

(2018) 12 J&K CK 0067

In the Jammu And Kashmir High Court

Case No : Habeas Corpus Petition (HCP) No. 279 Of 2018

Faisal Amin Mir @APPELLANT@Hash State Of Jammu & Kashmir & Ors

Date of Decision : 20-12-2018

Acts Referred:

Conservation Of Foreign Exchange And Prevention Of Smuggling Activities Act, 1974 — Section 3(3)

Jammu & Kashmir Public Safety Act, 1978, — Section 8, 13

Constitution Of India, 1950 — Article 21, 22, 22(3), 22(3)(b), 22(5), 22(6)

Citation : (2018) 12 J&K CK 0067

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : M. A. Qayoom, Asif Maqbool

Judgement

1) By virtue of order bearing No.131/DMS/PSA/2018 dated 05.09.2018, passed by respondent No.2-District Magistrate, Shopian, in exercise of powers conferred under Section 8 of the J&K Public Safety Act, 1978, Faisal Amin Mir son of Mohammad Amin Mir resident of Bonbazar Shopian (hereinafter referred as the detainee), has been taken into preventive custody and lodged in Central Jail, Kot Bhalwal, Jammu. Legality and veracity of the said order is assailed in the instant petition on the grounds detailed out therein.

2) The petitioner's case, as set out in the petition, is that the detainee was arrested by the police and booked in several FIRs, one after the other. Even though detainee was granted bail in FIR Nos.64/2014, 7/2014, 76/2014, 78/2014, 83/2014 and 121/2014 but was not released and instead was detained under the provisions of J&K Public Safety act in terms of impugned order. The allegations/grounds of detention are stated to be vague and mere assertions. The respondents are stated to have ignored to provide material relied upon by the detaining authority while passing the impugned order of detention and thus deprived the detainee of his Constitutional and Statutory rights. Grounds of detention are stated to be vague, baseless, non-existent and unfounded and there has been non-application of mind on the part of detaining authority while passing the detention order.

3) The respondents, in their counter affidavit, have disputed the averments made in the petition and stated that the respondents have followed the provisions of Public Safety Act. The detainee has been detained only after following due procedure. The grounds of detention were read over the detainee. There has been proper application of mind for detaining the detainee and the detainee has been provided all the material. The learned counsel for the respondents also produced the detention records to lend support to the stand taken in the counter affidavit.

4) Heard learned counsel for the parties and also perused the record.

5) Firstly, learned counsel for the petitioner contended that while passing the detention order, the detaining authority, besides others, has relied on FIR Nos.120/2017, 168/2017, 30/2018, 36/2018, 59/2018, 69/2018, 92/2018 and 183/2018, in which he had neither applied for bail nor there was any likelihood of his being granted bail. Further in FIR Nos.64/2014, 7/2014, 76/2014, 78/2014, 83/2014 and 121/2014 the detainee had been admitted to bail but these facts have not been made mention of in the grounds of detention though reference to said FIRs has been made. Either detaining authority has been kept in dark or otherwise detaining authority has not applied its mind properly. While detaining a person under Public Safety Act, detaining authority is under a legal obligation to analyze all the circumstances and material and then to gather conclusion about the requirement of depriving a person of his personal liberty. Non-mention about the grant of bail is serious lapse which in turn gives rise to the inference that there is non-application of mind. Similar situation has been dealt with by the Apex Court. It is quite relevant to quote following portion from para 8 of the judgment rendered by the Hon'ble Apex Court in the case of "Anant Sakharam Raut v. State of Maharashtra and another" reported in AIR 1987 SC 137:-

"We hold that there was clear non-application of mind on the part of detaining authority about the fact that the petitioner was granted bail when the order of detention was passed. In the result we set aside the judgement of the Bombay High Court under appeal, quash the order of detention and direct that the petitioner be released forthwith....."

6) Next, it is further projected that when the detainee was already in custody, there was no need to direct his preventive detention. Further, arrest of the detainee in connection with various criminal cases, at the time of passing of the order of detention, has not been disputed.

