

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

Case:- HCP No. 71/2024

Ashraf Ali @ Shiffu Aged 30 years
S/o Abdul Jaleel @ Jaleel Ahmed
R/o Mani Tehsil Ramnagar, District
Udhampur through his father Abdul Jaleel @
Jaleel Ahmed, aged 52 yearsPetitioner(s)
S/o Mohd. Din, R/o Mani Tehsil Ramnagar
District Udhampur.

Through: Mr. A. R. Khan, Advocate.

Vs

1. Union Territory of Jammu and Kashmir
through Financial Commissioner
(Additional Chief Secretary) Home
Department Civil Secretariat, Jammu.
2. Special Secretary to the Govt. Home
Department (PB-V Section) J&K Jammu.
3. Divisional Commissioner, Jammu.
4. The District Magistrate, Udhampur.
5. The Superintendent District Jail,
Ambphalla, Jammu. Respondent(s)

Through: Mr. Sumeet Bhatia, GA.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT
(17.09.2024)

1. A French proverb, "A barbe de fol apprend-on a raire" meaning "On a fool's beard the barber learns to shave" is a most inviting introduction to the case in hand wherein at the precious cost of the petitioner's fundamental right to personal liberty, the District Magistrate, Udhampur has first committed a faux pas and then concerted to cover up the same in a purported exercise of

preventive detention jurisdiction in terms of J&K Public Safety Act, 1978 against the petitioner.

2. Heard Mr. A. R. Khan, learned counsel for the petitioner and also Mr. Sumeet Bhatia, learned GA for the respondents.

3. Perused the writ pleadings and the documents annexed therewith and also perused the detention record produced from the end of respondent by Mr. Sumeet Bhatia, learned GA.

4. The Hon'ble Supreme Court of India not even once missing to bear, register and pronounce at the top of its voice a cumulative and recurring concern that powers of preventive detention are exceptional and even draconian with latest observing it in the case of **"Mallada K Sri Ram Vs. The State of Telangana and others"** reported in **2022 (3) JKJ 33** but still that seems to be of no instructive effect and purpose for the preventive detention related authorities when the present case, in terms of its facts, presents itself before this Court which exhibits an utter casualness and callousness on the part of none other than the District Magistrate, Udhampur in dishing out a preventive detention order as if loss of personal liberty of a person, in the present case of the petitioner, is a matter of an administrative excursion for said District Magistrate.

5. The petitioner, acting through his father, has come forward with the present writ petition under article 226 of the Constitution of India seeking a writ of habeas corpus for restoration of his lost personal liberty which came to be curtailed with effect from

03.01.2024 pursuant to a preventive detention order No. 01-PSA-2024 dated 02.01.2024 passed by the respondent No. 4-District Magistrate, Udhampur purportedly acting under section 8 of the Jammu & Kashmir Public Safety Act, 1978.

6. The casualness and callousness on the part of the District Magistrate, Udhampur, to which this Court has adverted to in the very opening, is self-reflected in the text and context of the detention order No. 01-PSA-2024 dated 02.01.2024 and which is reproduced herein as under:-

“O R D E R

No. 01-PSA-2024

Date: 02-01-2024

Whereas, Sr. Superintendent of Police, Udhampur vide letter no. Conf/Dossier/3-6 dated 01/01/2024 has submitted dossier and other connected documents in respect of Ashraf Ali @ Shifu S/o Jaleel Ahmed Caste Gujjar R/o Mani Tehsil Ramnagar, District Udhampur for his detention under the Jammu and Kashmir Public Safety Act, 1978; and

Whereas, after perusal of material records submitted by Sr. Superintendent of Police, Udhampur and after applying my mind carefully and having regard to the requirements of law, I am satisfied that Ashraf Ali @ Shifu S/o Jaleel Ahmed Caste Gujjar R/o Mani Tehsil Ramnagar, District Udhampur is hard-core criminal of the area being involved in series of criminal activities including serious offences/heinous nature cases/organized crime that may disrupt peace of the area and endanger human life with **distribution in public peace and tranquility**; and it is necessary to detain him under the provisions of Public Safety Act, 1978.

Now, therefore, in exercise of powers conferred under Section 8 of the Jammu and Kashmir Public Safety Act, 1978. I, Saloni Rai, IAS, District Magistrate, Udhampur hereby direct that Ashraf Ali @ Shifu S/o Jaleel Ahmed Caste Gujjar R/o Mani, Tehsil Ramnagar, District Udhampur be detained and lodged in Ambphala Jail, Jammu.

