HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

…

HCP No. 133/2023

Reserved on: 11.02.2025

Pronounced on: 19.02.2025

Majid Hyderi, aged 43 years S/o Late Jahangir Hyderi R/o Milat Abad Peerbach Srinagar

……. Petitioner(s)

Through: Mr. M. Y. Bhat, Sr. Advocate with
Mr. Pince Hamza & Mr. Sajid Bhat, Advocates

Versus

1. Union Territory of J&K through Principal Secretary to Home Department, Civil Secretariat, Srinagar/ Jammu
2. District Magistrate, Srinagar
3. Sr. Superintendent of Police, Srinagar.

….Respondent(s)

Through: Mr. A. R. Malik, Sr. AAG with Ms. Rahella Khan, AC

CORAM:
HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Petitioner prays to quash Order No.DMS/PSA/65/2023 dated 16.09.2023, ("*detention order*") passed by District Magistrate, Srinagar – respondent no.2 ("*detaining authority*") placing *Majid Hyderi S/o Late Jahangir Hyderi R/o Milat Abad Peerbach Srinagar* ("*detenu*") under preventive detention with a view to prevent him from acting in any manner prejudicial to the maintenance of security of State.

2. The case set up by petitioner, in the instant petition, is that detenu is a law abiding, peace loving and a senior Journalist/Debater of International Repute. He has attained the worldwide recognition for his reporting. He has contributed to reputed newspapers,

journals, TV Channels etc. for last two decades. Besides, his mother has also worked in national and patriotic programs, broadcasted on Radio Kashmir for decades when there were clear terrorist threats to the artists and performers. Her work and contribution have been appreciated by Radio Kashmir with remarks that she has exhibited great courage and patriotic zeal while volunteering to host patriotic programs like "*Wadi Ki Awaz*", which worked an effective tactic for countering terrorist propaganda. The detenu, in pursuance of his duty towards the nation as a journalist, published a story, in which he exposed one of the influential and well-connected individuals who happens to be a proclaimed offender and has various criminal cases against his name based on his extensive research/investigative journalism in order to serve the public interest, accountability and national interest at large. After publication of aforesaid article, the said influential person used his nefarious designs by filing a Civil suit for defamation and permanent injunction before the court of 1st additional District Judge, Srinagar, in order to restrain the detenu so that he could not publish any further statements/articles, but all his efforts went in vain when his application for interim relief was dismissed.

3. It is being also stated by petitioner that detenu informed the higher authorities at Delhi including the Hon'ble Prime Minister, Hon'ble Home Minister and Hon'ble Lt. Governor of UT of J&K about the illegalities committed by the said person so that appropriate legal

action was taken and he was unable to exercise influence. It is also stated that abovementioned individual crossed all limits when he filed an application under Section 156 (3) Cr.P.C., which was forwarded to SHO P/S Sadder for conducting investigation but the Police despite non-disclosure of any cognizable offence, lodged a frivolous FIR No.88/2023 dated 14.09.2023 under Section 500,177,386,120B IPC against the detenu following which the detenu was arrested.

4. It is also being submitted by petitioner that detenu approached competent court for grant of bail which was granted on 16.09.2023. Despite grant of bail detenu was not released and came to be placed under preventive detention in terms of impugned order.

5. Respondents have filed reply affidavit, insisting therein that detenu is not a peaceful citizen of India as he is involved in antinational/ nefarious activities and his activities pose a serious threat to national security or public order. It is being also stated that detenu, operating within the realm of journalism, has repeatedly engaged in actions that are not only provocative but also gravely endanger the security and integrity of India. The exploitation of the profession of journalism to disseminate false information. He advocates for separatist and secessionist ideologies through electronic means and promotes anti-India sentiments, which has been a matter of grave concern. This conduct has not been limited to the sporadic instances but has been a deliberate pattern of

behaviour over the past years, primarily through the social media channels. The detenu's actions, which have included glorifying violence, misrepresenting facts, and peddling secessionist narratives, have posed a severe threat to the peace and security of the State. The activities narrated in the grounds of detention have been reiterated in the reply/counter affidavit filed by respondents. The factual averments that detenu was not supplied with relevant material relied upon in the grounds of detention have been refuted. It is insisted that all the relevant material i.e. copies of order of detention, grounds of detention, copy of FIR, copy of statement and other documents, which has been relied upon by the detaining authority, was provided to the detenu at the time of execution of warrant.

