IN THE SUPREME COURT OF INDIA

(CRIMINAL WRIT JURISDICTION)

[Order XXXVIII of SCR, 2013]

(UNDER ARTICLE32 OF THE CONSTITUTION OF INDIA)

WRIT PETITION (CRL) No. _____ Of 2020

IN THE MATTER OF:

ILTIJA …Petitioner

VERSUS

UNION OF INDIA & ORS …Respondents

PAPER – BOOK

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ADVOCATE FOR THE PETITIONER: AAKARSH KAMRA

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SYNOPSIS

The present is a writ petition under Article 32 against an order dated 05.02.2020 (hereinafter, the "Detention Order" or the "Impugned Detention Order"), issued u/s 8 (1) of the Jammu & Kashmir Public Safety Act, 1978 (hereinafter, "the PSA" or "the 1978 Act") for preventively detaining Ms. Mehbooba Mufti (hereinafter, "Detenu"), the former Chief Minister of the State of Jammu and Kashmir, and also former Member of Parliament and the President of the Jammu and Kashmir People's Democratic Party (JKPDP), a registered political party recognised by the Election Commission of India. Significantly, this order has come when the Detenuwas already under detention since August 5,2019, without any palpable authority of the law although it is now being suggested by the State that the same was under Section 107 r/w 117 of the Code of Criminal Procedure, 1973 ("CRPC"). The Petitioner is the daughter and next friend of the Detenu.

The Impugned Detention Order signed by the District Magistrate, Srinagar (Respondent No.3 herein)served upon the Detenu at 9.30 PM on 05.02.2020, along with the 'Grounds' on which her detention is ordered, whichare wholly and substantially based on the recommendation of and the 'dossier' (hereinafter 'Impugned Dossier') prepared by the Senior Superintendent of Police, Srinagar (Respondent No.4 herein). No other material showing the facts on which the grounds of were based were given and the Impugned Dossier which is replete with personal remarks in bad taste, (Scheming, hard headed, short lived marriage, Daddy's Girl etc) is the only material cited in the "grounds" of detention.

The foremost reason cited for continued detention, now under PSA was that the six months maximum period of detention under section 107 and 117 CrPC was expiring on the very day the Impugned Detention Order(ref:

Section 116(6) proviso in CrPC) was passed, and that the Detenu had declined to sign a bond or "surety". This bond and surety which she was repeatedly asked to sign, the records would show,*interalia* included the promise that: "*In case of release from detention, I will not make any comment(s) or issue statement(s) or make public speech(s) hold or participate in public assemblies related to the recent events in the State of Jammu and Kashmir, at the present time, since it has the potential of endangering the peace and tranquility and law and order in the State or any part thereof*."

Thus, the admitted basis of the detention is a blanket undertaking not to make any comment on the recent events in the State.

On this count alone, the Detention Order should be set aside, for, preventive detention, tolerated by our polity and jurisprudence as a necessary evil, is not meant to stifle legitimate opposition to state policy.

Furthermore, the Impugned Dossier only refers to expressions of opinion in the pastas its basis, for, there is not the least suggestion that the Detenu, twice elected MP, also CM, has the least involvement in any and violent activity ever. The grounds of the Detention Order, refer to the past 10 years without details but utterances listed in them range between a time period March 2019 and August 2019. Significantly, only these utterances (12 in number) are listed without a single accompanying instance of any adverse effect on law and order. Moreover, the utterances were not even considered worthy of registering an FIR of the barest Ranbir Penal Code offence, at the time made. Therefore, the matters laid down by the statute (PSA) as relevant for reaching a decision are conspicuous by their absence.

The least stale or most recent utterance noted in the Impugned Dossier is of August 5,2019, on which date she was taken into detention. It opposes the abrogation of Article 370 as unconstitutional- a challenge which even this court has deemed fit to issue notice on and is hearing. The unconstitutionality of the purported abrogation of Article 370 is a common view held by many legal scholars and political scientists and many articles and writings have published taking the same view. *Ex facie* it is legitimate expression that is sought to be punished and prevented vide the Impugned Detention Order. The instant case therefore warrants this Hon'ble Court's interference, for what is sought to be prevented is not any threat to public order but a view unpalatable to the ruling dispensation. This cannot be justified as "reasonable objective basis for subjective satisfaction" as required by the statute and as interpreted by this Court in several judgments. (See for instance, *PebamNingolMikoi Devi v. State of Manipur* (2010) 9 SCC 618 at 626)

Likewise, an utterance questioning of the passage of the statute criminalising Triple Talaq when the Supreme Court has already ruled it illegal, and terming it as a misplaced priority, that seems to punish Muslims is listed as a ground although it has no remotest possibility of inciting any disorder. The Impugned Dossier cavils at this as a divisive approach, but fails to show how this will or can disturb order, at any time. If a law is limited to Muslims as a community, any discussion or criticism thereof will also refer to Muslims. If the former is not divisive why should the latter be?

Twelve utterances of the Detenu with their dates deliberately concealed are willy-nilly listed with not a whisper of any disturbance at the time uttered but chosen to be made grounds of detention a year later. Each of

the grounds and their ex facie legitimacy as expression and complete lack of nexus with any possible break down of public order. They will more fully be discussed in the Grounds of the instant Petition. Suffice it to say that the Impugned Detention Order is a simpliciter gag order in the guise of a preventive detention order, held to be ultra vires the law and the Constitution by this Court many times. Indeed, an order of preventive detention has been issued against expressions in respect of which even an injunction cannot be granted by a Court of law!

Thus, the grounds are not only stale, for they refer to utterances more than six months old and admittedly made with no adverse consequences to law and order, butare also vitiated fornon-application of mind insofar as they fail to show to why thesaid utterances pose a threat to public order. Other than a bald statement, not a single instance of any public disturbance has been cited. Nor is there any application of mind as to why such utterances if they contravene any law, cannot be managed by the normal criminal process. This Court in *V Shantha v. State of Telangana* AIR 2017 SC 2625 for instance laid down that "*The rhetorical incantation of the words, 'Goonda' or 'prejudicial to maintenance of public order cannot be sufficient justification to invoke the draconian power of preventive detention*."The very fact that not even an FIR was registered at that time demonstrates that the utterances were and are unexceptional.

The provisions of Section 8(3)(b) of the 1978 Act are wholly violated and none of the requirements laid down therein are satisfied bringing the instant case within the purview of the expression "acting in a manner prejudicial to the maintenance of public order".No facts supporting the grounds other than the words have been supplied and it would be safe to

assume they are non-existent. The order abounds with legal *malafides* and malice in law.

Furthermore, the Impugned Detention Order is wholly based on the Impugned Dossier which is manifestly biased, slanderous and libelous against the Detenu and which no reasonable person ought to rely on for depriving a citizen of her fundamental freedoms and person liberty. An inexhaustive list of such diabolically slanderous expressions and sentences used against the Detenu is given below.

