IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR
…

WP(Crl) no.549/2019

Reserved on: 09.03.2020

Pronounced on: 16.04.2020

Sajad Ahmad Hajam

…….Petitioner

Through: Mr Syed Sajad Geelani, Advocate

Versus

State of J&K and another

……Respondent(s)

Through: Mr B.A.Dar, Sr.AAG

CORAM: HON'BLE MR JUSTICE TASHI RABSTAN, JUDGE

JUDGEMENT

1. District Magistrate, Budgam – respondent no.2 here (for brevity "*detaining authority*"), has, by Order no.DMB/PSA/47 of 2019 dated 09.08.2019, placed *Shri Sajad Ahmad Hajam* son of*Ghulam Hussain Hajam* resident of*Chariya Gueon, Magam, Budgam* (for short "*detenu*") under preventive detention, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. It is this order, of which petitioner is aggrieved and throws challenge thereto on the grounds tailored in writ petition on hand.

2. The case set up by petitioner in writ petition is that detenu, being illiterate due to poverty,was working as a barber to help his family and was suddenly arrested by police and subsequently placed under preventive detention in terms of impugned detention order.

2.1. It is averred in writ petition that detaining authority has not applied its mind as there was no compelling reason and cogent material and details available before detaining authority, on the basis whereof impugned detention order was passed.

2.2. It is maintained that grounds of detention are replica of dossier.

2.3. It is urged in the petition that detenu is not able to understand English language. As grounds of detention are in English language, as such, detenu could not make an effective representation.

2.4. It is averred that grounds of detention are vague and stale. Detenu was not provided the material relied upon by detaining authority.

3. Reply Affidavit has been by respondents vehemently opposing the petition.

4. I have heard learned counsel for parties and considered the matter. I have gone through the detention record made available by learned counsel for respondents.

5. Prior to adverting to case in hand, it would be germane to say that right of personal liberty is most precious right, guaranteed under the Constitution. It has been held to be transcendental, inalienable and available to a person independent of the Constitution. A person is not to be deprived of his personal liberty, except in accordance with procedures established under law and the procedure as laid down, in ***Maneka Gandhi v. Union of India, 1978 AIR SC 597***, is to be just and fair. The personal liberty may be curtailed, where a person faces a criminal charge or is convicted of an offence and sentenced to imprisonment. Where a person is facing trial on a criminal charge and is temporarily deprived of his personal liberty owing to criminal charge framed against him, he has an opportunity to defend himself and to be acquitted of the charge in case prosecution fails to bring home his guilt. Where such a person is convicted of offence, he still has satisfaction of having been given adequate opportunity to contest the charge and also adduce evidence in his defence.

5.1. It is to be seen that framers of the Constitution of India have incorporated Article 22 in the Constitution of India, aiming at leaving room for placing a person under preventive detention without a formal charge and trial and without such a person held guilty of an offence and sentenced to imprisonment by a competent court. Its aim and object is to save society from activities that are likely to deprive a large number of people of their right to life and personal liberty. In such a case, it would be dangerous for the people at large, to wait and watch as by the time ordinary law is set into motion, the person, having dangerous designs, would execute his

plans, exposing general public to risk and causing colossal damage to life and property. It is, for that reason, necessary to take preventive measures and prevent a person bent upon to perpetrate mischief from translating his ideas into action. Article 22 Constitution of India, therefore, leaves scope for enactment of preventive detention laws.

5.2. The essential concept of preventive detention is that detention of a person is not to punish him for something he has done, but to prevent him from doing it. The basis of detention is satisfaction of the Executive of a reasonable probability of likelihood of detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. It is pertinent to mention here that preventive detention means detention of a person without trial in such circumstances that the evidence in possession of the authority is not sufficient to make a legal charge or to secure conviction of detenu by legal proof, but may still be sufficient to justify his detention. [***Sasthi Chowdhary v. State of W.B. (1972) 3 SCC 826***].

5.3. While the object of punitive detention is to punish a person for what he has done, the object of preventive detention is not to punish an individual for any wrong done by him, but curtailing his liberty with a view to preventing him from committing certain injurious activities in future. Whereas punitive incarceration is after trial on the allegations made against a person, preventive detention is without trial into the allegations made against him. [***Haradhan Saha v. State of W.B. (1975) 3 SCC 198***].

5.4. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. The compulsions of primordial need to maintain order in society, without which enjoyment of all rights, including the right of personal liberty would lose all their meaning, are the true justifications for the laws of preventive detention. This justification has been described as a "jurisdiction of suspicion" and the compulsions to preserve the values of freedom of a democratic society and social order, sometimes merit the curtailment of individual liberty. [***State of Maharashtra v. Bhaurao Punjabrao Gawande (2008) 3 SCC 613***]

5.4. To lose our Country by a scrupulous adherence to the written law, said *Thomas Jefferson*, would be to lose the law, absurdly sacrificing the end to the means. [***Union of India v. Yumnam Anand M., (2007) 10 SCC***

190; R. v. Holliday, 1917 AC 260; Ayya v. State of U.P. (1989) 1 SCC 374]

5.5. Long back, an eminent thinker and author, *Sophocles*, had to say: "*Law can never be enforced unless fear supports them.*" Though this statement was made centuries back, yet it has its relevance, in a way, with enormous vigour, in today's society as well. Every right-thinking citizen is duty bound to show esteem to law for having an orderly, civilized and peaceful society. It has to be kept in mind that law is antagonistic to any type of disarray. It is completely xenophobic of anarchy. If anyone breaks law, he has to face the wrath of law, contingent on the concept of proportionality that the law recognizes. It can never be forgotten that the purpose of criminal law legislated by competent legislatures, subject to judicial scrutiny within constitutionally established parameters, is to protect collective interest and save every individual that forms a constituent of the collective from unwarranted hazards. [Vide: ***State of Punjab v. Saurabh Bakshi, (2015) 5 SCC 182***].

