S. No. 9

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on :06.08.2024
Pronounced on : 12.11.2024

Case No. :- **HCP No. 27/2024**

Mohd. Azam, Age 50 years,
S/o Sh. Wazir Hussain,
R/o Wand Mohra, Pukharni,
Tehsil Qila Darhal and District
Rajouri, Through his next
friend/Nephew Sajjad Hussain,
age 22 years,
S/o Sh. Qadir Hussain,
R/o Village Kalalkas,
Tehsil and District Rajouri.
Presently lodged in District Jail,
Dhangri, Rajouri. ….. Petitioner(s)

Through: Mr. Arshad Majid Malik, Advocate.

Vs

1. The Union Territory of Jammu
   and Kashmir through the
   Financial Commissioner
   (Additional Chief Secretary),
   Home Department,
   Civil Secretariat, Jammu.
2. The District Magistrate, Rajouri.
3. The Superintendent,
   District Jail, Dhangri, Rajouri ….. Respondent(s)

Through: Mr. Rajesh Thappa, AAG.

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

1. Impugned in the instant petition, filed under the provisions of Article 226 of the Constitution of India, is the order of Detention bearing No. DMR/INDEX/01 of 2024 dated 30.01.2024 passed by the respondent

No.2 i.e. District Magistrate, Rajouri (hereinafter referred to as the "Detaining Authority", for short), while invoking his powers under Section (8) (1) (a) (i) of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as the "PSA", for short), whereby the petitioner/detenu was ordered to be detained with a view to prevent him from acting in any manner prejudicial to the maintenance of the public order and lodged in District Jail, Dhangri, Rajouri.

2. The impugned detention order has been assailed in this petition on the grounds *inter alia* that same is the outcome of non-application of mind as being *dehors* of subjective satisfaction of the detaining authority; that same has been based on the registration of FIR Nos. 189/2013 under Sections 458/323/427 RPC, 195/2014 under Sections 307/341/323/147 RPC, 123/2014 under Sections 447/147/323 RPC, 26/2016 under Section 279 RPC and 53/2021 under Sections 353/332 IPC, all of Police Station, Nowshera, which are reported to have finally culminated into the Final Reports/Challans under Section 173 of repealed Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code", for short) corresponding to Section 193 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS, for short) pending against the detenu but the fact is that four cases out of the said five cases stood already disposed off as compounded; that the relevant material on the basis of which the impugned detention order has been passed was not furnished to the petitioner/detenu in entirety thereby preventing him from making an effective representation as per the constitutional mandate to the detaining authority or the

government; that the petitioner/detenu who only understands Gojri language was not made to understand the contents of the impugned detention order and the grounds of detention in his local language understandable by him; that the petitioner/detenu notwithstanding the furnishing of the copies of the entire detention record to him, made a representation to the respondent Nos. 1 & 2 which was not considered; that the detaining authority has repeated the contents of the dossier of the concerned Superintendent of Police, verbatim in the grounds of detention and has not applied his independent mind before ordering the preventive detention of the petitioner thereby jeopardizing his fundamental right guaranteed under Article 21 of the Constitution and that the detaining authority has also referred to a report of District Special Branch, Rajouri dated 10.01.2024 without making any specific allegation against the petitioner/detenu.

3. The respondents through the memo of their objections have resisted the instant petition on the grounds that none of the legal, statutory or fundamental rights of the petitioner has been violated as he stands detained strictly in accordance with law as his repeated criminal activities were highly prejudicial to the maintenance of public order, who had spread reign of terror in the locality; that the petitioner/detenu is involved in five case FIR numbers; that all the procedural requirements including furnishing of complete set of documents to the petitioner/detenu as well as informing him regarding his right to make a representation to the

detaining authority and/or to the government have been fully complied with in the case.