(i) The Impugned Dossier describes the Detenu "hard-headed and scheming mind."

(ii) The Impugned Dossier also calls the political party which the Detenu heads, i.e. Jammu and Kashmir People's Democratic Party, as of "dubious nature". It is submitted that the JKPDP has formed popularly elected government twice in the State of Jammu and Kashmir, including the second time – in alliance with the present ruling party at the centre.The Impugned Dossier goes on to disapprove the symbol of the JKPDP which is taken from the election symbol of "Muslim United Front" and that the colour green used by the party is "radical".

(iii) The Impugned Dossier also vulgarly describes the Detenu as "Daddy's Girl" insults her as "Kota Rani" after a medieval queen who rose to power through dubious means such as poisoning her opponents.

(iv) The Impugned Dossier also makes unwarranted comment on the marital status of the Detenu terming that it did not "last long".

(v) The Impugned Dossier also describes the Detenu's politics as "cheap" and the Detenu's mindset variously to be "communal" , "divisive" and that the main motive of the Detenu is to "create an atmosphere of fear and chaos"

This Hon'ble Court has stated that, "*Preventive detention is by nature, repugnant to democratic ideas and an anathema to the rule of law. Preventive detention is often described as a 'Jurisdiction of suspicion'. The detaining authority passes the order of detention on subjective satisfaction. To prevent misuse of this potentially dangerous power, the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however technical, is, in our opinion, mandatory and vital*". Contrary to the above, there detaining authority under the guise of the Act of 1978 acts in complete violation of Article 14 and 21 of the Constitution by failing to furnish any specific, live and proximate grounds for preventively detaining the Detenu that has rational nexus with the stated object of preventing acts prejudicial to public order.

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

LIST OF DATES

August 5, 2019	The President issued the Constitution (Application to Jammu and Kashmir) Order, 2019 ("C.O. 272"). The said Order, issued under Article 370(1) with the purported concurrence of the Government of the State of Jammu and Kashmir, inserted Article 367(4) of the Constitution of India. In particular, the newly inserted Article 367(4)(c) stated that references in the Constitution to the Government of the State of Jammu and Kashmir would be construed as including references to the Governor of Jammu and Kashmir. Further, Article 367(4)(d) amended sub clause (3) of Article 370 by replacing the expression "Constituent Assembly of the State…" with the "Legislative Assembly of the State," paving way for the issuance of the subsequent order in effect purported to abrogate Article 370 on the recommendation of Parliament, acting in place of the legislative assembly because of the President's proclamation under Article 356 being in vogue.
05.08.2019	The mother of the Petitioner, the Detenu was detainedat about 6.30 PM after being taken from her Fairway, Gupkar Road residence. The Detenu, after being given twenty minutes to pack her clothes, was detained by the Executive Magistrate of Class I and was taken to Hari Nivas, accompanied by police personnel. This was the

	last contact between the Petitioner and her mother. The Order of detention dt. 05.08.2019, signed by the Executive Magistrate, did not disclose the law under which the Detenu was being detained.
06.08.2019	The President issued C.O. 273 (impugned herein) in exercise of powers under Article 370(3) of the Constitution as amended by C.O. 272, declared that Article 370 would cease to apply with effect from 06.08.2019.
05.09.2019	The Petitioner from 06.08.2019, was herself placed under restraint in various ways and disallowed by the Respondents from meeting her mother. The Petitioner then moved this Hon'ble Court and was able to meet the Detenu only on this Hon'ble Court's intervention vide. Order dt. 05.09.2019 in WP(Crl) 250 of 2019.
08.09.2019	The National Security Advisor, a functionary of the Respondent No.1 is reported to have issued statements, *inter alia* that the political leaders in the Jammu and Kashmir would be in detention indefinitely until a conducive environment democracy to function.
Sep, 2019 onwards	The Detenu was repeatedly being exhorted to sign the undertaking that included a promise "to not make any public comment …or participate in assembly related to recent events in the State of Jammu and Kashmir."
15.10.2019	Newsreports emerged where the Union Home Minister is reported to have said that the Detenu has been placed

	under preventive detention under the Public Safety Act, 1978.
Nov, 2019	The Detenu is shifted tothe Subsidiary jail in T6, Transport lane, Srinagar.
05.02.2020	The Respondent 4 prepared a dossier on the Detenu which has several statements and social media posts by her dating back to April 2019. Furthermore, the dossier betrays a clear political bias of the Respondent No.4 against the Detenu. For instance at one place, the dossier calls the Detenu "hard-headed and scheming mind,". At another place, it calls the political party which the Detenu heads, i.e. Jammu and Kashmir People's Democratic Party, as of "dubious nature" despite the fact that the JKPDP has formed popularly elected government twice in the State of Jammu and Kashmir. Furthermore, it goes on to describe the Detenu as "Daddy's Girl" and to insult her as "Kota Rani" after a medieval queen who rose to power through dubious means such as poisoning her opponents. All of which were without any basis whatsoever.
05.02.2020.	On the same day, the District Magistrate Srinagar, the Respondent No.3 herein, issued the Impugned Detention Order drawing up grounds of such detention under Section 8(1) of the 1978 Act, completely basing it on the said dossier prepared by the Respondent No.4.

At 9.30 PM, the Detenu was hand-delivered the Impugned Detention Order along with the Impugned Dossier and the Grounds of Detention.

Hence this Writ Petition.

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(UNDER ARTICLE32 OF THE CONSTITUTION OF INDIA)

WRIT PETITION (CRL) No. Of 2020

IN THE MATTER OF:

Iltija

…PETITIONER

VERSUS

1. Union of India
   Through
   Secretary, Home Affairs,
   New Delhi – 110001

…RESPONDENT NO.1

2. Union Territory of Jammu and Kashmir
   Through Principal Secretary,
   Home Department, Secretary Road,
   PakkiDhaki Old Heritage City,
   Jammu and Kashmir – 180001

...RESPONDENT No. 2

3. The District Magistrate (Srinagar)
   First Floor, Amar Niwas Complex,
   Tanki Pora-Srinagar-190010

…RESPONDENT NO.3

4. The Senior Superintendent of Police (SSP),
   Distt. Police Hqrs. Batamalloo,
   Srinagar - 190010,

…RESPONDENT NO.4

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

TO,

THE HON'BLE CHIEF OF INDIAAND HIS
COMPANION JUSTICES OF THE HON'BLE
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE PETITIONER
ABOVENAMED:

MOST RESPECTFULLY SHOWETH: -

1. The present is a writ petition under Article 32 against an order dated 05.02.2020 (hereinafter, the "Detention Order" or the "Impugned Detention Order"), issued u/s 8 (1) of the Jammu & Kashmir Public Safety Act, 1978 (hereinafter, "the PSA" or "the 1978 Act") for preventively detaining Ms. Mehbooba Mufti (hereinafter, "Detenu"), the former Chief Minister of the State of Jammu and Kashmir, and also former Member of Parliament and the President of the Jammu and Kashmir People's Democratic Party (JKPDP), a registered political party recognised by the Election Commission of India. The instant Petition seeks a writ of *habeas corpus*to be issued against the Respondents and to set the Detenu at liberty by quashing and setting-aside the Detention Order as ultra vires Articles 14, 19, 21 and 22 of the Constitution and ultra vires the PSA. The instant Writ Petition also seeks to quash the recommendation of and the dossier (hereinafter, "Impugned Dossier")prepared by the Respondent No.4, on which the Detention Order is based,for being ultra vires Article 14 of the Constitution.