No: DMU/JC/1478

Date: 02/01/2024

Sd/-

**District Magistrate
Udhampur”**

7. Pursuant to this detention order, the petitioner came to be detained by PSI Yogeshwar Manhotra, EXJ-196754 I/C PP Ghordi on 03.01.2024 and handed over to the Assistant Superintendent District Jail, Jammu for getting locked up in jail custody which is continuing as on date.

8. At the time of the execution of the detention order on 03.01.2024 by PSI Yogeshwar Manhotra, EXJ-196754 I/C PP Ghordi, the petitioner came to be handed over a copy of the detention order along with grounds of detention and also purportedly explained the import of the detention order and the grounds of detention in the language purportedly understood by the petitioner fully and this is what came to be stated by PSI Yogeshwar Manhotra, EXJ-196754 I/C PP Ghordi in his execution report bearing signature not only of the said executing officer but also of the petitioner as well as Assistant Superintendent District Jail, Jammu.

9. The petitioner was also made to execute a receipt in acknowledgement of receipt of the detention order, the grounds of detention and the dossier and the said receipt is dated 03.01.2024 bearing the attestation of the Assistant Superintendent District Jail, Jammu meaning thereby the detention order which came to be served, read and explained to the petitioner is the one, the text of which has been reproduced hereinabove given to the petitioner which by no stretch of imagination would have enabled him to

understand as to for what purpose and on what basis, the petitioner has come to be subjected to suffer sudden loss of his personal liberty by a stroke of pen at the end of the District Magistrate, Udhampur particularly by reference to **“distribution in public peace and tranquility”** leaving any reader of an ordinary reading intelligence perplexed in making actual sense of it.

10. Before coming to elaborate with the aforesaid vitiating aspect, it is pertinent to refer to the attending facts related to the preventive detention of the petitioner.

11. It is the Senior Superintendent of Police (SSP), Udhampur who, vide his communication No. Conf/Dossier/3-6 dated 01.01.2024, had come to submit a dossier against the petitioner to the respondent No. 4-District Magistrate, Udhampur thereby seeking preventive detention of the petitioner under Jammu & Kashmir Public Safety Act, 1978 for the purported reasons that normal laws of land are not sufficient to curb the criminal activities of the petitioner more particularly theft and bovine smuggling in the District Udhampur.

12. In his dossier, the Senior Superintendent of Police (SSP), Udhampur came to caricature the petitioner to be a serious and hard-core offender involved in many criminal cases by blatantly violating the rule of law indulging in bovine smuggling, theft and bootlegging cases thereby creating terror amongst the innocent

citizens as a result whereof his activities are highly prejudicial in the maintenance of the public peace and tranquility of the area.

13. The petitioner was also presented to be having a deep rooted nexus by encouraging criminal minded people to join with him and to commit theft and other criminal activities in the area of District Udhampur as a result whereof his remaining at large was reckoned to be posing an immediate threat to the UT of Jammu and Kashmir with regard to the disturbance of public peace and tranquility.

14. In said alleged characterization of the petitioner, the Senior Superintendent of Police (SSP), Udhampur referred to the petitioner's alleged involvements in the criminal cases related to following FIRs:-

- (i) FIR No. 25/2019 under section 188 Ranbir Penal Code registered with the Police Station Ramnagar,
- (ii) FIR No. 21/2021 under section 188 Indian Penal Code registered with the Police Station, Ramnagar,
- (iii) FIR No. 130/2023 under section 379 Indian Penal Code registered with the Police Station, Ramnagar,
- (iv) FIR No. 160/2023 under section 48(a) Excise Act registered with the Police Station, Ramnagar,
- (v) FIR No. 139/2023 under section 379 Indian Penal Code registered with the Police Station, Ramnagar,

15. Out of the aforesaid five cases, first four cases are said to have resulted in presentation of final police reports against the petitioner whereas the last FIR No. 139/2023 was said to be still under investigation.

16. Thus, purportedly on said basis that the petitioner's alleged activities were prejudicial to public peace and tranquility, the preventive detention was sought by the Senior Superintendent of Police (SSP), Udhampur unmindful of the fact that the Jammu & Kashmir Public Safety Act, 1978 does not provide for a preventive detention of a person relatable to public peace and tranquility scenario.

17. The respondent No. 4-District Magistrate, Udhampur, at her end, came to respond as if it was compulsive to oblige the Senior Superintendent of Police (SSP), Udhampur by following verbatim the text and context of the entire dossier without any *iota* of change whatsoever by purportedly formulating the grounds of detention for deriving so to say a subjective satisfaction that in order to curb repeated and continuous involvement of the petitioner in the criminal activities and to prevent the petitioner from disturbing public order, it was requisite to detain him under Jammu & Kashmir Public Safety Act, 1978 and the order of detention came forth in its text which has been reproduced as it is hereinbefore.

