IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

…

WP(Crl) no.251/2019
CrlM nos.1123/2019; 1063/2019
1060/2019; 767/2019; 728/2019

Reserved on: 03.02.2020

Pronounced on: 07.02.2020

Mian Abdul Qayoom

…….Petitioner

Through: Mr Z. A. Shah, Senior Advocate
with Mr Manzoor A. Dar, Advocate

Versus

State of J&K and others

……Respondent(s)

Through: Mr B.A.Dar, Sr. AAG with
Mr Shah Amir, AAG for respondents 1,3&5
Mr T. M. Shamsi, ASGI for respondents 4&6

CORAM: HON'BLE MR JUSTICE TASHI RABSTAN, JUDGE

JUDGEMENT

1. District Magistrate, Srinagar – respondent no.2 herein (for brevity "*detaining authority*"), has, by Order no.DMS/PSA/105/2019 dated 7th August 2019, placed *Mr Miyan Abdul Qayoom son of Miyan Abdul Rehman resident of Bulbulbagh, District Srinagar*, 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 petition on hand.

2. The case set up in instant petition is that detenu is a renowned practising senior Advocate in High Court of J&K for last forty years and that he

is also President of J&K High Court Bar Association, Srinagar. It is submission of petitioner that detenu had been earlier placed under preventive detention in the year 2010 and after incarceration in various Sub Jails of J&K, the detention order was withdrawn. The detenu is said to have been arrested during intervening night of 4th/5th August 2019 and lodged in Police Post Rangreth for two days and after that he was shifted to Central Jail, Srinagar. Upon having ken thereabout, petition, being WP(Crl) no.248/2019, was filed by General Secretary of J&K High Court Bar Association, Srinagar, in which notice was issued upon respondents, asking them to disclose the authority under which detenu was jailed. The said petition, however, was withdrawn by petitioner with a liberty to file a fresh as petitioner had reliably learnt that detenu was likely to be placed under preventive detention. It is averred that close relations of detenu went to Central Jail, Srinagar, to enquire about his presence, where they were intimated that detenu had been shifted from Central Jail, Srinagar. It is maintained by petitioner that a news item, circulated by news channels, disclosed that nearly 20 people from Central Jail, Srinagar, had been shifted and lodged in Central Jail, Agra and finally, they came to know about lodgement of detenu in Central Jail, Agra under preventive detention. It is claimed that close relations of detenu managed to get the order of detention, communication dated 7th August 2019 and grounds of detention, on 17th August 2019. The detenu is said to be suffering from various ailments.

2.1. It is also averred in writ petition that respondent no.2 has issued impugned order of detention on the basis of a communication of respondent no.3 dated 6th August 2019 along with material produced before him with connecting documents, but the said communication was not provided to detenu nor connected documents, which has deprived him of making an effective representation before detaining authority or government. The material relied upon by detaining authority is stated to have not been furnished to detenu.

2.2. It is maintained that grounds of detention are replica of dossier inasmuch as grounds of detention have not been formulated by respondent no.2 and that order of detention and grounds of detention have been signed by respondent no.2 without application of mind and without going through grounds of detention.

2.3. Further submission of petitioner is that activities mentioned in grounds of detention pertain to the year 2008 and 2010 and that respondent no.2 has relied upon FIRs registered in the year 2008 and 2010 for detaining detenu, for which detenu had already been detained in the year 2010 and that such material cannot be relied upon for repeating the order of detention. Petitioner states that a mention is made about his activities after death of Burhan Wani in the year 2016, which fact is not correct and that it is a false allegation levelled against detenu inasmuch as these incidents, which have been relied upon by respondent no.2, for passing impugned order of detention are vague, without any material to support the same. The detaining authority is said to have not even mentioned as

to what has happened to FIRs relied upon by detaining authority in grounds of detention and as to whether FIRs have been concluded and put to the Court for trial by producing Challan or whether investigation has been concluded or completed by police stations concerned, in these FIRs even after nine years, which would mean that FIRs itself have become stale, so far as connecting detenu with today's situation is concerned.

