

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

HCP No.282/2024

Reserved On: 11th of April, 2025.
Pronounced On: 5th of May, 2025.

Mohammad Ashraf Bhat

... Petitioner(s)

Through: -

Mr R. A. Jan, Senior Advocate with
Mr Adil Mushtaq, Advocate;
Mr Z. A. Qurashi, Senior Advocate with
Ms Rehana Fayaz, Advocate; and
Mr Mohammad Younis, Advocate.

V/s

Union Territory of J&K and Ors.

... Respondent(s)

Through: -

Mr Jehangir Ahmad Dar, Government Advocate.

CORAM:

Hon'ble Mr Justice Rahul Bharti, Judge.

(JUDGMENT)

01. Heard learned counsel for the parties.
02. Perused the pleadings of the writ petition and the record therewith. Also perused the record relating to the preventive detention of the petitioner as produced by the respondents.
03. "The history of liberty has largely been the history of the observance of procedural safeguards" is a famous quote of

Justice Felix Frankfurter, Judge Supreme Court of United States with a perpetual meaning and pregnant with a message that personal liberty of a citizen/subject is a 'Handle with Care and Caution' tag in case it is intended to be curtailed on preventive side intent and end of law.

04. The petitioner, who is a practising advocate aged 71 years, has come to suffer preventive detention custody in terms of an order No. DMS/PSA/18/2024 dated 16th of July, 2024 passed by the respondent No.2-District Magistrate, Srinagar acting in exercise of power under section 8 of the Jammu & Kashmir Public Safety Act, 1978 by reckoning the petitioner's personal liberty and his alleged reported activities to be prejudicial to the maintenance of security of the State. In terms of said order, the respondent No.2-District Magistrate, Srinagar directed the petitioner's detention and consequent detainment in the District Jail, Kathua.

05. The petitioner was taken into preventive custody when the detention warrant came to be executed on 17th of July, 2024 by PSI-Mubarak Ahmad Shah, Sub-Inspector Police Station, Sadar, Srinagar.

06. The institution of the present writ petition, seeking setting aside of his preventive detention custody by quashing of

preventive detention order, came to take place on 12th of August, 2024 by the petitioner acting through his wife-Mst. Asmat Hagroo.

07. A case for seeking preventive detention of the petitioner under the Jammu & Kashmir Public Safety Act, 1978 came to be initiated by the Senior Superintendent of Police (SSP), Srinagar who, vide his letter No. LGL/Det-PSA/2024/14353-55 dated 15th of July, 2024, submitted a dossier to the respondent No.2-District Magistrate, Srinagar thereby reporting the alleged activities of the petitioner, being in state of freedom of movement and personal liberty, to be prejudicial to the maintenance of the security of the State.

08. Text and context of said dossier needs to be reproduced as it is, on the basis of which the Senior Superintendent of Police (SSP), Srinagar solicited slapping of preventive detention upon the petitioner. The dossier reads as under:

“Name: Mohammad Ashraf Bhat.

Parentage: Late Ghulam Hassan Bhat.

Residence: Mughal Mohalla Chattabal A/P Rawalpura
near Boys Higher Secondary Mohalla
Rawalpura.

Category: General Secretary of Kashmir High Court
Bar Association.

Age: 70 years.

The subject was born at Mughal Mohalla Chattabal Srinagar in the year 1953 and is presently putting up at Rawalpura Srinagar. The subject graduated in law. Soon after the completion of Law degree, subsequently subject started practicing as lawyer as a regular member of High Court Bar Association Kashmir. The subject came to be nominated as General Secretary of high Court Kashmir Bar Association, Srinagar, having affiliated with APHC-G. The subject is known for his secessionist ideology and its anti-national propagation among like-minded lawyers and general masses.

The subject in the capacity of General Secretary of High Court Bar Association (HCBA) and has been instrumental in reviving of HCBA and to provide a platform to secessionist and terrorists. It was provided in adopted constitution of Kashmir High Court Bar Association to provide support to the terrorist movement till objective of secessionist of UT of J&K from Union of India is achieved. The subject is still continuing his activities for propagating the erstwhile adopted constitution of JKHCBA to support the terrorist movement to achieve unlawful desired object of secessionism under the influence of Advocate Abdul Qayoom, a staunch supporter of terrorist and secessionism.