6. I have heard learned counsel for parties. I have perused the detention record produced by learned counsel for respondents and considered the matter.

7. Learned senior counsel appearing for petitioner has stated that detenu, although being a Post Graduate, was not provided with due assistance and facilitation to file an effective representation from the jail, where he was lodged. He avers that detenu is a distinguished senior journalist (freelancer) of unimpeachable credibility both at national and international level, renowned for his transparent and ethically-driven journalist endeavours. He has made significant contributions to reputable newspapers, journals

and TV channels of national repute, consistently upholding the principles of responsible journalism.

8. Learned senior counsel also states that the Union Territory Administration has itself recognised the detenu's unwavering commitment to the national interest. He was selected to interact with ambassadors from 15 countries, including the United States of America on 09.01.2020, following the abrogation of Article 370. His participation in national and international conferences and events further illustrates his unwavering dedication in representing the country and the Union Territory of J&K in a patriotic matter. Moreover, his dedication to the national interest has rendered him a target of threats from unknown terror groups so his commitment towards truth, ethical journalism and national interest, demanding the immediate quashment of the detention order.

9. It is being also submitted by learned senior counsel that detenu's dedication to the national interest has rendered him a target of threats from unknown terror groups, prompting him to file a complaint with police station Kothibagh on 21.01.2020 and, accordingly, an FIR No.05/2020 was lodged in the said police station. This incident underscores the perilous environment in which the detenu operates and clearly contradicts any assertion that he poses a threat to the security of the State.

10. *Per contra*, learned counsel for respondents insists that detention order has been passed on subjective satisfaction by detaining authority and detention order is in accordance with law and there is

no violation or infringement of rights guaranteed under the Constitution of India. Hence, he pleads that petition be dismissed.

11. The question whether the prejudicial activities of a person requiring to pass a detention order is proximate to time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped, depends on the facts and circumstances of each case. Nonetheless, when there is an undue and long delay between the prejudicial activities and the passing of the detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the casual connection has been broken in the circumstances of each case. Certainly, in the present case, there is no cogent explanation coming to fore from perusal of the grounds of detention with reference to the live-link between the prejudicial activities and the purpose of the detention and resultantly the impugned detention order is liable to be quashed. In this regard reference is made to the law laid down in ***T. A. Abdul Rahman v. State of Kerala (1989) 4 SCC 741*** and ***Rajinder Arora v. Union of India and others (2006) 4 SCC 796***].

12. Preventive detention must be supported by existence of a 'live and proximate link' between past conduct and present imperative need to detain a person. It has been very often held that order of preventive detention must be passed by due application of mind and taking note of relevant factors. If order of detention is passed on the basis of

incidents which are stale, it is often stated that incident not being of relevance to establish imperativeness in passing an order of detention and such order passed must be treated as being based on extraneous factors. The observations made by the Supreme Court in ***Sama Aruna v. State of Telangana and another, (2018) 12 SCC 150***, is relevant to be reproduced herein below:

> "22. We are of the view, that the detention order in this case is vitiated by taking into account incidents so far back in the past as would have no bearing on the immediate need to detain him without a trial. The satisfaction of the authority is not in respect of the thing in regard to which it is required to be satisfied. Incidents which are stale, cease to have relevance to the subject-matter of the enquiry and must be treated as extraneous to the scope and purpose of the statute."

13. In such cases, the question would also arise regarding validity of an order of detention where after the last of such incidents there is a lull and after a substantial time lag, an order of detention is sought to be passed. The detaining authority must establish habituality of commission of offences which could be directly linked to a pattern of behaviour. In order to establish such pattern of behaviour that would reasonably indicate continuing commission of offences, the detaining authority must establish intermittent commission of offences which would indicate a regular pattern.