5.6. It is worthwhile to mention here that it is sometimes said in a conceited and uncivilised manner that law cannot bind individual actions that are perceived as flaws by large body of people, but, truth is and has to be that when law withstands test of Constitutional scrutiny in a democracy, individual notions are to be ignored. At times certain activities, wrongdoings, assume more accent and gravity depending upon the nature and impact of such deleterious activities on the society. It is neither to be guided by a sense of sentimentality nor to be governed by prejudices.

5.7. Acts or activities of an individual or a group of individuals, prejudicial to the security of the State or maintenance of peace and public order, have magnitude of across-the-board disfigurement of societies. No Court should tune out such activities, being won over by passion of mercy. It is an obligation of the Court to constantly remind itself the right of society is never maltreated or marginalised by doings, an individual or set of individuals propagate and carry out.

6. Article 22(5) of the Constitution of India and Section 13 of the Act of 1978, guarantee safeguard to detenu to be informed, *as soon as may be*, of grounds on which order of detention is made, which led to subjective

satisfaction of detaining authority and also to be afforded earliest opportunity of making representation against order of detention. Detenu is to be furnished with sufficient particulars enabling him to make a representation, which on being considered, may obtain relief to him.

6.1. In the present case, strenuous submission made by counsel for petitioner is that the material, relied upon by detaining authority for issuance of impugned order of detention, has not been furnished to detenu. His further submission is that grounds of detention are vague and sketchy. He contends that detenu was already in custody of police when impugned order of detention was passed and that he was not informed of his detention and was not even provided the material on which detention order was passed, thereby violating procedural safeguards as envisaged under law. At the time of passing of impugned order of detention detenu was already in police custody and detention order or grounds of detention nowhere make even a whisper about compelling reasons for passing of impugned order of detention. In support of his submissions, learned counsel for petitioner has placed reliance on ***Mohammad Ahsan Antoo v State & anr, 2011 (2) JKJ 216;*** and ***Ishfaq Ahmad Sofi v. State and others, 2014 (4) JKJ 21***.

6.2. In view of submissions made by counsel for petitioner, it would be in the fitness of things to have analysation of J&K Public Safety Act, 1978 (for short "*Act of 1978*"). The Act of 1978 is designed for to prevent the acts, which are prejudicial to security of the State or maintenance of public order. Act of 1978 has been enacted by the J&K State Legislature in the 29th Year of the Republic of India. The acts, indulged in by persons, who act in concert with other persons and quite often such activities have national level consequences. These acts are preceded by a good amount of planning and organisation by the set of people fascinated in tumultuousness. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed, but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds

for making or sustaining an order of detention. The said views and principles have been reiterated by the Supreme Court in ***Gautam Jain v. Union of India another AIR 2017 SC 230***.

6.3. It would be apt to have glimpse of Section 8 of the Act of 1978. It envisions:

> "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;
> (a-1) if satisfied with respect to any person that with a view to preventing him from-
> (i) smuggling timber, or liquor; or
> (ii) abetting the smuggling of timber, or liquor or
> (iii) engaging in transporting or concealing or keeping smuggled timber, or
> (iv) dealing the smuggled timber otherwise than by engaging in transporting or concealing or keeping in smuggled timber, or liquor; or
> (v) harbouring persons engaged in smuggling of timber or abetting the smuggling of timber, or liquor; or
> …….
> it is necessary so to do, make an order directing that such person be detained.
> *(2)* any of the following officers, namely
> (i) Divisional Commissioners,
> (ii) District Magistrate, may, if satisfied as provided in sub-clause (i) and (ii) of clause [(a) or (a-1)] of sub-section (1), exercise the powers conferred by the said sub-sections.
> *(3)* For the purposes of sub-section (1),
> [(a) Omitted.]
> (b) "acting in any manner prejudicial to the maintenance of public order" means-
> (i) promoting, propagating, or attempting to create, feelings of enmity or hatred or disharmony on ground of religion, race, caste, community, or region;
> (ii) making preparations for using, or attempting to use, or using, or instigating, inciting, provoking or otherwise, abetting the use of force where such preparation, using, attempting, instigating, inciting, provoking or abetting, disturbs or is likely to disturb public order;
> (iii) attempting to commit, or committing, or instigating, provoking or otherwise abetting the commission of, mischief within the meaning of section 425 of the Ranbir Penal Code where the commission of such mischief disturbs, or is likely to disturb public order;
> (iv) attempting to commit, or committing or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment of a term extending to seven years or more, where the commission of such offence disturbs, or is likely to disturb public order;
> [(c) "smuggling" in relation to timber or liquor means possessing or carrying of illicit timber or liquor and includes any act which will render the timber or liquor liable to confiscation under the Jammu and Kashmir Forest Act, Samvat, 1987 or under the Jammu and Kashmir Excise Act, 1958, as the case may be," and]
> [(d) "timber" means timber of Fir, Kail, Chiror Deodar tree whether in logs or cut up in pieces but does not include firewood.]

> [(e) Liquor includes all alcoholic beverages including beer.]
> *(4)* When any order is made under this section by an officer mentioned in sub-section (2) he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the Government."

6.4. Perusal of Section 8 (1) makes it known that the Government may, if it is satisfied with respect to *any person* that with a view to preventing him from acting in any manner prejudicial to security of the State or maintenance of public order, it is necessary so to do, make an order directing that such a person be detained. Subsection (1) of Section 8 of Act of 1978, thus, emphatically, envisions that *any person* can be placed under preventive detention if the Government is satisfied with respect to such a person that with a view to preventing him from acting in any manner prejudicial to the security of the State or maintenance of public order, it is essential to place such a person under preventive detention. Sub-clause (a-1) of Subsection (1) of Section 8 envisages that the Government may, if satisfied with respect to any person that with a view to preventing him from— (i) smuggling timber, or liquor; or(ii) abetting the smuggling of timber, or liquor or; (iii) engaging in transporting or concealing or keeping smuggled timber; or(iv) dealing the smuggled timber otherwise than by engaging in transporting or concealing or keeping in smuggled timber, or liquor; or(v) harbouring persons engaged in smuggling of timber or abetting the smuggling of timber, or liquor,make an order directing that such person be detained. Provisions of Subsection (1) of Section 8 of Act of 1978, thus, answers the questions that had been raised by learned counsel during arguments, that a person can be placed under preventive detention if his activities, as enumerated in the Act of 1978, are found prejudicial to the security of the State or maintenance or public order.

