

IN THE SUPREME COURT OF INDIA

(CRIMINAL WRIT JURISDICTION)

[Order XXXVIII of SCR, 2013]

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WRIT PETITION (CRL) No. ^{Daily No.} 5239 OF 2020

IN THE MATTER OF:

Sara Abdullah Pilot

...Petitioner

VERSUS

Union Territory of Jammu and
Kashmir & Anr.

...Respondents

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PAPER-BOOK
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ADVOCATE FOR THE PETITIONER: PRAGYA BAGHEL

SYNOPSIS

It is rare that those who have served the nation as members of parliament, chief ministers of a State, ministers in the Union, and have always stood by the national aspirations of India, are now perceived as a threat to the State.

Article 32 of the Constitution of India was advisedly placed in Part III of the Constitution, as a fundamental right to deal with situations in which this Hon'ble Court's jurisdiction can be directly invoked when there is a threat to life and liberty. A citizen, even if he has never held public office, has a right to approach this Hon'ble Court under Article 32, when it is demonstrated that his/ her life and/or liberty is in jeopardy. This is a right that can be invoked even prior to taking the individual into custody. Such is the width of this right.

This is a case wherein Omar Abdullah-detenu, who has served the nation in the following capacities from time to time:

- A. Member of Parliament (Lok Sabha) from 1998-2009;
- B. Minister of State for Commerce and Industry from 13.10.1999-;
- C. Minister of State for External Affairs from 2001-2002;
- D. Member of the Jammu & Kashmir Legislative Assembly from 2009-2014;

E. Chief Minister of the State of Jammu & Kashmir from 2009-2014;

F. The last Leader of Opposition of the legislature of the State of Jammu & Kashmir from 2014-2019;

was , in the intervening night between August 4th 2019-August 5th 2019, put under house arrest. It was later learnt that Section 107 of the Code of Criminal Procedure, 1973 ("Cr.PC"), was invoked justifying such arrest. Section 107 Cr.pc is a power vested in an Executive Magistrate to detain a person if it is believed that such person is likely to commit a breach of the peace or disturb public tranquillity, or is likely to do any wrongful act that will probably occasion a breach of peace or disturb public tranquillity. The basis of the information with the Executive Magistrate is required to be inquired into under Section 116 of the Cr.pc, in order to ascertain whether such information is credible. It is obvious that such an exercise of power is temporary in nature, as is evident from the relevant provisions of the Cr.pc. Despite this, detenu was kept in custody first under house arrest, and thereafter in judicial custody, since August 4/5, 2019 till February 5, 2020. Knowing full well that such exercise of power was mala fide, he chose not to challenge it, since the intent of exercise of power was to incarcerate not just him, but the entire leadership of the National Conference, as well as the leadership of other political

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parties, who were similarly dealt with, including Farooq Abdullah, who has served the state and the Union over several years, and who too has stood by India whenever the situation so demanded.

The exercise of powers under the Cr.pc, though unjustified, was clearly mala fide to ensure that the opposition to the abrogation of Article 370 of the Constitution is silenced. On February 5, 2020, an Order was served on detenu under Section 8(1) of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as the "Act of 1978"). This provision is meant to preventively detain individuals who are a threat to the security of the state or for maintenance of public order. The ground for invocation of power under Section 8(1) of the Act of 1978 for detenu's detention is that it is necessary for the maintenance of public order. However, the grounds served on detenu, had no material particulars with reference to the date or dates, the place or places, the words uttered from time to time, immediately prior to February 5, 2020, and other necessary particulars to justify such an Order. The following judgments of this Hon'ble Supreme Court require this to be mandatory for the purposed of upholding such an Order of detention:

