Kawaljeet Singh Alias Kabbu vs Union Territoryof J&K on 17 March, 2022

Author: Mohan Lal

Bench: Mohan Lal

S. No. 01

HIGH COURT OF JAMMU &KASHMIR AND LADAKH
AT JAMMU

WP (Crl) No. 48/2021

Reserved on: 04.02.2022
Pronounced on: 17.03.2022

Kawaljeet Singh Alias Kabbu .....Petitioner(s)/Appellant(s)

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

V/s

Union Territoryof J&K .....Respondent(s)

Through: Mr. Dewakar Sharma, Dy. AG

CORAM:

HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

JUDGMENT

17.03.2022

1. Petitioner by invoking the jurisdiction of this Court in terms of Article 226 of the Constitution of India has sought the indulgence of this Court for issuance of writ of habeas corpus commanding the respondents to release petitioner from illegal detention by quashing the detention order No. PSA/105 dated 03.05.2021 on the following grounds:

> (i) that the impugned detention order is bad and needs its quashment on the ground that the power for fixing the period of detention is not within the domain of respondent No. 02 who has reflected in his detention order that the detenue is detained for a maximum period;
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> (ii) that the impugned detention order is verbatim copy of the dossier which is totally non-application of the mind of the respondent No. 02 who has acted in a mechanical manner and has not applied his mind while passing of the detention order, as respondent No. 02 has neither reflectedits own satisfaction nor has drawn its own grounds indicating that he was satisfied that the detenue was acting in any manner

prejudicial and detrimental to the maintenance of public order;

(iii) that the essential material i.e., the copies of the FIRs alleged in the dossier of Senior Superintendent of PoliceKathua, recovery memos, statement of witnesses recorded u/s 161 Cr.P.C have not been supplied to the petitioner who has been prevented from making effective representation against the impugned detention order, as well as, the grounds of detention have not been communicated to the petitioner which is clear violation of mandate of Article 22(5) of Constitution of Indiar/wSection 13 of Public Safety Act 1978;

(iv) that the petitioner is not conversant with English language and can only understand Hindi/Punjabi, while the detention order and the accompanying grounds of detention were supplied to father of the petitioner in English language which were never explained or translated to the petitioner in Hindi or Punjabi nor any translated script of material was supplied to the petitionerin Hindi/Punjabi, which is denial of right ofthe petitioner of being communicated the grounds, whereby petitioner has failed to make an effective representation against his detention, which is again a violation of Article 22(5) of Constitution of India.

2. Respondent No. 02 (District Magistrate, Kathua)has filed counter affidavit wherein it has been specifically contended, that the preventive detention is aimed at stopping the illegal activities of the individual which otherwise under common law both criminal/civil cannot be stopped;that the individual has created havoc in the society which leads to public disorder, threat to peace and stability and in certain cases also raises alarm bells regarding nation's unity and integrity;that the petitioner falls under the category of being a threat to the public order, peace and stability in the society, thus, falling under the category of Section 8 of Public Safety Act, 1978; petitioner is a hardcore criminal, has been booked in so many criminal cases, has no respect for law of the land and always believes in breaking the law repeatedly,and, thus, scaring and terrorizing the people of the area;that the action against petitioner under substantive laws from time to time has not proved deterrent and the petitioner has not even mended his criminal mind., hence the order under preventive detention has been filed. It is contended, that the dossier was submitted to him for recommending the detention of the petitioner under the provisions of Public Safety Act 1978, as the petitioner is a desperate character and habitual of indulging in acts of crime and has no respect for law of the land;that as per the said dossier, it was recommended that the petitioner has an incorrigible nature and action against him under substantive laws from time to time has not proved deterrent and instead of reforming himself, petitioner has been continuously indulging in criminal activities and has scant respect for law of the land; that the detention order, notice and grounds of detentionwere read over to the petitioner/detenuein English language and explained in Dogri/local language of the petitioner, and his right to make representation was explained;that the grounds alleged by the petitioner are false, incorrect as the detenue was provided with the material, order of detention as well as the copies of dossier, contents of dossier, grounds of detention, as well as, other documents were fully explained to the petitioner in local language to enable him to make effective representation to the Government.It is lastly contended, that the executing police officer Anil Kumar, Inspector No. 046175/EXI, SHO Police Station Hira Nagar in his report has submitted that

the grounds of detention were read over to the petitioner in English language and explained to him in Dogri language who gave proper receipt.