The subject due to his hardcore secessionist ideology was very close to secessionist organizations and aided secessionist elements including Late Syed Ali Shah Geelani to formulate protest calendars during unrest of 2008, 2010 and 2016. The subject has also remained associated with the Peoples League and was arrested in the year 1989. He was tasked by APHC (G) to defend the cases of secessionist and terrorists sub-judice before different Courts which made him earn a prominent position within the secessionist rank. Subject is responsible for organizing anti-national seminars, rallies formulating secessionists programs aimed with to create anti-national atmosphere in the valley.

The subject post-abrogation of Article 370 in consultation with the mentors across the border was advocating to led many agitations and was hell bent upon to create a situation which could jeopardize public order of UT of J&K **was detained under PSA in year 2019.** However, after his release from the detention he did not mend his ways and continued propagating secessionism and terrorist.

In 2002, subject had gone to Pakistan with 03 other Kashmir Advocates namely Ghulam Nabi Shaheen, G. N. Hagroo and Mohd. Amin Bhat to attend a seminar on “Peace through Law” organized by Pakistan Bar Association at Islamabad. Reportedly, during their meeting with General Parvaiz Musharaff, they were warned to work strictly as per ISI directions and not to utter a word about peace in Kashmir. Since then, the subject has loyally toed the Pakistan line in Kashmir. He has remained staunch support separatism in Kashmir. The brother of the subject namely Advocate Mohamad Younis S/o Ghulam Hassan Bhat R/o Mughal MohallaChattabal is a released locally trained terrorist of the proscribed outfit Hizbul Mujahideen who was arrested by Security Forces in 1991 and released after two years of detention.

The subject remained active in mobilizing anti-national protests against the execution of death penalty inflicted by Hon’ble Court of Law against the hanging of Afzal Guru and delivered sermons that he was hanged without affording him the chance of a fair trial exposed Indian Judicial System as well as Kashmir’s Pro-Indian Camp.

There are credible and technical reports received with respect to the subject from various agencies which are suggestive of the fact that the subject has been facilitating terrorists/OGWs by way of legal recourse to get out of the ambit of law and subject has visited number of jails all over

India and had assured terrorists/secessionist lodged there that he will facilitate the release of such terrorists, this was done only to rise the circle of terrorists/secessionists groups. The subject being an Advocate practicing in High Court and District Court Srinagar is providing his services as Advocate to Terrorists, OWGs (accused persons) involved in UAPA cases.

The subject has always trying to find ways and means to devise programs/seminars/calendars which have been and are direct threat to the security of State in the past, as well because the subject is holding discreet meet with his likeminded lawyers and masses to review the secessionism in the valley District Srinagar particularly. The subject as per the credible/confidential sources and technical inputs is direct threat to security of state at present and assessing his past activities. The subject, being a staunch antinational element cannot see peace returning in UT of J&K and as such always in search of opportunity to mobilize the ways and means having bearing on security of State and as such has been found to have secretly devised programs for creating large scale violence which in all possibilities will have bearing on the security of State.

The subject whose audacity can be gauged from the activities he has carried out in past and is trying to revive is a potential threat to the security of State, if the subject is allowed to remain at large, there are more than compelling reasons that once the subject, is allowed to remain at large at this point of time, he is going to indulge in activities which are prejudicial to security of State.

Therefore, taking a wholesome view of the likely impact of the activities of the subject upon the overall scenario, if the subject gets liberty to move freely at this point of time, there is very chance that the subject will devise a plan with his likeminded advocates and masses which in all possibilities will

be a threat to the security of State. In order to safety of security of State and keeping the compelling circumstances mentioned above, the detention of subject under provisions of PSA 1978, for maximum period at this stage has become imperative.

It is as such requested, that a warrant of detention under provisions of J&K Public Safety Act 1978 to prevent him from acting in any manner prejudicial to Security of State may kindly be issued against subject and sent to this office for early execution.”

09. Acting upon the said dossier, the respondent No.2-District Magistrate, Srinagar formulated the grounds of detention on the purported basis whereof the respondent No.2-District Magistrate Srinagar came to hold that the petitioner’s personal liberty warranted to be curtailed in order to prevent him from acting in a manner prejudicial to the security of the State.