**A. Mohd. Yusuf Rather v. State of Jammu and Kashmir
and Ors. Reported at (1979) 4 SCC 370:**

"This Court has disapproved of vagueness in the grounds of detention because that impinges on the fundamental right of the detenu under Article 22(5) of the Constitution to make a representation against the order of detention when the grounds on which the order has been made are communicated to him. The purpose of the requirement is to afford him the earliest opportunity of seeking redress against the order of detention. But as is obvious, that opportunity cannot be said to be afforded when it is established that a ground of detention is so vague that he cannot possibly make an effective representation. Reference in this connection may be made to this Court's decision in State of Bombay v. Atma Ram Sridhar Vaidya 1951CriLJ373 where the guarantee of Article 22(5) has been characterised as an elementary right of a citizen in a free democratic state, and it has been held that if a ground of detention is not sufficient to enable the detained person to make a representation at the earliest opportunity, it must be held that his fundamental right in that respect has been infringed inasmuch as the material conveyed to him does not enable him to make the representation. So as the aforesaid grounds of detention are vague, the petitioner is entitled to an order of release for that reason alone. "

B. Khudiram Das v. State of West Bengal reported at (1975) 2 SCC 550, in the context of the Maintenance of Internal Security Act, 1971:

“Section 8(1) of the Act, which merely re-enacts the constitutional requirements of Article 22(5), insists that all basic facts and particulars which influenced the detaining authority in arriving at the requisite satisfaction leading to the making of the order of detention must be communicated to the detenu, so that the detenu may have an opportunity of making an effective representation against the order of detention. It is, therefore, not only the right of the Court, but also its duty as well, to examine what are the basic facts and materials which actually and in fact weighed with the detaining authority in reaching the requisite satisfaction. The judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that it has taken into account only certain basic facts and materials and though other basic facts and materials were before it, it has not allowed them to influence its satisfaction. The Court is entitled to examine the correctness of this statement and determine for itself whether there were any other basic facts or materials, apart from those admitted by it, which could have reasonably influenced the decision of the detaining authority and for that purpose, the Court can certainly require the detaining

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authority to produce and make available to the Court the entire record of the case which was before it. That is the least the Court can do to ensure observance of the requirements of law by the detaining authority."

C. Shalini Soni v. Union of India reported at (1980 4 SCC 580, in the context of the COFEPOSA, 1974:

"Communication of the grounds presupposes the formulation of the grounds and formulation of the grounds requires and ensures the application of the mind of the detaining authority to the facts and materials before it, that is to say to pertinent and proximate matters in regard to each individual case and excludes the elements of arbitrariness and automatism (if one may be permitted to use the word to describe a mechanical reaction without a conscious application of the mind). It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only eschewing the irrelevant and the remote. Where there is further an express statutory obligation to communicate not merely the decision but the grounds on which the decision is founded, It is a necessary corollary that the grounds communicated, that is, the grounds so made known, should be seen to pertain to pertinent and

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

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factual material which led to such factual inferences. The 'grounds' must be self-sufficient and self-explanatory."

Notwithstanding the above, the mere fact that detenu has been in detention by invoking Section 107 of the Cr.pc, the question of his being a threat to the maintenance to public order does not arise, since from 4th/ 5th 2019 till February 5th, 2020, he was in custody of the State/ the Union once the State of J&K became a Union Territory. This exercise of power is ex facie mala fide, for entirely political considerations, and has nothing to do with the necessary ingredients required for exercising power under Section 8(1) of the Act of 1978.

The Petitioner verily believes that the said exercise of power in similar circumstances has been utilized not just with reference to the detenu in the present Petition, but with other mainstream leaders of the National Conference, and with leaders of other political parties exactly in the same manner.

It is therefore of the utmost importance and of the utmost urgency that this Hon'ble Court protects not only the individual's right to life nad liberty, but also protects the essence of Article 21, which is the cornerstone of Part III of the Constitution, a violation of which is anathema to all

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that a democratic nation stands for. This is why the Petitioner is approaching this Hon'ble Court.

The impugned detention order is illegal for inter alia the following reasons:

- a. There could be no material available to detain a person who has already been detained for the previous 6 months.
- b. The grounds for the detention order are wholly lacking any material facts or particulars which are imperative for an order of detention.
- c. The provisions of Section 8(3) of the PSA are wholly violated and none of the conditions laid down therein to justify a detention order exists, nor is even adverted to.
- d. There has been a grave violation of Articles 14, 21 and 22 of the Constitution.
- e. Similar orders of detention have been issued by the Respondents over the last 7 months in a wholly mechanical manner to other detainees, which suggests that there has been a consistent and concerted effort to muzzle all political rivals.
- f. In fact, a reference to all the public statements and messages posted by the detainee during the period up to his first detention would reveal that he kept calling

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for peace and co-operation – messages which in Gandhi's India cannot remotely affect public order.