14. In plethora of judgments, the Supreme Court has held that the order of detention must not be based upon stale events. In this regard, the relevant observations made by the Supreme Court in ***Ameena Begum v. State of Telangana and others, (2023) 9 SCC 587***, are advantageous to be reproduced hereunder: -

> "17. In a different context, we may take note of the decision in *Sama Aruna vs. State of Telangana*[11], *where, S.A. Bobde, J.* (as the Chief Justice then was) while construing the provisions of the Act, held:
> "16. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that

> he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account." In holding that the order of detention therein was grounded on stale grounds, the Court held that:
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> > "The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it."

15. In ***Khaja Bilal Ahmed v. State of Telangana, (2020) 13 SCC 632***, the order of detention was issued on 2nd November 2018 and detaining authority had delved into the history of cases involving the appellant-detenu therein from the years 2007-2016, despite the subjective satisfaction of the Officer not being based on such cases. In quashing such an order, it was observed:

> "23….. If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the Appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention.

> Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future."

16. The satisfaction to be arrived at by detaining authority must not be based on irrelevant or invalid grounds and it must be arrived at on the basis of relevant material. The material which is not stale and has a live-link with the satisfaction of detaining authority. Detention order may refer to previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of a person could indicate his tendency or inclination to prejudicial activities, then it may have a bearing on the subjective satisfaction of detaining authority. However, in absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for requirements of passing order of detention. It is not open to detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.

17. I may also refer to the decision of a Constitution Bench of the Supreme Court in ***Sunil Fulchand Shah v. Union of India, (2000) 3 SCC 409***, wherein the need to strictly adhere to the timelines, provided as procedural safeguards, was stressed upon. It was held thus:

> "11.….The safeguards available to a person against whom an order of detention has been passed are limited and, therefore, the courts have always held that all the procedural safeguards provided by the law should be strictly complied with. Any default in maintaining the time-limit has been regarded as having the effect of rendering the detention order or the continued detention, as the case may be, illegal. The justification for preventive detention being necessity a

> person can be detained only so long as it is found necessary to detain him. If his detention is found unnecessary, even during the maximum period permissible under the law then he has to be released from detention forthwith. It is really in this context that Section 10 and particularly the words 'may be detained' shall have to be interpreted."

18. In the present case, the detaining authority has made reference to the social media comments/postings of and news items disseminated by the detenu way back in the year 2018. Those lack in to demonstrate a live and proximate link.

19. The requirement of 'proximity/live link' is required to demonstrate imperativeness in invoking the power of preventive detention more so where the criminal prosecution is pending which proceedings may culminate in imposition of a punitive sentence. It is a settled position of law that the power of passing an order of preventive detention cannot be a punitive measure on the apprehension, howsoever reasonable it may be that detenu is going to go scot free in pending trials due to lack of support to prosecution by crucial witnesses or otherwise.

20. Grounds of detention, on its perusal, allege that detenu has under the cover of journalism been advocating idea of separatism and secessionist ideology through the electronic media, tweets and social media posts and trying to advance the radical ideology. It is also mentioned in the grounds of detention that the detenu through his TV debates/Facebook, YouTube posts and personal tweets has been continuously propagating the stories in a selective narrative, which is in line with the separatist propaganda.

21. About the social media postings/reportings, a Division Bench of this Court vide judgement dated 09.11.2024, in LPA No.270/2022 titled as *Sajad Ahmad Dar v. Union Territory of J&K and others*, has held that negative critic towards the policies of Government of Union Territory of Jammu and Kashmir cannot be said to be a ground to be relied upon for placing a person under preventive detention, that too without any specific instance as to how such social media comments had caused any problem muchless public order problem to the government. Paras 14&15 of the said judgement are apt to be noticed:

> "14. Coming to the grounds of detention, there is no specific allegation against the detenu as to how his activities could be attributed to be prejudicial to the security of the State. The detaining authority, itself, has admitted that the detenu, having done Masters in Journalism, was working as a Journalist (Media Reporter) and it was his professional/ occupational duty to report the happenings in his area, even including the operations of the security forces. Such a tendency on the part of the detaining authority to detain the critics of the policies or commissions/ omissions of the Government machinery, as in the case of the present detenu-a professional media person, in our considered opinion is an abuse of the preventive law. The grounds of detention nowhere suggest/ reveal that the detenu had, at any point of time, filed/ uploaded any false story/ reporting based not on true facts. It is nowhere stated as to how the detenu had disrupted the public order creating any alleged enmity, inasmuch as, there is no specific instance in any of the allegations levelled against him to show that he had been working against the national interests, so as to be prejudicial to the security of the State.
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> 15. While going through the records, this Court finds an observation of the detaining authority that the detenu had been a negative critic towards the policies of the Government of the Union Territory of Jammu & Kashmir and that his tweets used to provoke the people against the Government. This cannot be said to be a ground to be relied upon that a true and factual media report can provoke people against the working of the Government, that too without any specific instance as to how his tweets had caused any problem, much less public order problem with the Government. In the grounds of detention, it has also been referred that the uploading of the news items by the detenu, as a Journalist, had created enmity and acrimony against Government machinery, however, there is no specific instance as to which of the posts/ write ups are there as being so and on what date."

22. Petitioner has placed on record various documents/papers, which suggest contrary to what has been alleged against detenu in

grounds of detention. Page 81 of writ petition detail out a certificate issued by Radio Kashmir, Srinagar, on 10th December 2017, wherein Director (PH) Radio Kashmir, Srinagar, on behalf of All India Radio, has expressed gratitude to mother of detenu, namely, Ms. Shafqat Jahan and her family, for extending her unequivocal services to the country at a critical time in national broadcasting history. Tributes have been given to the mother of detenu by saying that she has rich legacy of contribution to Radio broadcasting since 1985 when her journey began with the School Broadcast Programme. She moulded the minds of children, across the Valley with positive thoughts and hope for a bright future when all seemed lost. The certificate also mentions "*What stands out is her contribution during height of militancy in Kashmir. To appreciate her contribution, we must understand the situation prevalent at that time*". It also mentions that in early nineties (1990's) with the onset of the militancy many members of Radio Kashmir, Srinagar, left the Valley. The local artists were warned by the militants not to participate in radio programmes. The severe shortage of the staff, curfews, encounters, hartals and boycott by the local artists was making it very difficult to keep the signal beaming. The station was on the verge of collapse. At that critical juncture in the history of Radio Kashmir, some local casual artists came forward to keep the premier Radio Station of the country alive and save it from ignominy. One such Braveheart was detenu's mother. She exhibited great courage and patriotic zeal

when she volunteered to host the counter-propaganda programme '*Wadi ki Awaz*'. She was forewarned that she was putting herself and her family in serious peril but Ms. Jahan did not relent. She started hosting the programme under the assumed name 'Shahnaz' for several years. By praising mother of detenu, Director (PH) Radio Kashmir, Srinagar, has also mentioned in his letter dated 10th December 2017 that mother of detenu handled sensitive and controversial topics quite delicately at a time when even one sentence of displeasure, for some, could have been disastrous or even fatal for her and her family.

23. Pages 84, 111, 129, 135, 142 to 144, 145 to 155, 194 to 201, annexed with the writ petition give details of the news reports beamed by the detenu, stating that how J&K Police took care of and kept the militancy at bay and nipped it. There are even various news reported by the detenu, by which he praised the Prime Minister of India, the Home Minister, Lieutenant Governor of Union Territory of J&K, and Police Officers of J&K.

24. His news item of 6th June 2023 is worthwhile, wherein he has stated that braving terror threats and international conspiracies, the Modi Government hosted G20 summit in Kashmir, and what made the celebrations possible in the region otherwise marred by terror-related-violence of over three decades was essentially this foolproof security bandobast. He in his news-report thanks J&K Police, Central Armed Police for ensuring that G20 festivities remained incident-free in absolute terms.

25. The detenu has also placed on record a news item published by him wherein he has exposed the outfit Hurriyat's socalled Chairman Syed Ali Shah Geelani. He has also reported that "*Separatist leader, Sarkari Naukri: Why it's time to investigate Syed Ali Shah Geelani's grandson's government job*". The detenu has also written against the proscribed outfit, Dukhtaran-e-Millat led by Asiya Andrabi.

26. The petitioner has also annexed writ the writ petition, the news-item of the detenu with caption "*Inspired by PM Modi's Mann Ki Baat, Jammu boy creates handmade JCB-like machine to lift garbage*".

