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HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

HCP No.22/2019

Reserved on: 26.07.2019
Pronounced on: 16 .08.2019

Mohammad Hussain

.....Petitioner

Through: Mr. M.A Goni, Sr. Advocate with
Mr. Zulkarnain Chowdhary, Advocate.

Versus

Commissioner Secretary to Government, Home Department and Others

.....Respondent(s)

Through: Mr. Ayjaz Lone, Dy. AG.

CORAM: HON'BLE MR JUSTICE TASHI RABSTAN, JUDGE

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JUDGEMENT

1. *Shri Mohammad Hussain son of Shri Lal Hussain resident of Manohar Gopala Tehsil and District Samba* (hereinafter "*detenu*") has been placed under preventive detention vide Order No.09/PSA of 2019 dated 15.04.2019, passed by District Magistrate, Samba – respondent No.2 herein (for brevity "*detaining authority*"), so as to prevent detenu from acting in any manner prejudicial to the maintenance of public order and directed his lodgement in Sub Jail, Hiranagar. 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 by petitioner in present petition is that he has been implicated in various criminal cases in different Police Stations of Samba, Jammu, and Kathua Districts, and is stated to have been lodged in Sub Jail, Hiranagar, to be detained under preventive custody

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in terms of the aforesaid detention order passed against him. It is contended that on the basis of some criminal cases, earlier way back in the year 2014, the petitioner was slapped with detention order bearing PSA No.01/PSA of 2014 dated 22.01.2014 and in the year 2018 also, the District Magistrate, Samba passed another detention order bearing No.01/PSA of 2018 dated 20.06.2018 against the petitioner. Both the aforesaid detention orders of 2014 and 2018 were challenged by the petitioner and also quashed by this Court. Petitioner contends that recently in the month of April, 2019, the respondents have passed a fresh detention order on the strength of grounds of detention mentioned therein against him and impugning the same, has filed the present petition seeking quashment thereof.

3. Response has been filed by respondent no.2, fervently resisting the petition.

4. I have heard learned counsel for parties, considered their submissions and also gone through the original detention record made available by Mr. Ayjaz Lone, learned Dy. AG.

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

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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 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. However, framers of the Constitution have, by incorporating Article 22(5) in the Constitution, left room for detention of a person without a formal charge and trial and without such 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(5) Constitution of India, therefore, leaves scope for enactment of preventive detention law.

6. 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

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doing the same. The Supreme Court in ***Haradhan Saha v. State of W.B. (1975) 3 SCC 198***, points out that a criminal conviction, on the other hand, is for an act already done, which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case, a person is punished to prove his guilt and the standard is proof, beyond reasonable doubt, whereas in preventive detention a man is prevented from doing something, which it is necessary for reasons mentioned in the Act, to prevent.

7. Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 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.

7.1 Detention record, produced by counsel for respondents, divulges that detention order was made on proper application of mind, to the facts of the case and detenu was delivered at the time of execution of detention order and the material and grounds of detention. It also divulges that detenu was informed that he can make representation against his detention. Perusal of 'Execution Report' of detention order depicts its execution. It is mentioned therein that in compliance to District Magistrate, Samba's detention order, Inspector, S.D Singh

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Jamwal, Station House Officer, Police Station Samba took custody of detenu for execution of detention order. Execution Report of detention order also reveals that contents of detention warrant and grounds of detention had been read over and explained to detenu in Hindi, Dogri and Gojari languages, which he fully understood and it was in lieu whereof that he subscribed his signature on the Execution Report.

7.2 Detention record also comprises of an 'Acknowledgement of receipt of material'. Perusal whereof reveals that as many as 54 leaves, consisting of Order of detention; Grounds of detention; Notice regarding detention; Dossier; Copies of FIRs, etcetera, have been furnished to detenu. The detenu, as is coming forth from Acknowledgement of receipt of material, was also intimated to make representation to Government as well as detaining authority against detention order. It further comes to fore from the detention record that respondent No.4-Superintendent of Jail, Hiranagar has approached the Principal Secretary to Government, Home Department, Civil Sectt., Jammu vide communication bearing No. SJH/DET/148-154 dated 16.04.2019 requesting therein to process the case of the detenu before the Advisory Board. It further comes to fore from the record that Vide Government Order No. Home/PB-VI 724 of 2019 dated 17.05.2019 the Government has approved the detention order No.09/PSA of 2019 dated 15.04.2019 and also the case was referred to the Advisory Board for its opinion and the Advisory Board vide its opinion dated 25.04.2019 has observed that there was sufficient cause for detention of the detenue. In that view of matter the statement of Mr. MA Goni, learned senior counsel for petitioner made during the course of the

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argumentation that the order of detention has not been sent to the Government within twelve days of its passing, is not correct. It is also the contention of the learned senior counsel that the detenu has been detained for a period of two years which is not permissible under the Act.