A copy of the Detention Order dt. 05.02.2020, along with the Impugned Dossier dt. 05.02.2020 is annexed herewith and marked as **ANNEXURE-P-1 (from Pg___to ___)**.

1A. The Petitioner has not approached any Respondents with any representation in view of the fact that the reliefs prayed for herein can only be given by Constitutional Courts.

PARTIES

2. The Detenu is the Petitioner's mother Ms. Mehbooba Mufti (hereinafter, "Detenu"), the most recent chief minister of the State of Jammu and Kashmir. She is the President of the Jammu and Kashmir Peoples Democratic Party, a registered political party in the State of Jammu and Kashmir. The Detenu has been the chief minister of the State of Jammu and Kashmir between 04.04.2016 and 19.06.2018. She is also a former two time Member of Parliament, being elected Lok Sabha from Anantnag constituency in the state of Jammu and Kashmir. The Detenu's immediate family living in India includes two daughters including the Petitioner herein, her mother who is nearly 80 years of age, was in the care of the Detenu; and sister Ms. Rubaiya Sayeed who lives in Chennai.
3. The Petitioner is a citizen of India. No civil, criminal or revenue litigation involving the Petitioners, which has or could have a legal nexus with the issues involved in the Petition is pending before any Court or Tribunal. The Petitioner is filing this Writ Petition in her capacity as the Detenu's daughter and next-friend.

4. The Respondent No.1 is the Union of India. The Respondent No.2 is the Administration of the Union of Territory of Jammu and Kashmir. The Respondent No.3 is the District Magistrate Srinagar, who has passed the Impugned Detention Order. The Respondent No.4 is the Senior Superintendent of Police, Srinagar who has prepared the Impugned Dossier and made a recommendation to Respondent No.3 to issue the Impugned Detention Order.

BACKGROUND FACTS

5. On August 5, 2019 , the President issued the Constitution (Application toJammu and Kashmir) Order, 2019 ("C.O. 272"). The said Order, issued under Article 370(1) with the purported concurrence of the Government of the State of Jammu and Kashmir, inserted Article 367(4) of the Constitution of India. In particular, the newly inserted Article 367(4)(c) stated that references in the Constitution to the Government of the State of Jammu and Kashmir would be construed as including references to the Governor of Jammu and Kashmir. Further, Article 367(4)(d) amended sub clause (3) of Article 370 by replacing the expression "Constituent Assembly of the State…" with the "Legislative Assembly of the State," paving way for the issuance of the subsequent order in effect purported to abrogate Article 370 on the recommendation of Parliament, acting in place of the legislative assembly because of the President's proclamation under Article 356 being in vogue.
6. The same day, the mother of the Petitioner, the Detenu was detained at about 6.30 PM after being taken from her Fairway, Gupkar Road residence. The Detenu, after being given twenty minutes to pack her

clothes, was detained by the Executive Magistrate of Class I and was taken to Hari Nivas, accompanied by police personnel.

7. The following day, on 06.08.2019, the President issued C.O. 273 in exercise of powers under Article 370(3) of the Constitution as amended by C.O. 272, declared that Article 370 would cease to apply with effect from 06.08.2019.

8. The Petitioner from 06.08.2019, was herself placed under restraint in various ways and disallowed by the Respondents from meeting her mother. The Petitioner then moved this Hon'ble Court and was able to meet the Detenu only on this Hon'ble Court's intervention vide. Order dt. 05.09.2019 in WP(Crl) 250 of 2019. A true copy of the Order passed by this Hon'ble Court dt. 05.09.2019 is annexed herewith and marked as **ANNEXURE-P-2 (From Pg___to___)**.

9. In September 2019, The National Security Advisor, a functionary of the Respondent No.1 is reported to have issued statements, *inter alia* that the political leaders in the Jammu and Kashmir would be in detention indefinitely until a conducive environment democracy to function. A true copy of the news-report dt. 08.09.2019 available at https://www.ndtv.com/india-news/they-can-challenge-their-detention-nsa-ajit-doval-on-j-k-political-leaders-2097181 is annexed herewith and marked as **ANNEXURE-P-3 (From Pg___to ___)**.

10. During the period of detention, the Detenu was repeatedly being exhorted to sign the undertaking that included a promise "to not make any public comment …or participate in assembly related to recent events in the State of Jammu and Kashmir." A copy of the undertaking format dt. NIL is annexed herewith and marked as **ANNEXURE-P-4(From Pg___to ___)**.

11. On 15.10.2019, newsreports emerged where the Union Home Minister is reported to have said that the Detenu has been placed under preventive detention under the Public Safety Act, 1978. A true copy of the newsreport dt. 15.10.2015 available athttps://www.financialexpress.com/india-news/amit-shah-interview-says-omar-abdullah-mehbooba-mufti-detained-under-psa-jammu-and-kashmir-article-370/1735832/ is annexed herewith and marked as **ANNEXURE-P-5(From Pg___to ___)**.

12. Later, in November, the Detenu was shifted from Hari Nivasto the Subsidiary jail in T6, Transport Lane, Srinagar.The address is incorrectly mentioned as 'T6, Tulsibagh' in the Impugned Detention Order.

13. It is pertinent to mention that the Order of detention dt. 05.08.2019, signed by the Executive Magistrate, did not disclose the law under which the Detenu was being detained, although it was purported to be under Section 107 of CrPC. The proceedings under Section 107 ought to have come to a conclusion on 05.02.2020 following the expiry of the stipulated time limit of six months under Section 116(6) of CrPC.

14. However, a 'dossier' (hereinafter, "Impugned Dossier") was hastily prepared by Respondent No.4 on the same day, and the Impugned Detention Order, completely relying on the said dossier was also issued the same day and served on the Detenu at 9.30 PM. The whole process was designed such that she could not be released from detention and as if the State was choosing one law or another as a pre-text to keep the Detenu under detention without paying heed to the different requirements and pre-conditions necessary to invoke the different provisions.