6.5. As is gatherable from Subsection (2) of Section of Section 8, it provides that either Divisional Commissioner or District Magistrate may, if satisfied as provided in sub-clause (i) and (ii) of clause (a) or (a-

1) of Subsection (1) of Section 8, exercise the powers conferred by the said sub-sections, place a person under preventive detention.

6.6. Subsection (3) of Section 8 of the Act of 1978 enumerates various prejudicial activities that would fall within the mischief of "*acting in any manner prejudicial to the maintenance of public order*". It covers and includes in its fold the activities, which are prejudicial to the maintenance of public order, in the nature of:

a) promoting, propagating or attempting to create, feelings of enmity or hatred or disharmony on the ground of religion, race, community or region.

b) making preparations for using or attempting to use or using or instigating inciting, provoking or otherwise abetting the use of force where such preparation, using, attempting, instigating, inciting, provoking or abetting, disturbs or is likely to disturb public order.

c) attempting to commit, or committing, or instigating, provoking or otherwise abetting commission of mischief where the commission of such mischief disturbs or is likely to disturb public order,

d) attempting to commit or committing or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment of a term extending to seven years or more where the commission of such offence disturbs, or is likely to disturb public order.

6.7. Subsection (4) of Section 8 of the Act of 1978 envisions that when an order of detention is made, detaining authority shall report the fact of issuance of detention order to the Government together with the grounds on which the order is made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after making thereof unless in the interregnum, it has been approved by the Government.

6.8. To see as to whether, in the present case, detaining authority has reported issuance of detention order to the Government, I have gone through the detention record, produced by learned counsel for respondents. Immediately upon issuance of impugned detention order, detaining authority informed the Government thereabout vide communication

no.DMB/PSA/2019/47 dated 09.08.2019. The Government examined and considered grounds of detention, issuing Order no.Home/PB-V/1309 of 2019 dated 14.08.2019, and approving impugned detention order. And period of detention was said to be determined on the basis of opinion of Advisory Board. In such circumstances, it becomes unequivocal that detaining authority had, immediately upon issuing impugned detention order, reported the fact of issuance to the Government and the Government approved impugned detention order. Thus, there is no hindrance in saying that provisions of Subsection (4) of Section 8 of the Act of 1978, have been strictly complied with by respondents.

7. Section 9 of the Act of 1978 envisages that a detention order may be executed at any place in the manner provided for executing warrants of arrest.

8. Section 10 envisions that any person in respect of whom a detention order has been made under Section 8 of the Act shall be liable to be detained in such a place and under such conditions including conditions as to maintenance of discipline and punishment for breaches of discipline as the Government may specify and that any person placed under preventive detention shall be liable to be removed from one place of detention to another place of detention.

8.1. The law qua lodgement of a detenu at a particular place has been laid down by this Court in a number of cases. In ***Shabir Ahmed Shah v. State, 2010 (2) JKJ 409 (J&K)***, it has been said detenu has to be kept in detention in a place which is within the environs of his ordinary place of residence, however, departure is permissible when requirements of administrative inconvenience, safety and security may justify. In ***State of J&K v. Shabir Ahmad Shah, 2010(2) SLJ 450 : 2020 (2) JKJ 37 (J&K)***, the Division Bench of this Court has said that learned Single Judge could not have directed change in lodgement of detenu from Kathua to Srinagar inasmuch as law does not allow the Courts to interfere in the matter unless the order is vitiated by arbitrary consideration or *mala fides*.

9. Where a person has been detained in pursuance of detention order under Section 8 of the Act of 1978, which has been made on two or more grounds, such detention order, as envisaged under Section 10-A of the Act

of 1978, shall be deemed to have been made separately on each of such grounds and as a result thereof, such an order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, not relevant, not connected or not proximately connected with such person.

10. Section 13 of the Act of 1978 says that when a person is detained in pursuance of a detention order, the authority making the order shall, *as soon as maybe*, 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 the language which is understandable to him, the grounds on which the order has been made and shall afford him earliest opportunity of making a representation against detention order. However, Subsection (2) of Section 13 emphatically mentions that nothing in subsection (1) of Section 13 shall require the authority to disclose facts which it considers to be against the public interest to disclose.

10.1. Given the Statutory and Constitutional requirements and procedures to be followed by respondents in the present case, I thought it apt to go through detention record produced by learned counsel for respondents. It, *inter alia*, comprises of *Execution Report* as well. Perusal whereof unmasks that detenu has been furnished impugned detention order, grounds of detention, communication to make representation,dossier and the material relied upon by detaining authority. Mohd Hanneef ASI no.63/BD of police station Magam has executed the detention warrant. Execution Report also divulges that all that has been furnished to detenu has been read over and explained to detenu in Urdu/Kashmiri language, which he understood fully and he was also informed to make a representation against his detention.

10.2. Apropos to make mention here that Article 22 (5) of the Constitution of India casts a dual obligation on the detaining authority, viz.:

(i) To communicate grounds of detention to the detenu at the earliest;

(ii) To afford him the earliest opportunity of making a representation against the detention order which implies the duty to consider and decide the representation when made, as soon as possible.

10.3. The Supreme Court has reiterated that communication means bringing home to detenu effective knowledge of facts and grounds on which order of detention is based. In the present case, as is evident from *Execution Report*, that grounds of detention have been furnished to detenu and explained him in Urdu/Kashmiri language. He, however, did not opt to file representation against his detention.

