HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

…

HCP No. 281/2024
CM No. 5759/2024
CM No. 4918/2024
CM No. 5248/2024

Reserved on: 26.12.2024
Pronounced on: 03.01. 2025

Miyan Muzaffar, Aged 38 years
S/o Miyan Mohammad Yousuf
R/o Barzulla, Bulbulbagh, Srinagar
through his wife Safina Bashir
W/o Miyan Muzaffar
R/o Barzulla, Bulbulbagh, Srinagar

……...Petitioner(s)

Through:
Mr. R. A. Jan, Sr. Advocate with Mr. Suhail Mehraj, Advocate

Versus

1. UT of Jammu and Kashmir through Commissioner Secretary to Government Home Department Civil Secretariat, Srinagar/Jammu.
2. District Magistrate, Srinagar
3. Superintendent District Jail, Kathua, Jammu

……Respondent(s)

Through:
Mr. Satinder Singh Kala, AAG

***CORAM*:**
HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

J U D G M E N T

1. This petition has been filed at the instance of the detenue by his wife, thereby, challenging detention order passed by District Magistrate Srinagar-respondent No. 2, bearing No. DMS/PSA/17/2024 dated 13.07.2024, for short impugned order, whereby detenue namely Miyan Muzaffer S/o Miyan Mohammad Yousuf R/o Barzulla Bulbulgagh, Srinagar, has been detained under the provisions of Section 8 of the Jammu & Kashmir Public Safety Act,

1978, hereinafter for short as Act, on the ground that his activities are prejudicial to the maintenance of Security of the State and directed to be lodged at district Jail, Kathua Jammu, where he is undergoing detention.

FACTUAL MATRIX

2. The detenue was arrested during the intervening night of 13th/14th of July 2024, by police station, Saddar. Neither the detenue nor his family members were apprised about the reason of his arrest. It was in the morning hours of 14th of July 2024, the detenue was told that he has been detained under provisions of the Act. It is stated that detenue was not provided with the order of detention, grounds of detention or any other relevant documents, on the basis whereof the impugned order was passed by the District Magistrate, Srinagar. Thereafter detenue was taken to District Jail, Kathua, where Superintendent of Jail provided him with a copy of the order of detention and grounds of detention, besides, a copy of communication no. DMS/PSA/Jud/97-1000/2024 dated 13.07.2024, issued by District Magistrate, Srinagar, whereby, the detenue was advised that he may inform the Home department, if he would like to be heard in person by the Advisory Board and also may make a representation against the order of detention, in pursuance to Sub Section (1) of Section 13 of the Act. It was only after the documents were furnished to the detenue, a representation dated 23.07.2024 was sent on 25.07.2024, by the wife of the detenue to the Principal Secretary to Government Home Department through post and by hand to District Magistrate Srinagar.

3. The petitioner has assailed the order of detention dated 13.07.2024 on the following grounds-:

(a) The detention order mentions about the dossier which was submitted by the Senior Superintendent of Police, Srinagar for issuance of warrant of detention, after examination of the dossier, District Magistrate passed impugned order, but the same has not been provided to the detenue.

(b) The representation submitted to the Government as well as to the District Magistrate, Srinagar on 23.07.20 24, has not been considered by the respondents, and if at all considered the decision has not been communicated to the detenue.

(c) The grounds which have been taken into consideration by the District Magistrate Srinagar, are not supported by any document produced before him. District magistrate Srinagar has passed order of detention on vague and irrelevant grounds. Till date, no FIR has been registered against the detenue, which is also clear from the grounds of detention.

(d) District Magistrate has failed to substantiate that the provisions of normal law have not been found sufficient to stop the detenue to indulge into the activities mentioned in the grounds of detention, in absence of any FIR or complaint against the detenue, how the detaining authority has come to the conclusion that the normal law was not found sufficient to stop him from indulging in the activities mentioned in the grounds of detention. This clearly reflects non-application of mind by the detaining authority.

(e) In the grounds of detention, no incident has been supported by any document as to in what manner detenue was responsible for violence in

the valley, and when such incident had happened, it has also not been reflected when the strike has been called and how the detenue has become an instrument in compelling people to go for strike. Moreover, no specific year, month and date has been referred with respect to any of the alleged activity being carried out by the detenue.