- g. The detenu was not even served with the material that formed the basis of the grounds of detention order. The non-supply of this vitiates the impugned detention rendering it liable to be quashed by this Hon'ble Court.
- h. Finally, the order conflates 'Governmental policy' with the 'Indian State', suggesting that any opposition to the former constitutes a threat to the latter. This is wholly antithetical to a democratic polity and undermines the Indian Constitution.

Hence the present Writ Petition under Article 32 of the Constitution.

LIST OF DATES

The present Petition is filed by the Petitioner under Article 32 of the Constitution of India , who is the sister of the detenu Mr. Omar Abdullah, and who seeks a Writ in the nature of Habeas Corpus for production of the said detenu before this Hon'ble Court to be set at liberty, and for an appropriate Writ quashing the impugned order of detention dated 05.02.2020 passed by the Respondent No.2.

The detenu is a former Chief Minister of the erstwhile State of Jammu & Kashmir, a former Union Minister (Minister of State for External Affairs & Minister of State for Commerce) and is the present Vice President of the oldest political party of Jammu & Kashmir, i.e. the National Conference. The detenu has, in his impeccable political career, served three terms as an elected Member of Parliament of India and two terms as member of the Assembly of the erstwhile State of Jammu & Kashmir, and was the last Leader of the Opposition in the State Legislature.

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4-5.08.2019 In the intervening night of 4th and 5th of August 2019, the detenu was initially placed under house arrest at his official residence at Gupkar Road, Srinagar and was subsequently moved to the Subsidiary Jail of the J&K Home Department situated at Hari Niwas on 5th August, 2019. At the time of the arrest, the detenu was not even informed about the reasons and grounds of his arrest.

07.08.2019 About two weeks after the detention of the detenu, the detenu was served with an order backdated to 07.08.2019, purportedly passed under Section 107 of the Code of Criminal Procedure (J&K Code) (hereinafter '**Cr.pc**'), wherein it was *inter-alia* recorded that on account of apprehensions that the detenu, being the Vice President of National Conference, was likely to organize assemblies which have the potential of disturbing peace and tranquillity in the area, the detention of the detenu as occasioned on 05.08.2019 was ordered to be continued.

August 2019 It is pertinent to add that in mechanical satisfaction of the requirement of Section 107

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Cr.pc, the detenu was also served a template format of a Bond that *inter alia* required the detenu to undertake that the detenu, in case of his release from detention, would not make any comments, or issue statements or make public speeches, hold or participate in public assemblies related to the recent events in the State of Jammu and Kashmir. The 'recent events' specified in the Bond pertained to the aftermath of the de-operationalisation of Article 370 as was effectuated by the Central Government on 05.08.2019. The detenu refused to sign the said onerous Bond which apart from being unconstitutional was also at great variance from Form No.12 prescribed by the Cr.pc.

February 2020	During the currency of order under Section 107 Cr.pc, no proceedings with respect to the 'Inquiry as to truth of information' as mandated under Section 116 of the Cr.pc was conducted against the detenu and the maximum period of detention as warranted under the said section, being six months from the date of detention, lapsed by efflux of time
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on 05.02.2020.

05.02.2020. On 05.02.2020, i.e. the day on which the detention order as passed under Section 107 Cr.pc would terminate and cease to have legal effect and while the detenu was still under detention, the District Magistrate, in an absolutely arbitrary exercise of power, ordered the further detention of the detenu under Section 8 of the Public Safety Act, 1978 (hereinafter 'PSA') purportedly in order to prevent the detenu from acting in a manner prejudicial to the maintenance of public order.