7) The object of passing the order of detention is to deter a person from acting in any manner prejudicial to the security of the State or public order. When the movement of the person is already under curtailment i.e. is in custody in connection with a criminal case, then there can be no requirement of preventive detention, unless, of course, circumstances exist for passing order of detention. Preventive laws have the effect of depriving a person of liberty which is precious, deprivation thereof at times may be unavoidable, for justifying such deprivation,

safeguards as are provided by law are required to be respected. A person who dares to cause any type of insecurity or threatens security of the State has to be dealt with iron hand but for so doing the Constitutional safeguards as are available are also to be respected.

8) Law is well settled that when a person is in substantive custody of the police, the detaining authority is required to spell out the reasons as to why a person who was already in substantive custody was being detained in preventive custody. Absence of such reasons in the grounds of detention renders the detention illegal and such an order would clearly demonstrate non-application of mind of the detaining authority. In this view, I am fortified by the judgment of this in "Mohammad Hussain Dar v. State and others" reported in 2007(2) JKC HC-231.

9) It is also settled position of law that a person involved in a criminal case can be detained under the provisions of preventive laws provided there are compelling circumstances for so doing otherwise the order of detention shall be bad. In this connection, it is quite apt to quote following Para from the judgment "T. P. Moideen Koya vs. Government of Kerala and ors." reported in 2004 (8) SCC 106:

".....in law there is no bar in passing a detention order even against a person who is already in custody in respect of a criminal offence if the detaining authority is subjectively satisfied that detention order should be passed and that there must be cogent material before the authority passing the detention order for inferring that the detainee was likely to be released on bail"

10) It shall be quite apposite to quote Para 5, 6 and 7 of the judgment of the Hon'ble Apex Court in "Surya Prakash Sharma v. State of U. P. and others, 1994 SCC (Cri) 1691,:

"5. The question as to whether and in what circumstances an order for preventive detention can be passed against a person who is already in custody has had been engaging the attention of this court since it state first came up for consideration before a Constitution Bench in Rameshwar Shaw vs District Magistrate Burdwan to eschew prolixity we refrain from detailing all those cases accept that of Dharmendra Sugan Chand Chelawat v. Union of India wherein a three judge Bench after considering all the earlier relevant decisions including Rameshwar Shaw answered the question in the following words:

"The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detainee is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detainee is already in detention. The expression compelling reasons in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the

basis of which it may be satisfied that (a) the detainee is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detainee, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

6. When the above principles are applied to the facts of the instant case, there is no escape from the conclusion that the impugned order cannot be sustained. Though the grounds of detention indicate the detaining authority's awareness of the fact that the detenu was in judicial custody at the time of making the order of detention, the detaining authority has not brought on record any cogent material nor furnished any cogent ground in support of the averment made in the grounds of detention that if the aforesaid Surya Prakash Sharma is released on bail "he may again indulge in serious offences causing threat to public order". (emphasis supplied) To put it differently, the satisfaction of the detaining authority that the detenu might indulge in serious offences causing threat to public order, solely on the basis of a solitary murder, cannot be said to be proper and justified.

7. On the conclusions as above we quash the order of detention." 11) Since the detainee was in the custody of the police at the time of passing of the order of detention, therefore, question arises for consideration whether an order of detention could be passed on the face of such an eventuality? The answer to this question is emphatically "No", taking into consideration the law laid down by the Hon'ble Apex Court in "Sama Aruna v. State of Telangana & Anr" (AIR 2017 SC 2662). Para 24 of the said judgment is apposite to be quoted herein below:

"24. There is another reason why the detention order is unjustified. It was passed when the accused was in jail in Crime No.221 of 2016. His custody in jail for the said offence was converted into custody under the impugned detention order. The incident involved in this offence is sometime in the year 2002-03. The detainee could not have been detained preventively by taking this stale incident into account, more so when he was in jail. In Ramesh Yadav v. District Magistrate, Etah and ors, this Court observed as follows:

"6. On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detainee was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an under trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed."

12) Next learned counsel for the petitioner contended that the detainee has been disabled from making an effective representation against the detention as the

material, which formed base of the grounds of detention and consequent order of detention, has not been furnished to the detainee.