4. I have heard learned counsel for the parties.

5. The learned counsel for the petitioner while reiterating his stand taken in the instant petition submitted that the impugned detention order suffers from patent illegality and deserves to be quashed as the same is outcome of casual and reckless exercise of the detaining authority which has not applied its independent mind but has wholly and solely acted upon the dossier of the police. He submitted that out of five case FIR numbers which were challaned against the petitioner/detenu, four FIR bearing Nos. 189/2013, 195/2014, 123/2014 & 26/2016 stood already closed much before the passing of the impugned detention order. That the detaining authority was not intimated about the said fact and, as such, the impugned order has been passed upon suppression of the material information. That the copies of the grounds of detention and other documents relied upon by the detaining authority were not supplied to the petitioner/detenu not to speak of revealing the contents of the same to the detenu in the language understandable by him. The learned counsel further contended that the petitioner/detenu made a representation to the respondent Nos. 1 & 2 mentioning therein that the criminal cases in respect of four FIR numbers stood already closed upon compounding much prior to the passing of the impugned order but his representation was thrown in the dustbin.

6. The learned counsel in support of his arguments placed reliance on a catena of judgments of this Court passed on the subject and titled as

"Aijaz Ahmad Sofi Vs. UT of J&K and another", WP (Crl) No. 178/2022, decided on 26.08.2022, **"Javaid Ahmad Bhat Vs. UT of J&K and another", WP (Crl) No. 507/2022**, decided on 30.01.2023, **"Aqib Amin Rather Vs. UT of Jammu & Kashmir & anr.", WP (Crl) No. 429/2022**, decided on 24.08.2023, **"Javid Ahmad Wani Vs. Government of J&K & anr.", WP (Crl) No. 73/2020**, decided on 10.03.2021 & **"Arif Ahmad Khan Vs. UT of J&K and anr.", WP (Crl) No. 244/2022**, decided on 28.02.2023.

7. Per contra, Mr. Rajesh Thappa, learned Additional Advocate General has submitted that the detaining authority was constrained under compelling circumstances to order the detention of the petitioner as a preventive measure in exercise of his powers under PSA as the detenu was seriously involved in repeated criminal activities who had generated a fear and terror in the locality and the public in general was fed up of his conduct. That he could not be properly dealt with under the normal law because he used to misuse the concession of bail granted in his favour by the criminal courts by repeating the commission of the crime. He submitted that the procedural requirements as per the Constitution and the PSA were fully complied with in the case as the detenu was informed about the grounds of his detention with furnishing of complete set of documents including the grounds of detention to him. That the petitioner was also informed that he has a right to make a representation to the detaining authority or the government which he did but after consideration of his representation, no case was made out for his release in the general interest of the Society.

8. The detention record was perused at the time of hearing of the case and it was returned back to the learned State counsel in the open court.

9. Pursued the record of the instant petition and also considered the rival arguments advanced by the learned counsel for the parties.

10. Keeping in view the aforementioned perusal and the consideration in the light of law on the subject, this Court is of the considered opinion that the impugned detention order suffers from patent illegality. As rightly contended by the learned counsel for the petitioner, the detaining authority has not applied its independent mind while ordering the detention of the petitioner and has unmindfully acted on the dossier of the Police Superintendent concerned. As per the grounds of detention basing the impugned order, five case FIR numbers are reported as registered against the petitioner which have culminated into the Final Police Reports/Challans. As per the grounds of detention all the five case FIR numbers are reported pending trial but the petitioner has placed on record the concrete proof by way of the copies of the final orders to the effect that cases pertaining to four FIRs have already been closed by way of compounding and only one case FIR is reported still pending disposal. The grounds of detention, as such, are devoid of fairness and accuracy, thus, leading to the non-application of mind of the detaining authority. The dossier of the Police Superintendent concerned which also reveals all the five case FIR numbers as still pending thus carried the false information to the detaining authority. The grounds of detention appear to be the **ditto** of the dossier and both appear to be just formal documents far

from reality designed to illegally justify the impugned detention order. It is a settled legal position that the detention order which suffers from patent non-application of mind cannot sustain under law.

11. In its opinion, this Court feels fortified with law already laid down by this Court in cases titled **"Naba Lone Vs. District Magistrate, 1988 SLJ 300"** and **"Mohd. Farooq through Mohd. Yousuf Vs. UT of J&K and others, WP (Crl) No. 17/2023"**, decided on 03.09.2024 to the effect, "the grounds of detention supplied to the detenu is a copy of dossier, which was placed before the District Magistrate for his subjective satisfaction in order to detain the detenu. This shows total non-application of mind on the part of the Detaining Authority as he has **dittoed** the Police directions without applying his mind to the facts of the case."

