

**IN HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT JAMMU**

**HCP No. 40/2024**

**Reserved on : 12.11.2024**  
**Pronounced on: 06.12.2024**

Mohd. Arief @ Kaka

**...Appellant(s)/Petitioner(s)**

S/O Mashoor Ali

R/O Kordi Thyal, Tehsil Ramkot,

District Kathua,

Through: Mr. K.S.Johal, Sr. Advocate with Mr. Karman Singh Johal, Adv.

**Vs.**

01. Union Territory of JK through  
Principal/Secretary to Government,  
Home Department, Government of  
Jammu and Kashmir Civil Secretariat,  
Jammu.

**...Respondent(s)**

02. Divisional Commissioner, Rail Head  
Complex, Jammu.

03. District Magistrate,  
Kathua.

04. Senior Superintendent of Police,  
Anti Narcotic Task Force (ANTF),  
J&K, Jammu.

05. Superintendent,  
District Jail, Kathua.

Through: Mr. Bhanu Jasrotia, Id. GA.

**CORAM: HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE.**

**JUDGMENT**

**01.** Impugned in the instant petition filed under the provisions of Article 226 of the Constitution of India is the order of detention bearing No. PITNDPS 11 of 2024 dated 29<sup>th</sup> January, 2024, passed by the respondent no. 2 i.e., Divisional Commissioner, Rail Head Complex, Jammu, [hereinafter referred to as "the Detaining Authority"] in exercise of its powers vested in it under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs

and Psychotropic Substances Act, 1988 [hereinafter referred to as “the Act”], whereunder, the petitioner/detenué stands detained with the view to prevent him from committing any offence punishable under the NDPS Act and to secure the health and welfare of public at large and lodged in District Jail, Kathua, for a period to be specified by the Government.

**02.** The order impugned has been assailed by the petitioner on the grounds, *inter alia*, that he is a citizen of India and, as such, entitled to seek protection of his legal and fundamental rights guaranteed under the Constitution of India; that same is outcome of non-application of mind on the part of the Detaining Authority and, as such, cannot sustain under law; that same has been based on the registration of three case FIRs’ bearing Nos’ 95/2021 dated 18<sup>th</sup> June, 2021 registered with Police Station, Bilawar, Jammu, 9/2022 dated 8<sup>th</sup> August, 2022 registered with Police Station, Anti Narcotic Task Force (ANTF), Jammu and 9/2023 dated 17<sup>th</sup> January, 2023 registered with Police Station, Vijaypur, Jammu, all under Sections 8/21/22/29 NDPS Act against him; that besides the aforesaid case FIRs’, he has also been allegedly accused of the acts as mentioned under some Daily Diary and Istghasa reports maintained by Police Station, ANTF, Jammu bearing Nos’ GD report No. 5 dated 5<sup>th</sup> August, 2023, GD report No. 6 dated 1<sup>st</sup> September, 2023 and Istghasa No. 1-10A dated 4<sup>th</sup> January, 2024; that the last case FIR bearing No. 9/2023 registered with Police Station Vijaypur, Jammu, Under Sections 8/21/22/29 NDPS Act

allegedly covers an incident dated 17<sup>th</sup> January, 2023 which has no proximity and live link with the impugned detention order dated 29<sup>th</sup> January, 2024, owing to lapse of a period of more than a year; that the Daily Diary Reports, and the Istghasa under Cr.P.C. have been tactfully entered in the relevant Registries maintained by the Police Station, ANTF, Jammu, only to justify the passing of the impugned order; that the impugned order has been passed only to nullify the effect of the bail orders that have already been passed by the competent courts in the case FIRs' against him; that even under the alleged allegations against the petitioner, he was to be dealt with under the normal criminal law and the law of preventive detention was not to be invoked in the given circumstances; that the preventive detention of the petitioner despite his being dealt with under the normal criminal law is unconstitutional as has been laid down by the Hon'ble Apex Court in *V. Shantha vs. The State of Telangana and Ors.* reported in AIR 2017 SC 2625; that the contents of the alleged DDRs' and Istghasa have not been communicated to the petitioner; that the Detaining Authority has not mentioned as to why the normal criminal was inadequate to deal with the petitioner and it has not made mention of pending charge reports and grant of bail in the said case FIRs'; that no material except the grounds of detention have been made available to the petitioner which is in total breach of the mandatory provisions of the Article 22 (5) of the Constitution; that the order impugned has not been

confirmed by the Advisory Board till date; that the petitioner has not been informed regarding his right to make representation to the Government or to the Detaining Authority and the impugned detention order cannot sustain as being in violation of the mandatory provisions of the Article 22 (5) of the Constitution and the provisions of Section 3 of the Act.