2.4. It is stated that respondent no.2 has nether shown awareness of the fact that as to whether detenu has been granted bail in these FIRs, particularly in FIR no.74/2008 and FIR no.27/2010, in which, one of the offences is 13 ULA(P) Act nor respondent no.2 has reflected in grounds of detention that as to whether detenu has applied for bail, which confirms non-application of mind on the part of respondent no.2. Even if previous grounds are mentioned, in that eventuality fresh grounds cannot be considered for confirming or putting the person under detention.

2.5. It is claimed that what were decisions taken by Union Government on 5th August 2019, have not been mentioned by detaining authority and what was activity between 5th August 2019 to 7th August 2019, which influenced mind of detaining authority or police that detenu would instigate general public to resort to violence, have not been mentioned by detaining authority because such activities would thereafter become a ground for detaining the detenu under preventive detention, when fact

of the matter is that detenu was already detained during intervening night of 4th/5th August 2019.

2.6. It is also submitted that what were sufficient compelling reasons for putting detenu under prevention detention, have not been spelled out by detaining authority either in grounds of detention or in order of detention and even grounds of detention do not mention that which are the activities that led to agitation and on what occasions it endangered public life and property and disturbed peace and tranquillity of the State. Such record has not been provided to detenu.

2.7. It is claimed that respondent no.2 has informed detenu about order of detention dated 7th August 2019, through letter dated 7th August 2019, and has asked him to inform Home Department as to whether he would like to be heard in person by Advisory Board and he has also asked him to make a representation against order of detention to detaining authority or to Government, if he so desires. However, respondent no.2 has not informed detenu as to within how much period of time, he has to inform Home Department about his being heard by Advisory Board or as to within how much period of time he has to make a representation against order of detention to detaining authority or Government.

2.8. Grounds of detention, according to petitioner, are vague, indefinite, uncertain and baseless as also ambiguous and lack in material particulars and essential details, which has rendered detenu unable to make an effective representation against his detention to appropriate authority.

3. Reply affidavit has been filed by respondent. They insist that detenu came to be detained under the provisions of J&K Public Safety Act, 1978, (for brevity "*Act of 1978*") validly and legally and that all statutory requirements and Constitutional guarantees have been fulfilled and complied with by detaining authority. It is also insisted that grounds of detention, order of detention as well as the material relied upon by detaining authority have been furnished to detenu well within statutory period provided under Section 13 of the Act of 1978. The warrant of detention was executed by Executing Officer, namely, Inspector Parvaiz Ahmad no.7833/NG, SHO P/S Khanyar and detenu was handed over to S. P. Central Jail, Srinagar. The contents of detention order/warrant and grounds of detention are stated to have been read over and explained to detenu. Grounds of detention, it is submitted, have been framed by detaining authority with complete application of mind after carefully examining the material/record furnished to it by sponsoring agency and only after deriving subjective satisfaction. It is averred that use of expression "subject" in grounds of detention as similar to that of expression "subject" used in dossier will not render the order of detention ineffective and cannot be said to be suffering from vice of non-application of mind by detaining authority. Respondents maintain that in terms of Section 10-A of the Act, a detention order passed under Section 8, which has been made on two or more grounds, shall be deemed to have been made separately on each of such grounds and shall not be deemed to be invalid or inoperative

merely because one or some of the grounds is or are vague. Respondents claim that detenu is a practising lawyer in Srinagar having held position of President of J&K High Court, Bar Association Srinagar, and over a period of time, he has emerged as one of the most staunch advocate of secessionist ideology propagating in public through his speeches and appeals and that detenu has been involved in various criminal cases inasmuch as detenu has been using platform of J&K Bar Association for promoting and advocating his secessionist ideology and has been sponsoring strikes while instigating general public for indulging in activities prejudicial to maintenance of public order.