(f) The grounds mentioned in the detention order are vague so much so, that one of the allegations raised against the detenue is that he is a a lawyer by profession and a close relative of Mian Abdul Qayoom, Senior Advocate, J&K High Court. There is no satisfaction reflected in the grounds of detention that detenue being influenced by ideology of his uncle Mian Abdul Qayoom, has become hardcore secessionist. The detenue had no power to organise seminars or to provide any platform to secessionists and terrorists to preach their ideologies. Detenue only met his uncle Mian Abdul Qayoom when he was jailed and except him he has never met anyone else, or visited any jail. As a lawyer, it is his professional duty to provide legal assistance. The detaining authority has not mentioned any date or document which has supported the allegations mentioned in the grounds of detention. It is not stated as on which date, year or month detenue on Human Rights Day, tried to internationalise the Kashmir dispute, along with terrorist and secessionist groups like Syed Ali Shah Geelani, Yaseen Malik etc.

(g) It is stated that after August 2019, Mian Abdul Qayoom, Senior Advocate was arrested and detained under provisions of J&K Public Safety Act, and after his release by the order of Court, he did not continue with the office of Bar Association. No meeting was ever conducted by

Mian Abdul Qayoom either at Saddar Court or High Court of J&K. It was the duty of the detaining authority to examine the documents, if any produced before him and thereafter to apply his mind with respect to the allegations levelled against the detenue. The detaining authority has acted in a mechanical manner, accepting the report without any substantial document with the result detenue failed to make an effective representation before the respondents.

(h) The detenue is suffering from mild lleitis Crohns Ds, for which he is undergoing the treatment of a Gastroenterologist and is on medication. On health grounds also, the detenue deserves to be released from the detention to safeguard his health.

4. Per Contra, respondents in their counter affidavit have stated that the detenue being close to Mian Abdul Qayoom was influenced by his ideologies, which made him a hardcore secessionist. The detenue became a prominent vocal voice, spreading secessionism and terrorism among the legal community and general public. He organised various seminars within the premises and provided a platform to secessionists and terrorists to preach their ideologies. The detenue met Mian Abdul Qayoom during his detention at Agra Jail and received orders from him to act as a spokesperson for terrorist and secessionist. He also visited several jails where the detenue spoke with terrorists and secessionists and promised them support in both High Court as well as in the Lower Courts. The detenue being a stanch anti-national element was constantly looking for opportunities to mobilise methods and means that could compromise the security of the Union Territory of Jammu & Kashmir and have been found involved in secretly devising programs for creating large scale

violence. Accordingly, the police concerned prepared a dossier and while finding the activities of the detenue prejudicial to the security of the state and since normal law of land is not sufficient to deter the detenue from his nefarious activities, therefore, SSP concerned forwarded dossier along with record to the detaining authority with the recommendation to order preventive detention of the detenue. The detention order dated 13-07-2024 was ordered with a view to prevent him from acting in any manner, which is prejudicial to maintenance of security of the state.

5. Pursuant to the detention order, the warrant was executed through concerned police on 14.07.2024, who handed over the detenue to Assistant Superintendent District Jail, Kathua, who took over the detenue against proper receipt and lodged him in the jail. The contents of the warrant were read over and explained to the detenue in his own language, which he understands. The detenue was informed about his right to make a representation to the District Magistrate as well as to the Government. The representation filed by the detenue after being considered by the Government has been found without any merit.

6. The Government after examining the impugned order and the material placed on record in exercise of powers conferred under Sub Section (4) of Section 8 of the Act, approved the detention order dated 13.07.2024, passed by the detaining authority. It is stated that the examination of material as well as detention order by the government as also by the Advisory Board, is sufficient to prove that the impugned order has been confirmed by the competent authority after due diligence and after following constitutional safeguards.

7. It is also stated that in compliance to the direction passed by this Court, the detenue was given proper treatment and all prescribed medicines, which he has been taking prior to his arrest at district Jail Kathua. Moreover, the detenue was sent to Government Medical College for orthopaedic consultation and ENT consultation.