**03.** The respondents, through the counter affidavit, have resisted the petition on the grounds that none of the constitutional, legal or statutory rights of the petitioner have been infringed or violated by them which was *sine qua non* for invoking the writ jurisdiction of this Court and, as such, the petition merits dismissal for want of any cause of action. That disputed questions of facts have been raised in the writ petition which cannot be adjudicated while hearing a petition of present nature. That the Detaining Authority after careful perusal of the dossier submitted to it by the respondent no. 4 and upon application of its mind was convinced to order the detention of the petitioner with the view to prevent him from indulging in any manner in the activities punishable under the NDPS Act and prejudicial to the public health and welfare. That the ordinary law had failed to deter the petitioner who was repeatedly engaged in commission of offences punishable under the NDPS Act; that the copies of the detention order including the grounds of detention (total 36 leaves) were furnished to the petitioner and the contents thereof were also explained to him in his own language with further information

that he shall be at liberty to make a representation to the Government or the Detaining Authority. That the repeated and continuous involvement of the petitioner/detenué in the Illicit Traffic in Narcotic Drugs and Psychotropic Substances led to the issuance of the detention order after application of mind by the Detaining Authority. That the detention order passed by the respondent no. 2 was confirmed by the Home Department vide Order No. Home/PB-V/564 of 2024 dated 27<sup>th</sup> March, 2024 after seeking opinion of the Advisory Board dated 18<sup>th</sup> March, 2024. That the detention order under challenge issued by the answering respondent No.2 stands backed by the judgment dated 16.08.2023 passed by this Court in LPA No. 55/2023 titled “*Anil Sharma Vs. UT of J&K and Ors.*” wherein this Court was pleased to uphold the detention order and the relevant portion of the said judgment is reproduced as under :-

*“...In view of the foregoing discussion, it is clearly disclosed that it is not the number of acts that are to be determined for detention of an individual but it is impact of the act which is material and determinative. In the instant case the act of detenué relates to drug trafficking, which has posed serious threat, apart from health and welfare of the people, to youth, most particularly unemployed youth, to indulge in such acts, ramifications thereof would be irreversible and unimaginable. Appellant/writ petitioner has not been able to convincingly point out violation of any statutory or constitutional provisions...”*

**04.** That the Hon’ble Apex Court has also issued guidelines for preventive detention in case titled “*Naresh Kumar Goyal Vs.*

*Union of India* (2005) 8 SCC 276” and “*Haradhan Saha Vs. State of W.B* (1975) 3 SCC”. The relevant portions of the authoritative judgments are reproduced hereunder respectively:-

*“It is trite law that an order of detention is not a curative or reformatory or punitive action, but a preventive action, avowed object of which being to prevent the anti-social and subversive elements from imperilling the welfare of the country or the security of the nation or from disturbing the public tranquillity or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc. Preventive Detention is devised to afford protection to society. The authorities on the subject have consistently taken the view that preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it, and to prevent him from doing so.”*

*“32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.*

*33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.”*

- 05.** Heard the learned counsel for the parties, who reiterated their stands respectively taken by them in their pleadings.
- 06.** Learned counsel for the petitioner, in support of his contentions that there appears to be no proximity or live link between the last alleged incident and the object of the detention order leading to the inference of non-application of mind on the part of the Detaining Authority, placed reliance on the Authoritative Judgments cited as , *Sushanta Kumar Banik Vs. The State of Tripura and Ors*, reported in AIR 2022 SC 4715 and *Kewal Krishan vs. Financial Commissioner ACS Home Department and Ors*, Writ Petition (Criminal) No. 20/2022 decided by this Court on 10<sup>th</sup> November, 2023.
- 07.** The learned State counsel Mr Bano Jasrotia, learned Government Advocate, in support of his contentions to the effect that the Detaining Authority, having regard to the conduct of the petitioner, who used to indulge repeatedly in the activities of illicit trafficking in Narcotic Drugs and Psychotropic Substances, thereby posing a great threat to the health and welfare of the public in general and youth in particular, was justified in passing