12. As hereinbefore mentioned the grounds of detention are the ditto and verbatim of the dossier. The two when placed and perused in juxtaposition reveals that the detaining authority has followed the dossier in its entirety even in phraseology to complete the formality. The detaining authority has even repeated the words, "subject" occurring in the dossier in the grounds of detention. Thus, it lends credence to the fact that the impugned detention order is bereft of subjective satisfaction and application of mind of the detaining authority.

This Court in its opinion is also fortified with the authoritative judgment of the Hon'ble Apex Court passed in case titled **"Jai Singh and ors. Vs. State of J&K**", **AIR 1985 SC 764 decided on 24.01.1985,** the relevant portion whereof is reproduced as hereunder:

> **"**First taking up the case of Jai Singh, the first of the petitioners before us, a perusal of the grounds of detention shows that it is a **verbatim reproduction** of the dossier submitted by the Senior Superintendent of Police, Udhampur, to the District Magistrate requesting that a detention order may kindly be issued. At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited "The subject is an important member of ……"
>
> Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, S/o Ram Singh, resident of village Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find greater proof of non-application of mind. The liberty of a subject is a serious matter and is not to be trifled with in this casual, indifferent and routine manner.**"**

13. The last case FIR bearing No. 53/2021 of Police Station, Nowshera came to be registered against the petitioner/detenu on 8th April, 2021 which alone is reported to be still pending trial. Thereafter the detaining authority has referred to a report of the District Special Branch, Rajouri dated 10.01.2024 without any specific allegation to the effect that detenu is continuously indulging in criminal acts, anti-social activities and has not changed his behavior despite number of FIRs having been registered against him. There is no specific allegation after the incident of 08.04.2021 which led to the registration of case FIR No. 53/2021 of Police Station, Nowshera by way of registration of any FIR in any Police Station against the detenu or by way of initiation of proceedings under Sections 107, 110 and 151 of the Code of Criminal Procedure, 1973.

Thus, it is clear that the impugned detention order dated 30.01.2024 has been passed after a gap of about three years from the date of registration of the last FIR bearing No. 53/3021 of Police Station, Nowshera dated 08.04.2021.

14. In the opinion of this Court, there appears to be no proximity or the live link between the past conduct of the detenu and the need for passing of the detention order. The same leads to an inference of non-application of mind on the part of the detaining authority.

This Court feels supplemented in its opinion with the authoritative judgment of the Hon'ble Supreme Court of India reported in "**Rajinder Arora Vs. Union of India and others" AIR 2006 (4) SCC 796, decided on 10.03.2006**. The relevant paras of the judgment are reproduced as hereunder:-

> "The conspectus of the above decisions can be summarized thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the 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. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinize 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 causal connection has been broken in the circumstances of each case.
>
> Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner."

15. This Court in its opinion is also fortified with the authoritative judgment of the Hon'ble Apex Court passed in case titled **"Rameshwar Shaw Vs. District Magistrate, Burdwan and another**", **AIR 1964 SC, 334**, the relevant portion whereof is reproduced as hereunder:

> "In deciding the question as to whether it is necessary to detain a person, the authority has to be satisfied that the said person if not detained may act in a prejudicial manner and this conclusion can be reasonably reached by the authority generally in light of evidence about past prejudicial activities of the said person. When evidence is placed, the Detaining Authority has to examine the said evidence and decide whether it is necessary to detain the said person in order to prevent him from acting in a prejudicial manner. Thus, it was held that the past conduct or antecedent history of a person can be taken into account in making the detention order and it is largely from prior events showing tendencies or inclinations of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order. Further the past conduct or history of the person on which the authority purports to act should ordinarily be proximate in point of time and should have the rational connection with the conclusion that the detention of the person is necessary, that it would be irrational to take into account the conduct of a person which took the place years before the date of detention".

16. **The learned counsel for the petitioner during his arguments submitted that the documents basing and referred to in the impugned**

detention warrant were not furnished to the petitioner/detenu in its entirety, who notwithstanding such failure on the part of the detaining authority made a representation to the respondent Nos. 1 & 2 which was not considered. Non-supply of the entire set of documents basing and referred to in the detention order at an earliest contravenes the provisions of Article 22 (5) of the Constitution. The Constitutional mandate regarding information to the petitioner/detenu that he has a right to make representation to the detaining authority or to the Government in respect of his preventive detention is not to be taken as a mere formality by making mention of the words, "the detenu was also informed that he can make a representation to the detaining authority or to the government in respect of his preventive detention" in the previously cyclostyled/computerized receipts but is meant to be followed with utmost fairness, responsibility and accountability having regard to the fact that detenu's fundamental right to life and personal liberty is being curtailed on account of his apprehended conduct. The detaining authority and the government in case of making any representation by the detenu to them as regards his detention are under a constitutional obligation to accord due consideration under law to the same and to intimate the result of the consideration to the detenu through the concerned jail authority or through is home people.

