he will mobilize crowd and instigate protests if acting public order.

In view of above, it is requested that warrant for detention under provisions of Public Safety Act may kindly be issued against the subject and sent to this office for its early execution.


Sr. Superintendent of Police,
District Srinagar.

Profile of Omer Abdullah



Name: Omar Abdullah
Parentage: Farooq Abdullah
Resident of: Srinagar Gupkar Road
D.O.B: 1970
Age: 49 Years


Breif Details


Omar Abdullah born 10 March 1970 is an Indian politician and the scion of the Abdullah family, he became the 11th and the youngest Chief Minister of the State of Jammu and Kashmir, after forming a government in coalition with the Congress party, on 5 January 2009.

He was the last Leader of opposition in the erstwhile state Jammu & Kashmir legislative assembly (Member of the Legislative Assembly from Beerwah constituency of Budgam District. Before the assembly was dissolved and the state of Jammu & Kashmir ceased to exist as on 6th August 2019.

Twitter Handle Url: <https://twitter.com/OmarAbdullah>

These are the some activeties on his Twitter / Faebook timeline are as under :-

 Omar Abdullah @OmarAbdullah · Aug 5
I'm especially concerned about the people living in the Pir Pandral & Chenab Valley regions. These areas have been very susceptible to attempts at communal violence. I hope the Govt has taken adequate precautions to ensure no communal trouble breaks out.
1.8K 12.953 3.5K

 Omar Abdullah @OmarAbdullah · Aug 5
Violence will only play in to the hands of those who do not have the best interests of the state in mind. This wasn't the India J&K acceded to but I'm not quite ready to give up hope yet. Let calm heads prevail. God be with you all.
620 852 4K
Show this thread

IN THE COURT

Omar Abdullah @OmarAbdullah · Aug 5
 While I've been focused on Kashmir I must add a word for people in Kargil, Ladakh & Jammu. I've no idea what is in store for our state but it doesn't look good. I know many of you will be upset by what unfolds. Please don't take the law in to your own hands. please stay calm.

1.9K 1.4K 86K

Show this thread

Omar Abdullah @OmarAbdullah · Aug 4
 To the people of Kashmir, we don't know what is in store for us but I am a firm believer that what ever Almighty Allah has planned it is always for the better. we may not see it now but we must never doubt his ways. Good luck to everyone. stay safe & above all PLEASE STAY CALM.

2.9K 3.9K 20.2K

Omar Abdullah @OmarAbdullah · Aug 4
 If officers in the state government are to be believed mobile internet is going down now an unofficial curfew is going to start & mainstream leaders are going to be detained. No idea who to believe & where this is heading.

1.8K 2K 76K

Omar Abdullah @OmarAbdullah · Aug 4
 India orders tourists to leave Kashmir over 'terror threat'



Thousands flee Kashmir after militant attack alert
 Indian officials have told thousands of Hindu pilgrims to leave Kashmir over security concerns.
 -@bbc.co.uk

294 1.3K 1K

Omar Abdullah @OmarAbdullah · Aug 3
 I was witness to 3 foreign tourists who had boarded our flight to Srinagar change their mind about the trip after seeing the government order. They walked up to the crew & demanded to have their bags offloaded.

1.5K 1.8K 97K

Show this thread

Omar Abdullah @OmarAbdullah · Aug 2
 I have so many questions & not a single answer. I've met people today who occupy important positions to do with J&K, not one of them was able to tell me anything and I've been CM for 6 years. Imagine the plight of your everyday Kashmiri who doesn't know what to believe.

3.4K 1.8K 9.3K

Omar Abdullah @OmarAbdullah · Aug 2
 Although this unprecedented order would seem to suggest a genuine fear of a massive terror strike directed at Amarnath ji yatra or/and tourists this will do nothing to dampen the sense of fear & foreboding that prevails in the valley at the moment.

Omar Abdullah @OmarAbdullah · Aug 2
 What "on going situation" in Kashmir would require the army AND the Air Force to be put on alert? This isn't about 35A or delimitation. This sort of alert, if actually issued, would be about something very different.