27. The detaining authority appears to have not been made aware of the abovementioned facts/information. If this information would have been brought to the notice of detaining authority, things would have been different and the detenu would not have been languishing in jail but would have been, at this moment, serving the Nation.

28. It is very unfortunate that respondents, in their Reply Affidavit, have labelled the detenu as "*not a peaceful citizen of India*". If we treat detenu, like peace loving citizens, in such a harsh way, by bashing and thrashing them, and placing them under preventive detention, then we will lose "*peace*" and "*peace loving citizens*". Instead of appreciating the detenu, he has placed under preventive detention. Instead of rewarding mother of detenu, she has been

forced to see her son detained in preventive detention for none of his faults.

29. The detaining authority, in the grounds of detention, has made reference to case FIR no.88/2023. The said FIR relates to defamation matter, which has been registered after receiving copy of complaint/application under Section 156(3) Cr.P.C. from the concerned court Srinagar. It is startling that the detaining authority has made use of this FIR to show his subjective satisfaction derived therefrom for placing the detenu under the preventive detention, oblivious of the fact that the allegations contained therein will not affect sovereignty, security and integrity of the world's largest democratic country – India. The activities alleged in aforementioned FIR, *per se*, do not attract or entail the provisions of the J&K Public Safety Act.

30. Do the expressions "security of State" and "public order" take in every kind of infraction of order or only some categories thereof. It is manifest that every act of assault or injury to specific persons does not lead to activities prejudicial to security of State or public order. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder and threat to security of the State. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order and posing threat to the security of the State. The

contravention of any law always affects order but before it can be said to affect public order and pose threat to security of the State, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest is to be drawn. A mere disturbance of law and order leading to disorder is, thus, not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act. Reference in this regard is made to ***Pushkar Mukherjee v. State of West Bengal, (1969) 1 SCC***.

31. In ***Nenavath Bujji v. State of Telangana, 2024 INSC 239 : 2024 SC Online SC 367***, the Supreme Court has said that inability on the part of the State's police machinery to tackle the law and order situation should not be an excuse to invoke preventive detention. It is also observed by the Supreme Court that satisfaction cannot be inferred by mere statement in the order that "it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order". Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention while expressing its

satisfaction. Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s) / grounds(s) not furnished to the detenu. The decision of the authority must be the natural culmination of the application of mind to the relevant and material facts available on the record. It was also said by the Supreme Court that mere registration of two FIRs for alleged offences of robbery etc. could not have been made the basis to invoke the provisions of the Preventive Detention Act for the purpose of preventively detaining a person and that in order to bring activities of a person within expression of acting in any manner prejudicial to maintenance of public order or say security of State, the activities must be of such a nature that the ordinary laws cannot deal with them or prevent subversive activities affecting society.

32. It is worthwhile to mention here that the power of preventive detention as the very word indicates has to be used *bona fidely for* the purpose of prevention of possible criminal offences by detenu based on past behaviour with a pattern of repeated offences. The observations of the Supreme Court in ***Khudiram Das v. State of West Bengal, AIR 1975 SC 550***, would throw light on the above, the relevant observations are as follows:-

> "8.... The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof….."

33. It may be appropriate to mention here that in the case in hand, perusal of the grounds of detention reveals that the grounds are vague and ambiguous, and do not refer to any date, month or year of the activities, which have been attributed to detenu. Detention in preventive custody on the basis of such vague and ambiguous grounds of detention cannot be justified. It may not be out of place to mention here that preventive detention is largely precautionary and is based on suspicion. The Court is ill-equipped to investigate into circumstances of suspicion on which such anticipatory action must be largely based. The nature of the proceeding is incapable of objective assessment. The matters to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of surrounding circumstances and other relevant material, is likely to act in a prejudicial manner as contemplated by the provisions of the law and, if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not the matters susceptible of objective determination, and they could not have been intended to be judged by objective standards. They are essentially the matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of detaining authority which, by reason of its special position, experience and expertise, would be best suited to decide them. Thus, the Constitutional imperatives of Article 22(5) and the dual obligation imposed on the authority making the order of preventive detention, are twofold: (1) The detaining authority must, as soon as may be, i.e. as soon as practicable, after the detention order is passed, communicate to the detenu the grounds on