17. The learned counsel for the petitioner has placed on record a copy of the representation made by the detenu to the respondent Nos.1 and 2 along

with an online printout of the acknowledgement of the same without any status of the consideration.

18. It is a settled legal position that non-consideration of the representation of the detenu vitiates the impugned order of detention.

19. In **Tara Chand v. State of Rajasthan and others, 1980 (2) SCC 321** and **Raghavendra Singh v. Superintendent, District Jail, Kanpur and others (1986) 1 SCC 650**, the Hon'ble Apex Court has held that if there is inordinate delay in considering the representation that would clearly amount to violation of the provisions of Article 22(5) as to render the detention unconstitutional and void.

In **Rajammal v. State of Tamil Nadu and others, 1999(1) SCC 417**, it has been held as follows:

> "It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest."

In **K. M. Abdulla Kunhi v. Unio of India (1991) 1 SCC 476**, it has been held as follows:

> ".... it is settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

In **Ummu Sabeena v. State of Kerala, (2011) 10 SCC 781**, the Hon'ble Supreme Court has held that the history of personal

liberty, as is well known, is a history of insistence on procedural safeguards. The expression 'as soon as may be', in Article 22 (5) of the Constitution of India, clearly shows the concern of the makers of the Constitution that the representation, made on behalf of detenu, should be considered and disposed of with a sense of urgency and without any avoidable delay.

20. It was further held by the Hon'ble Apex Court in the said case that writ of Habeas Corpus is a writ of highest constitutional importance being a remedy available to the lowliest citizen against the most powerful authority.

21. This Court in its opinion is also fortified with the authoritative judgment of the Hon'ble Apex Court cited as **Shalini Soni Vs. Union of India (1980) 4 SCC 544: 1981 SCC (Ori) 38,** the relevant portion of which is reproduced as herein under:-

> "The Article 22 (5) has two facets : (1) communication of the grounds on which the order of detention has been made; (2) opportunity of making a representation against the order of detention. Communication of the grounds pre-supposes the formulation of the grounds and formulation of the grounds requires and ensures the application of the mind of the detaining authority to the facts and materials before it, that is to say to pertinent and proximate matters in regard to each individual case and excludes the elements of arbitrariness and automatism (if one may be permitted to use the word to describe a mechanical reaction without a conscious application of the mind). It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only eschewing the irrelevant and the remote. Where there is further an express statutory obligation to communicate not merely the decision but the grounds on

> which the decision is founded. It is a necessary corollary that the grounds communicated, that is, the grounds so made known, should be seen to pertain to pertinent and proximate matters and should comprise all the constituent facts and materials that went in to make up the mind of the statutory functionary and not merely the inferential conclusions. Now, the decision to detain a person depends on the subjective satisfaction of the detaining authority. The Constitution and the statute cast a duty on the detaining authority to communicate the grounds of detention to the detenu. From what we have said above, it follows that the grounds communicated to the detenu must reveal the whole of the factual material considered by the detaining authority and not merely the inferences of fact arrived at by the detaining authority. The matter may also be looked at from the point of view of the second facet of Article 22(5). An opportunity to make a representation against the order of detention necessarily implies that the detenu is informed of all that has been taken into account against him in arriving at the decision to detain him. It means that the detenu is to be informed not merely, as we said, of the inferences of fact but of all the factual material which have led to the inferences of fact. If the detenu is not to be so informed the opportunity so solemnly guaranteed by the Constitution becomes reduced to an exercise in futility. Whatever angle from which the question is looked at, it is dear that "grounds" in Article 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The 'grounds' must be self-sufficient and self-explanatory. In our view copies of documents to which reference is made in the 'grounds' must be supplied to the detenu as part of the 'grounds'."