3.1. Respondents also maintain in their Reply Affidavit that detenu has been actively involved in furtherance of his secessionist ideology in the Valley, particularly during agitation of 2008 as also in the agitation at the time of killing of terrorist, Burhan Wani, in 2016, which agitation led to highest magnitude of violence in the Valley, leaving many people dead. Since detenu have had a long history of promoting, propagating and advocating secessionist ideology inasmuch as instigating public wilfully and unlawfully for violence against the government established under law and its functionaries, therefore, detaining authority on careful examination of the entire material furnished to it by all concerned, deemed it expedient, imperative and appropriate to detain detenu under the provisions of the Act of 1978 in terms of order dated 7th August 2019, in that there has been every likelihood and apprehension after

Government of India passed law regarding abrogation of Article 370 read with Article 35(A) of the Constitution of India. The detenu in view of his secessionist ideology and on account of his past unlawful activities, having been found prejudicial to maintenance of public order, would instigate general public to resort to violence, which would in the process disturb maintenance of public order. Hence detaining authority found it necessary and imperative to invoke relevant provisions of the Act of 1978 and subsequently detain the detenu in order to preclude him from indulging in activities which would be prejudicial to maintenance of public order.

3.2. It is also insisted 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 claimed that detenu has been staunch advocate of secessionist ideology instigating public through his speeches, hartal calls and physical participation in strikes aimed at disturbing public order 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 been 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.

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 apt 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. Nevertheless, 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 are 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.

5.1. 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]. While the object to 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***]

5.2. 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, some times merit the curtailment of individual liberty. [***State of Maharashtra v. Bhaurao Punjabrao Gawande (2008) 3 SCC 613***]

5.3. 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***]

5.4. 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.

5.5. 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.

5.6. 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 swayed 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, learned senior counsel representing petitioner, after ingeminating the grounds made in writ petition for quashing impugned detention order, has stated that the case diaries and material, relied upon by detaining authority, have not been supplied to detenu. His further submission is that no material has been given or comes forth for extension of detention of detenu inasmuch as extension of detenu is inconsistent with the observations made by the Division Bench of this Court in ***Tariq Ahmad Sofi v. State of J&K and others, 2017 (I) SLJ 21 (HC)***.

6.2. Taking into account above submission of Mr Shah, learned senior counsel appearing for petitioner, it would be in the fitness of things to go through Section 18 of the Act of 1978. It provides:

> "18. Maximum period of detention. –
> (1) The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 17, shall be –
> (a) three months in the first instance which may be extended upto twelve months from the date of detention in the case of persons acting in any manner prejudicial to the maintenance of public order
> …………….
> (2) Nothing contained in this section shall affect the powers of the Government to revoke or modify the detention order at any earlier time, or to extend the period of detention of a foreigner in case his expulsion from the State has not been made possible."

6.3. Prior to having an analysis and elaboration qua provisions of Section 18 of the Act, it would be germane to mention here that if one looks at the acts, the J&K Public Safety Act, 1978 is designed for, is to prevent, they are all these acts, that are 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 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***.

6.4. It would be apt to have glimpse of Section 8 of the Act of 1978. It reads:

> "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;
> ……………………………………….
> 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;
> ………………………….…..
> *(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."

6.5. From bare perusal of Section 8 (1) it comes to fore 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. Sub-Rule (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.

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 in its fold prejudicial activities in the nature of promoting, propagating or attempting to create, feelings of enmity or hatred or disharmony on the ground of religion, race, community or region. It also includes activities of 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. 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, comes within the meaning of activities in any manner prejudicial to the maintenance of public order. Acting in any manner prejudicial to maintenance of public order, also consists of 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 4 of the Act of 1978 envisions that when an order of detention is made, detaining shall 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 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 the fact concerning making of order of detention to the Government, I have gone through the detention record produced by learned counsel for respondents. A communication bearing no.DMS/ PSA /Jud/3859/2019 dated 7th August 2019, has been addressed by respondent no.2 (detaining authority) to Principal Secretary to Government, Home Department, for approval of impugned detention order.