ANI @ANI · Aug 2
 Srinagar: In view of the ongoing situation in Kashmir valley, Government has put the Air Force and the Army on high operational alert.
 twitter.com/ANI/status/115...

1.1K 509 1.9K

IN THE CO.

Live Law ALL ABOUT LAW

Omar Abdullah @OmarAbdullah- Aug 5

I'm especially concerned about the people living in the Pir Panchal and Chenab valley regions. These areas have been very susceptible to attempts at communal violence. I hope the Govt has taken adequate precautions to ensure no communal trouble breaks out.

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Violence will only play in the hands of those who do not have the best interests of the state in mind. This wasn't the India J&K acceded to but I'm not quite ready to give up hope yet. Let calm heads prevail. God be with you all.

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Omar Abdullah @OmarAbdullah- Aug 4

India orders tourists to leave Kashmir over 'terror threat'

Thousands flee Kashmir after militant attack alert

Indian officials have told thousands of Hindu pilgrims to leave Kashmir over security concerns.

Omar Abdullah @OmarAbdullah- Aug 3

I was witness to 3 foreign tourists who had boarded our flight to Srinagar change their mind about the trip after seeing the government order. They walked up to the crew & demanded to have their bags offloaded.



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Omar Abdullah @OmarAbdullah- Aug 2

What 'on going situation' in Kashmir would require the Army AND the Air Force to put on alert? This isn't about 35 A or delimitation. This sort of alert if actually issued would be about something very different.

S.NO	DATE	Posts by Omar Abdullah	URL	SOCIAL MEDIA PLATFORM
1	04.08.2019	Leaders of political parties of Jammu and Kashmir gather at the residence of National Conference leader Farooq Abdullah's residence for an All Party meet.	https://www.facebook.com/marabdullahcm/	facebook
2.	04.08.2019	All party meet at Dr. Farooq Abdullahs residence Srinagar, all political leaders meeting to discuss prevailing situation.	https://www.facebook.com/marabdullahcm/	facebook
3.	04.08.2019	We Will fight attempts to abrogate Art 35-A, Art 370 with all might: NC	https://www.facebook.com/marabdullahcm/	facebook
4.	04.08.2019	We are stand with Article 370. And Article 35-A .No body has right to demolish it. It's our ethnic identity.. Team Omar Abdullah UPCOMING CM OF j&k	https://www.facebook.com/marabdullahcm/	Facebook
5.	04.08.2019	Pakistan PM Imran Khan has summoned meeting of the National Security Committee at 3 PM today to discuss the Kashmir situation and the situation on the Line of Control.	https://www.facebook.com/marabdullahcm/	Facebook
6.	04.08.2019	Home Minister Amit Shah chairs important security review meeting inside the parliament right now. NSA Ajit Doval and Home Secretary Rajeev Gauba also present. Intel Chiefs Samant Kumar Goel and Arvind Kumar are also present in the meeting.	https://www.facebook.com/marabdullahcm/	Facebook
7.	04.08.2019	Prime Minister @narendramodi has called a crucial Union Cabinet Meeting tomorrow at 9.30 am, at 7 Lok Kalyan Marg.	https://www.facebook.com/marabdullahcm/	Facebook
8.	04.08.2019	JKNC vice president Mr Omar Abdullah today	https://www.facebook.com/marabdullahcm/	Facebook

41

		presided over party's Political Affairs Committee (PAC) meeting at Nawai Subah, Srinagar.		
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صدر دفتر ضلع پولیس سرینگر

42



DISTRICT POLICE HEADQUARTERS SRINAGAR

Shergarhi, Opposite Iqbalpark, Srinagar, Jammu & Kashmir, J&K 190009

E-mail. dposrinagar@jkpolice.gov.in Tele: 0194-2311324 Fax: 0194-2311322

No: LGL/PSA/3206/2020/1398-9

Dated: 08/02/2020

The Principal Secretary to Government,
Home Department,
J&K, Jammu.

Subject: - Execution of PSA warrant.

Sir,

Kindly find enclosed herewith copy of PSA warrant duly executed on 06/02/2020 against below mentioned individual, for favour of kind information, please.