13) The grounds under Article 22(5) means all the basic facts and materials which have been taken into account by the detaining authority in making the order of detention and on which, therefore, the order of detention is based. Nothing less than all the basic facts and materials which influenced the detaining authority in making the order of detention must be communicated to the detainee. That is the plain requirement of the first safeguard in Article 22(5). The second safeguard in Article 22(5) requires that the detainee shall be afforded the earliest opportunity of making representation against the order of detention. No avoidable delay, no shortfall in the materials communicated shall stand in the way of the detainee in making an earlier, yet comprehensive and effective, representation in regard to all basic facts and materials which have influenced the detaining authority in making the order of detention depriving him of his freedom. The detaining authority is required to communicate to the detainee, (i) grounds of detention; (ii) all the documents referred to in the grounds of detention; (iii) all the documents and materials which the detaining authority considers while framing his subjective satisfaction; (iv) detention order and also the police report or dossier if any. The word 'grounds' used in clause (5) of Article 22 of the Constitution means not only the narrations or conclusions of facts, but also all materials on which those facts or conclusions which constitute grounds are based, such material has to be supplied to the detainee so as to enable him to make an effective and meaningful representation. The detaining authority is obliged to mention in the grounds as to on which material he based his satisfaction, failure to do so renders the detention illegal. To communicate the bare grounds of detention to the detainee will not be sufficient unless grounds are accompanied by material which the detaining authority has considered and relied upon. For this, support can be had from the judgment "Nazeer Ahmad Sheikh vs. Additional Chief Secretary Home", 1999 SLJ 241.

14) Detention records, as produced by learned counsel for the respondents, contains copy of receipt of grounds of detention, perusal of which reveals that 14 leaves including grounds of detention 08 leaves along with other documents 04 leaves have been provided to the detainee and in token whereof his signatures have been obtained on the said receipt. It is quite strange that as many as 19 FIRs have been shown to have been registered against the detainee, whether copies of these FIRs, copies of statements recorded in connection there with have been supplied to him or not, is not mentioned in the detention record. Further in the said receipt, other documents consisting of 04 leaves are shown to have been supplied to the detainee, what were these documents, has also not been spelled out, which in turn has disabled the detainee from making an effective representation against his detention. Furnishing the copy of grounds of detention would not absolve the detaining authority from furnishing the material forming base of the grounds of detention as it is the material which would enable the detainee to make an effective representation against the detention. Non-

supply of the material would amount to violation of Article 22(5) of the Constitution of India, so deprivation of a valuable right.

15) The Hon'ble Apex Court in the judgment rendered in the case of "Sophia Gulam Mohd. Bham v. State of Maharashtra & ors" (AIR 1999 SC 3051), has held as under:

"The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detainee to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detainee and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language."

16) In paras 27 and 28 of the judgment captioned Tahira Haris etc. etc. Vs. Government of Karnataka &Ors, reported in AIR 2009 Supreme Court 2184, Hon'ble Apex Court has held as under:

"27. There were several grounds on which the detention of the detainee was challenged in these appeals but it is not necessary to refer to all the grounds since on the ground of not supplying the relied upon document, continued detention of the detainee becomes illegal and detention order has to be quashed on that ground alone.

28. Our Constitution provides adequate safeguards under clauses (5) and (6) of Article 22 to the detainee who has been detained in pursuance of the order made under any law providing for preventive detention. He has right to be supplied copies of all documents, statements and other materials relied upon in the grounds of detention without any delay. The predominant object of communicating the grounds of detention is to enable the detainee at the earliest opportunity to make effective and meaningful representation against his detention.

17) It is also quite apposite to quote para 10 of the judgment of the Hon'ble Apex Court in "Ibrahim Ahmad Bhatti alias Mohd. Akhtar Hussain alias Kandar Ahmad Wagher alias Iqbal alias Gulam Vs. State of Gujarat and others", (1982) 3 SCC 440:

"10. Two propositions having a bearing on the points at issue in the case before us, clearly merge from the aforesaid resume of decided cases : (a) all documents, statements and other materials incorporated in the grounds by reference and which have influenced the mind of the detaining authority in arriving at the requisite subjective satisfaction must be furnished to the detenu along with the grounds or in any event not later than five days ordinarily and in the exceptional circumstances and for reasons to be recorded in writing not later than 15 days from the date of his detention and (b) all such material must be

furnished to him in a script or language which he understands and failure to do either of the two things would amount to a breach of the two duties cast on the detaining authority under Article 22 (5) of the Constitution. Relying upon this legal position counsel for the petitioner urged before us that in the instant case a breach of the mandate contained in Article 22 (5) read with Section 3 (3) of the COFEPOSA is clearly involved because of three things that have happened, namely, (i) supply of Urdu translations of the bulk of documents and statements incorporated in the grounds and relied upon by the detaining authority was delayed beyond the normal period of 5 days without any exceptional circumstances obtaining in the matter, (ii) the alleged exceptional circumstances purporting to justify the delay and the fact that the reasons had been recorded in writing were not communicated to the detenu which has prevented him from making effective representation against his continued detention and (iii) Urdu translations of quite a few documents and statements incorporated in the grounds and relied upon by the detaining authority have not been supplied to him at all. As regards the first two aspects counsel relied upon two decisions of the Patna High Court, namely, *Bishwa Mohan Kumar Sinha v. State of Bihar and Ors.*(1) and *Bishwanath Prasad Keshari v. State of Bihar & Ors.*(2) where the Patna High Court has taken the view that not merely should the exceptional circumstances exist justifying the delayed supply of the grounds of detention but these should be communicated to the detenu to enable him to make an effective representation. Counsel urged that because of the aforesaid failure the continued detention of the petitioner must be held to be illegal. We find considerable force in these submissions made by the counsel for the petitioner."

18) Next it is contended by the learned counsel for the petitioner that the detenu has also been disabled from making an effective representation by not supplying him the translated copies of the ground of detention which are in English language besides being in a hyper technical language which the detenu is not in a position to understand being illiterate.

19) As per record produced by the learned counsel for the respondents, the qualification of detenu is 8th pass, therefore, he would not be in a position to understand the contents of the grounds of detention. The record also do not suggest that the translated copies of grounds of detention have been supplied to the detenu, therefore, infringement of right guaranteed under Article 22(5) of the Constitution. The service of the grounds of detention on the detenu is a very precious constitutional right and the object behind the same is to enable the detenu to file an effective representation. It will be an empty formality to supply the grounds of detention to the detenu unless he is in a position to understand the same. In my view I am fortified by the judgment rendered by the Hon'ble Apex Court in the case "*Chaju Ram Vs. The State of Jammu & Kashmir*" reported in AIR 1971 SC 263. Following portion from para 9 of the judgment shall be quite apposite to be quoted:

"..... The detenu is an illiterate person and it is absolutely necessary that when

we are dealing with a detenu who cannot read or understand English language or any language at all that the grounds of detention should be explained to him as early as possible in the language he understands so that he can avail himself of the statutory right of making a representation. To hand over to him the document written in English and to obtain his thumb impression on it in token of his having received the same does not comply with the requirements of the law which gives a very valuable right to the detenu to make a representation which right is frustrated by handing over to him the grounds of detention in an alien language. We are therefore compelled to hold in this case that the requirement of explaining the grounds to the detenu in his own language was not complied with."

20) Para 13 of the judgment in Ibrahim Ahmad Batti's case (supra) shall also be quite apposite to be reproduced herein:

"Lastly, Urdu translations of quite a few documents and statements referred to in the grounds of detention and relied upon by the detaining authority were admittedly not supplied to the detenu at all and the only explanation given by the counsel for the respondents at the hearing has been that most of these documents (Urdu translations whereof were not supplied) comprised statements of accounts which had figures in English with some English words written in capital letters and some documents were in Hindi and Gujarati and the record (statements of Rekha, her sister Indi and one Jayantilal Soni, all co-conspirators of the detenu, recorded during the investigation) clearly shows that the petitioner knows English figures, understands English words written in capital letters and can also converse or talk in Hindi and Gujarati and as such the non-supply of Urdu translations of these documents cannot be said to have caused any prejudice to the petitioner in the matter of making a representation against his detention. In our view, the explanation is hardly satisfactory and cannot condone the non-supply of Urdu translations of these documents. Admittedly, the petitioner is a Pakistani national and Urdu seems to be his mother tongue and a little knowledge of English figures, ability to read English words written in capital letters and a smattering knowledge of Hindi or Gujarati would not justify the denial of Urdu translations to him of the material documents and statements referred to as incriminating documents in the grounds and relied upon by the detaining authority in arriving at its subjective satisfaction. In fact, the claim made before us on behalf of the detenu that he only knows Urdu cannot be brushed aside as false especially in view of the fact that the same was accepted on the earlier occasion by the Advisory Board who had actually opined that failure to supply Urdu translations of grounds of detention and documents had vitiated the earlier order of detention and following this opinion respondent No. 1 had revoked the said order. Moreover, with the assistance of counsel on either side we have ourselves gone through many of these documents and statements and it is not possible to say that most of them are merely statements of account containing figures in English with English words written in capital letters. These documents recovered from three flats in three different societies, include, for