10.4. The Constitution has guaranteed freedom of movement throughout the territory of India and has laid down detailed rules as to arrest and detention. It has also, by way of limitations upon the freedom of personal liberty, recognised right of the State to legislate for preventive detention, subject to certain safeguards in favour of detained person, as laid down in Clauses (4) & (5) of Article 22. One of those safeguards is that detained person has a right to be communicated the grounds on which order of detention has been made against him, in order that he may be able to make his representation against detention order. In the circumstances of instant case, it has been shown that detenu had opportunity, which the law contemplates in his favour, for making an effective representation against his detention. He, however, did not avail of said opportunity.

10.5. In that view of matter, the contention in the petition on hand that detenu was not furnished the material relied upon by detaining authority to make a representation against his detention while passing impugned detention order, is specious.

11. Section 14 of the Act of 1978 provides constitution of Advisory Board. It shall comprise of a Chairman, who is or has been a Judge of the High Court, and two other members, who are, or have been, or are qualified to be appointed as Judges of the High Court. Such a Chairman and members shall be appointed by the Government in consultation with the Chief Justice of the High Court. Section 15 says that in every case, where a detention order has been made under the Act of 1978, the Government shall within four weeks from the date of detention order, place before Advisory Board the grounds on which order of detention has been made; representation, if any, made by person affected by order of detention and in case where order of detention has been made by an officer, also report by such officer under subsection (4) of Section 8.After considering the

material placed before the Advisory Board 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 in any particular case the Advisory Board 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.

11.1. In the present case detention record, on its perusal, reveals that Advisory Board vide its order Report dated 29.08.2019, has conveyed that grounds of detention formulated by detaining authority are sufficiently supported by dossier/material and that grounds of detention and other relevant material were furnished to detenu at the time of taking him into detention and that detenu was also informed about his right of making representation against his detention. However, no representation was made by detenu and, therefore, there was no rebuttal to the grounds of detention formulated by detaining authority. The report of Advisory Board also reveals that all the requirements contemplated under the Act of 1978, have been complied with and no error of law or procedure, which would invalidate the detention, have been committed by detaining authority and as an outcome thereof, the detention is in conformity with the principles as enshrined under Article 22(5) of the Constitution of India and the provisions of the Act of 1978. The Advisory Board has opined that there is sufficient cause for detention of detenu with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.

11.2. Communication no.AB/PSA/2019/307 dated 02.09.2019, shows Advisory Board transmitted its Report to the Government qua detenu for further action. Upon receipt of report from Advisory Board, the Government, in exercise of powers conferred by Section 17(1) of the Act of 1978, vide Order no.Home/PB-V/1830 of 2019 dated 16.09.2019, confirmed detention order and directed lodgement of detenu in Central Jail, Varanasi, Uttar Pradesh. So, there is strict

compliance of provisions of Section 14, 15, 16, and 17 of the Act of 1978.

11.3. In the present case, Advisory Board has furnished its Report, opining disclosure of sufficient cause for detention of detenu with a view to preventing him from acting in any manner prejudicial to maintenance of public order.

11.4. In view of above, it is made clear here that this Court cannot go into the question whether on the merits the detaining authority was justified to make detention order or to continue it, as if sitting on appeal. Thus, this Court cannot interfere on the ground that in view of the fact that times have changed, further detention would be unjustified. That is for the Government and Advisory Board to consider. Reference in this regard is made to ***Bhim Sen v. State of Punjab, AIR 1951 SC 481; Gopalan A.K. v. State of Madras AIR 1950 SC 27; Shibbanlal Saksena v. State of U.P., AIR 1954 SC 17; Hemlata Kantilal Shah v. State of Maharashtra, AIR 1982 SC; Sheoraj Prasad Yadav v. State of Bihar, AIR 1975 SC 1143;*** and ***Ram Bali Rajbhar v. State of W.B. AIR 1975 SC 623***.

12. Learned counsel for petitioner has also stated that the allegations/ grounds of detention are vague and the instances and cases mentioned in grounds of detention have no nexus with detenu. It is his submission that there is no live link between the order of detention and object, which it sought to be achieved because implication of detenu in criminal offence would suggest that these offences can be de dealt with under the provisions of criminal law and if at all detenu would be found involved in the offences after a full-dress trial before the criminal court, the law will take its own course and, therefore, substantive law would have been sufficient to deal with the offences the detenu is charged with, and, thus, preventive detention is not justified inasmuch as detenu was in police custody at the time of passing of detention order.

12.1. It would be appropriate to note that with the evolution of mankind from primitive stage to the stage of social welfare State, the administration of criminal law assumed great importance. As long as human beings were God-fearing and had faith that their actions were being watched by the Almighty the need for administration of criminal justice was not felt.

However, with the passage of time and people becoming more materialistic, a section of society consisting of misguided and disgruntled human beings lost faith in the Almighty and started thinking that their actions could not be seen by anybody. These misguided persons indulged in criminal activities that led to necessity for administration of criminal justice. In addition, the activities to be termed as criminal activities have also undergone change with the passage of time. What was regarded not harmful fifty years ago has become the greatest evil of the day in view of changed circumstances, new researches, new thinking and modern way of life.

12.2. The present case relates to illicit trafficking of narcotic drugs. The drug problem is a serious threat to public health, safety and well-being of humanity. Our global society is facing serious consequences of drug abuse and it undermines the socio-economic and political stability and sustainable development. Besides, it also distorts the health and fabric of society and it is considered to be the originator for petty offences as well as heinous crimes like smuggling of arms & ammunition and money laundering. The involvement of various terrorist groups and syndicates in drug trafficking leads to threat to the national security and sovereignty of States by the way of Narco-terrorism. The drug trafficking and abuse has continued its significant toll on valuable human lives and productive years of many persons around the globe. With the growth and development of world economy, drug traffickers are also seamlessly trafficking various type of drugs from one corner to other ensuring the availability of the contrabands for vulnerable segment of the society who fall into the trap of drug peddlers and traffickers. Due to India’s close proximity with major opium growing areas of the region, India is facing serious menace of drug trafficking and as a spill-over effect, drug abuse especially among the youth is a matter of concern for us.