Name of deteneue	Category	PSA order No. with date	Place of lodgment
Shri Omer Abdullah S/O Farooq Abdullah R/O Gupkar Road Srinagar.	Political Leader	DMS/PSA/146/19 dated 05/02/2020	Subsidiary Jail, Hari Nawas, Srinagar

Besides, receipt of grounds of detention handed over to said deteneue at the time of lodgment is also enclosed for acknowledgement please.

Hence submitted.

Yours faithfully

Sr. Superintendent of Police,
District Srinagar.

Encl: As above

Copy to the:

1. Additional, Director General of Police, CID J&K, Jammu,
2. Inspector General of Police, Kashmir Zone Srinagar,
3. District Magistrate Srinagar,
4. Under Secretary to Government Home Department J&K Jammu...

...for favour of information please.

Sr. Superintendent of Police,
District Srinagar.

Jud

RECEIPT OF GROUNDS OF DETENTION

43

Received the grounds of detention issued by District Magistrate Srinagar vide letter No. DMS/PSA/Jud/915-918/20 dated 05/02/2020 in English consisting of 07 lvs PSA warrant 01 leaf, Dossier with relied upon documents through executing officer ST Mohammad Sultan NO. EXK 831666 of Police Station. Ram Munshi Bagh. The contents of warrant and grounds of detention have been read over and explained to me in English and Urdu language which I fully understood today on 06/02/2020. I have also been informed that I can make representation to the Govt. if I so desire.

Signature of the detenu.

Name: [Signature]
SIC: Omar Abdullah
R/O: Farooq Abdullah
6upkar, Srinagar

AMU
SI-831666

Executing Officer

Attested by Superintendent _____ Jail

[Signature]
(Magistrate)

[Signature]
Asst. Taseed Majeed
7137 / 2020

Execution Order

44

Received the grounds of detention issued by District Magistrate Beindagar vide letter No. DMS/PSA/Jud/1915-918/20 dated 05/02/2020 in English consisting of 07 WS PSA warrant of leaf, Dossier with relied upon documents through executing officer SI Md Sultan No. EXK 831666 of P/S R.M. Bagh. The contents of warrant and grounds of detention have been read over and explained to me in English and Urdu language which I fully understood today on 06/02/2020. I have also been informed that I can make representation to the Government if I so desire.



[Signature]
Signature of Detenu (Omar Abdullah
s/o Farooq Abdullah
P/o Gupkar)

[Signature]
Magistrate

[Signature]
SI-831666/EXK
Executing officer

[Signature]
7/157/N80

Dated - 06/02/2020

ANN. R2/3

23

Government of Jammu and Kashmir
Home Department
Civil Secretariat, Jammu

Subject: Detention under the Jammu and Kashmir Public Safety Act, 1978.

Government Order No. Home/PB-V/ 371 of 2020
Dated: 14-02-2020

Whereas, District Magistrate, Srinagar, in exercise of powers conferred u/s B (1) (a) (i) of the Jammu and Kashmir Public Safety Act, 1978, vide order No. DMS / PSA / 146 / 2020 dated 05-02-2020 ordered the detention of, Omer Abdullah S/o Farooq Abdullah R/o Gupkar Road, Srinagar, with a view to prevent him from acting in any manner prejudicial to the maintenance of Public Order and directed his lodgment in Subsidiary Jail, Hari Niwas, Srinagar, and

Whereas, District Magistrate, Srinagar, endorsed a copy of order dated 05-02-2020 to Home Department for approval as envisaged under sub-section (4) of Section 8 of the Act; and

Whereas, the grounds of detention were examined and considered by the Government, and

Whereas, the detenu has also been endorsed a copy of the grounds of detention relied upon by the detaining authority to enable him to make a representation against his detention order as provided under the Jammu and Kashmir Public Safety Act, 1978.

Now, therefore, in exercise of powers conferred by Sub-Section (4) of Section 8 of the Jammu and Kashmir Public Safety Act, 1978, the Government hereby approves the detention order No. DMS / PSA / 146 / 2020 dated 05-02-2020 passed by the District Magistrate, Srinagar. The period of detention shall be determined on the basis of opinion of Advisory Board.