10.02.2020 Hence, the Writ Petition

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IN THE SUPREME COURT OF INDIA
(CRIMINAL WRIT JURISDICTION)
[Order XXXVIII of SCR, 2013]
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WRIT PETITION (CRL) No. _____ OF 2020

IN THE MATTER OF:

SARA ABDULLAH PILOT

...PETITIONER

VERSUS

- | | |
|---|-----------------------------------|
| 1. UNION TERRITORY OF JAMMU AND KASHMIR
Through Principal Secretary,
Home Department, Secretary Road,
Pakki Dhaki Old Heritage City,
Jammu and Kashmir - 180001 | Contesting
Respondent
No. 1 |
| 2. DISTRICT MAGISTRATE
First Floor, Amar Niwas Complex,
Tanki Pora-Srinagar-190010 | Contesting
Respondent
No. 2 |

A WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA IN THE NATURE OF WRIT OF
HABEAS CORPUS FOR PRODUCTION OF DETENU MR
OMAR ABDULLAH BEFORE THE HON'BLE COURT AND
FOR AN APPROPRIATE WRIT QUASHING THE IMPUGNED
ORDER OF DETENTION AND/OR FURTHER ORDERS AS
THIS HON'BLE COURT MAY DEEM FIT.

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF
THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION
OF THE PETITIONER ABOVE
NAMED:

MOST RESPECTFULLY SHOWETH:-

1. That the present Petition is filed by the Petitioner under Article 32 of the Constitution of India, who is the sister of the detenu Mr. Omar Abdullah, and who seeks a Writ in the nature of Habeas Corpus for production of the said detenu before this Hon'ble Court to be set at liberty, and for an appropriate Writ quashing the impugned order of detention dated 05.02.2020 passed by the Respondent No.2.
2. That the Petitioner is the sister of the detenu who resides in New Delhi, and who has been gravely concerned about the welfare, safety and security of the detenu over the past 6 months while he has been detained under provisions of the Code of Criminal Procedure. Now, just when her brother's release was imminent, the Petitioner has shockingly learnt about his new detention under the provisions of the Public Safety Act (under which their father also remains detained), which could have no application to one who has anyway been in custody over several months in a State that was under a complete lockdown. The Petitioner is hence instituting the present Writ Petition before this Hon'ble court in order to secure the release of her brother from the illegal detention of the Respondents.

BRIEF BACKGROUND

3. That the detenu is a former Chief Minister of the erstwhile State of Jammu & Kashmir, a former Union Minister (Minister of State for External Affairs & Minister of State for Commerce) and is the present Vice President of the oldest political party of Jammu & Kashmir, i.e. the National Conference. The detenu has, in his impeccable political career, served three terms as an elected Member of Parliament of India and two terms as member of the Assembly of the erstwhile State of Jammu & Kashmir, and was the last Leader of the Opposition in the State Legislature.
4. That in the intervening night of 4th and 5th of August 2019, the detenu was initially placed under house arrest at his official residence at Gupkar Road, Srinagar and was subsequently moved to the Subsidiary Jail of the J&K Home Department situated at HariNiwas on 5th August, 2019. At the time of the arrest, the detenu was not even informed about the reasons and grounds of his arrest.
5. That about two weeks after the detention of the detenu, the detenu was served with an order backdated to 07.08.2019, purportedly passed under Section 107 of the Code of Criminal Procedure (J&K Code) (hereinafter 'CrPC'), wherein it was *inter-alia* recorded that on

account of apprehensions that the detenu, being the Vice President of National Conference, was likely to organize assemblies which have the potential of disturbing peace and tranquillity in the area, the detention of the detenu as occasioned on 05.08.2019 was ordered to be continued.

A true Copy of the Order dated 07.08.2019 passed by Executive Magistrate 1st Class Srinagar, District-Srinagar No. 01/Camp/The Eidgah along with photocopy of original is annexed herewith as **Annexure P-1** (pg. ~~20~~ - ~~21~~).

6. That it is pertinent to add that in mechanical satisfaction of the requirement of Section 107 CrPC, the detenu was also served a template format of a Bond that *inter alia* required the detenu to undertake that the detenu, in case of his release from detention, would not make any comments, or issue statements or make public speeches, hold or participate in public assemblies related to the recent events in the State of Jammu and Kashmir. The 'recent events' specified in the Bond pertained to the aftermath of the de-operationalisation of Article 370 as was effectuated by the Central Government on 05.08.2019. The detenu refused to sign the said onerous Bond which apart from

being unconstitutional was also at great variance from Form No.12 prescribed by the CrPC.