Submissions made by learned Senior Counsel, Mr. R A Jan, for the petitioner.

8. Learned Senior counsel for the petitioner has stated that the grounds of detention are not only vague, but have no substance. The allegations levelled against the detenue are not specific. There is no material available with the respondents, on the basis of which impugned order could be passed by the detaining Authority. It is stated that an allegation without any material in support is merely an opinion and not a satisfaction arrived at by the detaining authority and no satisfaction can be arrived at without any supporting material. However, that satisfaction has to be arrived at after appreciation of material to reach to a specific conclusion. The allegations made in the grounds of detention are non-existent, unreasonable and unjustified.

He has further stated that Syed Ali Shah Geelani died in the year 2019 and Yasin Malik is in jail since 2020. Mr. Mian Qayoom was a Bar president in the year 2016 and after that he was detained under J&K Public Safety Act and Mr. Ronga was made as an interim Bar president for few years and afterwards, Kashmir Advocates Association also came into being which has been registered since 2021. The detenue was never in the executive committee of the Bar and since 31 October 2019, there is absolute peace, as such, there is no live link or any proximity to the allegations made in the grounds of

detention. Allegations are non-existent, illusionary on anvil of Law. It is also stated that the detenue was never made to appear before the Advisory Board. The detention order is perfunctory and has been passed mechanically and in a cavalier manner.

9. Learned senior counsel for the petitioner in support of his submissions has referred to and relied upon the Judgments reported as (1996) 6 SCC 593, (2023) 9 SCC 587, (1982) 1 SCC 271, (1980) 4 SCC 531, (1980) 4 SCC 544, 1989 4 SCC 741, (2006) 4 SCC 796 and JKJ 2023 Vol-II 394.

Submissions made by learned counsel for the respondents.

10. Learned counsel has stated that as per the report submitted by Senior Superintendent of Police, Srinagar, it is stated that as per the credible/confidential sources and technical inputs, there is a direct threat to security of state. As per his past activities, he is trying to find ways and means to device programmes / seminars/ calendars, which have a direct threat to security of state. He further stated that detenue has been detained on the basis of the subjective satisfaction arrived at by the detaining authority. Since the detenue was produced before the Advisory Board and was heard through virtual mode on 06.08.2024, therefore, the claim of the detenue that he was not produced by the prison authorities before the Advisory Board, is devoid of any merit. He has stated that the representation of the petitioner was rejected after due consideration.

11. Heard learned counsel for the parties, considered the submissions and perused the record produced by the respondents.

12. From the perusal of the record, it is clear that order of detention dated 13.07.2024 has been executed on 14.07.2024, the detenue has been detained at district, Kathua. The approval in terms of Section 8(4) has been recorded by the Government Home Department on 19.07.2024. Record further reveals that information in terms of Section 13(1) of the Act was duly given to the detenue by the Detaining Authority on 14.07.2024. The copy of detention order, grounds of detention and other documents (08) leaves have been read over to the detenue in English and explained in Urdu, Hindi and Kashmiri languages, which he fully understood. He was informed about his right to make a representation against the order of detention. The representation made by the wife of the detenue was received by Home Department on 25.07.2024 and 31.07.2024, for revocation of the detention order and for providing detenue a personal hearing before the Advisory Board. The detenue was heard through virtual mode on 06.08.2024, the representation was rejected by Advisory Board on 09.08.2024.

13. Considering the fact that the detenue has no past criminal history, which has any live or proximate link with the grounds of detention and passing of the impugned order, it gives rise to question of laws as under:-

1. Whether there is any subjective satisfaction of the detaining authority in passing the impugned order of detention?

2. Whether detenue was provided with sufficient material so as to make an effective representation?

14. Article 21 and 22 of the Constitution of India being relevant are taken note of:-

"21. Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

22. Protection against arrest and detention in certain cases

(1)No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2)Every person who is arrested and detained in custody shall 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 no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3)Nothing in clauses (1) and (2) shall apply—

(a)to any person who for the time being is an enemy alien; or

(b)to any person who is arrested or detained under any law providing for preventive detention.