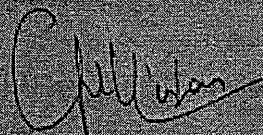
By order of the Government of Jammu and Kashmir

Sd/-
(Shaleen Kabra) IAS
Principal Secretary to Government
Dated: 14-02-2020

No. Home/PB-V/20/2020

Copy for information and necessary action to the:-

1. Director General of Police, J&K, Jammu.
2. Director General of Police, (Prisons), J&K, Jammu
3. Additional Director General of Police, CID, J&K, Jammu
4. District Magistrate, Srinagar
5. Sr. Superintendent, of Police, Srinagar
6. Superintendent, Subsidiary Jail, Hari Niwas, Srinagar
7. Government Order file/file


(Gurpreet Singh) KAS
Deputy Secretary to Government



AMN R 244

Advisory Board under The Jammu and Kashmir Public Safety Act, 1978,
Jammu.

File No:Home/PB-V/20/2020

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QUORUM

Justice (Retd.)Janak Raj Kotwal

Chairman

Abdul Wahid

Member

Kartar Singh

Member

*Detention Order No.DMS/PSA/146/2020 Dated
05.02.2020 of Omer Abdullah S/O Farooq Abdullah
R/O Gupkar Road, Srinagar.*

REPORT

24.02.2020

We have perused and accorded our consideration to the material placed before us.

Omer Abdullah S/O Farooq Abdullah R/O Gupkar Road, Srinagar (hereinafter to be referred as the Detenu) has been detained under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as the Act) by virtue of Order No.DMS/PSA/146/2020 dated 05.02.2020 passed by the District Magistrate Srinagar, (hereinafter to be referred as the Detaining Authority) with a view to preventing him from acting in a manner prejudicial to the maintenance of the Public Order. The order of Detention has been executed on 06.02.2020 and the Detenu is lodged in Subsidiary Jail, Hari Niwas, Srinagar. The approval in terms of Section 8(4) of the Act has been accorded by the Government, Home Department, vide G. O. No. Home/PB-V/ 371 of 2020 dated 14.02.2020.

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grounds of detention formulated by the Detaining Authority are supported by the dossier/material placed before him by the Sr. Superintendent of Police, Srinagar. Record reveals also that information in terms of section 13(1) of the Act was duly given to the Detenu by the Detaining Authority vide his endorsement No.DMS/PSA/Jud/915-918/2020 dated 05.02.2020 and the grounds of detention and other relevant material were furnished to the Detenu at the time of taking him into Detention on 06.02.2020 against receipt and their contents were read over and explained to him in Kashmiri and Urdu Languages. The Detenu was also informed about his right of making representation against his Detention to the Detaining Authority as also to the Government.

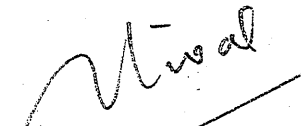
No representation is stated to have been made by the Detenu. There is, thus, no rebuttal to the grounds of detention formulated by the Detaining Authority or the material relied upon. All the requirements contemplated under the Act have been complied with and no error of law or procedure, which would invalidate the Detention, seems to have been committed by the Detaining Authority. The detention is thus, in conformity with the principles as enshrined under Article 22(5) of the Constitution of India and the provisions of the Act.

We are, thus, of the opinion that there is sufficient cause for detention of the Detenu under Section 8 of the Act with a view to preventing him from acting in any manner prejudicial to the maintenance of the Public Order.

The Reference is accordingly disposed of. Record of the case along with this report be sent back to the Government for necessary action at their end. The index of the file be maintained in the office and consigned to records.


Kartar Singh
Member


Abdul Wahid
Member


Janak Raj Kotwal
Chairman

Government of Jammu and Kashmir
Home Department,
Civil Secretariat, Jammu

AMV.R2/E

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Subject: Confirmation of detention order in respect of Omer Abdullah S/o Farooq Abdullah R/o Gupkar Road, Srinagar.

Reference: Advisory Board's opinion dated 24-02-2020.