instance, documents like bills and vouchers showing purchases made from some shops, while a large number of documents are in Hindi and Gujarati and relate to transactions in contraband articles like gold, silver, watches, etc., and comprise accounts of such transactions, the figures as well as recitals pertaining to which are entirely in Gujarati. All these, in our view, are material documents which have obviously influenced the mind of the detaining authority in arriving at its subjective satisfaction and these are all in a script or language not understood by detenu, and, therefore, the non-supply of Urdu translations of these documents has clearly prejudiced the petitioner in the exercise of his right to make an effective representation against his detention and hence the safeguard contained in Article 22(5) is clearly violated."

21) It shall also be quite apposite to quote following portions from paras 3 and 5 of the judgment rendered by the Hon'ble Apex Court in the case captioned "Smt. Raziya Umar Bakshi Vs. Union of India" (AIR 1980 SC 1751):

"3.....The service of the grounds of detention on the detenu is a very precious constitutional right and where the grounds are couched in a language which is not known to the detenu, unless the contents of the grounds are fully explained and translated to the detenu, it will tantamount to not serving the grounds of detention to the detenu and would thus vitiate the detention ex-facie."

5.....in case where the detaining authority is satisfied that the grounds are couched in a language which is not known to the detenu, it must see to it that the grounds are explained to the detenu, a translated script is given to him and the grounds bear some sort of a certificate to show that the grounds have been explained to the detenu in the language he understands."

22) In "Powanammal Vs. State of T. N. and another" reported in (1999) 2 SCC 413, Hon'ble Supreme Court has observed as under:

".....The amplitude of the safeguard embodied in Article 22(5) extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detenu but also to supplying their translation in script or language which is understandable to the detenu. Failure to do so would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order."

23) The detention record produced by the learned counsel for the respondents carries a copy of Execution Report dated 08.09.2018 perusal of which shows that the grounds of detention have been read over to the detenu by one SI Mohammad Jabbar but no affidavit in support thereof has been filed which was required to be sworn by the said officer. Looking at the said ground from yet another angle, what can be said is that to eradicate all the doubts, it was incumbent on the part of the person, who did the exercise of handing over the documents and conveying the contents thereof to the detenu, to file an affidavit in order to attach a semblance of fairness to his actions. Resort can, in this

behalf, be had to the law laid down by the Apex Court of the country in the case of "State Legal Aid Committee, J&K Vs. State of J&K & others", reported in AIR 2005 SC 1270, wherein it has been held as under:

"Though several questions have been raised in this petition, it is not necessary to deal with them in detail as we find that there is no definite material to show that the requirements of Section 13 of the Jammu & Kashmir Public Safety Act, 1978, (in short the Act), requiring the grounds of order of detention to be disclosed/communicated to the person affected by the order has been complied with. Though in the affidavit filed by the State, it has been stated that the contents of the warrants and grounds of detention were served, read over and explained to the assessee and he was informed about his right to make a representation against the detention, if he so desired, there is no material placed on record to substantiate this stand. It is stated in the affidavit that the detenu refused to receive copy of the detention order and also refused to put his signatures on the documents. The least the State could have done is to file an affidavit of the person who wanted to serve the relevant documents and an endorsement LPA (HC) 107/2017 10 of 16 to the effect that there was refusal. Even the name of the official has not been indicated in the affidavit. That would have been sufficient to comply with the requirements of Section 13 of the Act."