10. The respondent No.2-District Magistrate, Srinagar, vide communication No. DMS/PSA/JUD/1003-1006/2024 dated 16th of July, 2024, addressed to the petitioner meant to notify him about the passing of detention order against him and his impending detention to be carried out pursuant thereto and further registering a reminder to the petitioner about his option to exercise his right to make a representation against the order of detention be it to the respondent No.2-District Magistrate, Srinagar and/ or to the Government as may be desired by the petitioner.

11. Simultaneously, the respondent No.2-District Magistrate, Srinagar also notified the Principal Secretary to Government, Home Department, Union Territory of Jammu & Kashmir vide letter No. DMS/PSA/JUD/1007-1008/2024 dated 16th of July, 2024 about passing of detention order against the petitioner by the respondent No.2-District Magistrate, Srinagar.

12. The actual detention of the petitioner taking place on 17th of July, 2024 was accompanied with handing over of eight (08) leaves compilation to the petitioner by the Superintendent of Police, District Jail, Kathua attended with the grounds of detention being read over and explained to the petitioner.

13. Upon lodgment of the petitioner in the District Jail, Kathua, the Superintendent, District Jail, Kathua, vide his communication No. DJK/DS/4333-38 dated 18th of July, 2024, apprised the Financial Commissioner (Additional Chief Secretary), Government of Union Territory of J&K, Home Department about the detention of the petitioner having been carried out and his detainment in the District Jail, Kathua having taken place.

14. Upon execution of detention warrant resulting in taking into custody the person of the petitioner, the Station House Officer (SHO), Police Station Sadar, vide his letter No. SDR/PSA/24/04

dated 19th of July, 2024, apprised the Senior Superintendent of Police (SSP), Srinagar about the fact of the petitioner being taken into preventive detention custody.

15. Senior Superintendent of Police (SSP), Srinagar at his end, vide his letter No. LGL/PSA-3717/24/14828-31 dated 20th of July, 2024, apprised the Principal Secretary to Government, Home Department, Union Territory of Jammu & Kashmir about the execution of the detention warrant upon the petitioner.

16. The preventive detention order No. DMS/PSA/80/2024 dated 16th of July, 2024 came to be approved by the Home Department, Government of Union Territory of Jammu & Kashmir vide Government Order No. Home/PB-V/1503 of 2024 dated 22nd of July, 2024 in terms whereof the determination of period of detention of the petitioner under the preventive detention custody was made subject to the receipt of opinion of the Advisory Board.

17. The petitioner, acting through his wife, submitted a written representation dated 24th of July, 2024 addressed to the Chairman, Advisory Board thereby detailing the facts and circumstances on the basis of which the revocation of the detention order was solicited.

18. In addition, the petitioner, through his wife, also submitted written representation dated 24th of July, 2024 to the respondent No.2-District Magistrate, Srinagar duly received in the office of District Magistrate, Srinagar in terms whereof a plea was made for revocation of the preventive detention against the petitioner.

19. The preventive detention file of the petitioner is said to have been sent and submitted for its opinion to the Advisory Board under the Jammu & Kashmir Public Safety Act, 1978 on 24th of July, 2024.

20. The Deputy Secretary to Government, Home Department, Union Territory of Jammu & Kashmir, vide his letter No. Home/PB-V/417-2024(7527085) dated 26th of July, 2024, addressed to the Chairman, Advisory Board also forwarded the written representation of the petitioner for consideration.

21. In order to avail his right of representation against his preventive detention in an effective manner, the petitioner, vide a handwritten application dated 1st of August, 2024 addressed to Principal Secretary to Government, Home Department, Union Territory of Jammu & Kashmir, asked for personal hearing before the Advisory Board.

22. The petitioner being in state of custody handed over his handwritten application dated 1st of August, 2024 to the Superintendent, District Jail, Kathua obviously for the purpose of its placement before the Principal Secretary to Government, Home Department, Union Territory of Jammu & Kashmir.

23. Superintendent, District Jail, Kathua, acting at his end vide letter No. DJK/MH/4720 dated 2nd of August, 2024 addressed to the Director General Prisons, Jammu & Kashmir, Srinagar, forwarded said handwritten application of the petitioner seeking right of personal hearing before the Advisory Board.