Government Order No. Home/PB-VI/542 of 2020

D a t e d:- 26-02-2020

Whereas, District Magistrate, Srinagar, in exercise of powers conferred u/s 8 (1) (a) (i) of the Jammu and Kashmir Public Safety Act, 1978, vide order No. DMS/PSA/146/2020 dated 05-02-2020, ordered the detention of Omer Abdullah S/o Farooq Abdullah R/o Gupkar Road, Srinagar, with a view to prevent him from acting in any manner prejudicial to the maintenance of Public Order and directed his lodgment in Subsidiary Jail, Hari Niwas, Srinagar; and

Whereas, grounds of detention and other relevant material thereof were examined and considered by the Government and the order No. DMS/PSA/146/2020 dated 05-02-2020 passed by District Magistrate, Srinagar was approved by the Government vide order No. Home / PB-V / 371 of 2020 dated 14-02-2020; and

Whereas, the order No. DMS/PSA/146/2020 dated 05-02-2020 came to be executed on 06-02-2020; and

Whereas, the case was referred to the Advisory Board for opinion. The Advisory Board vide its opinion dated 24-02-2020 has observed that there is sufficient cause for detention of the detainee.

Now therefore, in exercise of powers conferred by section 17(1) of the Jammu and Kashmir, Public Safety Act, 1978, the Government hereby confirms the detention order No. DMS/PSA/146/2020 dated 05-02-2020 passed by District Magistrate, Srinagar and further direct that Omer Abdullah S/o Farooq Abdullah R/o Gupkar Road, Srinagar, be detained for a period of three months in the first instance and lodged in Subsidiary Jail, Hari Niwas, Srinagar.

By order of the Government of Jammu and Kashmir.

Sd/-

(Shaleen Kabra) IAS
Principal Secretary to Government
Dated: -26-02-2020

No. Home/PB-VI/20/2020

Copy for information and necessary action to the:-

1. Director General of Police, J&K, Jammu
2. Director General of Police, (Prisons), J&K, Jammu.
3. Additional Director General of Police, CID, J&K, Jammu.
4. District Magistrate, Srinagar.
5. Sh. B.A.Dar, Sr. Addl. Advocate General, Hon'ble High Court, Srinagar.
6. Sr. Superintendent of Police, Srinagar.
7. Superintendent, Subsidiary Jail, Hari Niwas, Srinagar.
8. Government Order file/file....

(Gurpreet Singh) KAS

Deputy Secretary to Government

VAKALATNAMA

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
SLP/WRIT PETITION (C) NO. 57/2020**

IN THE MATTER OF:

Saeed Abdullah Pilot Petitioner
VERSUS

U.T. of Jammu & Kashmir Respondents

I/WE, the petitioner(s)/Respondent(s)) in the above mentioned matter, do hereby appoint and retain SHASHI JUNEJA & ... Advocate Supreme Court of India, to act and appear for me /us in the above mentioned matter reference and on my/our behalf to conduct and prosecute(or defend) or withdraw the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and application for review, to file and obtain, return of documents and to deposit and receive money on my/our behalf in the above mentioned matter Reference and in the above matter. I/We agree to ratify all acts done by the aforesaid Advocate, in pursuance of this authority.

Dated this the 29th day of February 2020

Accepted and Identified and certified

Shashi Juneja
Advocate, Supreme Court of India

Rehal Sella
Petitioner/Respondent/PA
Identified by:

Shashi Juneja
Advocate

MEMO OF APPEARANCE

To
The Registrar
Supreme Court of India
New Delhi
Sir,

Please enter my appearance on behalf of the Petitioner(s)/ Appellant(s)/ Respondent(s)/ Intervenor/ Caveator in the above mentioned matter.

Yours faithfully,

Shashi Juneja
Advocate for the Petitioner/Respondent

SHASHI JUNEJA
ADDL. STANDING COUNSEL,
U.T. OF JAMMU AND KASHMIR
21, POORVI APARTMENTS
New Delhi VASANT VIHAR, NEW DELHI-57
Dated # +91 997 188 7457
Email: shashi.jun@rediffmail.com.