15. The Impugned Dossier is not only a hastily prepared one. It betrays political bias and personal bias against the Detenu. The dossier is

also.slanderous and libelous against the Detenu, and completely unbecoming of a responsible officer holding the position such as the Respondent No.4. It contains statements and imputations of the kind that should find no place in an official document. An inexhaustive list of such diabolically slanderous expressions and sentences used against the Detenu is given below.

(i) The Impugned Dossier describes the Detenu "hard-headed and scheming mind."

(ii) The Impugned Dossier also calls the political party which the Detenu heads, i.e. Jammu and Kashmir People's Democratic Party, as of "dubious nature". It is submitted that the JKPDP has formed popularly elected government twice in the State of Jammu and Kashmir, including the second time – in alliance with the present ruling party at the centre. The Impugned Dossier goes on to disapprove the symbol of the JKPDP which is taken from the election symbol of "Muslim United Front" and that the colour green used by the party is "radical".

(iii) The Impugned Dossier also vulgarly describes the Detenu as "Daddy's Girl" insults her as "Kota Rani" after a medieval queen who rose to power through dubious means such as poisoning her opponents.

(iv) The Impugned Dossier also makes unwarranted comment on the marital status of the Detenu terming that it did not "last long".

(v) The Impugned Dossier also describes the Detenu's politics as "cheap" and the Detenu's mindset variously to be "communal"

,“divisive” and that the main motive of the Detenu is to “create an atmosphere of fear and chaos”

Needless to say, none of the aforementioned charges in the Dossier are substantiated except baldly quoting some of the social media posts of the Detenu.

16. The Impugned Dossier therefore is liable to be quashed, and the Impugned Detention Order which is wholly and substantially and inseverably based on the Impugned Dossier is consequently liable to be quashed as non-est in the eyes of law.

GROUNDS

17. The reliefs sought for herein are based on the following grounds which are taken alternatively and cumulatively and without prejudice to one another. The Petitioner also craves liberty to urge other grounds at a later stage in the proceedings if so appropriate.

IMPUGNED DETENTION ORDER DISCLOSES NO GROUND THAT HAS ANY RATIONAL NEXUS WITH DISTURBANCE TO PUBLIC ORDER

A. BECAUSE This Court has, in a catena of cases, held that a writ court hearing a challenge to an order of preventive detention, will assess whether the acts complained of ex facie have the tendency of disturbing public order. This would not amount to substituting the Detaining Authority’s subjective satisfaction, but instead an assessment of whether the subjective assessment has been formed on relevant grounds or

reasonable objective basis (See for instance, *Sama Aruna v. State of Telangana*, (2018) 12 SCC 150 and *PebamNingolMikoi Devi v. State of Manipur* (2010) 9 SCC 618 at 626) Indeed, in a case under PSA, this Court has held that if mere words like 'revolt' or 'revolution' are held to have the propensity to disturb public border then the entire legislatures may have to go behind the bars. (See *Mohd. Yousuf Rather v. State of J&K*, (1979) 4 SCC 370at 380)

IMPUGNED DETENTION ORDER IS BASED ON STALE GROUNDS

B. BECAUSE the grounds of detention mentioned in the Impugned Detention order are 'stale' inasmuch as all of them were made atleast six months earlier and for which the Detenu has already been detained ansd have no live and proximate link to detaining her in the present time. Staleness is assessed not by any time frame straightjacket but in terms whether the effect has spent itself and whether the future has any link to such effect. In the present case a political leader's many utterances on disparate subjects made, heard agreed or disagreed with, in the course of political discourse, are being raked up with no nexus to any public order issue then or now.

C. BECAUSE it has been held in *Sama Aruna v. State of Telangana,* (2018) 12 SCC 150 at page 158 that

> "The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not

> to punish him for something he has done but to prevent him from doing it. See G. Reddeiah v. State of A.P. [G. Reddeiah v. State of A.P., (2012) 2 SCC 389 : (2012) 1 SCC (Cri) 881] and P.U. Iqbal v. Union of India [P.U. Iqbal v. Union of India, (1992) 1 SCC 434 : 1992 SCC (Cri) 184]."

This Court went on to add,

> "Incidents which are old and stale and in which the detenu has been granted bail, cannot be said to have any relevance for detaining a citizen and depriving him of his liberty without a trial."

It further quoted the ratio of this Hon'ble Court in *Khudiram Das v. State of W.B.*, (1975) 2 SCC 81 in approval, wherein it was held:

> "9. … The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. *Partap Singh v. State of Punjab*AIR 1964 SC 72. If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider."

D. BECAUSE this Court in *T.A. Abdul Rahman v. State of Kerala* [(1989) 4 SCC 741 : 1990 SCC (Cri) 76], held that where the authority takes into account stale incidents which have gone-by to seed it would be safe to infer that the satisfaction of the authority is not a genuine one.

E. BECAUSE the Detenu was already in detention and no new fact/ground that merited continued detention under the 1978 Act has been cited in the Impugned Detention. It clearly appears from the haste with which the Impugned Dossier was prepared on 05.02.2020 and the Impugned Order having been issued the same day, it was a deliberate attempt by the Respondent No.4 to deprive the Detenu of her fundamental rights. Existence of fresh grounds necessitating her detention is*sine qua non* for

ordering further detention of the Detenu.

F. BECAUSE the Impugned Order effectively attempts to do indirectly what is not prohibited to be done directly under Section 116(6) i.e. extension of the detention under Section 107 of CrPC for a period of time beyond 6 months.

IMPUGNED DETENTION ORDER DOES NOT ASSESS WHETHER NORMAL CRIMINAL PROCESS IS SUFFICIENT TO DEAL WITH THE ADVERSE CONSEQUENCES IF ANY OF THE DETENU's SPEECHES

G. BECAUSE, although not completely a bar to preventive detention, the viability of the normal criminal process as sufficient should be assessed. In the present case there is no such assessment.

H. BECAUSE this Court has held, *inter alia*, in *Rekha v. State of T.N.*, (2011) 5 SCC 244 that the detaining authority has to satisfy itself that the ordinary criminal process is not sufficient to deal with the Detenu before invoking the powers of preventive detention. In *Rekha*, while setting aside the detention order therein, reasoned:

> "Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.
> …
> Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the

> answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal."

It is submitted that no such assessment has been made in the instant case.

IMPUGNED DETENTION ORDER IS BASED ONLY COMPLETELY EXTRANEOUS MATERIAL AND IS COLOURABLE EXERCISE OF POWER

I. BECAUSE completely extraneous material, having no bearing on the possibility of any public disturbance have been relied on including several personally loaded comments in the Impugned Dossier.

J. BECAUSE refusal to sign a general bond without any reference to violence or disturbance has been made a ground of preventive detention, which is wholly unauthorised by the PSA and indeed completely incompatible with the Constitution. A refusal simpliciter cannot be a valid ground. Especially becauseany political comment on recent developments was posited as definitionally a threat to public order. The understanding of requirement under the statute is inherently flawed. Furthermore, a general bond curbing her legitimate exercise of free speech is manifestly an unconstitutional condition liable to be set aside.