(4)No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a)an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention: Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b)such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5)When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6)Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7)Parliament may by law prescribe—

(a)the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b)the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c)the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

15. The Supreme Court in case titled ***"Khudiram Das Vs. State of W.B"*** reported as *(1975) 2 SCC 91*, has held as under:-

> 5. *We will first consider the constitutional background against which the Act has been enacted and then refer to the material provisions of the Act. The relevant article of the Constitution having a bearing on this question is article 22. This article has been analysed in more cases than one by this Court and it is clear from the decided cases that this article provides various safeguards calculated to protect personal liberty against arbitrary restraint without trial. These safeguards cannot be regarded as substantial. They are essential procedural in character and their efficacy depends on the care and caution and the sense of responsibility with which they are regarded by the detaining authority. Two of these safeguards, which relate to the observance of the principle of natural justice and which a fortiorari are intended to act as a check on arbitrary exercise of power, are to be found in Art. 22(5) of the Constitution. This provision of the Constitution introduces two procedural requirements embodying the rule of audi alteram partem to a limited but a crucial and compulsive extent by providing that : "When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order".*
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> *The constitutional imperatives enacted in this article are two-fold : (1) the detaining authority must, as soon as may be, that is, as soon as practicable after the detention, 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 a representation against the order of detention. These are the barest minimum safeguards which must be observed before an executive authority can be permitted to preventively detain a person and thereby drown his right of personal liberty in the name of public good and social security. But, what is the content of these safeguards ? What does the word 'grounds' mean ? Does it mean only the final conclusion reached by the detaining authority on which alone the order of detention can be made, or does it include the basic facts and materials from which the conclusions justify-ing the order of detention are drawn by the detaining authority? What is the inter-relation between the requirements of the first and the second safeguards? Is the efficacy of the second safeguard violated by non-observance of the requirement of the first safeguard? If all the 'grounds' which weighed with the detaining authority are not communicated to the detenu, does it constitute merely a breach of the first safeguard or does it also involve the violation of the second?"*

16. Sections 8, 13 and 16 of the J&K Public Safety Act, being relevant are taken note of:-

Power to make orders detaining certain persons

8. Detention of certain persons. —
(1) The Government may—
(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to—
(i) the security of the State or the maintenance of the public order ; or
[(ii) Omitted.]

13. Grounds of order of detention to be disclosed to persons affected by the order. —
(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, [but ordinarily not later than five days and in exceptional circumstances and for reasons
to be recorded in writing, not later than ten days from the date of detention] [communicate to him, in language which is understandable to him, the grounds on which the order has been made], and shall afford him the earliest opportunity of making a representation against the order to the Government.
(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.
16. Procedure of Advisory Board. —
(1) The Advisory Board shall, after considering the material
placed before it and, after calling for such further information as it may deem necessary from the Government or from the person called for the purpose through the Government or from the person concerned and if any particular case it considers it essential so to do or, if the person concerned desires to be heard, after hearing him in person, submit its report to the Government within [six weeks] from the date of detention. (2) Notwithstanding anything contained in sub-section (1), the Board may, if the person detained so demands, at any time before submitting its report, after affording an opportunity to the person detained and the Government or the officer, as the case may be, of being heard, determine whether the disclosure of facts, not disclosed under sub-section (2) of section 13 to the person detained, is or is not against public interest. Such finding of the Board shall be binding on the Government.
(3) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.
(4) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.
(5) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential."

17. The Supreme Court in case titled ***"Ameena Begum Vs. State of Telenganna"*** reported as *(1987) 4 SCC 58*, has held the detention order must be based on a reasonable prognosis of the further behaviour of a person based his past conduct in light of the surrounding circumstances and requisite satisfaction. It

would be profitable to reproduce paragraphs 19,20, 28 and 29 of the said judgment herein:

19. *In holding that the order of detention therein was grounded on stale grounds, the Court held that:*