12.3. Our Constitution framers had visualised the danger of misuse of such type of substances and therefore, made it part of directives issued to the State. The Directive Principles, which are part of our Constitution, lay down that the State shall make endeavours to bring about the prohibition of substances injurious for health except for medicinal andscientific

purposes. In recent years, India has been facing a problem of transit traffic in illicit drugs. The spill over from such traffic has caused tribulations of abuse and addiction. This trend has created an illicit demand for drugs within the country.

12.4. The illicit traffic in narcotic drugs and psychotropic substances poses a serious threat to the health and welfare of the people and activities of persons engaged in such illicit traffic have a deleterious effect on the national economy as well. Having regard to the persons by whom and the manner in which such activities are organised and carried on, and having regard to the fact that in certain areas which are highly vulnerable to the illicit traffic in narcotic drugs, such activities of a considerable magnitude are clandestinely organised and carried on, it is necessary for the effective prevention of such activities to provide for detention of persons concerned in any manner therewith.

12.5. Reverting back to the case in hand.Grounds of detention unmask that detenu had inclination towards criminality which ultimately resulted in detenu becoming notorious trafficker in narcotic drugs and in past he very ingeniously avoided getting incriminated overtly, but he was found involved in cases FIR nos.153/2018 under Section 8/22 NDPS Act and 88/2019 under Section 8/20 NDPS Act registered in police station Magam.

12.6. It is also mentioned in grounds of detention that detenu has not only amassed and acquired ill-gotten wealth as a result of illicit trafficking of narcotic drugs, but there are nefarious designs of ensuring that youth of the area are pushed towards drug addiction so that they could be easily tasked to indulge in violent stone pelting and purpose of detenu is manifold and in this regard he has accomplished to a large extend. The drug addicts of the area, as indicated in grounds of detention, are under total control of detenu and they unhesitatingly resort to stone pelting whenever called upon to do so by detenu and they feel compelled to follow dictates of detenu as they depending on narcotic drugs provided to them by detenu. This, as is discernible from grounds of detention, is modus operandi adopted by detenu to accomplish his nefarious designs which are to amass ill-gotten wealth and to push youth towards agitation

and stone pelting. Detenu is said to have been found to be one of main links tasked for implementing programmes like enforcing strikes, stopping vehicular movement, closing of business activities/ educational institutions and disrupting supply of essential commodities.

12.7. It has been insisted by learned counsel for petitioner during course of advancement of arguments that power of preventive detention is a precautionary power exercised in reasonable anticipation and it may or may not relate to an offence. The basis of detention is satisfaction of Executive on a reasonable probability of likelihood of detenu acting in a manner similar to his past acts and prevent him from doing the same. It is contended that detenu has been habitual in creating law and order problem, instigating youth to indulge in prejudicial activities and that detaining authority, therefore, while taking into account past activities of detenu found it imperative and necessary to detain him inasmuch as preventing him from indulging in the said activities not with an object of punishing him for something he has done but to prevent him from doing it. Reference of FIRs in grounds of detention reflects and manifests awareness of detaining authority qua conduct and activities of detenu that he has indulged in. The order of detention has been passed by detaining authority as a precautionary measure based on a reasonable prognosis of the future behaviour of detenu based on his past conduct in light of surrounding circumstances much probability emerged warrant detention of detenu.

12.8. In the above backdrop it is mentioned here that the purpose of J&K Public Safety Act, 1978, is to prevent the acts and activities prejudicial to security of the State or maintenance of public order. The acts, indulged in by persons, who act in concert with other persons and quite often such activity has national level consequences. These acts are preceded by a good amount of planning and organisation by the set of people fascinated in turmoil. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed, but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On

the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention.

12.9. It may not be out of place to mention here that grounds of detention are definite, proximate and free from any ambiguity. Detenu has been informed with sufficient clarity what actually weighed with Detaining Authority while passing detention order. Detaining Authority has narrated facts and figures that made it to exercise its powers under Section 8 of the Act of 1978, and record subjective satisfaction that detenu was required to be placed under preventive detention in order to prevent him from acting in any manner prejudicial to the security of the State.

12.10. In such circumstances, suffice it is to say that there had been material before detaining authority to come to a conclusion and hence, it cannot be said that subjective satisfaction of detaining authority was wrongly arrived at or grounds of detention are self-contradictory or vague. The role of detenu has been specifically described.

12.11. Even otherwise it is settled law that this Court in the proceedings under Article 226 of the Constitution has limited scope to scrutinizing whether detention order has been passed on the material placed before it, it cannot go further and examine sufficiency of material. [Vide: ***State of Gujarat v. Adam Kasam Bhaya (1981) 4 SCC 216].*** This Court does not sit in appeal over the decision of detaining authority and cannot substitute its own opinion over that of detaining authority when grounds of detention are precise, pertinent, proximate and relevant. [See: ***State of Punjab v. Sukhpal Singh (1990) 1 SCC 35]***

12.12. This Court can only examine grounds disclosed by the Government in order to see whether they are relevant to the object which the legislation has in view, that is, to prevent detenu from engaging in activities prejudicial to security of the State or maintenance of public order. [See:***Union of India v. Arvind Shergill (2000) 7 SCC 601;Pebam Ningol Mikoi Devi v. State of Manipura, (2010) 9 SCC;*** and ***Subramanian v. State of T.N. (2012) 4 SCC 699***]

12.13. It may not be impertinent to mention here that the Supreme Court, in several decisions, has held that even one prejudicial act can be treated as sufficient for forming requisite satisfaction for detaining a person. The

power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be, made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention and an order of preventive detention is also not a bar to prosecution. Discharge or acquittal of a person will not preclude detaining authority from issuing a detention order. In this regard the Constitution Bench of the Supreme Court in ***Haradhan Saha's*** case (supra), while considering various facets concerning preventive detention, has observed:

> "32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be, made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.
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> 33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.
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> 34. The recent decisions of this Court on this subject are many. The decisions in *Borjahan Gorey v. State of W.B., Ashim Kumar Ray v. State of W.B.; Abdul Aziz v. District Magistrate, Burdwan and Debu Mahato v. State of W.B.* correctly lay down the principles to be followed as to whether a detention order is valid or not. The decision in *Biram Chand v. State of U. P., (1974) 4 SCC 573*, which is a Division Bench decision of two learned Judges is contrary to the other Bench decisions consisting in each case of three learned Judges. The principles which can be broadly stated are these. First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him

> and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances."