K. BECAUSE the detaining authority has not provided or looked at her speeches and expression as a whole to assess the statutory requirement. In fact in the time period of ten years that the Impugned Order considers, the Detenu has taken oaths of office as MP and as a Chief Minister of the State to uphold the Constitution and has discharged her duties without a

single instance of provocation or instigation of violence and has at several points called for peace.

L. BECAUSE there has complete cooperation and coordination between the Govt under which the SSP recommending authority functions and Impugned Order is liable to be set aside on manifest non-application of independent mind by the Respondent No.3.

M. BECAUSE the material on record suggested that the Respondent No.3 had acted under dictation from Respondent No.1 or some of the functionaries of the Respondent No.1 and the Respondent No.3 ought to be directed by this Hon'ble Court to produce all instructions and directions received from the functionaries of the Respondent No.1 including the National Security Advisor and the officials in the Ministry of Home Affairs in connection with the detention or release of the Detenu. It is trite law that a decision by an authority acting under dictation from another authority not vested with the power under the statute is void and is liable to be set aside. (See *Chintpurni Medical College v. State of Punjab*(2018) 15 SCC 1).

N. BECAUSE It has been held in V. Shantha v. State of Telangana, (2017) 14 SCC 577at page 579 that:

> "An order of preventive detention, though based on the subjective satisfaction of the detaining authority, is nonetheless a serious matter, affecting the life and liberty of the citizen under Articles 14, 19, 21 and 22 of the Constitution. The power being statutory in nature, its exercise has to be within the limitations of the statute, and must be exercised for the purpose the power is conferred. If the power is misused, or abused for collateral purposes, and is based on grounds beyond the statute, takes into consideration extraneous or irrelevant materials, it will stand vitiated as being in colourable exercise of power."

It is submitted that the observation is squarely applicable in the instant case and the Impugned Detention Order is clearly a colourable exercise of power.

GROUNDS ARE ILLUSORY, VAGUE AND IRRELEVANT AND ISSUED FOR IMPROPER PURPOSE

O. BECAUSE the grounds of detention are *ex-facie* 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.

P. BECAUSE the Detention Order is wholly based on the Impugned Dossier prepared by Respondent No.4 which is slanderous, libelous and clearly demonstrative of political and personal bias against the Detenu and completely extraneous to the authority and import of the power exercised by Respondent No.4 for such purpose. The Impugned Dossier clearly suffers from legal *mala fides* and is liable to be quashed for violation of Article 14 of the Constitution and the Impugned Detention Order, which is wholly based on the same is also consequentially bad in law.

Q. BECAUSE several grounds in the Impugned Detention Order is based on the Impugned Dossier which deliberately suppresses the date of utterances from the detaining authority, rendering the grounds of detention vague and liable to be struck down.

R. BECAUSE several utterances have been selectively picked and imputed motives of divisiveness and instigation to violence when there was none in in the utterances themselves. Relying on specific phrases or words in

an utterance to invoke the powers of preventive detention have been struck down by this Court on the ground of vagueness. For instance in *Mohd. Yousuf* (supra), this Court struck down several grounds of the detention order impugned therein as having no palpable connection with disturbance to public order thus:

> "23. The grounds of detention begin with the statement that the detenu is a "die-hard Naxalite". Dr Singhvi described a Naxalite as a "votary of change by resort to violence" and urged that as the meaning ascribed to the expression by the daily press (Marxist Exclamation: the Capitalist Press !). Many may not agree with Dr Singhvi. Some think of Naxalites as blood-thirsty monsters; some compare them to Joan of Arc. It all depends on the class to which one belongs, one's political hues and ideological perceptions. At one stage of the argument Dr Singhvi himself described a Naxalite as an "ideological revolutionary". The detenu himself apparently thought that it meant no more than that he was a believer in the Marxist-Leninist ideology and so he affirmatively declared that he was a firm believer in that ideology and was proud of that fact. Though he did urge that the expression Naxalite connoted a person who sought change through violent means, Dr Singhvi had, ultimately, to confess that the expression 'Naxalite' was as definite or as vague as all words describing ideologies, such as democracy etc. were. *It is enough to say that it is just a label which can be as misleading as any other and is, perhaps, used occasionally for that very purpose*.
>
> 24. In the third paragraph of the grounds of detention it is said that the detenu made a speech in which he asked his audience to shun the life of dishonour and rise in revolt against oppression. In the fourth paragraph he is stated to be responsible for posters bearing the caption "No solution without revolution". It is also stated that the posters asked the people to prepare themselves for revolution. Now, expressions like "revolt" and "revolution" are flung about by all and sundry in all manner of context and it is impossible to attach any particular significance to the use of such expressions. Every turn against the establishment is called "revolt" and every new idea is labelled as "revolutionary". *If the mere use of expressions like "revolt" and "revolution" are to land a person behind the bars what would be the fate of all our legislators? It all depends on the context in which the expressions are used. Neither paragraph three nor paragraph four of the grounds of detention specifies the particular form of revolt or revolution which the detenu advocated. Did he incite people to violence?What words did he employ?* What, then, is the connection between these grounds and "acting in any manner prejudicial to the maintenance of the public order"? There is no answer to be gleaned from the grounds recited in paragraphs three and four which must therefore, be held to be both irrelevant and vague.

> 25. In paragraph five it is said that the detenu instigated educated unemployed youth to go on a hunger strike. *A hunger strike, in our country, is a well-known form of peaceful protest but it is difficult to connect it with public disorder.* We consider this ground also to be vague and irrelevant. The allegation that the detenu made derogatory remarks about Shri Sheikh Mohammed Abdullah, Chief Minister of Kashmir, and compared him with General Zia of Pakistan appears to us, again, to be entirely irrelevant. I do not think it is necessary to refer to all the grounds in any further detail as that has been done by my brother Shinghal, J." (Emphasis supplied)

S. BECAUSE it has been held by this Hon'ble Court in *S.R. Venkataraman* [*S.R. Venkataraman v. Union of India*, (1979) 2 SCC 491] as follows:

> "6. It is however not necessary to examine the question of malice in law in this case, for it is trite law that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by Lord Goddard, C.J. in Pilling v. Abergele Urban District Council [Pilling v. Abergele Urban District Council, (1950) 1 KB 636 (DC)] where a duty to determine a question is conferred on an authority which state their reasons for the decision,and the reasons which they state show that they have taken into account matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the court to which an appeal lies can and ought to adjudicate on the matter."

The above passage was quoted in approval in *Sama Aruna*(supra) to hold that the preventive detention order therein suffered from legal malice.