22. **The preventive detentions need to be passed with great care and caution keeping in mind that a citizens most valuable and inherent human right is being curtailed. The arrests in general and the preventive detentions in particular are an exception to the most cherished fundamental right guaranteed under Article 21 of the Constitution of India. The preventive detentions are made on the basis of subjective satisfaction of the detaining authority in relation to**

an apprehended conduct of the detenu by considering his past activities without being backed by an immediate complaint as in the case of the registration of the FIR and, as such, is a valuable trust in the hands of the trustees. The provisions of Clauses (1) and (2) of Article 22 of our Constitution are not applicable in the case of preventive detentions. So, the provisions of Clause (5) of the Article 22 of our Constitution, with just exception as mentioned in Clause (6), together with the relevant provisions of the Section 8 of PSA requiring for application of mind, subjective satisfaction, inevitability of the detention order, proper and prompt communication of the grounds of detention and the information of liberty to make a representation against the detention order, are the imperative and inevitable conditions rather mandatory requirements for passing of a detention order.

23. The Hon'ble Supreme Court in case of **"Rekha Vs. State of Tamil Nadu through Secretary to Government and another", reported in (2011) 5 SCC 244** has laid emphasis on the fundamental right to life and personal liberty of a citizen of India guaranteed under Article 21 of our Constitution and has, accordingly, stressed for taking great care and caution while passing any preventive detention orders so that same are passed in case of genuine and inevitable need only without any misuse or abuse of the powers. The relevant provisions of the said authoritative judgment are reproduced as hereunder:-

"21. It is all very well to say that preventive detention is preventive not punitive. The truth of the matter, though, is that in substance a detention order of one year (or any other period) is a punishment of one year's imprisonment. What difference is it to the detenu whether his imprisonment is called preventive or punitive?

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 (Indian Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.

35. It must be remembered that in cases of preventive detention no offence is proved and the justification of such detention is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. Preventive detention is often described as a 'jurisdiction of suspicion', (Vide State of Maharashtra Vs. Bhaurao Punjabrao Gawande. The detaining authority passes the order of detention on subjective satisfaction. Since clause (3) of Article 22 specifically excludes the applicability of clauses (1) and (2), the detenu is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest. To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however, technical, is, in our opinion, mandatory and vital.

36. It has been held that the history of liberty is the history of procedural safeguards. (See: Kamleshkumar Ishwardas Patel Vs. Union of India and others). These procedural safeguards are required to be zealously watched and enforced by the court and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu. As observed in Rattan Singh Vs. State of Punjab, (1981) 4 SCC 1981 :-

"4. May be that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a

> modicum of safeguards to persons detained under them, and if freedom and liberty are to have any meaning in our democratic set-up, it is essential that at least those safeguards are not denied to the detenus."
> 39. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. The stringency and concern of judicial vigilance that is needed was aptly described in the following words in Thomas Pelham Dale's case, (1881) 6 QBD 376 :
>
> "Then comes the question upon the habeas corpus. It is a general rule, which has always been acted upon by the Courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue."

24. In the case of **"Francis Coralie Mullin Vs Administrator, Union Territory of Delhi and others,"** reported in **(1981) SCC 608,** it has been *inter alia* authoritatively laid down:-

> "4. Now it is necessary to bear in mind the distinction between 'preventive detention' and punitive detention', when we are considering the question of validity of conditions of detention. There is a vital distinction between these two kinds of detention. 'Punitive detention' is intended to inflict punishment on a person, who is found by the judicial process to have committed an offence, while 'preventive detention' is not by way of punishment at all, but it is intended to pre-empt a person from indulging in conduct injurious to the society. The power of preventive detention has been recognized as a necessary evil and is tolerated in a free society in the larger interest of security of the State and maintenance of public order. It is a drastic power to detain a person without trial and there are many countries where it is not allowed to be exercised except in times of war or aggression. Our Constitution does recognize the existence of this power, but it is hedged-in by various safeguards set out in Articles 21 and 22. Art. 22 in clauses (4) to (7), deals specifically with safeguards against preventive detention and any law of preventive detention or action by way of