the impugned order and that with such bonafide intention the Detaining Authority was not required to consider a series of acts but had to apply its mind as regards the impact of his activities, placed reliance on the authoritative Judgments already referred to in the counter affidavit and cited as “*Naresh Kumar Goyal Vs. Union of India* (2005) 8 SCC 276” , “*Haradhan Saha Vs. State of W.B* (1975) 3 SCC” and “*Anil Sharma Vs. UT of J&K and Ors* passed by this Court in LPA No. 55/2023 on 16.08.2023.

- 08.** I have perused the record of the instant petition as well as the detention record produced by learned counsel State counsel.
- 09.** Keeping in view the aforementioned perusal and the consideration of the rival arguments advanced on both the sides in the light of law on the subject, this Court is of the opinion that the impugned detention order suffers from illegality and perversity. As rightly contended by learned counsel for the petitioner, the impugned detention order suffers from non-application of mind on the part of the Detaining Authority. It appears to have merely acted as a post office by carrying into effect the dossier submitted to it by the Sponsoring Agency i.e., respondent no. 4. The Detaining Authority, in the grounds of detention basing the impugned order, has referred to three case FIRs’ as hereinbefore mentioned, having been already registered against the petitioner with concerned Police Stations. In addition, some Daily Diary Reports and an Istghasa under Code of Criminal Procedure have also been referred to in the grounds of

detention as the incriminating material warranting the preventive detention of the petitioner. The last case FIR bearing No. 9/2023 registered with P/S Vijaypur under Sections 8/21/22/29 NDPS Act against the petitioner refers to an alleged incident of 17<sup>th</sup> January, 2023. It has been admitted by the Detaining Authority in the grounds of detention basing the impugned order that the final police report/challan in respect of the said case FIR stands already produced before the competent court and is pending trial, in which, the petitioner has also been admitted to bail. It has also been admitted by the Detaining Authority that the petitioner has also been admitted to bail in other two case FIRs', in which, one is pending trial and the other is pending investigation. The extracts from Daily Diary Reports dated 5<sup>th</sup> August, 2023, 1<sup>st</sup> September, 2023 and Istghasa No. 1-10A dated 4<sup>th</sup> January, 2024 of the same Police Station referred to some accusation allegedly made by the locals against the petitioner. Reference in the DDR dated 5<sup>th</sup> August, 2023 of Police Station ANTF, Jammu, has been made to the case FIRs' hereinbefore mentioned. The DDRs' which do not lead to any penal action including the registration of FIR, cannot be made basis for infringing a valuable fundamental right of a person. It appears that the aforementioned DDRs' have been recorded in the concerned Registry by the Police Station only to justify the passing of the impugned detention order and to fill the gap of the distance between the last alleged incident of 17<sup>th</sup> January, 2023 giving rise to the registration of case FIR No.

9/2023 of Police Station, Vijaypur, and the object of the passing of impugned detention order on 29<sup>th</sup> January 2024.

**10.** There appears to be no proximity or a live link between the alleged incident of 17<sup>th</sup> January, 2023 and the passing of the impugned detention order dated 29<sup>th</sup> January, 2024. A period of twelve months appears to have elapsed since the last alleged incident of 17<sup>th</sup> January, 2023. It is a settled legal position that inordinate delay in passing the detention order from the date of the alleged criminal act of the detenu snaps live link between the two and renders the detention order bad under law.

This Court in its opinion feels supplemented with the authoritative Judgment of the Hon'ble Supreme Court of India titled "*Rajinder Arora vs. Union of India and Ors*" AIR 2006(4) SCC 796, decided on 10<sup>th</sup> March, 2006. The relevant paras of the Judgment are reproduced as under:-

*"The conspectus of the above decisions can be summarized thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to*

*scrutinize whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.*

*Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner. “*

11. This Court in its opinion is also fortified with the authoritative judgment of the Hon<sup>ble</sup> Apex Court passed in case titled “*Rameshwar Shaw Vs. District Magistrate, Burdwan and another*”, AIR 1964 SC, 334, the relevant portion whereof is reproduced as hereunder:

*“In deciding the question as to whether it is necessary to detain a person, the authority has to be satisfied that the said person if not detained may act in a prejudicial manner and this conclusion can be reasonably reached by the authority generally in light of evidence about past prejudicial activities of the said person. When evidence is placed, the Detaining Authority has to examine the said evidence and decide whether it is necessary to detain the said person in order to prevent him from acting in a prejudicial manner. Thus, it was held that the past conduct or antecedent history of a person can be taken into account*

*in making the detention order and it is largely from prior events showing tendencies or inclinations of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order. Further the past conduct or history of the person on which the authority purports to act should ordinarily be proximate in point of time and should have the rational connection with the conclusion that the detention of the person is necessary, that it would be irrational to take into account the conduct of a person which took the place years before the date of detention”.*

**12.** The opinion of this Court is also supplemented by another authoritative Judgment of the Hon’ble Apex Court cited as “*Sushanta Kumar Banile Vs. State of Tripura & Ors*”. AIR, 2022 SC 4175 also relied upon by the learned counsel for the petitioner, in which, it has been held that undue and unreasonable gap between the alleged accusation and the passing of the detention order snaps the live link between the two.

On the basis of the afore referred authoritative Judgments, this Court is of the opinion that the Detaining Authority has not applied its mind before passing the impugned detention order.

**13.** It was incumbent upon the Detaining Authority to address to itself as to how the normal criminal law was inadequate to tackle the petitioner who had been granted bail in the criminal cases registered against him. It is not the case of the respondents that the petitioner/detenué had violated the bail conditions nor is it their stand that they assailed the bail orders but did not succeed

and, therefore, they bonafidely invoked the provisions of the Act to detain the petitioner with the view to prevent him from repeating his alleged illegal activities of illicit trafficking in drugs.

**14.** The impugned detention order dated 29<sup>th</sup> January, 2024, has come to be executed by the respondents on 2<sup>nd</sup> March, 2024 i.e., after a delay of 33 days. I have gone through the execution report in respect of the impugned detention order dated 2<sup>nd</sup> March, 2024, of Inspector Sanjeet Sharma of Police Station ANTF, Jammu and there is no mention in the said execution report regarding the reasons of delay in execution. It is also a settled legal position that inordinate and unexplained delay in execution of the detention order snaps the object of the same and doubts the bonafides of the Detaining Authority.

This Court in its opinion feels fortified with authoritative Judgment of the Hon'ble Apex Court cited as "*P.U.Iqbal vs. Union of India and Ors*" reported in (1992) 1 SCC 434, the operative paras of which decision are reproduced hereunder for ready reference:-

***"14. Now, there can be no doubt-and the law on this point must be regarded as well settled by these two decisions-that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenu, such delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate and it would be a legitimate inference to draw that the District Magistrate was not really and***

*genuinely satisfied as regards the necessity for detaining the petitioner.*

*15. Chinnappa Reddy, J. speaking for the Bench in Bhawarlal Ganeshmalji v. State of Tamil Nadu has explained as follow:*

*It is further true that there must be a 'live and proximate link' between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the prevention of smuggling activities. We may in appropriate cases assume that the link is 'snapped' if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case, we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the 'link' not snapped but strengthened.*

*It is manifestly clear from a conspectus of the above decisions of this Court, that the law promulgated on this aspect is that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenu, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the 'live and proximate link' between the grounds of the detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.”*

It is profitable to reproduce the paras 18,19 and 20 of the Judgment passed by the Hon'ble Supreme Court in Sushanta

Kumar Banik Vs. State of Tripura AIR Online 2022 SC 349 as  
the law laid down therein has a bearing on the subject:-

*“18. Chinnappa Reddy, J. speaking for the Bench in Bhawarlal Ganeshmalji v. State of Tamil Nadu, (1979) 1 SCC 465 (AIR 1979SC 541), has explained as follow:*

*“It is further true that there must be a “live and proximate link” between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the prevention of smuggling activities. We may in appropriate cases assume that the link is “snapped” if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case, we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the “link” not snapped but strengthened.”*  
*(Emphasis supplied)*

*19. Sabyasachi Mukharji, J. (as the learned Chief Justice then was) in Shafiq Ahmed v. District Magistrate, Meerut and Ors., (1989) 4 SCC 556 (AIR 1990SC 220), having regard to the fact that there was a delay of two and a half months in detaining the petitioner (detenu) therein, pursuant to the order of detention has*