It is submitted that in the instant case, the Impugned Detention Order, which is ostensibly issued to curb the Detenu's legitimate exercise of speech and has not nexus whatsoever with the purpose of the PSA or the definition under Section 8(3)(b) of PSA ought be held to suffer from legal malice and deserves be set aside on that ground.

CONDITIONS REQUISITE UNDER 8(3)(b) of PSA NOT SATISIFED

T. BECAUSE none of the requisiteconditions are satisfied in the instant case to bring it within the purview of "acts prejudicial to maintenance of public order" as defined under 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, feeling of enmity or hatred or disharmony on grounds of religion, race, caste, community, or region;
>
> (ii) making preparations, 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.

This alone renders all the grounds in the detention order vague and irrelevant and makes the detention order wholly illegal, arbitrary and unconstitutional.

PARA-WISE CHALLENGE TO THE GROUNDS ON WHICH THE IMPUGNED DETENTION ORDER IS BASED.

U. BECAUSE n view of Section 10A of the PSA (the vires of the same that the Petitioner does not concede and reserves the liberty to challenge separately in another proceeding if so required or adviced), the grounds are severable from one another and therefore the detaining authority has to satisfy itself that the exercise of powers under preventive detention is warranted under each ground claimed in the Order. The table indicates below, none of the grounds of detention mentioned in the order taken stand-lone nor cumulatively satisfy the requirements under Section 8(1)(b) of the said Act and furthermore, each of the grounds suffer from one or more of the vices of vagueness, improper purpose, staleness, arbitrariness, non-adherence to principles of natural justice or absence of

Detention Ground (Original emphasis retained in Bold, supplied emphasis in Italics)	**Illegality / Unconstitutionality**
Ground – 1 The statement of Executive Magistrate has also been examined in the instant case which explicitly states that proceedings under Section 107 CrPC were initiated in view of likely breach of peace by the Subject. *A series police reports were also received thereafter substantiating the continuation of detention*. The Magistrate has further stated that the period of detention under the said provision has expired however neither the detenue has submitted surety as per the provisions of the Act nor the *necessitating reasons under the said proceedings have changed*. The Hon'ble High Court has laid down detailed guidelines regarding the detention under the J&K Public Safety Act, of a person who is already in detention, and reasonable grounds need to exist for such a detention. In light of the provisions of the Act(s) and prevalent sensitive law and order situation there is every apprehension in the matter that public order could be disturbed by the subject by provocative speeches or publication of such material or statements which may be detrimental to maintenance of public order, a number of instances / examples have been cited by the Executive Magistrate to substantiate the recommendation.	(a) The grounds of detention u/s 107 of CrPC and the grounds of detention for maintenance of public order under 1978 Act are materially different and cannot be used interchangeably as has been done in the instant case. If it were the same, certainly the standards applicable necessitating a six-month detention or a maximum of two-year detention have to be read in as vastly different. This conflation of the two standards betray a non-application of mind in the issuance of the Detention Order, in respect of this corresponding Ground of detention. (b) Furthermore, the series of police reports has not been disclosed to the Detenu and the Detention Order is liable to be set aside on that ground alone as the supply of material on which the Grounds of detention is based is *sine qua non* and is otherwise a violation of the principles of natural justice under Article 14 of the Constitution of India. Disclosure of all relevant material is an essential procedural safeguard. It has been held that the history of liberty is the history of procedural safeguards. (See *KamleshkumarIshwardas Patel v. Union of India* [(1995) 4 SCC 51 : 1995 SCC (Cri) 643] vide para 49.) These procedural safeguards are required to be zealously watched and enforced by the court and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu. As observed in *Rattan Singh v. State of Punjab* [(1981) 4 SCC 481 : 1981 SCC (Cri) 853] : (SCC p. 483, para 4) (c) As observed in *Abdul Latif Abdul Wahab Sheikh v. B.K. Jha* [(1987) 2 SCC 22 : 1987 SCC (Cri) 244] vide SCC para 5: (SCC p. 27)

	"5. ... The procedural requirements are the only safeguards available to a detenu since the court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural requirements are, therefore, to be strictly complied with if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard."
Ground – 2 The dossier submitted by the District Police, Srinagar delineates the political journey of the subject *citing a series of instances leading to disturbance in public order* and *in many cases inciting violence* which indeed is detrimental to maintenance of public order. A number of incidents of *last more than 10 years* have been cited wherein the subject *indulged in inciting violence* thereby *leading to disturbance in public order*. The situation in Kashmir valley has improved in recent months with business establishments, trade, services, export and other sectors registering normal activity however at the same time some serious attempts have been made, overtly or covertly, to disturb public order which encompasses the involvement of some persons in attacks on security establishment, civilian business areas and even targeting the common people I their routine way of life. *The subject having a history of making provocative speeches and charged statements leading to incitement of violence* on several occasions in the political career has been stated in police dossier, as a potential threat to maintenance of public order in view of the prevalent security scenario and also stated to be required as a measure for enabling peace and tranquility in the region.	(a) There is no reported instance of the Detenu's speeches having caused any violence whatsoever. There is no such material in the dossier nor is there such a publicly documented fact. The conclusion that the Detenu's speeches in the last ten years have caused public order disturbance is a figment of the Respondent No.3's imagination. Nor as the Detenu been ever charged with offences amounting breach of peace or enmity between religious groups. (b) The time frame of 10 years is not proximate enough standard for the invocation of the 1978 Act. This makes the ground manifestly stale. (c) "prevalent security scenario" is a vague and unverifiable term and betrays non-application of mind by Respondent No.3 (d) Similarly, "disturbance in public order" is a vague, arbitrary and loose standard and indicates no satisfaction to the rigours of Section 8(3)(b) of the 1978 Act.
Ground – 3 The police dossier has further stated sections of the subject *ranging from speeches glorifying militants* to *creating fears among majority population based on divisive politics among the masses*. The approach of Subject has been based *on creating a rift between the groups of law-abiding masses*. There have been *many occasions when the Subject reports*	(a) Even assuming the allegation to be true, without conceding, "glorifying militancy" or "divisible politics" are merely political positions that may or may not in a given case amount to tendency to breach public order. In the instant case, the Respondent No.3 has not applied his mind as to whether any such speech specifically has caused such breach of public peace in the