18. The preventive detention order passed against the petitioner did not spell out that in order to prevent the petitioner

from acting in a manner prejudicial to maintenance of public order, the petitioner's preventive detention was being effected. In fact, what preventive detention order literally reads is that it was necessary to detain the petitioner under the provisions of the Public Safety Act, 1978, because the petitioner is a hard-core criminal of the area involved in a series of criminal activities including serious offences/heinous nature cases/organized crime that may disrupt the peace and tranquility of the area and endanger human life with **distribution in public peace and tranquility.**

19. This detention order by itself landed the petitioner in preventive detention custody with effect from 03.01.2024.

20. Acting at her own end by keeping the petitioner totally uninformed, the District Magistrate, Udhampur tried to play smart with the record of the file by creating a so called corrigendum No. DMU/JC/1487 dated 04.01.2024 purportedly meaning to correct the expression "Public Peace and Tranquility" wherever appearing in the detention order and the connected documents to be read as "Prejudicial to maintenance of Public Order". There is nothing on the file to exhibit what led the District Magistrate, Udhampur's attention requiring issuance of said corrigendum.

21. The preventive detention order No. 01-PSA-2024 dated 02.01.2024 came to be approved by the Government in terms of requirement of section 8(4) of the J&K Public Safety Act, 1978. By virtue of a Government Order No. Home/PB-V/106 of 2024 dated

09.01.2024, the preventive detention order No. No. 01-PSA-2024 dated 02.01.2024 read with said corrigendum issued vide endorsement No. DMU/JC/1487 dated 04.01.2024 of the District Magistrate, Udhampur came to be approved and matter referred for the opinion of the Advisory Board.

22. This Government Order No. Home/PB-V/106 of 2024 dated 09.01.2024, nowhere bears a whisper of recital that the petitioner came to be served with a copy of the corrigendum so issued by the District Magistrate, Udhampur for the sake of apprising him about the purported correction having taken place with respect to the detention order No. 01-PSA-2024 dated 02.01.2024 otherwise served upon and announced to him in its original text.

23. The Advisory Board, at its end, came to tender its opinion in its report dated 18.01.2024 wherein from the record it came to refer the fact that the petitioner was furnished with the documents related to his detention, and that being ground of detention and other documents against which the petitioner had furnished receipt dated 03.01.2024, meaning thereby even the Advisory Board was incognizant of the fact that a corrigendum No. DMU/JC/1487 dated 04.01.2024 had come to be issued with respect to and post the preventive detention order No. 01-PSA-2024 dated 02.01.2024 otherwise the report of Advisory Board would not have missed a mention to this aspect.

24. Nevertheless, the Advisory Board came to hold the preventive detention of the petitioner justified in terms of its said report which paved way for issuance of Government Order No. Home/PB-V/195 of 2024 dated 24.01.2024 thereby confirming the detention order against the petitioner and also settling the period of detention of the petitioner at the first instance to last for three months in the District Jail, Jammu to be the place of his confinement.

25. First three months' period of detention on coming to expire was followed by a Government Order No. Home/PB-V/591 of 2024 dated 01.04.2024 further extending the period of detention of the petitioner with effect from 03.04.2024 to 02.07.2024 with the petitioner continuing to be lodged in the District Jail, Jammu.

26. It is at this intervening of second extension period stage of his detention that the petitioner came forward with the present writ petition filed on 24.04.2024.

27. This Court, in terms of an order dated 24.07.2024, came to take a serious view of the absurdity attending the very text of the preventive detention order No. 01-PSA-2024 dated 02.01.2024, both from court's own legal perspective and layman's perspective of the petitioner who is a 6th pass, as to absentminded attention of and on the part of the District Magistrate, Udhampur in the matter of passing an order which was meant to befall upon the petitioner with loss of his personal liberty and confined to jail custody which by no

stretch of justification could be said to be a detention order in the eyes of law for the sake of justifying deprivation of fundamental right to personal liberty of the petitioner and, accordingly, directed the personal appearance of the District Magistrate, Udhampur who came in appearance in person on 26.07.2024 offering lame justification as if same is of no big deal thereby compounding the error glaring on the face of the record.

28. This Court, nevertheless, came to afford time to the respondents to file counter affidavit to the writ petition which came to be filed alongwith production of detention record and the adjudication of this writ petition is now taking place adding few more startling facts coming to notice of this Court.

29. During the pendency of this writ petition, the detention period of the petitioner came to be further extended second time for next period of three months with effect from 03.07.2024 to 02.10.2024 in terms of Government Order No. Home/PB-V/1366 of 2024 dated 27.06.2024.