> *"17. 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."*
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> *20. This was further affirmed by this Court in Khaja Bilal Ahmed vs. State of Telangana , where the detention order dated 2nd November, 2018 issued under the Act had delved into the history of cases involving the appellant-detenu from the years 2007 - 2016, despite the subjective satisfaction of the Officer not being based on such cases. In quashing such an order, Hon'ble Dr. D.Y. Chandrachud, J. (as the Chief Justice then was) observed:*
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> > *"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 12 (2020) 13 SCC 632 978 [2023] 11 S.C.R. SUPREME COURT REPORT: DIGITAL 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."*
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> > *28. In the circumstances of a given case, a Constitutional Court when called upon to test the legality of orders of preventive detention would be entitled to examine whether*
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> > *(28.1) the order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;*
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> > *28.2 in reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;*

28.3 power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;
28.4 the detaining authority has acted independently or under the dictation of another body;
28.5 the detaining authority, by reason of self-created rules of policy or in any other manner not authorized by the governing statute, has disabled itself from applying its mind to the facts of each individual case;
28.6 the satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;
28.7 the satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;
28.8 the ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;
28.9 the grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and
28.10 the timelines, as provided under the law, have been strictly adhered to."

29. Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the Rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3) (b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal."

18. The Supreme Court in case titled ***"Nenavath Bujji etc. Vs. The State of Telenganna and Ors."*** reported as *MANU/S/0239/2024* has held the Advisory Board performs the most vital duty of independently reviewing the detention order after considering all the material placed before it or any other material which it deems necessary. It would be profitable to reproduce paragraphs 43, 55, 57, 58, 59,61, 62 and 63 of the said judgment herein:

"43. We summarize our conclusions as under: -

(i) The Detaining Authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,

(ii) It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,

(iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated,

(iv) In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,

(v) While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,(vi) The 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,

(vii) Inability on the part of the state's police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,

(viii) 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, and

(ix) To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention . For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority.

55. What can be discerned from a bare perusal of the abovementioned provisions is that the Advisory Board performs the most vital duty of independently reviewing the detention order, after considering all the materials placed before it, or any other material which it deems necessary. When reviewing the detention order along with the relevant materials, the Advisory Board must form an opinion as to the sufficiency of the cause for warranting detention. An order of detention passed under the Act, 1986 can only be confirmed if the Advisory Board is of the opinion that there exists sufficient cause for the detention of the detenu.

57. The legislature in its wisdom has thought it fit, to entrust the Advisory Board and no one else, not even the Government, with the performance of this crucial and critical function which ultimately culminates into either the confirmation or revocation of a

detention order. The Advisory Board setup under any preventive detention law in order to form its opinion is required to; (i) consider the material placed before it; (ii) to call for further information, if deemed necessary; (iii) to hear the detenu, if he desires to be heard and; (iv) to submit a report in writing as to whether there is sufficient cause for "such detention" or whether the detention is justified.

58. An Advisory Board is not a mere rubber-stamping authority for an order of preventive detention. Whenever any order of detention is placed before it for review, it must play an active role in ascertaining whether the detention is justified under the law or not. Where it finds that such order of detention is against the spirit of the Act or in contravention of the law as laid down by the courts, it can definitely opine that the order of detention is not sustainable and should not shy away from expressing the same in its report.

59. As stated by us above, preventive detention being a draconian measure, any order of detention as a result of a capricious or routine exercise of powers must be nipped in the bud. It must be struck down at the first available threshold and as such, it should be the Advisory Board that must take into consideration all aspects not just the subjective satisfaction of the detaining authorities but whether such satisfaction justifies detention of the detenu. The Advisory Board must consider whether the detention is necessary not just in the eyes of the detaining authority but also in the eyes of law.

61. An Advisory Board whilst dispensing its function of ascertaining the existence of a "sufficient cause" for detention, cannot keep itself unconcerned or oblivious to the developments that have taken place by a plethora of decisions of this Court delineating the criterion required to be fulfilled for passing an order of detention. The "independent scrutiny" as envisaged by Article 22 includes ascertaining whether the detention order would withstand the scrutiny a court of law.

62. We fail to understand what other purpose the Advisory Board encompassing High Court judges or their equivalent as members would serve, if the extent of their scrutiny of the order of detention is confined just to the subjective satisfaction of the detaining authority. The entire purpose behind creation of an Advisory Board is to ensure that no person is mechanically or illegally sent to preventive detention. In such circumstances, the Advisory Boards are expected to play a proactive role. The Advisory Board is a constitutional safeguard and a statutory authority. It functions as a safety valve between the detaining authority and the State on one hand and the rights of the detenu on the other. The Advisory Board should not just mechanically proceed to approve detention orders but is required to keep in mind the mandate contained in Article 22(4) of the Constitution of India.