24) Para 5 of the judgment rendered in the case of "Mohammad Shaban Chopan Vs. State and another" reported in 2003(II) 455 shall be advantageous to be quoted here-under:-

"5. Thus the stand taken by the detaining authority is that ASI Gh. Ahmad explained the grounds of detention to the detenu in Urdu and Kashmiri. However, affidavit of said ASI has not been filed. I have perused the record made available by Learned Counsel for the respondents. In the record there is a photocopy of C/Certificate of said ASI to that effect when the Learned Counsel was asked to produce the original, he expressed his inability to do so. The unauthenticated photocopy does not deserve to be noticed. Therefore, neither there is affidavit of said ASI nor any reliable document available on record to substantiate the fact that ASI Ghulam Ahmad had actually explained the grounds of detention to the detenu in his own language. Bare statement of the detaining authority in this behalf is of no consequence as has been held by the Hon'ble Supreme Court in the above quoted authority. The detention order thus cannot be sustained being violative of mandate of law on the aforesaid ground alone."

25) Para 20 of judgment rendered in the case of "Lallubhai Jogibhai Patel vs Union Of India & Ors" reported in 1981 AIR 728 is advantageous to be quoted:

"20. It is an admitted position that the detenu does not know English. The grounds of detention, which were served on the detenu, have been drawn up in English. It is true that Shri C. L. Antali, Police Inspector, who served the grounds of detention on the detenu, has filed an affidavit stating that he had fully explained the grounds of detention in Gujarati to the detenu. But, that is not a

sufficient compliance with the mandate of Article 22(5) of the Constitution, which requires that the grounds of detention must be "communicated" to the detenu. "Communicate" is a strong word. It means that sufficient knowledge of the basic facts constituting the 'grounds' should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the 'ground' to the detenu is to enable him to make a purposeful and effective representation. If the 'grounds' are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed. If any authority is needed on this point, which is so obvious from Article 22(5), reference may be made to the decisions of this Court in *Harikishan v. State of Maharashtra*: and *Haribandhu Dass. v. District Magistrate* (AIR 1969 SC 43) (ibid)."

26) Next learned counsel argued that the detenu, at the time of passing of impugned order on 05.09.2018, was minor, therefore, the respondents could not have passed the impugned order. Supporting his contention, learned counsel relied on Annexure-K appended to the petition, which is a certificate purported to have been issued by Green Land Education Institute (Higher Secondary School), Shopian.

27) Learned counsel for the respondents while rebutting this argument with vehemence, contended that the detenu, at the time of passing of impugned order was major and the certificate supra is a forged document. Buttressing his submission, he produced a copy of the communication dated 10.12.2018, addressed to him by District Magistrate, Shopian, and submitted that the matter may be got enquired into.

28) The plea regarding invalidity of the detention order on the basis of minority of the detenu need not to be examined in the light of other grounds referred hereinabove. This being a question of fact, it would not be proper herein to return a finding. The respondents, if interested and in case, to their understanding, the certificate produced, is forged one, move a formal motion in this regard, which accordingly would be dealt on its own merits. If relied on anywhere in similar circumstances for deriving a benefit or concession as a juvenile, appropriate action may be directed to be taken by the competent authority.

29) Be it so, the preventive laws have the effect of depriving a person of his liberty which is precious, however, deprivation thereof at times becomes indispensable. For justifying such deprivation, the safeguards as are provided by law are also required to be respected. A person who dares to threaten maintenance of public order has to be dealt with iron hand but the Constitutional safeguards as are available are also to be followed. The Article 21 of the constitution of India has protected the life and personal liberty of people by providing that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The word established is used in

Article 21 in order to denote and ensure that the procedure prescribed by law must be defined with certainty in order that those who are deprived of their fundamental right to life or liberty must know the precise extent of such deprivation. If a person is to be deprived of his life or liberty, the authority concerned is under a constitutional mandate to follow the procedure established by law, the procedure prescribed for depriving a person of his life or liberty has to be reasonable, fair and just. The protection contained in the article does not extend to only citizens but to all persons.

The law providing for preventive detention has to be strictly construed keeping in view the delicate balance between social security and citizen freedom. Thus if the preventive detention has not been ordered in strict conformity with law authorizing detention, the detenu is entitled to be released.