3. Respondent No. 03 (SSP Kathua)in his counter affidavit, has specifically stated, that the petitioner is a hardcore criminal and has been booked under many criminal cases; he has no respect for law and always believes in breaking the law repeatedly, thus, scaring and terrorizing the people of the area; detention of petitioner under preventive law is only to keep him at bay as a precautionary measure and not as punishment;that the dossier was submitted by him wherein he recommended to District Magistrate Kathua to detain the petitioner under the provisions of Public Safety Act 1978, as in his recommendation dossierhe had recommended that petitioner has an incorrigible nature and instead of reforming himself he has continuously indulged in criminal activities and has scant respect for law of the land; he has become a threat to the public order, people were scaredof him,that is the reason that the petitioner was booked under Public Safety Act 1978 because of his increased criminal activities;that the petitioner has been detained under Public Safety Act 1978 vide District Magistrate, Kathua's order No. PSA/105 dated 03.05.2021 issued under endorsement No. DMK/JC/2021-22/289-96 dated 03.05.2021 on the ground that detenue/petitioner was first arrested in the year 2009 for his involvement in the case of theft for breaking open the locks of school in FIR No. 123/2009 U/S 457/380 RPC at P/S Rajbagh and after the investigation of the case challan was produced in the court of law and apart from this, petitioner is involved in thirteen (13) number of other criminal cases registered in different Police Stations in District Kathua, [08 in P/S Rajbagh, 04 in P/S Kathua and 01 case in P/S Hiranagar].It is contended, that the detenue is a habitual criminal, and is prejudicial to the maintenance of peace, public order and the safety of common citizens,the detention order has been issued by District MagistrateKathua and was executed by Senior Superintendent of PoliceKathua whereby the detenueis presently lodged in Central Jail KotBhalwal, Jammu;that the detention order alongwith grounds of detention order and other material have been read over and explained to the detenue in the language he understands; that the detenue was informed that he can make a representation against the detention order if he would desire so to do; the grounds of detention and other relevant material thereof were examined and considered by the Government and the detention order was further extended for a period of three (03) months vide Union Territory of J&K Govt. Order No. Home/PB-V/579 dated 28.07.2021;that the detenue was detrimental to the maintenance of peace and public order, detenue being notorious and habitual criminal was not likely to desist from his criminal activities which were prejudicial to the maintenance of peace and public order in District Kathua, as the application of normal law was ineffective to deter the detenue from carrying out his inimical designs, his detention under preventive Section of law had become necessary.

4. Mr. K. S. Johal, Senior Advocate appearing on behalf of the petitioner, has vehemently argued, and has sought the setting aside/quashment of detention order No. PSA/105 dated 03.05.2021on the following counts;

(i) It is argued, that the detenue/petitioner has not been supplied with the copies of dossier, copies of FIRs registered against the petitioner, recovery memos, statement of witnesses recorded U/S 161 Cr.P.C to enable the petitioner to make effective representation against the impugned detention order,detenue has a right to make representation to the detaining authority so long as order of

detention has not been approved by the State Government and consequently non-supplying of such material/non-communication of the fact to the detenue that he has a right to make representation to the detaining authority would constitute infraction of the valuable constitutional right guaranteed to the detenue under Article 22(5) of Constitution of Indiar/w Section 13 of Public Safety Act 1978and such failure would make order of detention invalid.To buttress his arguments, learned counsel has relied upon the decisions reported in, (i)AIR 2000 SC 2504 (State of Maharashtra & Ors. v. Santosh Shankar Acharya),and (ii) LPA No. 137/2020 (Saboor-ul-HaqMalla v. Union Territory of JK & Anr.) decided by the Division Bench of Hon'ble High Court of J&K on 18.12.2020;

(ii) It is argued, that the grounds of impugned detention order is verbatim copy of the dossier and no other material has been considered by the detaining authority which speaks volumes about the non-application of mind on the part of the detaining authority which does not justify the preventive detention and the detention order requires quashment. To support his arguments, learned counsel has relied upon the rulings reported in, (i) WP (Crl) No. 54/2020 (Balbir Chand - Petitioner vs. UT of J&K and others - Respondents), (ii) Naba Lone vs. District Magistrate(1988 SLJ

300), (iii) Noor-ud-Din Shah vs. State of J&k and Ors (1989 SLJ, 1), and (iv) Jai Singh and Ors. vs. State of Jammu and Kashmir (AIR 1985 SC 764);