which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention, i.e. to be furnished with sufficient particulars to enable him to make a representation which, on being considered, may obtain relief to him. The inclusion of an irrelevant or non-existent ground, among other relevant grounds, is an infringement of the first of the rights and the inclusion of an obscure or vague ground, among other clear and definite grounds, is an infringement of the second of the rights. In either case there is an invasion of the constitutional rights of the detenu entitling him to approach the Court for relief. The reason why the inclusion of even a simple irrelevant or obscure ground, among several relevant and clear grounds, is an invasion of the detenu's constitutional right is that the Court is precluded from adjudicating upon the sufficiency of the grounds, and it cannot substitute its objective decision for the subjective satisfaction of the detaining authority. Even if one of the grounds or reasons, which led to the subjective satisfaction of the detaining authority, is non-existent or misconceived or irrelevant, the order of detention would be invalid. Where the order of detention is founded on distinct and separate grounds, if any one of the grounds is vague or irrelevant the entire order must fall. The satisfaction of detaining authority being subjective, it is impossible to predicate whether the order would have been passed in the absence of vague or irrelevant data. A ground is said to be irrelevant when it has no connection with the satisfaction of the authority making the order of detention. Irrelevant grounds, being taken into consideration for making the order of detention, are sufficient to vitiate it. One irrelevant ground is sufficient

to vitiate the order as it is not possible to assess, in what manner and to what extent, that irrelevant ground operated on the mind of the appropriate authority, and contributed to his satisfaction that it was necessary to detain the detenu in order to prevent him from acting in any manner prejudicial to the maintenance of the public order or security of the State. Reference in this regard is made to ***Mohd. Yousuf Rather v. State of J&K and others, AIR 1979 SC 1925;*** and ***Mohd. Yaqoob v. State of J&K &ors, 2008 (2) JKJ 255 [HC]***.

34. A Division Bench of this Court in ***LPA no.133/2024*** titled as ***Imran Rashid Rather v. UT of J&K and another***, vide judgement dated 17.12.2024, has said that the grounds of detention must afford an opportunity to the detenu to give specific rebuttal rather than a generalised one that the "allegations are false and denied". Vague grounds militate against subjective satisfaction, which is not satisfaction based upon specific acts attributable to the detenu which raise a reasonable apprehension in the mind of the detaining authority, that not taking the detenu under preventive detention would have a deleterious effect, either on public order, or on the security of the state. Grounds of detention disclosing specific instances verifiable by documents and/or statement of witnesses establish subjective satisfaction and its absence, vitiates the order of detention, as the satisfaction is not subjective but one influenced by prejudice or unsubstantiated apprehension. The relevant portion of the judgement are worthwhile to be reproduced hereunder:

> "13. The grounds of detention must give an opportunity to the detenue to give specific rebuttal rather than a generalized one that the "allegations are false and denied". Vague grounds militate against subjective satisfaction, which is not satisfaction based upon specific

acts attributable to the detenue which raise a "reasonable apprehension" in the mind of the detaining authority, that not taking the detenue under preventive detention would have a deleterious effect, either on public order, or on the security of the state. Grounds of detention disclosing specific instances verifiable by documents and/or statement of witnesses establish "subjective satisfaction" and its absence, vitiates the order of detention, as the satisfaction is not subjective but one influenced by prejudice or unsubstantiated apprehension.

14. Detaining a person under the provisions of the PSA is an exercise of executive discretion, seriously infracting the individual's right under article 21 of the constitution. Though constitutionally and statutorily valid, the exercise of jurisdiction under laws of preventive detention must be an exception to the general laws of arrest and detention.