24. Meanwhile, the Advisory Board under the Jammu & Kashmir Public Safety Act, 1978 came to submit its opinion report on file No. Home/PB-V/417/2014 dated 5th of August, 2024 in terms whereof the preventive detention of the petitioner was held to be based upon sufficient grounds.

25. The Advisory Board in its opinion report came to refer about the fact of the written representation of the petitioner being considered but found to be without any substance. The Advisory Board in express terms came to observe that the petitioner had not registered any request for personal hearing.

26. Staff Officer to the Director General Prisons, Jammu & Kashmir, Srinagar, vide a letter No. DS/PSA correspondence SJ

Reasi/2024 (7423072) 3764 dated 6th of August, 2024 addressed to the Principal Secretary to Government, Home Department, Union Territory of Jammu & Kashmir forwarded the letter No. DJK/MH/4270 dated 2nd of August, 2024 of the Superintendent, District Jail, Kathua along with handwritten application dated 1st of August, 2024 of the petitioner seeking personal hearing before the Advisory Board.

27. Thereafter, the Deputy Secretary to Government, Home Department, Union Territory of Jammu & Kashmir, vide letter No. Home/PB-V/417/2024/7527085 dated 8th of August, 2024 addressed to the respondent No.2-District Magistrate, Srinagar, conveyed the fact of rejection of petitioner's representation. Copy of this communication was also meant to be forwarded to the Superintendent, District Jail, Kathua for the sake of conveying to the petitioner about the rejection of his representation against his preventive detention.

28. On the other hand, following the Advisory Board's opinion confirming the petitioner's preventive detention, confirmation of the petitioner's detention came to be ordered vide Government Order No. Home/PB-V/1638 of 2024 dated 8th of August, 2024 and thereby settling the period of the petitioner's

detention custody at the first instance for six months to be kept detained in District Jail, Kathua.

29. The Deputy Secretary to Government, Home Department, Union Territory of Jammu & Kashmir, vide his letter No. Home/PB-V/417/2024(7527085) dated 20th of August, 2024 addressed to the Additional Director General of Police, CID, J&K, forwarded communication No. DS/PSA correspondence SJ Reasi/2024(7423072) 3764 dated 6th of August, 2024 of the Staff Officer to Director General, Prisons, Jammu & Kashmir.

30. The respondent No.2-District Magistrate, Srinagar vide his letter No. DMS/JUD/Misc/2024/1785 dated 11th of October, 2024 addressed to the Principal Secretary to Government, Home Department, Union Territory of Jammu & Kashmir, forwarded the written representation of the petitioner seeking revocation of his detention which was submitted by the respondent No.2-District Magistrate, Srinagar.

31. The Deputy Secretary to Government, Home Department, Union Territory of Jammu & Kashmir, vide his letter No. Home/PB-V/417-2024-7527085 dated 16th of October, 2024 addressed to the respondent No.2-District Magistrate, Srinagar, apprised him about the fact that the petitioner's written representation against his preventive detention stood already

rejected as conveyed vide letter No. Home/PB-V/417/2024/7527085 dated 8th of August, 2024.

32. From the office of Additional Director General of Police, CID, J&K, Senior Superintendent of Police (A), vide letter No. CID/SSP(A)/BR/M-03/2019/SGR/14278 dated 29th of October, 2024 addressed to Principal Secretary to Government, Home Department, Union Territory of Jammu & Kashmir, recommended the rejection of the petitioner's representation, whereafter the Deputy Secretary to Government, Home Department, Union Territory of Jammu & Kashmir, vide his letter No. Home/PB-V/417/2024/7527085 dated 28th of October, 2024 addressed to respondent No.2-District Magistrate, Srinagar, conveyed the fact of rejection of the petitioner's representation.

33. The Additional District Magistrate, Srinagar vide his letter No. DMS/JUD/Misc/2024/2203-2204 dated 26th of November, 2024 apprised the Senior Superintendent of Police (SSP), Srinagar about the disposal of the petitioner's representation.

34. Vide Government Order No. Home/PB-V/99 of 2025 dated 14th of January, 2025, the petitioner's period of detention came to be extended by period of another six months w.e.f. 17th of January, 2025 to 16th of July, 2025 which period is still in

currency and in the course of which the adjudication of this writ petition has come up.

35. The petitioner in his writ petition has assailed his preventive detention custody on the grounds as set out in para 8 (A) to (J).