7.3 Further contention of learned senior counsel that the detenu has not been informed to make a representation against his detention and has not been furnished the material relied upon by detaining authority, are also specious, given above fact-situation discernible from the detention record.

7.4 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 J&K Public Safety Act, 1978, and record subjective satisfaction that detenu was required to be placed under preventive detention so as to prevent him from acting in any manner prejudicial to the maintenance of public order.

7.5 Mr. M.A Goni, learned counsel for petitioner, states that the petitioner has been wrongly implicated in various criminal cases by registering different FIRs by police concerned, with which detenu has no connection. He further states that the detention order passed against detenu suffers from total non-application of mind and has been addressed to the name of petitioner's father who expired fifteen years

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ago. He further states that the grounds of detention were never explained to petitioner in the language which he understands.

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

7.7 The power of preventive detention is a precautionary power exercised in reasonable anticipation.

7.8 Preventive detention may or may not relate to an offence.

7.9 Preventive detention is not a parallel proceeding.

7.10 Preventive detention does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched.

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7.11 An order of preventive detention may be, made before or during prosecution.

7.12 An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal.

7.13 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.

7.14 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

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> 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.
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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."

8 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

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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 SK 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.

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8.1 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 activity has 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***.

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8.2 Momentary look of detention record produced by respondents would reveal that detenu is involved in cases FIR Nos. 31/2019; 70/2019; 32/2019 and 72/2019 registered in police stations Ghagwal and Samba. The aforementioned four FIRs were registered against detenu in one month only, i.e. March, 2019. 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.

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8.3 It is relevant to say, given the case set up and submissions made by learned counsel for petitioner, that before a person can be held liable for an offence, it is obvious that he should be in a position to know what he may do or not do, and an omission to do or not to do will result in the State considering him guilty according to the penal enactment. When it comes, but to preventive detention, the very purpose is to prevent an individual not merely from acting in a particular way but as the discussion ingeminated above, show, from achieving a particular object. It will not be humanly possible to tabulate exhaustively all actions which may lead to a particular object. Preventive detention is a purely precautionary measure which must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof. It would be difficult, if not impracticable to mention various circumstances or to enumerate various classes of cases exhaustively in which a person should be detained for more than three months for preventive purposes, except in broad outline.

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9. It is settled law that this Court in proceedings under Article 226 of the Constitution has limited scope to scrutinize whether detention order has been passed on material placed before it; it cannot go further and examine sufficiency of material. 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. 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

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prevent detenu from engaging in activities prejudicial to security of the State or maintenance of public order. In this regard I am fortified by law laid down by the by the Supreme Court in ***State of Gujarat v. Adam Kasam Bhaya (1981) 4 SCC 216;State of Punjab v. Sukhpal Singh (1990) 1 SCC 35;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***.

10. 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 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 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***.

11. 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***.

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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

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> 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."

12. In 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 the material before detaining authority another view was possible. Citations relied upon by learned counsel for petitioner, viz. *Mohammad Maqbool Beigh v. State of J&K & ors, 2007 (3) JKJ 106 [HC]; Azad Ali Khan v. State and ors, 2007 (II) SLJ 822;* and *Reyaz Ahmad Khan v. State of J&K & ors, 2018 (2) SLJ 978 [HC]*, are extremely distinguishable from the facts of the present case and do not bolster the case set up by petitioner.

13. Last but not least, as has been recapitulated very often that preventive detention, unlike punitive detention which is to punish for the wrong done, is to protect the society by preventing wrong being done. Though such powers must be very cautiously exercised not to undermine fundamental freedoms guaranteed to our people, the procedural safeguards are to ensure that yet these must be looked at from a pragmatic and common-sense point of view. The exercise of