A true copy of the Bond Format as served upon the detenu dated NIL is annexed herewith and marked as **Annexure P-2**(pg. 23 - 25).

7. That during the currency of order under Section 107 CrPC, no proceedings with respect to the 'Inquiry as to truth of information' as mandated under Section 116 of the CrPC was conducted against the detenu and the maximum period of detention as warranted under the said section, being six months from the date of detention, lapsed by efflux of time on 05.02.2020.
8. That on 05.02.2020, i.e. the day on which the detention order as passed under Section 107 CrPC would terminate and cease to have legal effect and while the detenu was still under detention, the District Magistrate, in an absolutely arbitrary exercise of power, ordered the further detention of the detenu under Section 8 of the Public Safety Act, 1978 (hereinafter 'PSA') purportedly in order to prevent the detenu from acting in a manner prejudicial to the maintenance of public order.

A true copy of the impugned detention order dated 05.02.2020 passed by District Magistrate Srinagar in

order No. DMS/PSA/146/2020 is annexed herewith as
Annexure P-3(pg. 24 - 28).

A true copy of the grounds of detention dated
05.02.2020 is annexed herewith as **Annexure P-**
4(pg. 29 - 35)

A true copy of the dossier is annexed herewith as
Annexure P-5(pg. 36 - 39)

9. That it is submitted that the order and the grounds of detention that were subsequently handed over to the Petitioner would reveal that the grounds on which the detention is ordered are false and illusory to the extent of being non-existent and are not grounds within the contemplation of the Public Safety Act, 1978.
10. That in addition to the above, the detenu was not even served with the material that formed the basis of the grounds of the detention order and the non-supply of the same impairs the detenu's right of effective representation and vitiates the impugned detention on the anvil of Articles 14 & 22 of the Constitution of India rendering it liable to be quashed by this Hon'ble Court.
11. That it is further submitted that since the detenu was already in detention for a period of six months as on 05.02.2020 and by virtue of such detention no new fact/ground could exist that would merit continued

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detention, the impugned detention order, in as much as it relies on the same grounds as that of the previous order of detention, is manifestly illegal and unconstitutional on the premise that once the order of detention dated 07.08.2019 lapsed there must exist, in law, fresh grounds/facts and fresh material substantiating such grounds/facts for ordering further detention of the person in question. In absence of any such fresh ground and material, warranting in law the detention of the person in question, no detention can be ordered and any such detention made *sans* such fresh grounds and material would not only suffer from the vice of being arbitrary and unconstitutional but would also be frowned upon as being actuated by malice in law.

12. That it is further submitted that on a bare perusal of the order and the grounds thereto it is evident that the orders proceeds on information that is not only non-existent, bereft of material particulars but is in fact false and misleading and the same is patently belied by open source information otherwise available and accessible on social media. Despite the law on detention being abundantly clear, the Respondents have sought to detain the detenu without any facts or particulars the absence of which would violate Article 21.

13. That the primary allegations against the detenu are:
- a. After the decision of revocation of Article 370, he, *'while resorting to his dirty politics had adopted a radical methodology by way of instigating and provoking general masses against the policies of the Central Government'.*
 - b. He has *'posted many provoking and instigating comments/ideas on social networking sites, so as to instigate common people against the decision of the Parliament which had the potential of inciting violence and disturbing public order in the region'.*
14. Apart from the obvious fact that disagreement with the policies of the Central Government is a lawful right of a citizen in a democracy (especially to a member of the opposition), it is submitted that all such observations were not supported by any material whether in the form of social media posts or otherwise. *Per Contra* there exists overwhelming evidence in the form of tweets and public statements made by the detenu prior to this detention that point towards the exemplary conduct of the detenu wherein the detenu as a votary of peace and public order has repeatedly requested to general people to maintain peace and tranquillity.