13. The Supreme Court in the case of ***Debu Mahato v. State of W.B. (1974) 4 SCC 135***, has said that while ordinarily-speaking one act may not be sufficient to form requisite satisfaction, there is no such invariable rule and that in a given case "*one act may suffice*". That was a case of wagon-breaking and given the nature of the Act, it was held therein that "*one act is sufficient*". The same principle was reiterated in the case of ***Anil Dely v. State of W.B. (1974) 4 SCC 514***. It was only a case of theft of railway signal material. Here too "*one act was held to be sufficient*". Similarly, in ***Israil S K v. District Magistrate of West Dinajpur (1975) 3 SCC 292*** and ***Dharua Kanu v. State of W.B. (1975) 3 SCC 527***, *single act* of theft of telegraph copper wires in huge quantity and removal of railway fish-plates respectively, was held *sufficient to sustain the order of detention*. In ***Saraswathi Seshagiri v. State of Kerala (1982) 2 SCC 310***, a case arising under a single act, viz. attempt to export a huge amount of Indian currency was held sufficient. In short, the principle appears to be this: "*Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity.*" The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity. That is the reason why single acts of wagon-breaking, theft of signal material, theft of telegraph copper wires in huge quantity and removal of railway fish-plates were held sufficient by the Supreme Court. Similarly, where the person tried to export huge amount of Indian currency to a foreign country in a planned and premeditated manner, as in the present case detenu has been apprehended in the activities of illicit trafficking of narcotic drugs, it was held that such a single act warrants an inference that

he will repeat his activity in future and, therefore, his detention is necessary to prevent him from indulging in such prejudicial activity.

14. One more submission was made during course of advancing the arguments that criminal prosecution could not be evaded or short-circuited by ready resort to preventive detention and power of detention could not be used to subvert, supplant or substitute punitive law of land. It has also been urged that no material has been disclosed by detaining authority in grounds of detention to establish existence of any exceptional reasons justifying recourse to preventive detention inasmuch as implication of detenu in criminal offence(s) would suggest that these offences could be dealt with under the provisions of criminal law and if at all detenu would be found involved in the offence(s) after a full-dress trial before criminal court, the law would take its own course, and in the absence of such reasons before detaining authority, it was not competent to detaining authority to make order of detention sidestepping criminal prosecution. This argument completely overlooks the fact that the object of making an order of detention is preventive while object of a criminal prosecution is punitive. Even if a criminal prosecution fails and an order of detention is then made, it would not invalidate order of detention, because, as pointed out by the Supreme Court in ***Subharta v. State of West Bengal, [1973] 3 S.C.C. 250***, "*the purpose of preventive detention being different from conviction and punishment and subjective satisfaction being necessary in the former while proof beyond reasonable doubt being necessary in the latter*", the order of detention would not be bad merely because criminal prosecution has failed. It was pointed out by the Supreme Court in that case that "*the Act creates in the authority concerned a new jurisdiction to make orders for preventive detention on their subjective satisfaction on grounds of suspicion of commission in future of acts prejudicial to the community in general. This Jurisdiction is different from that of judicial trial in courts for offences and of judicial orders for prevention of offences. Even unsuccessful judicial trial or proceeding would therefore not operate as a bar to a detention order or render it mala fide*". If the failure of criminal prosecution can be no bar to the making of an order of detention, *a fortiori* the mere fact that a criminal prosecution can be

instituted cannot operate as a bar against the making of an order of detention. If an order of detention is made only in order to bypass a criminal prosecution which may be irksome because of inconvenience of proving guilt in a court of law, it would certainly be an abuse of power of preventive detention and detention order would be bad. But if object of making the order of detention is to prevent commission in future of activities, injurious to the community, it would be a perfectly legitimate exercise of power to make the order of detention. The Court would have to consider all the facts and circumstances of the case in order to determine on which side of the line detention order falls. The order of detention was plainly and indubitably with a view to preventing detenu from continuing the activities which are prejudicial to the maintenance of public order.

15. In the above background, it would be apt to refer to the observations made by the Constitution Bench of the Supreme Court in the case of ***The State of Bombay v. Atma Ram Shridhar Vaidya AIR 1951 SC 157***. The paragraph 5 of the judgement lays law on the point, which is advantageous to be reproduced infra:

> "5. It has to be borne in mind that the legislation in question is not an emergency legislation. The powers of preventive detention under this Act of 1950 are in addition to those contained in the Criminal Procedure Code, where preventive detention is followed by an inquiry or trial. By its very nature, preventive detention is aimed at preventing the commission of an offence or preventing the detained person from achieving a certain end. The authority making the order therefore cannot always be in possession of full detailed information when it passes the order and the information in its possession may fall far short of legal proof of any specific offence, although it may be indicative of a strong probability of the impending commission of a prejudicial act. Section a of the Preventive Detention Act therefore requires that the Central Government or the State Government must be satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to (1) the defence of India, the relations of India with foreign powers, or the security of India, or (2) the security of the State or the maintenance of public order, or (8) the maintenance of supplies and services essential to the community ..... it is necessary So to do, make an order directing that such person be detained. According to the wording of section 3, therefore, before the Government can pass an order of preventive detention it must be satisfied with respect to the individual person that his activities are directed against one or other of the three objects mentioned in the section, and that the detaining authority was satisfied that it was necessary to prevent him from acting in such a manner. The wording of the section thus clearly shows that it is the satisfaction of the Central Government or the State Government on the point which alone is