6.9. Detention record also comprises of a Government Order no.Home/PB-V /1141 of 2019 dated 7th August 2019. By this order impugned detention order of detenu has been approved and the period of detention has been said to be determined on the basis of opinion of the Advisory Board.

6.10. In such circumstances, detaining authority had, immediately upon issuance of impugned detention order, reported the said fact 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 provides that a detention order may be executed at any place in the manner provided for executing warrants of arrest. 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. Where a person has been detained in pursuance of an order of detention under Section 8 of the Act of 1978, made on two or more grounds, such order of detention, 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 consequence whereof, 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.

9. 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 may be*, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him, in the language which is understandable to him, the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order of detention. 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.

9.1. Given the Statutory and Constitutional requirements to be followed by respondents in the present case, I thought it apt to again go through the detention record produced by learned counsel for respondents. It comprises of *Execution Report* as well. Perusal whereof reveals that Shri Parvaiz Ahmad, Inspector no.7833/NGO SHO Police Station Khayar has executed the detention warrant on 8th August 2019. Ten leaves, comprising PSA warrant, grounds of detention, letter addressed to detenu, have been handed over to detenu under proper receipt. It also divulges that detenu has been informed to make a representation against his detention.

9.2. 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.

9.3. 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. To a person who is not conversant with English language, in order to satisfy requirement of the Constitution, must be given grounds in a language that he can understand and in a script that he can read, if he is a literate person. If a detained person is conversant with English language, he will naturally be in a position to understand gravamen of the charge against him and the facts and circumstances on which order of detention is based. So is the position in the present case.

9.4. 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 the order of detention. 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.

9.5. In that view of matter, the contentions 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, are meretricious.

10. Section 14, that follows Section 13, provides constitution of Advisory Board for the purposes of the Act of 1978, which shall comprise of a Chairman and members. 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.

10.1. In the present case detention record, on its glance, would divulge that Advisory Board vide its order Report dated 29th August 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 has been made by detenu and, therefore, there is 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.

10.2. By communication no.AB/PSA/2019/282 dated 29th August 2019, the Advisory Board, transmitted its Report pertaining to detenu for further action. The Government, in exercise of powers conferred by Section

17(1) of the Act of 1978, confirmed impugned order of detention and directed lodgement of detenu in Central Jail, Agra, for a period of three months *in the first instance*. So, there is strict compliance of provisions of Section 14, 15, 16, and 17 of the Act of 1978.

11. Now comes Section 18 of the Act of 1978. Plain reading thereof says that maximum period, upon confirmation of detention order in terms of Section 17, shall be three months *in the first instance*, extendable up to twelve months. Thus, detention order in the beginning will be for three months and is extendable up to twelve months at the discretion of Government. So, the Government in terms of Section 18 does not require to pass any fresh order of detention. It only makes operation of original detention order longer in time.

11.1. During the course of argumentation of the case, a concerted argument of learned senior counsel for petitioner has been that for extension of detention, no compelling reason comes to fore. In this regard he has also relied upon the judgement of the Division Bench of this Court rendered in the case of ***Tariq Ahmad Sofi*** (supra). However, I am not swayed muchless impressed by this submission. The reason being that first of all Section 18 of the Act of 1978 empowers the Government to extend detention of a person, already placed under preventive detention under Section 8 and confirmed under Section 17. Compelling reasons are to be shown and subjective satisfaction arrived at by detaining authority, at the threshold, when it passes order of detention, followed

by opinion of Advisory Board inasmuch as opinion of Advisory Board is a clinching moment in the matter of detention.