63. Thus, an Advisory Board setup under a preventive detention legislation is required to undertake a proper and thorough scrutiny of an order of detention placed before it, by appreciating all aspects and angles before expressing any definite opinion in its report.

19. The submission of the learned senior counsel with respect to the allegation against the detenue of having organized seminars along with Syed Ali Shah Geelani and Yasin Malik on Human Rights Day being vague and ambiguous is justified as the respondents have nowhere stated as to on which date, month or year such an act was committed by the detenue. The allegation thus is certainly inexplicable, depicting complete non application of

mind on the part of the detaining authority. The detenue is not specifically shown to have indulged in subversive or anti-national activities warranting his preventive detention. The learned senior counsel is quite right in submitting that the detaining authority has passed the impugned order on flimsy grounds inasmuch as one of the grounds taken in support of the detention is that the detenue is an advocate by profession and a relative of Mian Abdul Qayoom, Sr. Advocate.

20. From the above it is clear that the acts of the detaining authority are subject to judicial review and the authority is not immune to it *ipso facto*. The subjective satisfaction is the condition precedent for the exercise of power conferred on the executive and the constitutional Court can always examine whether the requisite satisfaction is arrived at by the authority, if it has not, the exercise of power would be bad. In this case the detaining authority has not based the impugned order on its subjective satisfaction; in reaching to the requisite satisfaction. The detaining authority has not applied its mind to the relevant circumstances, the detention order is based on material extraneous to the scope and purpose of the statute. The grounds on which the impugned order has been based are not only vague, but illusive also. There is neither any clarity nor any live and proximate link between any past conduct of the detenue, and the imperative need to detain him. The Advisory Board has also not specified effectively the sufficient cause for the detention of the detenue. This question of law is answered in negative.

21. The grounds of detention mean all the basic facts and material which have been taken into account by the Detaining Authority in making the order of detention and on which the order of detention is based, but if the relevant material is not being provided to the detenue then an opportunity of making representation would be rendered illusory. As per the record, the family of the detenue claimed that the circumstances surrounding the detention of the detenue are vague as such

they requested vide communication dated 16.07.2024 to the competent authority for providing them with more information about the charges, so that they could make an effective representation, however, nothing is borne out from the record that any further information was provided to the family of the detenue or not.

22. The Supreme Court in case titled *"**Jaseela Shaji vs. Union of India**"* reported as *(2024) 9 SCC 53*, while referring to certain earlier decisions of the Court, has held that the failure of the respondents to supply the relevant material to the detenue has been held to be fatal for the detention order. It would be profitable to reproduce paragraphs 29,35,36 and 37 of the said judgment herein:

> *"29. There can be no doubt that it is not necessary to furnish copies of each and every document to which a casual or passing reference may be made in the narration of facts and which are not relied upon by the Detaining Authority in making the order of detention. However, failure to furnish copies of such document/documents as is/are relied on by the Detaining Authority which would deprive the detenu to make an effective representation would certainly amount to violation of the fundamental right guaranteed under Article 22(5) of the Constitution of India.*
>
> *35. In the case of Ranu Bhandari (supra), this Court observed thus:*
>
> > *"25. Keeping in mind the fact that of all human rights the right to personal liberty and individual freedom is probably the most cherished, we can now proceed to examine the contention advanced on behalf of the parties in the facts and circumstances of this case. But before we proceed to do so, it would be apposite to reproduce hereinbelow a verse from a song which was introduced in the cinematographic version of Joy Adamson's memorable classic Born Free which in a few simple words encapsulates the essence of personal liberty and individual freedom and runs as follows:*
> >
> > *"Born free, as free as the wind blows,*
> > *As free as the grass grows,*
> > *Born free to follow your heart.*
> > *Born free and beauty surrounds you,*
> > *The world still astounds you,*
> > *Each time you look at a star.*
> > *Stay free, with no walls to hide you,*
> > *You're as free as the roving tide,*
> > *So there's no need to hide.*
> > *Born free and life is worth living,*
> > *It's only worth living, if you're born free."*
> >
> > *The aforesaid words aptly describe the concept of personal liberty and individual freedom which may, however, be curtailed by preventive detention laws, which could be used to consign an*