> necessary to be established. It is significant that while the objects intended to be defeated are mentioned, the different methods, acts or omissions by which that can be done are not mentioned, as it is not humanly possible to give such an exhaustive list. The satisfaction of the Government however must be based on some grounds. There can be no satisfaction if there are no grounds for the same. There may be a divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction required by the section. One person may think one way, another the other way. If, therefore, the grounds on which it is stated that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of mala fides cannot be challenged in a court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government or the State Government, is ruled out by the wording of the section. It is not for the court to sit in the place of the Central Government or the State Government and try to deter- mine if it would have come to the same conclusion as the Central or the State Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a court of law. Such detention orders are passed on information and materials which may not be strictly admissible as evidence under the Evidence Act in a court, but which the law, taking into consideration the needs and exigencies of administration, has allowed to be considered sufficient for the subjective decision of the Government."

16. What emerges from the above, is that preventive detention is aimed at preventing prejudicial activities or preventing the detained person from achieving a certain end. The authority making the order, therefore, cannot always be in possession of full detailed information when it passes the order of detention and the information in its possession, may fall far short of legal proof of any specific offence, although it may be indicative of a strong probability of the impending commission of a prejudicial act. Preventive Detention Act, therefore, requires that the Government must be satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of public order or the maintenance of supplies and services essential to the community, it is necessary so to do make an order directing that such person be detained. The Act, therefore, implies that the Government can pass an order of preventive detention it must be satisfied with respect to the individual person that his activities are directed against objects mentioned in the Act and that detaining authority was satisfied that it was necessary to prevent him from acting in such a manner. Thus, it clearly shows that it is the satisfaction of Government on the point which

alone is necessary to be established. It is significant that while the objects intended to be defeated are mentioned, the different methods, acts or omissions by which that can be done are not mentioned as it is not humanly possible to give such an exhaustive list. The satisfaction of the Government, however, must be based on some grounds. There can be no satisfaction if there are no grounds for the same. There may be a divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction required by the Act. It also emerges from above quoted judgement that one person may think one way, another the other way. If, therefore, the grounds on which it is stated that the Government was satisfied, are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of *mala fides* cannot be challenged in a court. Whether in a particular case, the grounds are sufficient or not, according to the opinion of any person or body other than the Government, is ruled out by the language of the Act. It is not for the Court to sit in the place of the Government and try to determine if it would have come to the same conclusion as Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a court of law. Such detention orders, the Supreme Court has said, are passed on information and materials which may not be strictly admissible as evidence under the Evidence Act in a court, but which the law, taking into consideration the needs and exigencies of administration, has allowed to be considered sufficient for the subjective decision of the Government.

17. In the light of aforesaid position of law settled by the Six-Judge Constitution Bench, way back in the year 1951, the scope of looking into the manner in which subjective satisfaction is arrived at by detaining authority, is limited. This Court, while examining the material, which is made basis of subjective satisfaction of detaining authority, would not act as a '*court of appeal*' and find fault with the satisfaction on the ground that on the basis of material before detaining authority, another view was possible. Resultantly, the judgements cited by learned counsel for petitioner would not offer any assistance to the case set up by petitioner.

18. There was a vehement submission that failure on the part of detaining authority to mention the period of detention in detention order vitiates detention. The said submission is antonym to the provisions of Section 18, which confers powers on the Government with regard to fixation of maximum period of detention. Thus it would have been illegal if detaining authority was permitted to fix such period of detention, before the matter had gone to Advisory Board and considered by the Government. Somewhat fixing of maximum period of detention in detention order in anticipation of its affirmation by Advisory Board and the Government, would amount to overstepping jurisdiction and may vitiate the order of detention.

19. There was another submission that grounds of detention are verbatim of dossier. As clearly mentioned elsewhere in this judgement, this Court, while examining the material which is made basis of subjective satisfaction of detaining authority, would not act as a court of appeal and find fault with satisfaction on ground that on the basis of material before detaining authority another view was possible. Such being the scope of enquiry in this aspect.Grounds of detention are not replica of dossier. The sponsoring authority has not only supplied the material, viz. dossier, containing gist of the activities of the detenu but has also supplied the material in the shape of FIRs. All this material was before detaining authority when it arrived at subjective satisfaction that activities of the detenu were prejudicial to maintenance of public order and require prevention detention of detenu.

20. The contention of learned counsel for petitioner that failure on the part of detaining authority to provide translated copies of documents relied upon in grounds of detention vitiates the detention, is too fallacious to be accepted. The detenu is an illiterate person. The documents relied upon in grounds of detention, viz. FIRs, are in Urdu. In addition to that, grounds of detention have been well explained to detenu in language he understands but he never demanded translated copies of any of the documents forming part of grounds of detention. It is nowhere pleaded by petitioner that detenu cannot read or write Urdu. Thus, even on the

facts, petitioner's contention has impetus or force. Otherwise also, from relevant provisions of the Act of 1978, dealing with preventive detention, read with the Constitutional mandate under Article 22 (5) of the Constitution of India, I do not find that such requirement is mandatory and failure on part of detaining authority to supply translated copies in all cases, vitiates detention. This may be so if there is a specific request from detenu to supply such copies in a language he understands and then there is failure on the part of detaining authority to respond. Nothing of the sort has happened in instant case. It is also not demonstrated before this Court as to how this omission on the part of detaining authority has violated rights of detenu to make any effective representation, more so when detenu chose not to make a representation either to detaining authority or tothe Government. He had an option to appear before Advisory Board and make such a submission before it but he has chosen not to do so. In such circumstances, submissions of learned counsel for petitioner are wholly unacceptable and thus, rejected.