15. The exercise of executive discretion of detaining a citizen under the preventive detention laws without justifiable grounds, is an act of colourable exercise of executive discretion making such action violative of article 21 of the constitution. The Supreme Court has in held in several cases that the power to act in discretion is not a power to act "ad-arbitarium" and that such power to exercise jurisdiction is not a "despotic power" nor is it "hedged with arbitrariness" and when the discretion is exercised mala fide, it gets vitiated by colourable exercise of power.In another case, the Supreme Court observed that the "attainment of ends" beyond the sanctioned purposes of power is a colourable exercise of power. Yet in a case under the COFEPOSA, the Supreme Court held that even a solitary instance may be sufficient for the detaining authority to be subjectively satisfied about the detrimental effect of letting the detenue roam free, the subjective satisfaction of the authority is not "absolute" and neither ought it be "unreasonable" and that the authority must disclose the reasons for its inference as to why it arrived at the subjective satisfaction that not taking the detenue into preventive detention would result in the detenue continuing with his/her nefarious acts. It was also held that the absence of any "specific and authenticated material" to indicate that the detenue had the inclination to indulge in similar activities would not for a legitimate basis to take the detenue into preventive detention1.

16. Therefore, this Court holds that vague and non-specific grounds of detention firstly, violates the fundamental right to life and personal liberty of the detenue under article 21 of the constitution as it summarily curtails the liberty of the citizen based on the subjective satisfaction of the executive which is an exceptional power as against the general law relating to arrest and detention. Secondly, it deprives the detenue of giving a specific rebuttal to the grounds of detention which may satisfy the detaining authority or the Government that his detention is unlawful and compels him to answer the grounds of detention as "it is incorrect" or "it is false" etc. Thirdly, vague and generalised grounds in the order of detention, smacks of arbitrariness on the part of the detaining authority rendering the subjective satisfaction arrived at as violative of article 14 of the constitution and fourthly, vague and non-specific grounds raise the impression that the same has been done deliberately in order to deprive the detenu of giving a precise rebuttal. Malafide in fact may be difficult to establish as they must be pleaded with specific facts, but the lack of bonafides may be presumed where the executive act results in the deprivation of personal liberty from a detention order based on vague grounds. In such cases, the lack of bonafides is to be presumed due to a cavalier or casual exercise of the authority to detain the citizen without any

> specific ill will or personal animosity. The lack of bonafides is on account of failure to take due care and act without introspection, blindly on the report of the SP without insisting on supporting material which justifies the deprivation of liberty.

35. It has been observed by the Division Bench in ***Imran Rashid Rather*** (supra) that detaining a person under the provisions of the PSA is an exercise of executive discretion, seriously infracting the individual's right under Article 21 of the Constitution. Though constitutionally and statutorily valid, the exercise of the jurisdiction under laws of the preventive detention must be an exception to the general laws of the arrest and detention. The Division Bench has held that the vague and non-specific grounds of detention firstly, violates the fundamental right to life and personal liberty of the detenu under Article 21 of the Constitution as it summarily curtails the liberty of a citizen based on the subjective satisfaction of the executive which is an exceptional power as against the general law relating to arrest and detention. It deprives the detenu of giving a specific rebuttal to the grounds of detention which may satisfy the detaining authority or the Government that his detention is unlawful and compels him to answer grounds of detention as "it is incorrect" or "it is false" etc. The vague and generalised grounds in the order of detention, smacks of arbitrariness on the part of the detaining authority rendering the subjective satisfaction arrived at as violative of Article 14 of the Constitution and vague and non-specific grounds raise the impression that the same has been done deliberately in order to deprive the detenu of giving a precise rebuttal. It is also

said by the Division Bench that the *mala fide*, in fact, may be difficult to establish as they must be pleaded with the specific facts, but lack of *bona fide* may be presumed where the executive act results in the deprivation of personal liberty from a detention order based on vague grounds. In such cases, the lack of *bona fide* is to be presumed due to a cavalier or casual exercise of the authority to detain the citizen without any specific ill will or personal animosity. The Division Bench has also observed that the lack of *bona fide* is on account of the failure to take due care and act without introspection, blindly on the report of the sponsoring agency, without insisting on the supporting material which justifies the deprivation of liberty. The above observations and findings given by the Division Bench also apply to the present case.

36. For the reasons discussed above, Detention Order No.DMS/ PSA/ 65/2023 dated 16.09.2023 passed by District Magistrate, Srinagar, is quashed. Respondents are directed to release the detenu forthwith, provided he is not required in any other case.

37. **Disposed of**.

38. Registry to return detention record to learned counsel for respondents.

(Vinod Chatterji Koul)
Judge

Srinagar
19.02.2025
(Qazi Amjad, Secy)

Whether the order is reportable: Yes/No.