(iii) It is argued, that the impugned detention order and the list of cases attached with it are in the English language whereas the petitioner/detenue only understands Hindi/Punjabi, neither the detention order was read over and explained to the petitioner in Hindi or Dogri language which is a pre-requisite for maintainability of the detention order, the non-supply of detention order and all other documents in Hindi or Punjabi language violates the provisions of law as such the detention order deserves its quashment. To support his arguments, learned counsel has relied upon a decision reported in 1992 Legal Eagle (J&K) 28 (Manzoor Ahmad Malik v. State & Ors.);

(iv) It is argued, that petitioner/detenue has been booked in as many as 13 FIRs as is depicted from the detention order/dossier,it is settled position of law, that if the remedies to deal with the criminal activities of the detenue/petitioner are sufficient under ordinary law of the land, the detention order is unsustainable and liable to be set aside.To support his arguments, learned counsel has relied upon the decisions reported in (i) AIR 2017 SC 2625 (V. Shantha vs. State of Telangana & Ors.) and,(ii) Criminal Appeal No. 733 of 2021 (Arising out of SLP (Criminal) No. 4729 of 2021) (Banka Sneha Sheela v. The State of Telangana & Ors.).

5. Mr. Dewakar Sharma, Dy. AG,Learned counsel appearing on behalf of respondents, has reiterated the grounds contained in the detention order, and has vehemently argued, that the detenue/petitioner is a habitual criminal who has created fear amongst the general public, and since he was likely to commit similar offences in future, it was important to prevently detain him, as the ordinary law had no deterrent effect on him. It is argued, that the petitioner has no respect for law and has indulged in so many cases viz; attempt to murder, burglary, wrongful restraint and assault, abduction cases, use of sharp edged weapons, extortion, assault on public servants, theft cases, illegal possession of fire arms, rioting, arson, and all the offences against the petitioner are heinous in nature as he has indulged in organized crime and has disrupted the peace of the area, therefore,

the detention order against the petitioner needs its confirmation and dismissal of the petition.

6. I have heard learned counsel for the petitioner and learned AAG for respondents. I have also perused the contents of the petition, counter affidavits filed by the respondents and the record made available by the respondents.

7. The first argument urged by learned counsel for the petitioner is, that the detenue/petitioner has not been supplied the copies of dossier, copies of FIRs registered against the petitioner, recovery memos, statements of witnesses recorded under Section 161 Cr.P.C to enable the petitioner to make effective representation against the impugned detention order, thereby,for non-supplying of such material, petitioner's right to representation against his detention has been violated in terms of Article 22 (5) of Constitution of India r/w Section 13 of Jammu and Kashmir Public Safety Act 1978.

In AIR 2000 SC 2504, (State of Maharashtra and Ors. - Appellants v. Santosh Shankar Acharya - Respondent) relied upon by learned counsel for the petitioner, Hon'ble Supreme Court while quashing the detention order on the ground that the detenue was not supplied the copies of the material from which the detention order was made, there was non-communication of the fact to the detenue that he could make representation to the detaining authority so long as the order of detention has not been approved by the state government amounted to denial of representation to the detenue and infraction of a valuable constitutional right guaranteed to the detenue under Article 22 (5) of Constitution of India, in Para (8) of the judgment held as under:

> 8. If the contention of Mr. Deshpande to the effect that the moment an order of detention issued by an order under sub-

section (2) of Section 3 of the Act is communicated to the State Government under sub-section (3) of the said Section thereof the State Government becomes the detaining authority, and therefore, the power under Section 21 of the Bombay General Clauses Act cannot be exercised by the said detaining authority is correct, then it has to be found out as to under which contingency Section 14 of the Maharashtra Act would apply. To our query neither Mr. Deshpande nor Mrs. Ramani, learned counsel appearing for the State Government could indicate any situation when such power could be exercised. It is too well known a principle of construction of statutes that the legislature engrafted every part of a statute for a purpose and the legislative intention is that every part of the statute should be given effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. We are cognizant of the principle ex majori cautela but it is difficult for us to apply the said principle to Section 14 of the Maharashtra Act and even hold the same to be tautologous in as much as it has never been shown as to what was the necessity for the legislature to protect the power under Section 21 of the Bombay General Clauses Act, to an order of detention made under the Maharashtra Act. The only logical and harmonious construction of the provisions would be that in a case where an order of detention is issued by an officer under sub- section (2) of Section 3 of the Act, notwithstanding the fact that he is required to forthwith report the factum of detention together with the grounds and materials to the State Government and notwithstanding the fact that the Act itself specifically provides for making a representation to the State Government