*concluded that "there was undue delay, delay not commensurate with the facts situation in that case and the conduct of the respondent authorities betrayed that there was no real and genuine apprehension that the detenu was likely to act in any manner prejudicial to public order. The order, therefore is bad and must go". However, the learned Judge observed that "whether the delay was unreasonable depends on the facts and circumstances of each case."*

*20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the "live and proximate link" between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.*

15. This Court in the facts and circumstances of the case has no reason to disbelieve that the copies of the detention record have not been furnished in entirety to the petitioner/detentue with

verbal translation of the contents of the same in his local language to him. The petitioner/detenué has been made to sign on a printed/cyclostyled report regarding furnishing of documents to him.

16. The procedural safeguards as mandated under Article 22 (5) of the Constitution as well as under Section 3 of the Act appear to have been observed in breach, and as such the impugned order cannot sustain.

17. This Court in its opinion is fortified with the authoritative Judgment of the Hon'ble Apex Court cited as *Shalini Soni Vs. Union of India* (1980) 4 SCC 544: 1981 SCC (Ori) 38, the relevant portion of which is reproduced as under:-

*The Article 22 (5) has two facets : (1) communication of the grounds on which the order of detention has been made; (2) opportunity of making a representation against the order of detention. Communication of the grounds pre-supposes the formulation of the grounds and formulation of the grounds requires and ensures the application of the mind of the detaining authority to the facts and materials before it, that is to say to pertinent and proximate matters in regard to each individual case and excludes the elements of arbitrariness and automatism (if one may be permitted to use the word to describe a mechanical reaction without a conscious application of the mind). It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only eschewing the irrelevant and the remote. Where there is further an express statutory obligation to*

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

18. The Hon'ble Supreme Court in case of "Rekha Vs. State of Tamil Nadu through Secretary to Government and Anr" reported in

(2011) 5 SCC 244 has laid emphasis on the fundamental right to life and personal liberty of a citizen of India guaranteed under Article 21 of our Constitution and has, accordingly, stressed for taking great care and caution while passing any preventive detention orders so that same are passed in case of genuine and inevitable need only without any misuse or abuse of the powers.

**19.** The preventive detentions need to be passed with great care and caution keeping in mind that a citizen's most valuable and inherent human right is being curtailed. The arrests in general and the preventive detentions in particular are an exception to the most cherished fundamental right guaranteed under Article 21 of the Constitution of India. The preventive detentions are made on the basis of subjective satisfaction of the detaining authority in relation to an apprehended conduct of the detenu by considering his past activities without being backed by an immediate complaint as in the case of the registration of the FIR and, as such, is a valuable trust in the hands of the trustees. The provisions of Clauses (1) and (2) of Article 22 of our Constitution are not applicable in the case of preventive detentions. So, the provisions of Clause (5) of the Article 22 of our Constitution, with just exception as mentioned in Clause (6), requiring for application of mind, subjective satisfaction, inevitability of the detention order, proper and prompt communication of the grounds of detention and the information of liberty to make a

representation against the detention order, are the imperative and detention order.

**20.** For the foregoing discussion, the impugned order appears to be outcome of the non-application of mind. Besides on account of delay in passing the same followed by the delay in execution of the same, the necessary proximity and the live link appears to be missing. The procedural safeguards mandated under Article 22 (5) of the Constitution and Section 3 (3) of the Act appear to have been compromised, therefore, the impugned detention order cannot sustain under law.

**21.** The petitioner/detenué has already suffered a detention of more than nine months, pursuant to the impugned order.

**22.** Accordingly, the petition is allowed and the impugned detention order bearing No. PITNDPS 11 of 2024 dated 29<sup>th</sup> January, 2024, passed by the respondent no. 2 i.e., Divisional Commissioner, Rail Head Complex, Jammu, is quashed with the direction to the respondents to release the petitioner/detenué forthwith from his preventive custody in the instant case. The detention record is ordered to be returned back to the office of learned Government Advocate against proper acknowledgment.

**23. Disposed of.**

**(Mohd. Yousuf Wani)**  
**Judge**

**SRINAGAR:**  
**06.12.2024**  
*"Shamim Dar"*

*Whether the Judgment is reportable? yes*

*Whether the Judgment is Speaking? Yes*