separatism about which several confidential and secret reports have been filed / submitted by respective agencies which are of very serious nature.	past, even if some such speech were glorifying militants or divisive in nature. The ground ought be held to be vague and illusory as per the *Mohd. Yousuf* (supra) ratio. (b) The confidential and secret reports allegedly relied on by the Respondent No.3 to issue the Impugned Order has not been supplied to the Detenu and therefore the Order suffers from failure to adhere to principles of natural justice and violative of Article 14.
<u>Grounds 4 – 5</u> The police dossier has further quoted several instances which include: Statement on August 5th – 2019, **"That abrogation of Article 370 hasn't just made accession null and void and also reduces India to an occupation force in J&K". Another statement** same date on record is as follows: - **"Once again government of India has pushed Kashmiri's to the brink there is no other way but to oppose this illegal and unconstitutional onslaught on our dignity."** Every Citizen has a right to protest however the statement recorded above clearly reflect that a divisive attempt was made *thereby provoking the political cadre of a particular area or ideology for* street protests and violence. These statements examine in the backdrop of several such earlier incidences prove, beyond reasonable doubt, the existing potential of the subject to disturb public order in the region.	(a) The statements merely betray a political position in exercise of the fundamental right to free speech under Article 19 of the Constitution. (b) Detention for merely exercising one's right to free speech against governmental action is manifestly disproportionate and arbitrary and causes a chilling effect on the exercise of such rights. (c) It is settled law that the effect of speech must be examined, for the purposes of limiting such a right, from the stand point of a reasonable person and not from the stand point of a weak-minded and wildly passionate individual. By that standard, the said statements are hardly provocative or instigating as has been alleged in the Impugned Order. (d) The ground is manifestly vague, illusory, and irrelevant. It is also stale given that it was made six months ago and for which the Detenu has already been under detention.
<u>Ground – 6</u> Another evidence submitted by the police is the following public statement: **"Government of India's intention is clear and sinister they wanted to change the demography of the only Muslim majority State in India, dis-empower Muslims to the extent where they become 2nd class citizens in their**	(a) The equal effect of the legislation or otherwise is a political take and the Respondent No.3 is using the same to discredit and disagree with the Detenu's statements. Such disagreement however is without any basis characterized as a call for violence and to create divisions in the society.

own state".*An Act passed by the Parliament with statutory majority has been terrified as an attempt against the resident citizens of a particular religionnot withstanding the fact that the legislation is equally applicable to all the citizens irrespective of the religion, caste, identity or political affiliation*. A political leader of such a standing is expected to behave in a manner which is not such as an attempt to incite violence, disturb public order or create such divisions based on religion or identity which may lead to loss of life or properly, as the case may be. *Every rational mind would fail to understand as to how a legislation related to re-organization of a state or province makes people of one faith as 2nd class citizens, directly or indirectly*. History is replete with examples where Thinkers triggered evolution of society. *A political leader in 21st century so brazenly inciting religion to divide the people based on religion, that too in an area with sensitive security situation / eco-system is indeed a potential threat for maintenance of public order*. Such appeals and statements have the potential of disturbing public order to such an extent leading to massive loss to life and property. This can also trigger violence in other regions of the country in view of religion and identity being invoked in such a manner.	(b) Furthermore, if Respondent No.3's own contention is that every rational mind knows that reorganization will not lead to any oppression of one faith over another. If that is the case, it is not clear at all how the Respondent No.3 has come to the conclusion that the said statements will have any effect at all on the minds of the public. (c) It is evident that the Respondent No.3 has allowed his own political biases to colour his judgment on the necessity to detain the Detenu and therefore the Impugned Order ought to be struck down for considering factors wholly irrelevant to the issue at hand.
<u>Ground – 7</u> The designed instigation can be gauged from the following statements made through social media based on nothing but blatant lies aimed at demoralizing security forces: **"Every human even a militant deserves dignity after death. Armed forces use of chemicals in encounters disfiguring their bodies, inhuman imagine the emotions that will overcome a boy who sees his brother's mutilated changed body, would you be surprised if he picked up a gun".** This statement notwithstanding the fact that no such evidence was found even by a Commission in the Instant case, reflects the deliberate attempts of the subject in causing disturbance to the public order. *A leader is expected to*	(a) The said statements were issued by the Detenu in April, 2019, nearly a year before the Impugned Detention Order and have no proximity whatsoever to order of detention. Following such statements no violence was reported. (b) The Respondent No.3 also goes on to unwarrantedly comment on the motives and aims of the Detenu, which is wholly extraneous and irrelevant to the determination of whether a particular statement or statements have the tendency to cause breach of peace, which relates to the 'effect' of such speech. (c) The Respondent No.3 has also allowed his own judgment and

invoke spirit of inquiry before making such an irresponsible statement aimed at provoking sentiments and inciting violence.	ideals of a good leader and used that as a test instead of the statutorily prescribed test under Section 8(3)(b) of the 1978 Act. Such a ground is manifestly arbitrary and liable to be struck down.
Ground – 8 Another statement of the subject submitted by the police as a material evidence is: **"Any thrashing civilians in the state is nothing new. But manhandling civil officers marks a new low. The valley & its people are being choked to a silent death. For how long will you oppress them in their own land? Is this what we deserve for choosing India over Pakistan?".** The incident was yet to be enquired while such a statement was *made aimed at disturbing public order.*	The Respondent No.3 vide the Impugned Order once again has chosen to unwarrantedly comment on the motives and aims of the Detenu, which is wholly extraneous and irrelevant to the determination of whether a particular statement or statements have the tendency to cause breach of peace, which relates to the 'effect' of such speech.
Ground – 9 The police dossier further narrated the attempts aimed at inciting masses so as to create issues of disturbance in public order and *demoralizing security forces* by making unscrupulous statements vis-à-vis the security exercises being undertaken for safety and security of common people. The following announcements made in month of April-2019 is reflective of this: **"Kashmiri's now need to seek permission to use roads that rightfully belong to them & pay taxes for seems like GOIs plan is to reduce us to second class citizens in our own territory. The valley's story has all the elements of a Greek tragedy "and "How can you restrict civilians on our main highway? You want to smother Kashmiris change the demographics of J&K State and imprison them in their own land? Over my dead body."**	(a) "Demoralizing Security Forces" is not at all a verifiable standard within the Section 8(3)(b) of the 1978 Act. The usage of the same in the Impugned Order smacks of irrationality and arbitrariness and consideration of extraneous facts. (b) The Impugned Order notes that the statement was made in April 2019. If the statement were designed to "incite the masses" as is alleged, there is no material provided wherein such acts of violence actually resulted or was attempted and stopped.