individual to the confines of jail without any trial, on the basis of the satisfaction arrived at by the detaining authority on the basis of material placed before him. The courts which are empowered to issue prerogative writs have, therefore, to be extremely cautious in examining the manner in which a detention order is passed in respect of an individual so that his right to personal liberty and individual freedom is not arbitrarily taken away from him even temporarily without following the procedure prescribed by law.

26. We have indicated hereinbefore that the consistent view expressed by this Court in matters relating to preventive detention is that while issuing an order of detention, the detaining authority must be provided with all the materials available against the individual concerned, both against him and in his favour, to enable it to reach a just conclusion that the detention of such individual is necessary in the interest of the State and the general public.

27. It has also been the consistent view that when a detention order is passed all the material relied upon by the detaining authority in making such an order, must be supplied to the detenu to enable him to make an effective representation against the detention order in compliance with Article 22(5) of the Constitution, irrespective of whether he had knowledge of the same or not. These have been recognised by this Court as the minimum safeguards to ensure that preventive detention laws, which are an evil necessity, do not become instruments of oppression in the hands of the authorities concerned or to avoid criminal proceedings which would entail a proper investigation.

36. *A perusal of the aforesaid judgment would reveal that for emphasizing the importance of personal liberty and individual freedom, this Court has reproduced Joy Adamson's memorable classic Born Free. This Court observed that though the concept of personal liberty and individual freedom can be curtailed by preventive detention laws, the Courts have to ensure that the right to personal liberty and individual freedom is not arbitrarily taken away even temporarily without following the procedure prescribed by law. It has been held that when a detention order is passed all the material relied upon by the detaining authority in making such an order must be supplied to the detenu to enable him to make an effective representation. This Court held that this is required in order to comply with the mandate of Article 22 (5) of the Constitution, irrespective of whether the detenu had knowledge of such material or not.*

37. It is thus a settled position that though it may not be necessary to furnish copies of each and every document to which a casual or passing reference has been made, it is imperative that every such document which has been relied on by the Detaining Authority and which affects the right of the detenu to make an effective representation under Article 22(5) of the Constitution has to be supplied to the detenu.

In our view, the documents relied on by the Detaining Authority which form the basis of the material facts which have been taken into consideration to form a chain of events could not be severed and the High Court was not justified in coming to a finding that despite eschewing of certain material taken into consideration by the Detaining Authority, the detention order can be sustained by holding that the Detaining Authority would have arrived at such a subjective satisfaction even without such material."

23. It is clear from the judgements *supra* that the detenue has to be informed, not only of the inferences of the fact but of all the factual material which have led to the inference of fact. If the detenue is not informed about his right as enshrined in the Constitution, the opportunity granted by the Constitution itself becomes an exercise in futility if not a nullity. The grounds of detention must be self – sufficient and self – explanatory. The detaining authority is under an obligation to furnish all the pertinent and proximate facts and material relied upon in passing the detention order to the detenue. In the instant case the relevant material was not supplied to the family of the detenue or to the detenue even on their request, which was essential for making an effective representation. This question of law thus is also answered in negative.

CONCLUSION

24. In view of above, this petition is allowed. The impugned detention order No. DMS/PSA/17/2024 dated 13.07.2024, passed by respondent No. 2, is quashed and set aside. The detenue namely Miyan Muzaffar S/o Miyan Mohammad Yousuf R/o Barzulla Bulbulbagh, Srinagar, is directed to be set at liberty forthwith, if not required in any other case.

25. Detention record be returned to the learned counsel for the respondents against receipt.

26. Disposed of along with all connected CM(s).

(MOKSHA KHAJURIA KAZMI)
JUDGE

Srinagar
03.01.2025
"Mohammad Yasin Dar"

Whether the Judgment is reportable: Yes/No.
Whether the Judgment is speaking: Yes/No.