36. The petitioner challenges his preventive detention being procured by suppression of facts at the end of the Senior Superintendent of Police (SSP), Srinagar who is said to have withheld true and full disclosure of facts of the petitioner's previous preventive detention ordered in year 2019 under the Jammu & Kashmir Public Safety Act, 1978 resulting in its setting aside and quashment by a judgment dated 16th of March, 2020 in WP (Crl) No. 573/2019.

37. The petitioner has annexed copy of judgment dated 16th of March, 2020 along with his writ petition as Annexure-V page Nos. 26 to 30. In the said writ petition, the Superintendent of Police, Srinagar figured as respondent No.5 and was, thus, meant to be fully cognizant of previous preventive detention of the petitioner having taken place earlier in 2019 but consequently getting quashed.

38. It is pleaded in the grounds of challenge that the second time detention of the petitioner, now being under challenge, is

premised on the same basis as was the preventive detention effected in the year 2019 vide Order No. DMS/PSA/129/2019 dated 26th of September, 2019.

39. It is pleaded in the grounds of challenge to his preventive detention custody that from 2019 onwards, there is no activity whatsoever reflected and reported in the dossier by the Senior Superintendent of Police (SSP), Srinagar on the basis of which the present preventive detention custody of the petitioner could come to take place and, therefore, second time preventive detention of the petitioner is resting upon the same grounds without being first disclosed and briefed to the respondent No.2-District Magistrate, Srinagar about first detention order.

40. It is further pleaded that once the preventive detention of the petitioner effected in the year 2019 came to be quashed by judgment dated 16th of March, 2020 passed by this Court which remained unchallenged, all the preceding references which led upto passing of preventive detention order No. DMS/PSA/129/2019 dated 26th of September, 2019 against the petitioner were to be of no worth even for reference sake much less for reliance sake but still in the dossier submitted by the Senior Superintendent of Police (SSP), Srinagar against the petitioner to the respondent No.2-District Magistrate, Srinagar,

who thereupon formulated grounds of detention, all the self-same references were borrowed and imported in the grounds of detention on the basis of which the impugned second time detention order came to be passed subjecting the petitioner to suffer loss of personal liberty by the preventive detention mode.

41. The petitioner has also assailed his preventive detention custody on the ground that his representation made through his wife has remained unconsidered and un-responded.

42. In addition, though not pleaded in the writ petition but came to be argued by the learned counsel for the petitioner that petitioner's request for personal hearing duly submitted by him in terms of his handwritten application dated 1st of August, 2024 was made to go waste by the Jail Authorities and also by the Home Department, Government of Union Territory of Jammu & Kashmir which resulted in denying him personal hearing before the Advisory Board in connection with consideration of his written representation submitted to the Advisory Board seeking revocation of his preventive detention.

43. The petitioner has relied upon the following judgments to supplement his submissions in seeking quashment of his preventive detention custody:

- i. 1975 (II) SCC 4;

- ii. 1979 (V) SCC 559;
- iii. 1980 (IV) SCC 544;
- iv. 1987 (VII) SCC 22;
- v. 1989 (IV) SCC 741;
- vi. 2006 (IV) SCC 796;
- vii. 2023 AIR SC 4273;
- viii. 2023 JKJ (II) 394; and
- ix. 2023 JKJ (VI) 77.

44. The petitioner has also agitated, as a ground of challenge, the fact that the dossier submitted by the Senior Superintendent of Police (SSP), Srinagar to the respondent No. 2-District Magistrate, Srinagar was not provided to him and, as such, the material on the basis of which the dossier was framed was also not provided to him.

45. In the counter affidavit to the writ petition, the respondents in general and respondent No.2-District Magistrate, Srinagar in particular has come forward with preliminary objections as well as parawise reply on the basis of which the dismissal of the writ petition filed by the petitioner is being sought.

46. In the preliminary objections, it is being stated that no legal, fundamental or statutory right of the petitioner has been

violated and, therefore, the writ petition merits outright rejection. It is further objected by the answering respondents, with respect to the maintainability of the writ petition, that the petitioner has not approached the Court with clean hands and the contentions made in the writ petition are baseless.