11.2. Here it is pertinent to mention that Article 22(4) of the Constitution of India is another safeguard provided to a detenu under preventive detention. The Supreme Court in ***Abdul Latif v. B.K. Jha, (1987) 2 SCC 22***, has said that under Article 22(4)(a), preventive detention for over three months is possible only when an Advisory Board holds that, in its opinion, there is sufficient cause for such detention. The Advisory Board must report before the expiry of three months. If the report is not made within three months of the date of detention, the detention would become illegal.

11.3. The Supreme Court in ***Nandlal v. State of Punjab, (1981) 4 SCC 327***, has spelled out the rule that not only the Advisory Board should report within three months of the date of detention that in its opinion there is sufficient cause for detention of detenu, but also the Government should itself confirm and extend the period of detention as failure on the part of the Government to do so will render detention invalid as soon as three months elapse and any subsequent action by the Government cannot have the effect of extending the period of detention beyond three months. The Division Bench in ***Tariq Ahmad Sofi*** (supra) has categorically mentioned that provisions of Section 18 of the Act of 1978 confer discretion on the Government whether or not to extend the detention of a detenu beyond initial period of three months, however, such discretion has to be exercised on some kind of satisfaction to be

attained by the Government to extend or not to extend the detention period, and for how long. However, such satisfaction would be founded on the opinion of Advisory Board and relatable to grounds of detention already served on the detenu.

11.4. 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.

11.5. 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 the order of detention 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 the 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 senior counsel appearing 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 and have been manoeuvred by police in order to justify its illegal action of

detaining detenu. It is his submission that activities mentioned in grounds of detention pertain to the year 2008 and 2010 and that respondent no.2 has relied upon FIRs registered in the year 2008 and 2010 for detaining detenu, for which detenu had already been detained in the year 2010 and that such material cannot be relied upon for repeating the order of detention. Petitioner states that a mention is made about his activities after death of Burhan Wani in the year 2016, which fact is not correct and that it is a false allegation levelled against detenu inasmuch as these incidents, which have been relied upon by respondent no.2, for passing impugned order of detention are vague, without any material to support the same. The detaining authority is said to have not even mentioned as to what has happened to FIRs relied upon by detaining authority in grounds of detention and as to whether FIRs have been concluded and put to the Court for trial by producing Challan or whether investigation has been concluded or completed by police stations concerned, in these FIRs even after nine years, which would mean that FIRs itself have become stale, so far as connecting detenu with today's situation is concerned. In support of his submission, learned senior counsel has placed reliance on *Chhagan Bhagwan Kahar v. N.L. Kalna and others, (1989) 2 SCC 318; T.B.Abdul Rahaman v. State of Kerala and others, 91989) 4 SCC 741; Thahira Haris Etc v. Government of Karnataka and others, (2009) 11 SCC 438; Sama Aruna v. State of Telangana, (2018) 12 SCC 150*.

12.1. To consider above submission, I have gone through grounds of detention. It, *inter alia*, mentions that detenu believes that Jammu and Kashmir is a disputed territory and it has to be seceded from Union of India and annexed with Pakistan and that role of detenu has remained highly objectionable as he was indicted many times in past for secessionist activities, which can be gauged from the fact that at least four criminal cases have been registered against him and his associates for violating various laws, whose sanctity they are supposed to uphold in highest esteem. It is also mentioned in grounds of detention that detenu used every occasion to propagate secessionist ideology and even allows known secessionist elements to use platform of J&K High Court Bar Association, Srinagar, besides, he has gone to extent of even sponsoring strikes as President Bar Association, thus instigating general public to indulge in activities, which are prejudicial to maintenance of public order and that a number of newspaper reports have also been presented before the detaining authority that substantiate indulgence of detenu in secessionist activities. It is also made mention of that despite holding responsible position of Bar Association, detenu wilfully and actively indulged in unlawful activities and instigated people for violence thereby disturbing public order.