15. That as a matter of illustration it is brought to the notice of this Hon'ble Court that the detenu's last tweet on microblogging site Twitter exhorted the people to 'stay safe and to stay calm' and 'not take the law into your own hands'. A true copy of the latest tweets of the detenu from 04.08.2019 to 05.08.2019 alongwith printed copy is annexed herewith and marked as **Annexure P-6**(pg. 40-43).

16. That to shed light on the political discourse of the detenu, it is submitted that the detenu being a prominent political leader of Jammu and Kashmir leader had met the Prime Minister of India, along with two other senior leaders of his party, on 01.08.2019 seeking his rightful indulgence in the maintenance of peace and order in the erstwhile State of J&K. True copy of the meeting held on 01.08.2019 which was duly acknowledged by the Prime Minister's Office in Twitter and issued a photograph of the meeting, which is annexed herewith and marked as **Annexure P-7**(pg. 44).

17. That the detenu at no point of time in his prolific political career has resorted to or indulged in conduct unbecoming of a conscientious public figure. A fortiori no material, suggesting the likelihood of the detenu to partake in activities prejudicial to the maintenance of

public order, exists and axiomatically no such material has been adduced before the Respondent No.2 and/or served upon the detenu that would enable the Respondent No.2 to reach the conclusion of likelihood of the detenu to indulge in acts prejudicial to maintenance of public order as have been specified in the impugned order of detention.

18. That the impugned order of detention proceeds on the *ipse dixit* of the record as purportedly provided by the Senior Superintendent of Police and as such being arbitrary, whimsical and fanciful deserves to be quashed by an appropriate writ of this Hon'ble Court on the anvil of Articles 14 and 21 of the Constitution.

19. That the Dossier handed over to the detenu along with the order of detention under the PSA contains patently false and ridiculous material, essentially accusing the detenu of becoming a popular figure among general masses and possessing considerable influence over people. The detenu has been accused of "favouring radical thoughts" and of "planning and projecting his activities against the Union of India under the guise of politic" while enjoying the support of gullible masses". These averments fly in the face of the tweets of the detenu (cited hereinabove) shortly before/ around the time that the detenu was being detained, in which he

cautioned people against resorting to violence and taking law into their hands ["Please don't take the law into your hands, please stay calm"; "violence will only play into the hands of those who do not have the best interests of the State in mind"]

20. That the dossier states that the capacity of the subject (detenu) to influence people for any cause "could be gauged from the fact that he was able to convince the electorate to come out and vote in huge numbers even during peak militancy and poll boycotts". In other words, the detenu is accused of convincing people to participate in elections in huge numbers and exercise their democratic right to vote despite threats from militants.

21. In view of the aforesaid facts and circumstances, the Petitioner has preferred the instant Petition impugning the detention as well as the grounds thereof, inter-alia, on the following grounds: -

GROUND S

- A. BECAUSE no order of detention could be passed on one who had already been under detention for the previous six months and who had no access to any form of public speech and expression which could cause an apprehension of public order being affected.

- B. BECAUSE the impugned order of detention is vague and irrelevant without any material facts and particulars, thereby rendering it vulnerable to challenges under Articles 14, 21 and 22 of the Constitution.
- C. BECAUSE the order of detention cannot lose sight of the high political offices held by the detenu, including as Chief Minister, Union Minister, MP, MLA and Leader of the Opposition, all of which were without blemish and fully in consonance of the oath to uphold the Constitution. The grounds of detention are patently false and misleading and do not answer any of the imperatives as contemplated under the J&K Public Safety Act, 1978.
- D. BECAUSE the grounds of detention on the face of it are illusory to the extent of being vague and irrelevant, vitiating thereby the satisfaction required to be entered by the detaining Authority and rendering the detention order illegal and unconstitutional.
- E. BECAUSE the material on the basis of which the impugned order of detention is claimed to have been passed by the Respondents is neither disclosed in the grounds of detention nor supplied to the detenu depriving thereby the detenu of fundamental right of

making effective representation guaranteed to the detenu under Article 22(5) of the Constitution of India.

F. BECAUSE this Hon'ble Court has, in a catena of judicial pronouncements, held that the non-supply of material forming the basis of the grounds of detention vitiates the order of detention making it unconstitutional and liable to be quashed.