47. Continuing with their preliminary objections, the respondents come forward with recitals as to the jurisdictional basis of preventive detention jurisdiction and in that regard draw reference from the judgments of the Hon'ble Supreme Court in the cases of **'Haradhan Saha v. State of West Bengal, 1975 (III) SCC 198'**; **'The Secretary to Government, Public (Law and Order-F) &Anr. v. Nabila &Anr.'**, **'2015 (XII) SCC 127; Debu Mahato v. State, 1974 AIR (SC) 816'**; and **'Ashok Jumar v. Delhi Administration and Ors., 1982 AIR (SC) 1143.'**

48. In order to provide insulation to the preventive detention of the petitioner as ordered by respondent No.2-District Magistrate, Srinagar, the respondents in their reply have come forward claiming that all the statutory requirements and constitutional guarantees were fulfilled and complied with in ordering and effecting the preventive detention of the petitioner keeping in mind the very object of law of preventive detention.

49. It is further asserted that the detention order and the grounds in support thereof were not only made available to the petitioner but also read over and explained to the petitioner besides apprising him about his right of making a representation against his preventive detention. Further, in order to salvage the basis of preventive detention imposed upon the petitioner, the respondents in their counter affidavit have come forward stating that even if on one of the grounds of detention the preventive detention of the petitioner is rendered questionable, the other grounds can suffice and serve the purpose to lend validity to the preventive detention of the petitioner.

50. On parawise reply side, the respondents have come up with a novelty of the factual background narrative without bothering to deal with the parawise reply of the assertions and averments made in the writ petition filed by the petitioner.

51. This Court is at loss to discern the reluctance on the part of the respondent No.2-District Magistrate, Srinagar in coming forward with parawise reply in the counter affidavit to the averments and assertions made in the writ petition by the petitioner.

52. In the factual background as set out in the counter affidavit, there is a very muted reference of one liner about the

earlier preventive detention case of the petitioner dating back to 2019 and its outcome, and also as to how the petitioner came to be apprised about the outcome of consideration of his written representation made for seeking revocation of his preventive detention.

53. There is nothing said or suggested in the counter affidavit by the respondent No.2-District Magistrate, Srinagar as to why the petitioner's plea for seeking personal hearing before the Advisory Board was made to suffer waste in the process of official correspondence and, in the meanwhile, the Advisory Board was let to opine on the preventive detention of the petitioner without personal hearing accorded to the petitioner.

54. Upon consideration of all facts and circumstances with respect to the case in hand drawn from the writ petition, the documents therewith, the counter affidavit without any documents therewith and the detention record produced, the preventive detention of the petitioner is found to be seriously faulty and flawed.

55. The first and foremost flaw is the stone like silence on the part of the Senior Superintendent of Police (SSP), Srinagar and also of the respondent No.2-District Magistrate, Srinagar in putting out in full with respect to the petitioner's preventive

detention effected in the year 2019. The petitioner had earned quashment of his first preventive detention custody through the medium of a writ petition WP (Crl) No. 573/2019 in which the Senior Superintendent of Police (SSP), Srinagar and the District Magistrate, Srinagar figured as respondents No. 4 and 5. The adjudication of said 2019 writ petition had taken place not in an *ex-parte* manner for affording said two officers an excuse to plead ignorance. First preventive detention of the petitioner was quashed on merits. This Court is clueless to decipher as to why in his dossier, the Senior Superintendent of Police (SSP), Srinagar missed out in documenting in his dossier the details and dossier of the petitioner's preventive detention effected in the year 2019 and its consequent quashment.

56. Likewise, the respondent No.2-District Magistrate, Srinagar, if had acted with due diligence at his end, would have come across with a fact from the records of his office that the petitioner was subjected to preventive detention in the year 2019 which came to be set aside by the intervention of the High Court of Jammu & Kashmir and Ladakh. This omission is too serious to be taken casually much less by this Court as being the guardian of the fundamental rights of a citizen of India which the petitioner undoubtedly is.

57. The preventive detention of the petitioner is further flawed because of the petitioner being kept uninformed about the fate of his written representation which was made not only to the Advisory Board but also to the respondent No.2-District Magistrate, Srinagar and to the Principal Secretary to Government, Home Department, Union Territory of Jammu & Kashmir. There is found no communication on the detention record file of the petitioner, as produced from the respondents' end, to confirm that the petitioner was duly notified with respect to the rejection of his written representation against his preventive detention.