under Section 8(1), the said detaining authority continues to be the detaining authority until the order of detention issued by him is approved by the State Government within a period of 12 days from the date of issuance of detention order. Consequently, until the said detention order is approved by the State Government the detaining authority can entertain a representation from a detenu and in exercise of his power under the provisions of Section 21 of Bombay General Clauses Act could amend, vary or rescind the order, as is provided under Section 14 of the Maharashtra Act. Such a construction of powers would give a full play to the provisions of Section 8 (1) as well as Section 14 and also Section 3 of the Maharashtra Act. This being the position, non-communication of the fact to the detenu that he could make a representation to the detaining authority so long as the order of detention has not been approved by the State Government in a case where an order of detention is issued by an officer other than the State Government under sub- section (2) of Section 3 of the Maharashtra Act would constitute an infraction of a valuable right of the detenu under Article 22(5) of the Constitution and the ratio of the Constitution Bench decision of this Court in Kamlesh Kumars case (supra) would apply notwithstanding the fact that in Kamlesh Kumars case (supra) the Court was dealing with an order of detention issued under the provisions of COFEPOSA.

In LPA No 137/2020 (Saboor-ul-HaqMalla v. Union Territory of JK & Anr.) relied upon by learned counsel for the petitioner decided by Division Bench of High Court of J&K on 18.12.2020, Hon'ble High Court of J&K while quashing the detention order on the ground that the detenue was not communicated the grounds of detention, in paras 15, 16, 17 & 18 held as under:

> 15. From a reading of the said decision, it is abundantly clear that non-communication of the fact that the detenu can make a representation to the Detaining Authority, till the detention order is not approved by the Government, would constitute an infraction of a valuable Constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right under Section 13 of the Jammu and Kashmir Public Safety Act, 1978. Failure of such noncommunication would invalidate the order of detention.
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> 16. The plea of the learned counsel for the respondents, that the detenu could make a representation to the State Government and that such an opportunity had been provided, would be of no consequence for the simple reason that the Government s approval of the detention order came later i.e., on 28.12.2016 whereas, the detention order was executed upon the detenu on 24.12.2016 and between that date and 28.12.2016 he had a right to make a representation to the Detaining Authority i.e., the District Magistrate, Baramulla, to revoke the detention order.

That opportunity not having been given, vitiated the detention order. In other words, the detention order stood vitiated and invalidated on 22.12.2016 itself.

17. In view of the foregoing, we need not to consider any of the other pleas sought to be raised by the learned counsel for the appellant, inasmuch as the detention order has been invalidated because of non-

communication of the fact that the detenu could make a representation to the Detaining Authority. The detention order having become invalid, the detenu is liable to be released forthwith insofar as this detention order is concerned.

18. The appeal is allowed. The impugned order is set aside."

Ratios of the judgments (supra) make the legal proposition abundantly clear, that non-supply of the essential documents/copies of the material on which detention order is passed against the detenueand failure of non- communication to the detenue that he has right to make representation before the detaining authority so long as the order of detention has not been approved by the State Government amounts to infraction of constitutional right of the detenue guaranteed under Article 22 (5) of Constitution of India r/w Section 13 of J&K Public Safety Act 1978 which invalidates the order of detention.

8. The 2ndargumentcanvassed by learned counsel for the petitioner is, that the detention order is a verbatim copy of the dossier and no other material has been considered by the detaining authority which speaks volumes about the non-application of mind by the detaining authoritywhereby the detention order is liable to be quashed.

In WP (Crl) No. 54/2020 decided by Hon'ble J&K High Court, His Lordships Hon'ble Mr. Justice Tashi Rabstan while relying upon the judgments of (i) Naba Lone v. District Magistrate 1988 SLJ 300, (ii) Noor-ud-Din Shah v. State of J&K & Ors. 1989 SLJ, 1 and (iii) Jai Singh & Ors. v. State of Jammu & Kashmir AIR 1985 SC 764, in para 13 of the judgment held as under:

> 13. Applying the settled legal position to the facts of the present case, I find that the order impugned cannot stand as it is based on grounds of detention, which is only verbatim copy of police dossier. The order of detention, for the reasons, exhibit total non-application of mind on the part of detaining authority and therefore, the petition is allowed and the detention order No. PSA/104 dated 16.10.2020 passed by the District Magistrate, Kathua-respondent No. 2 directing the detention of Balbir Chand S/o Rana R/o Chack Drab Khan, Tehsil and District Kathua is quashed. Respondents are directed to release the detenue forthwith, provided he is not required in connection with any other case.