30) Preventive detention, in effect, is an invasion to personal liberty which infringe the right to liberty guaranteed by Article 21 of the Constitution of India. Preventive detention, in view of exception to Article 21, has to be reasonable, shall not be on the ipse dixit of the detaining authority. Preventive detention wherever permissible shall adhere to the procedural safeguards. Infraction of safeguards renders the order of detention unsustainable. The Hon'ble Supreme Court in catena of judgments has made it clear as to what is the value of the 'constitutional safeguard' and as to what is the value of right to liberty guaranteed under Article 21 of the Constitution of India. In this connection, it shall be quite relevant to quote paras 37 and 38 of the judgment rendered by a Bench of three Hon'ble Judges of the Hon'ble Apex Court in case captioned "Rekha Vs. State of Tamil Nadu and anr", reported in (2011) 5 SCC 244:

"37. As observed in Abdul Latif Abdul Wahab Sheikh v. B. K. Jha 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." As observed by Mr. Justice Douglas of the United States Supreme Court in Joint Anti-Fascist Refugee Committee v. McGrath:(US p. 179)

"...It is procedure that spells much of the difference between rule of law and rule of whim or caprice. Steadfast adherence to strict procedural safeguards are the main assurances that there will be equal justice under law".

38. Procedural rights are not based on sentimental concerns for the detenu. The procedural safeguards are not devised to coddle criminals or provide technical loopholes through which dangerous persons escape the consequences of their acts. They are basically society's assurances that the authorities will behave properly within rules distilled from long centuries of concrete experience".

31) Preventive detention as held in "A.K.Gopalan v. State of Madras" [1950 SCR 88] and reiterated in "Rekha v. State of Tamil Nadu"[AIR 2011 SCW 2262] is by its very nature repugnant to democratic ideals and an anathema to the rule of law. The Supreme Court in Rekha's case (supra), while emphasizing that Article 22(3)(b), Constitution of India, is to be read as an exception to Article 21, Constitution of India and not allowed to nullify the right to personal liberty guaranteed under the later, observed:

"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 to very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of Constitution of India, which was won after long arduous, historic struggle. It follows therefore that if law of land (Indian Penal Code and other penal statutes) can deal with the situation, recourse to the preventive detention law will be illegal."

32) The Court further observed:

"It must be remembered that in case of preventive detention no offence is proved and the justification of such detention case is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. Preventive detention is often described as jurisdiction of suspicion. The Detaining Authority passes the order of detention on subjective satisfaction. Since Clause (3) of Article 22 specifically excludes the applicability of Clauses (1) and (2), the detainee is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest. 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."

33) In "Kamleshwar Ishwar Prasad Patel Vs Union of India and Others" [(1995) 2 SCC 51] the Supreme court observed:

"The history of liberty is the history of procedural safeguards. 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 alleged activities of the detainee."

34) Law on the subject was succinctly laid down by the Apex Court in Abdul Latif Abdul Wahab Sheikh Vs B. K. Jha and another [(1987) 2 SCC 22] in following words:

"The procedural requirements are the only safeguards available to a detainee 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."

35) The baseline, that emerges from the above overview of case law on the

subject of preventive detention is that whenever preventive detention is called in question in a court of law, the first and foremost task before the Court is to see whether the procedural safeguards, guaranteed under Article 22(5) Constitution of India and Preventive Detention Law pressed into service to slap the detention, are adhered to.

36) Keeping in view the hallmark of the cherished right to liberty in keeping with the object of Article 21 of the Constitution of India, while exercising power to order preventive detention, various procedural and other safeguards available have to be respected and adhered to. It is the bounden duty of the detaining authority to derive subjective satisfaction before passing the order of detention. If record suggests that there is non-application of mind, that ipso facto means that subjective satisfaction is missing.

37) The cumulative effect of the aforesaid discussion leads to the only conclusion i.e. the order of detention impugned bearing No.131/DMS/ PSA/ 2018 dated 05.09.2018, passed by respondent No.2-District Magistrate, Shopian is not valid, as such, quashed. Further custody of the detainee shall be governed by the orders as shall be passed by the Court of competent jurisdiction relatable to the criminal cases registered against him.

38) The record, as produced, be returned to the learned counsel for the respondents.