30. Adding further to her blunder committed in the manner of passing of the detention order No. 01-PSA-2024 dated 02.01.2024 followed by corrigendum No. DMU/JC/1487 dated 04.01.2024, the respondent No. 4-District Magistrate, Udhampur purportedly came forward with an order No. 07-PSA-2024 dated 01.08.2024 thereby meaning to say that the words **“with distribution in public peace**

and tranquility” to be read “as such is Prejudicial to maintenance of Public Order”.

31. The passing of this order No.07-PSA-2024 dated 01.08.2024 by the District Magistrate, Udhampur exposes not only the very fallacy of the preventive detention of the petitioner as if done for the sake of test trial for the facility of the incumbent District Magistrate, Udhampur as if an exercise in abecedarian for her stint as District Magistrate and the sheer lack of understanding of very fundamentals of preventive detention jurisdiction and authority of a District Magistrate under J&K Public Safety Act, 1978.

32. Once a detention order No. 01-PSA-2024 passed by her had come to be approved and confirmed by the Government of UT of J&K through its Home Department, the District Magistrate, Udhampur ceased to have any further role and intervention being a functus officio in the matter for doing any, so to say, error correction work in the basic detention order to cover up her embarrassment and that instantly proved the point that the preventive detention order No. 01-PSA-2024 dated 02.01.2024 from its very inception was nothing but nullity in the eyes of law which ought not to have made the petitioner suffer loss of his personal liberty with effect from 03.01.2024 lasting as on date of passing of this judgment.

33. Otherwise also, the facts and circumstances as reported in the dossier by the Senior Superintendent of Police (SSP), Udhampur against the petitioner following the purported basis for preventive detention of the petitioner, by no stretch of legal justification, constituted a basis for preventive detention of the petitioner and this is being observed by this court with the safety of reference to the judgment of Hon'ble the Supreme Court of India in **"Mallada K Sri Ram Vs. The State of Telangana and others"** as referred herein before and for the sake of serving the text and context is being referred again in terms of para-15:

"15. A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the "maintenance of public order". In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months prior to the detention order has no basis in fact. The apprehension of an adverse impact to public order is a mere surmise of the detaining authority, especially when there have been no reports of unrest since the detenu was released on bail on 8 January 2021 and detained with effect from 26 June 2021. The nature of the allegations against the detenu are grave. However, the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining authority. The two FIRs which were registered against the detenu are capable of being dealt by the ordinary course of criminal law."

34. Therefore, this Court is of firm view that the fundamental right of the petitioner in terms of article 21 of the Constitution of India has been seriously trampled upon with impunity by the acts of omission and commission on the part of the District Magistrate, Udhampur, namely, Saloni Rai, IAS who is the author of the preventive detention order and also the corrigendum and subsequent order/s passed by the Government of UT of J&K operating at the same pedantic level as that of the District Magistrate, Udhampur.

35. This Court is constrained to observe that the judgment of Mrs. Saloni Rai, IAS District Magistrate, Udhampur to act as a detention order making authority under the J&K Public Safety Act, 1978 is seriously suspect. It is for the Home Department, UT of Jammu & Kashmir to take a call to deprive the incumbent District Magistrate, Udhampur of her said jurisdiction to indulge in future exercising of the preventive detention jurisdiction under the J&K Public Safety Act, 1978 lest she would repeat the acts of omission or commission in some other form again thereby violating fundamental right of right to life and personal liberty of some other person to a serious damage.

36. In the facts and circumstances of the case, this Court holds the preventive detention of the petitioner illegal right from inception and, accordingly, quashes preventive detention No. 01-PSA-2024 dated 02.01.2024 read with consequent corrigendum and order

passed by the District Magistrate, Udhampur and consequent Government orders of approval and confirmation.

37. The petitioner is directed to be restored to his personal liberty with immediate effect by his released from the District Jail, Jammu by the Superintendent District Jail, Jammu.

38. At this stage, this Court contemplated of compensating the petitioner for the costs of litigation by imposing exemplary costs on Mrs. Saloni Rai, IAS, District Magistrate, Udhampur but for vehement insistence by Mr. Sumeet Bhatia, learned GA to exempt the said officer from the burden of suffering costs, this Court is staying away from imposing costs upon her, which otherwise would have been payable from her personal pay and purse.

39. The writ petition is, accordingly, ***disposed of.***

40. A copy of the judgment be sent by the Registrar Judicial, Jammu to the Financial Commissioner (Additional Chief Secretary) Home Department, Government of UT of J&K for notice and record sake so as to remind all the District Magistrates across UT of Jammu & Kashmir to act and stay alert and attentive in the matter of passing preventive detention order ensuring error free exercise of jurisdiction under the Jammu & Kashmir Public Safety Act, 1978.

(RAHUL BHARTI)
JUDGE

JAMMU
17.09.2024
Shivalee

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