preventive detention taken under such law must be in conformity with the restrictions laid down by those clauses. But apart from Art. 22, there is also Art. 21 which lays down restrictions on the power of preventive detention. Until the decision of this Court in Maneka Gandhi. v. Union of India, a very narrow and constricted meaning was given to the guarantee embodied in Art. 21 and that article was understood to embody only that aspect of the rule of law, which requires that no one shall be deprived of his life or personal liberty without the authority of law. It was construed only as a guarantee against executive action unsupported by law. So long as there was some law, which prescribed a procedure authorizing deprivation of life or personal liberty, it was supposed to meet the requirement of Art. 21. But in Maneka Gandhi's case (supra), this Court for the first time opened-up a new dimension of Art. 21 and laid down that Art. 21 is not only a guarantee against executive action unsupported by law, but is also a restriction on law making. It is not enough to secure compliance with the prescription of Article 21 that there should be a law prescribing some semblance of a procedure for depriving a person of his life or personal liberty, but the procedure prescribed by the law must be reasonable, fair and just and if it is not so, the law would be void as violating the guarantee of Art. 21. This Court expanded the scope and ambit of the right to life and personal liberty enshrined in Art. 21 and sowed the seed for future development of the law enlarging this most fundamental of Fundamental Rights. This decision in Maneka Gandhi's case became the starting point-the-spring board-for a most spectacular evolution the law culminating in the decisions in M. H. Hoscot v. State of Maharashtra, Hussainara Khatoon's case, the first Sunil Batra's case and the second Sunil Batra's case. The position now is that Art. 21 as interpreted in Maneka Gandhi's case (supra) requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful and it is for the Court to decide in the exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure, which is reasonable, fair and just or it is otherwise. The law of preventive detention has therefore now to pass the test not only of Art. 22, but also of Art. 21 and if the constitutional validity of any such law is challenged, the Court would have to decide whether the procedure laid down by such law for depriving a person of

> his personal liberty is reasonable, fair and just. But despite these safeguards laid down by the Constitution and creatively evolved by the Courts, the power of preventive detention is a frightful and awesome power with drastic consequences affecting personal liberty, which is the most cherished and prized possession of man in a civilized society. It is a power to be exercised with the greatest care and caution and the courts have to be ever vigilant to see that this power is not abused or misused. It must always be remembered that preventive detention is qualitatively different from punitive detention and their purposes are different. In case of punitive detention, the person concerned is detained by way of punishment after he is found guilty of wrong doing as a result of trial where he has the fullest opportunity to defend himself, while in case of preventive detention, he is detained merely on suspicion with a view to preventing him from doing harm in future and the opportunity that he has for contesting the action of the Executive is very limited. Having regard to this distinctive character of preventive detention, which aims not at punishing an individual for a wrong done by him, but at curtailing his liberty with a view to pre-empting his injurious activities in future."

25. In the case of **"Nand Lal Bajaj Vs State of Punjab and another,"** reported in **(1981) 4 SCC 327**, the Hon'ble Supreme Court has stated the position as under**:-**

> **"**9. Among the concurring opinions, Krishna Iyer, J., although he generally agreed with Bhagwati, J., goes a step forward by observing:
>
> Procedural safeguards are the indispensable essence of liberty. In fact, the history of procedural safeguards and the right to a hearing has a human-right ring. In India, because of poverty and illiteracy, the people are unable to protect and defend their rights: observance of fundamental rights is not regarded as good politics and their transgression as bad politics. In short, the history of personal liberty is largely the history of procedural safeguards. The need for observance of procedural safeguards, particularly in cases of deprivation of life and liberty is, therefore, of prime importance to the body politic."

26. While summing up the case in hand, it is opined that the impugned detention order suffers from the non-application of the mind by the detaining authority and after passing of the same with such disability, the detaining authority has further observed the mandatory provisions of Article 22 (5) of the Constitution in breach. The detention order as such cannot sustain.

27. **The petitioner/detenu has been under detention since last about 10 months.**

28. For the foregoing discussion, there seems to be merit in the instant petition, which is allowed. The impugned Detention Order bearing No. DMR/INDEX/01 of 2024 dated 30.01.2024 passed by the Respondent No.2 i.e. District Magistrate, Rajouri is quashed with the direction to the respondents to release the petitioner/detenu forthwith from his preventive detention in the case in hand.

29. Disposed off.

(Mohd. Yousuf Wani)
Judge

JAMMU :
12.11.2024
Pawan Chopra

i) Whether the Judgment is speaking: Yes
ii) Whether the Judgment is reportable: Yes