21. The Supreme Court in ***Abdul Latief Abdul Wahab Sheikh V. B.K. Jha, 1987 (2) SCC 22*** has in unequivocal terms made clear that it is only the procedural requirements, which are the only safeguards available to detenu, that is to be followed and complied with as the Court is not expected to go behind the subjective satisfaction of detaining authority. In the present case, the procedural requirements/safeguards have been followed and complied with by respondents in letter and spirit.

22. Personal liberty is one of the most cherished freedoms, perhaps more important than the other freedoms guaranteed under the Constitution. It was for this reason that the Founding Fathers enacted the safeguards in Article 22 in the Constitution so as to limit the power of the State to detain a person without trial, which may otherwise pass the test of Article 21, by humanising the harsh authority over individual liberty. In a democracy governed by the rule of law, the drastic power to detain a person without trial for security of the State and/or maintenance of public order, must be strictly construed. However, where individual liberty comes into conflict with an interest of the security of the State or

maintenance of public order, then the liberty of the individual must give way to the larger interest of the nation. These observations have been made by the Supreme Court in the case of ***Sunil Fulchand Shah v. Union of India and others (2000) 3 SCC 409*** and followed in ***The Secretary to Government, Public (Law and Order-F) and another v. Nabila and another (2015) 12 SCC 127***.

23. Liberty of an individual has to be subordinated, within reasonable bounds, to the good of the people. The framers of the Constitution were conscious of the practical need of preventive detention with a view to striking a just and delicate balance between need and necessity to preserve individual liberty and personal freedom on the one hand, and security and safety of the country and interest of the society on the other hand. Security of State, maintenance of public order and services essential to the community, prevention of smuggling and black-marketing activities, etcetera demand effective safeguards in the larger interests of sustenance of a peaceful democratic way of life.

24. In considering and interpreting preventive detention laws, the Courts ought to show greatest concern and solitude in upholding and safeguarding the fundamental right of liberty of the citizen, however, without forgetting the historical background in which the necessity—an unhappy necessity—was felt by the makers of the Constitution in incorporating provisions of preventive detention in the Constitution itself. While no doubt it is the duty of the Court to safeguard against any encroachment on the life and liberty of individuals, at the same time the authorities who have the responsibility to discharge the functions vested in them under the law of the country should not be impeded or interfered with without justification. [See: ***State of W.B. v. Ashok Dey, (1972) 1 SCC 199; Bhut Nath Mete v. State of W.B., (1974) 1 SCC 645; ADM v. Shivakant Shukla (1976) 2 SCC 521; A. K. Roy v. Union of India, (1982) 1 SCC 271; Dharmendra Suganchand Chelawat v. Union of India, (1990) 1 SCC 746; Kamarunnisa v. Union of India and another, (1991) 1 SCC 128; Veeramani v. State of T.N. (1994) 2 SCC 337; Union of India v. Paul Manickam and another, (2003) 8 SCC 342;*** and

Huidrom Konungjao Singh v. State of Manipur and others, (2012) 7 SCC 181]

25. Observing that aim of preventive detention is not to punish a man for having done something but to intercept and to prevent him from doing so, the Supreme Court in the case of ***Naresh Kumra Goyal v. Union of India and others, (2005) 8 SCC 276***, and ingeminated in ***Union of India and another v. Dimple Happy Dhakad, AIR 2019 SC 3428***, has held that an order of detention is not a curative or reformative or punitive action, but a preventive action, avowed object of which being to prevent antisocial and subversive elements from imperilling welfare of the country or security of the nation or from disturbing public tranquillity or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances, etc. Preventive detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so.

26. To sum up, a law of preventive detention is not invalid because it prescribes no objective standard for ordering preventive detention, and leaves the matter to subjective satisfaction of the Executive. The reason for this view is that preventive detention is not punitive but preventive and is resorted to with a view to prevent a person from committing activities regarded as prejudicial to certain objects that the law of preventive detention seeks to prescribe. Preventive detention is, thus, based on suspicion or anticipation and not on proof. The responsibility for security of State, or maintenance of public order, or essential services and supplies, rests on the Executive and it must, therefore, have necessary powers to order preventive detention. Having said that, subjective satisfaction of a detaining authority to detain a person or not, is not open to objective assessment by a Court. A Court is not a proper forum to scrutinise the merits of administrative decision to detain a person. The Court cannot substitute its own satisfaction for that of the authority concerned and decide whether its satisfaction was reasonable or proper, or whether in the circumstances of the matter, the person concerned should

have been detained or not. It is often said and held that the Courts do not even go into the question whether the facts mentioned in grounds of detention are correct or false. The reason for the rule is that to decide this, evidence may have to be taken by the courts and that is not the policy of law of preventive detention. This matter lies within the competence of Advisory Board. While saying so, this Court does not sit in appeal over decision of detaining authority and cannot substitute its own opinion over that of detaining authority when grounds of detention are precise, pertinent, proximate and relevant.

26.1. It is apposite to mention that our Constitution undoubtedly guarantees various freedoms and personal liberty to all persons in our Republic. However, it should be kept in mind by one and all that the constitutional guarantee of such freedoms and liberty is not meant to be abused and misused so as to endanger and threaten the very foundation of the pattern of our free society in which the guaranteed democratic freedom and personal liberty is designed to grow and flourish. The larger interests of our multi-religious nation as a whole and the cause of preserving and securing to every person the guaranteed freedom peremptorily demand reasonable restrictions on the prejudicial activities of individuals which undoubtedly jeopardise the rightful freedoms of the rest of the society. Main object of Preventive Detention is the security of a State, maintenance of public order and of supplies and services essential to the community demand, effective safeguards in the larger interest of sustenance of peaceful democratic way of life.

27. For the foregoing discussion, the petition *sans* any merit and is, accordingly, **dismissed**.

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

(Tashi Rabstan)
Judge

Srinagar
16.04.2020
Ajaz Ahmad, PS

Whether approved for reporting? Yes