G. BECAUSE the detenu at no point of time in his prolific political career has resorted to or indulged in conduct unbecoming of a conscientious public figure and a fortiori no material suggesting the likelihood of the detenu to partake in activities prejudicial to the maintenance of public order exists.

H. BECAUSE reference may be made to Section 8(3)(b) of the Public Safety Act which reads as follows:

(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 grounds of religion, race, caste, community, or region;

(ii) making preparations for using, or attempting its use, or using, or instigating, inciting, 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, inciting, 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 for a term extending to seven years or more, where the commission of such offence disturbs, or is likely to disturb public order.

As none of the above are satisfied in the present case even remotely, the detention order under Section 8 is not justified at all.

I. BECAUSE none of the grounds in the detention order disclose as to precisely which prohibited action listed in Section 8(3)(b) of the PSA was committed or likely to be committed by the detenu, which smacks of complete non- application of mind and a mechanical exercise of power by the District Magistrate. This alone renders all the grounds in the detention order vague and irrelevant and makes the detention order wholly illegal, arbitrary and unconstitutional;

J. BECAUSE the detenu was already in detention for a period of six months as on 05.02.2020 and by virtue of such detention no new fact/ground could exist that would merit continued detention under the Public Safety Act. It clearly appears from the immediacy with which the new order under the PSA was passed that it was a deliberate attempt by the Respondent to deprive the detinue of his liberty. After the lapse of order of

detention dated 07.08.2019, existence of fresh grounds/facts and fresh material substantiating such grounds/facts was a *sine qua non* for ordering further detention of the detenu.

K. BECAUSE in absence of any such fresh ground and material, warranting in law the detention of the detenu, no further detention can be ordered and any such detention made *sans* any grounds and material would not only suffer from the vice of being arbitrary and unconstitutional but the timing would also render it *mala fide*.

L. BECAUSE this Hon'ble Court has in various judicial pronouncements held that on expiry of an order of detention, a new order of detention cannot be issued without the existence of new facts/ grounds and new material substantiating such grounds and any such order passed without such new facts and material would be illegal and liable to be set aside. Thus, when the Section 107 CrPC order lapsed, there were no new facts which justified the Section 8 PSA order.

M. BECAUSE there exists overwhelming evidence in the form of tweets and public statements made by the detenu prior to this detention that point towards the exemplary conduct of the detenu wherein the detenu as a votary of peace and public order has repeatedly

requested the general people to maintain peace and tranquillity. These tweets have in fact had the required effect with several thousand people retweeting and endorsing the sentiment.

N. BECAUSE the impugned order of detention in view of the grounds thereof has clearly been passed in a most mechanical and arbitrary manner violating with impunity the Constitutional guarantees guaranteed to the detenu under Article 21 and 22 of the Constitution of India.

O. BECAUSE the impugned order of detention proceeds on the *ipse dixit* of the record as purportedly provided by the Senior Superintendent of Police and as such being arbitrary, vague, irrelevant, whimsical and fanciful deserves to be quashed by an appropriate writ of this Hon'ble Court.

P. That the Petitioner reserves its right to take any other additional ground as may be available.

22. That the petitioner has not filed any other petition either before this Hon'ble Court or before any other Court or forum for the relief prayed in this writ petition.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (i) To issue writ in the nature of Habeas Corpus commanding the Respondents to produce the person of the detenu forthwith before this Hon'ble Court for being set at liberty.
- (ii) To issue an appropriate writ, direction or order quashing the impugned order of detention dated 05.02.2020 and the grounds thereof.
- (iii) Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case as well in the interest of justice.

**FOR THIS ACT OF KINDNESS, THE PETITIONER
ABOVENAMED AS IN DUTY BOUND SHALL EVER PRAY.**

FILED BY

(PRAGYA BAGHEL)

Advocate for the Petitioner

Drawn by: SHARIQ J. REYAZ Advocate

**Settled by: KAPIL SIBAL
Senior Advocate
&
GOPAL SANKARANARAYANAN,
Senior Advocate**

Drawn on: 08.02.2020

Filed on: 10.02.2020