58. In the present writ petition, the respondent No.3 is Superintendent of Police, District Jail, Kathua. There is no counter affidavit from his end nor is there any averment in the counter affidavit filed by the respondent No.2-District Magistrate, Srinagar by reference to the respondent No.3-Superintendent of Police, District Jail, Kathua that the petitioner was duly notified about the rejection of his written representation which was otherwise conveyed to the respondent No.3.

59. These two grounds are self-sufficient by themselves to render the preventive detention of the petitioner bad in the eyes of law.

60. The exercise of preventive detention jurisdiction is a double-edged sword which is unsparing both for the hand which wields it and the hand which bears its blow. If mishandled by the wielder of said sword, then the effect stays on the side of the wielder whereas the relief passes on to the side of the person aimed to suffer its blow, and which precisely is the situation in hand before this Court in the context of the present case.

61. In the case of **“Ayya @ Ayub Vs State of UP and another,” (1989)1 SCC 374**, the Hon’ble Supreme Court of India has delved into the essence of preventive detention jurisdiction and its sensitivities. Paras 11,12, 13, 14, 15, 16, 17, 18, 19 & 20 are worth reference herein which are reproduced as under:-

“11. Personal liberty protected under Article 21 of the Constitution is held so sacrosanct and so high in the scale of constitutional values that this Court has shown great anxiety for its protection and wherever a petition for writ of habeas-corpus is brought-up, it has been held that the obligation of the detaining-authority is not confined just to meet the specific-grounds of challenge but is one of showing that the impugned detention meticulously accords with the procedure established by law. Indeed the English Courts a century ago echoed the stringency and concern of this judicial vigilance in matters of personal liberty in the following words:

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 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.”

12. 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 is stressed in the words of Lord Dinning:

Whenever one of the King's Judges takes his seat, there is one application which by long tradition has priority over all others. Counsel has but to say 'My Lord, I have an application which concerns the liberty of the subject' and forth-with 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.

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

14. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by the genius of its administration so as to strike the right balance between individual-liberty on the one hand and the needs of an orderly society on the other. But the realities of executive excesses in the actual enforcement of the law have put the courts on the alert, ever-ready to intervene and confine the power within strict limits of the law both substantive and procedural. The paradigms and value judgments of the maintenance of a right balance are not static but vary according as the "pressures of the day" and according as the intensity of the imperatives that justify both the need for and the extent of the curtailment to be individual liberty. Adjustments and readjustments are constantly to be made and reviewed. No law is an end in itself. The "inn that shelters for the night is not journey's end and the law, like the traveller, must be ready for the morrow."

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

"Faith in America is faith in her free institutions or it is nothing. The Constitution we adopted launched a daring and bold experiment. Under that compact we agreed to tolerate even ideas we despise. We also agreed never to prosecute people merely for their ideas or beliefs"

16. Judge Stanley H. Fuld of the New York Court of Appeals said:

"It is a delusion to think that the nation's security is advanced by the sacrifice of the individual's basic- liberty. The fears and doubts of the moment may loom large, but we lose more than we gain if we counter with a resort to alian procedures or with a denial of essential constitutional guarantees."

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

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

18. In *Ichudevi v. Union of India* AIR 1980 SC 1983, Bhagwati J. spoke of this Judicial commitment:

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

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” (emphasis supplied)

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

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

20. In *Hem Lall Bhandari v. Sikkim*, AIR 1987 SC 762 at 766, it was observed:

"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"

62. The preventive detention custody of the petitioner being based upon procedural pitfalls is, thus, held to be illegal and liable to be quashed.

63. Accordingly, preventive detention order No. DMS/PSA/18/2024 dated 16th of July, 2024 passed by the respondent No.2-District Magistrate, Srinagar read with confirmation/ approval/ extension orders with respect to the preventive detention of the petitioner are hereby quashed.

64. The petitioner is directed to be restored, without loss of any time, to his personal liberty by his immediate release from the concerned Jail and to that effect the Superintendent of the concerned Jail detaining the petitioner to act in compliance of the directions hereby being issued with respect to the release of the petitioner from preventive detention custody.

65. **Disposed of.**

66. Record be returned.

(Rahul Bharti)
Judge

SRINAGAR
May 5th, 2025
"TAHIR"

i. Whether the Judgment is approved for reporting? **Yes**