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power of preventive detention must be strictly within safeguards provided. We are governed by the Constitution and our Constitution embodies a particular philosophy of Government and a way of life and that necessarily requires understanding between those who exercise powers and the people over whom or in respect of whom such power is exercised. The purpose of exercise of all such powers by the Government must be to promote common wellbeing and must be to sub-serve the common good. It is, therefore, necessary to protect individual rights insofar as practicable, which are not inconsistent with the security and well-being of the society. Grant of power imposes limitation on the use of the power. There are various procedural safeguards and we must construe those in proper light and from pragmatic common-sense viewpoint. We must remember that observance of written law about the procedural safeguards for protection of individual is normally the high duty of public official but in all circumstances not the highest. The law of self-preservation and protection of the Country and National Security may claim in certain circumstances higher priority. As has been said by *Thomas Jefferson,* "***To lose our country by a scrupulous adherence to written law, would be to lose itself, with life, liberty, property and all those who are enjoying them with us, thus absurdly sacrificing the end to the means***". [Vide: *Thomas Jefferson, Writings (Washington ed), V. 542-545 and The Constitution Between Friends by Loutis Fisher 47*].

14. It is pertinent to mention here that law of preventive detention is not invalid because it prescribes no objective standard for ordering preventive detention, and leave the matter to the subjective

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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 which 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 the State, or maintenance of public order, or essential services and supplies rests on the Executive and it must, therefore, have the necessary power to order preventive detention. The 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 the 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. The Supreme Court has stated that "*when power is given to an authority to act on certain facts and if that authority acts on relevant facts and arrives at a decision which cannot be described as either irrational or unreasonable; in the sense that no person instructed in law could have reasonably taken that view, then the order is not bad and the court cannot substitute its decision or opinion, in place of the decision of the authority concerned on the necessity of passing the order*".

15. The Courts do not even go into the question whether the facts mentioned in the 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

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Courts and that it is not the policy of the law of preventive detention. This matter lies within the competence of the advisory board.

16. Those who are responsible for national security or for maintenance of public order must be the sole judges of what the national security, public order or security of the State requires. 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. Justification for such detention is suspicion or reasonable probability and not criminal conviction, which can only be warranted by legal evidence. Thus, any preventive measures, even if they involve some restraint or hardship upon individuals, as said by the Supreme Court in ***Ashok Kumar v. Delhi Administration and others AIR 1982 SC 1143***, do not partake in any way of the nature of punishment. There is no reason why the Executive cannot take recourse to its power of preventive detention in those cases where the Court is genuinely satisfied that no prosecution could possibly succeed against detenu because he is a dangerous person who has overawed witnesses or against whom no one is prepared to depose.

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

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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. One of the main grounds of challenge in petition on hand to seek quashment of impugned detention order, is that detaining authority has not prepared grounds of detention itself but same are replica of police dossier and that same depicts non-application of mind on part of detaining authority.

19. In view of above, contradiction is at galore in instant writ petition. At one place petitioner claims that grounds of detention are replica of dossier as if petitioner has gone through the both and at another place he claims that dossier has not been furnished. Such contradictory statements smash the case of petitioner to smithereens and as a consequence of which, petition is liable to be dismissed.

19.1 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

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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.

20. In considering and interpreting preventive detention laws, 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;***

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

21. The satisfaction of detaining authority that detenu is already in custody and he is likely to be released on bail and on being released, he is likely to indulge in the same prejudicial activities is the subjective satisfaction of the detaining authority. The Supreme Court in the case of ***Senthamilselvi v. State of T.N. and another, (2006) 5 SCC 676***, has held that satisfaction of detaining authority, coming to conclusion that there is likelihood of detenu being released on bail is "subjective satisfaction", based on materials and normally subjective satisfaction is not to be interfered with.

22. 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 recently ingeminated by the Supreme Court while rendering ***judgement dated 18th July 2019***, in ***Criminal Appeal No.1064 of 2019 arising out of SLP (Crl.) no.5459 of 2019 titled Union of India and another v. Dimple Happy Dhakad***, 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

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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.

23. Learned Senior counsel appearing on behalf of the petitioner in support of his arguments has also relied upon the judgment of the Apex Court in case titled **Lahu Shriran Gatkal Vs. State of Maharashtra and others**, reported in **2017 (13) SCC 519.** I have gone through the judgment and the same is extremely distinguishable from the facts of the present case and do not bolster the case set up by petitioner.

24. For the foregoing discussion, the petition is without any merit and is, accordingly, **dismissed**.

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

Jammu **(Tashi Rabstan)**
16.08.2019 **Judge**
Madan, PS

Whether the order is speaking? Yes.
Whether the order is reportable? Yes.

MADAN LAL VERMA
2019.08.17 09:36
I attest to the accuracy and
integrity of this document