12.2. Mr B. A. Dar, learned Sr. AAG, to rebut the submissions of learned senior counsel for petitioner has, while recapitulating the assertions made in Reply Affidavit filed by respondents, stated that detenu has emerged as one of the most staunch advocate of secessionist ideology

propagating in public through his speeches and appeals and that detenu has been involved in various criminal cases inasmuch as detenu has been using platform of J&K Bar Association for promoting and advocating his secessionist ideology and has been sponsoring strikes while instigating general public for indulging in activities prejudicial to maintenance of public order. It is also claimed that detenu has been actively involved in furtherance of his secessionist ideology in the Valley, particularly during agitation of 2008 as also in the agitation at the time of killing of terrorist, Burhan Wani, in 2016, which agitation led to highest magnitude of violence in the Valley, leaving many people dead. Since detenu have had a long history of promoting, propagating and advocating secessionist ideology inasmuch as instigating public wilfully and unlawfully for violence against the government established under law and its functionaries, therefore, detaining authority on careful examination of the entire material furnished to it by all concerned, deemed it expedient, imperative and appropriate to detain detenu under the provisions of the Act of 1978 in terms of order dated 7th August 2019, in that there has been every likelihood and apprehension after Government of India passed law regarding abrogation of Article 370 read with Article 35(A) of the Constitution of India and detenu in view of his secessionist ideology and on account of his past unlawful activities, having been found prejudicial to maintenance of public order, would instigate general public to resort to violence, which would in the process disturb maintenance of public order. Hence detaining

authority found it necessary and imperative to invoke relevant provisions of the Act of 1978 and subsequently detain the detenu in order to preclude him from indulging in activities which would be prejudicial to maintenance of public order. He has also insisted 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 same. It is contended that detenu has been staunch advocate of secessionist ideology instigating public through his speeches, hartal calls and physical participation in strikes aimed at disturbing public order 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 been 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. Learned counsel, to cement his arguments, has relied upon ***Borjahan Gorey v. The State of West Bengal, (1972) 2 SCC 550; Debu Mahto v.***

The State of W.B., AIR 1974 SC 816; State of U.P. v. Durga Prasad, (1975) 3 SCC 210; Ashok Kumar v. Delhi Administration and others, AIR 1982 SC 1143; State of Maharashtra and others v. Bhaurao Punjabrao Gawande, (2008) 3 SCC 613; Gautam Jain v. Union of India & anr., 2017 (1) JKLT 1 (SC); Union of India and another v. Dimple Happy Dhakad, AIR 2019 SC 3428.

12.3. In the above backdrop it is mentioned 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.

12.4. 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 maintenance of peace and public order.

12.5. In such circumstances, suffice it is to say that there had been material before detaining authority to come to 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.

12.6. 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. [***State of Gujarat v. Adam Kasam Bhaya (1981) 4 SCC 216] .*** 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. [***State of Punjab v. Sukhpal Singh (1990) 1 SCC 35]***

12.7. 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***]

12.8. It may not be inappropriate 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.
> 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.
> 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 with arms and ammunition, it was held that such 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 taken during course of advancing the arguments that criminal prosecution could not be circumvented 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 was also 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 dressed 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 bypassing 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 the 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 the order of detention 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 milieu, 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 profitable 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 determine 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. 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 senior counsel would not offer any assistance to the case set up by petitioner.

17. 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 Secretary to Government, Public (Law and Order-F) and another v. Nabila and another (2015) 12 SCC 127***.

18. 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.

19. 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. It is well settled that if detaining

authority is satisfied that taking into account nature of antecedent activities of detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities. [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***].

20. Observing that the object 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 by the Supreme Court in ***Dimple Happy Dhakad***, (supra), 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.

21. To sum up, a law of preventive detention is not invalid because it prescribed 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.

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

23. Detention record be returned to learned counsel for respondents.

(Tashi Rabstan)
Judge

Srinagar
07.02.2020
Ajaz Ahmad, PS

Whether approved for reporting? *Yes*