Grounds 10 & 11 Citizens are entitled to make statements of their choice under the freedom of speech and expression guaranteed by the Constitution however this is subject to reasonable restrictions as contained under the same provisions. *A leader needs to exercise caution, more carefully than a common citizen. The following statement is again a visible attempt to incite attempts at disturbing public order*: **"Fail to understand the need to pass the triple talaq bill especially since the Supreme Court had already declared it illegal. Undue interference seemingly to punish Muslims. Given the current state of the economy, should this really have been a priority?"** Another public statement circulated through social media has been highlighted by the police **"India in 2019 - Muslims & other minorities are demonised& punished In Assam, a senior Muslim citizen is beaten up & forced to eat pork which is forbidden in Islam."***Similar statements made in a sensitive security scenario* can disturb public order which makes out a case for preventive measures required to be taken.	The emphasized portions of the ground similarly consider irrelevant factors and has caused the Respondent No.3 to substitute his political wisdom over the Detenu's in order to exercise powers under the 1978 Act, which is wholly arbitrary and unconstitutional. Usage of completely vague and unverifiable and non-standard terms such as "sensitive security scenario" smacks of non-application of mind and mechanical automatism and recitation of such terms like a mantra.
Ground -12 **Further,** the subject has been *glorifying and justifyingactions of anti-national elements*, a pronouncement in this behalf regarding rioting done by criminals within the premises of Central Jail is enough to indicate the same. **"Prisoners are entitled to fundamental human rights & using brute force to quell protests is a clear violation. Pertinent to mention that inmates protested after alleged desecration of Quran. GOI wants to turn Kashmir into an open-air prison & convert actual Jails into Guantanamo."**	(a) "*glorification and justification*" of actions of any one cannot be a ground for detention under Section 8(3)(b) and the Impugned Order does not state how such glorification would lead to violence or whether it indeed lead to public order disturbance in the past. (b) "Prisoners are entitled to fundamental human rights" is a position in law true under the Constitution and the Respondent No.3 holding any thoughts contrary to this is not only unconstitutional, but a violation of the oath of his office.

Ground – 13 Another attempt underlined in the dossier is the statement **"This is, Kashmir, not Palestine. We won't allow you to turn our beloved land into an open-air prison. Jis Kashmir ko khoon say seencha who Kashmir humarahai."** Criticizing of Government policies in a democratic setup is not a crime, but *whipping up of mass hysteria* based on details far away from truth intended to provoke disturbance to public order is a worth to be culled for protection of safety, security of common people and development of nation.	The emphasized portions of the ground similarly consider irrelevant factors and has caused the Respondent No.3 to substitute his political wisdom over the Detenu's in order to exercise powers under the 1978 Act, which is wholly arbitrary and unconstitutional.
Ground – 14 **"Jamaat, an organization that has done great work in upliftment of poor makes you uncomfortable owing to its Islamic ideology. You'd rather extend patronage to rabid right-wing orgs that lunch innocents on flimsy excuses & spearhead a divisive agenda to persecute minorities."** An organization banned following the provisions laid down under the statutes has been praised which could been seen well within rights of a citizen to criticize or object a policy however at the same time making such a statement about division in society on religious grounds is *seen as another attempt to create disturbance, the right forum, even after criticism would have been a court of law instead of invoking religion and terming it as persecution of minorities reflect the designs aimed at creating public disorder*. **Another public statement contained in the dossier reflecting the attempts to incite violence is "Last I checked, we were a democracy. But this sounds like a diktat of Martial Law. After bringing Kashmir to the brink the administrations adamant on ensuring collective punishment for Kashmiris."**	The emphasized portions of the ground similarly consider irrelevant factors and has caused the Respondent No.3 to substitute his political wisdom over the Detenu's in order to exercise powers under the 1978 Act, which is wholly arbitrary and unconstitutional.

Ground – Unnumbered Para after 14 Whereas, material evidence has been produced by the police substantiating the case that *deliberate attempts made by the subject to create an atmosphere of fear and chaos, so as to create mass agitation leading to disturbance of public order* including incitement of violence; are seen as a potential repeat attempt to incite violence at this juncture in Kashmir particularly and rest of the region in general. However in light of the facts and gravity of the situation in order to ford strong apprehensions which are augured by the profile and actions stated above and in order to stop the subject from indulging in activities which are aimed at disturbing public order, detention under the provisions of PSA at this stage has become imperative.	(a) No such material evidence has been produced by the Respondent No.3 in support of the said ground. (b) The repeated imputation of the Detenu's motives and designs clearly betray malafides on the part of Respondent No.3 in issuing the Impugned Order.
Ground – Unnumbered Para – the second and thid from Para 14 Whereas, the case has been examined under the provisions of The Jammu and Kashmir Public Safety Act. Judgements issued by Hon'ble High Court on various aspects of the detention under PSA and after due application of mind pursuant to perusal of material evidence, documents and reports submitted by the Police, Magistrate and other agencies I am of the view that, in view of the serious activities of the subject prejudicial to the maintenance of public order, a strong case has been made for immediate measures under the J&K PSA for detention of the subject in order to avoid disturbance to public order in the region. On the basis of grounds stated, I have reached to the conclusion that *it would be expedient to detain* Mrs. Mehbooba Mufti D/o Sh. Mufti Muhammad Sayeed, R/O Bijbehara, District Anantnag A/P R/O Nowgam, District Srinagar, under the provisions of J&K Public Safety Act, 1978, for which orders are being issued	In a catena of decisions, it has been held that "expediency" is not a ground of deprivation of fundamental rights and that it has to be justified on the anvil of Necessity. (See for instance, *Rangarajan v. Jagjivan Ram*, (1989) 2 SCC 574)

separately.	

V. BECAUSE all of the grounds cited in the Impugned Detention Order are based on social media posts or ‘tweets’ which are short written statements, although publicly accessible, but are addressed to and generally seen only by those persons who follow the Detenu on the social media site twitter and the Impugned Detention Order fails to take that into account in determining the likelihood of such utterances causing public disorder.The Impugned Detention Order is wholly liable to be set aside as unreasonable for not considering relevant factors and ultra vires Article 14.

W. BECAUSE the Impugned Detention Order proceeds on the sole basisof the Impugned Dossier 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 because the Respondent No.3 took no steps to independently inquire into the veracity of the said material or the truth of its contents.

18. The Petitioner has not filed any Petition or proceeding before any other court or tribunal for the same or similar reliefs. The Petition is without prejudice,to any extent or in any manner whatsoever, to the rights of the Petitioner and/or the Detenu to challenge the vires of the provisions of the PSA and/or Section 107 of the CrPC in separate proceeding/s before this Hon’ble Court or any other forum.

PRAYER

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

(1) 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;

(2) To issue an appropriate writ, direction or order quashing the impugned order of detention dated 05.02.2020 and the grounds thereof as *ultravires* Articles 14, 19, 21 and 22 of the Constitution;

(3) To issue an appropriate writ, direction or order quashing the impugned order of detention dated 05.02.2020 and the grounds thereof as *ultravires*Section 8 of the Jammu and Kashmir Public Safety Act, 1978;

(4) To issue an appropriate writ, direction or order quashing the impugned dossier dated 05.02.2020 prepared by the Respondent No.4 and the recommendation based on the same as being ultra vires Article 14 of the Constitution;

(5) To award appropriate compensation to the Detenu for the illegal and/or unconstitutional detention that she has suffered;

(6) To award costs of this litigation to the Petitioner;

(7) 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.

DRAWN ON: 18.02.2020

FILED ON: 19.02.2020

DRAWN BY:

PRASANNA S& AAKARSH KAMRA

FILED BY: AAKARSH KAMRA, Advocate on Record