Ratio of the judgment (supra) makes it manifestly clear, that when the grounds of detention supplied to the detenue is a verbatim copy of the police dossier, it shows total non-application of mind on the part of the detaining authority, the liberty of a subject is a serious matter and it is not to be trifled with in this casual, indifferent and routine manner, whichvitiates the detention order.

9. The 3rd argument urged by learned counsel for the petitioner is, that the detenue only understands Hindi/Punjabi language, the detention order was not read over to him in Hindi or Punjabi or Dogri language which is a pre-requisite for maintainability of detention order and non-supply of the detention order in the language which the detenue understands makes the detention order liable to be quashed.

In 1992 Legal Eagle (J&K) 28 (Manzoor Ahmad Malik v. State and Others) relied upon by learned counsel for the petitioner, detention order was quashed by Hon'ble High Court of J&K on the ground that it was mandatory on part of the detaining authority to supply the grounds of detention to the detenue in the language which the detenue knows and infraction thereof is infringement of his legal and constitutional right to make effective representation, in paras 12, 13, 14 and 15 held as under:

> 12. Secondly, it has been emphatically averred in the petition on an affidavit that the detenue is an illiterate person and the grounds of detention were supplied to him in „English Language and therefore he could not make a representation against his detention.
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> 13. There is no counter to this allegation and therefore the court has to presume that the detenue is illiterate. In that case the detenue was to be supplied with a copy of the grounds of detention in a language, which he knew and understood, so as to enable him to make a representation against his detention. It is an established law that the grounds of detention are to be supplied to the detenue in the language, which he knows. If it is not done, it will deprive him of his legal and constitutional right to make an effective representation against his detention.
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> 14. From the perusal of record, the contention of the petitioner is confirmed that he is illiterate. He has put his thumb impression on the receipt obtained from him; Merely saying that the grounds of detention were explained to the detenue in English and Urdu is not sufficient to observe the mandate of law.
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> 15. On this ground also the detention order is liable to be quashed. Non-supply of grounds of detention to the detenue in the language he understands is flagrant violation of the mandate of law which bad deprived him of his constitutional right to make a representation against his detention as provided under Art. (5) of the Constitution of India.

Ratio of the judgment (supra) makes the legal position abundantly clear that non-supply of grounds of detention to the detenue in the language he understands is flagrant violation of the mandate of law which vitiates the detention order.

10. The 4thargumentcanvassed by learned counsel for the petitioner is, that the detenue/petitioner has been booked in as many as thirteen (13) FIRs, it is settled law that if the remedies to deal with the criminal activities of detenue/petitioner are sufficient under ordinary law of the land, the detention order becomes unsustainable and liable to be set aside/quashed.

In AIR 2017 SC 2625 (V. Shantha - Appellants vs. State of Telangana and Ors. - Respondent) relied upon by learned counsel for the petitioner, Hon'ble Supreme Court while observing that if the remedies against the detenue are sufficient under ordinary laws of the land, the detention order becomes unsustainable and liable to be set aside, in paras 12, 15, 17 held as under:

> 12. The detenu was the owner of Laxmi Bhargavi Seeds, District distributor of Jeeva Aggri Genetic Seeds. Three FIRs were lodged against the detenu and others under Sections 420, 120-

B, 34, IPC and Sections 19, 21 of the Seeds Act, 1966. It was alleged that the chilli seeds sold were spurious, as they did not yield sufficient crops, thus causing wrongful loss to the farmers, and illegal gains to the accused. Whether the seeds were genuine or not, the extent of the yield, are matters to be investigated in the FIRs. Section 19 of the Seeds Act provides for penalty by conviction and sentence also. Likewise, Section 20 provides for forfeiture. Sufficient remedies for the offence alleged were, therefore, available and had been invoked also under the ordinary laws of the land for the offence alleged.

15. After noticing Rekha case (supra) also, it was observed and concluded as follows:

> "7. Having considered the submissions made on behalf of the respective parties, we are unable to accept the submissions made on behalf of the State in view of the fact that the decision in Rekha case, in our view, clearly covers the facts of this case as well. The offences complained of against the appellant are of a nature which can be dealt with under the ordinary law of the land..."

9. No doubt, the offences alleged to have been committed by the appellant are such as to attract punishment under the Andhra Pradesh Prohibition Act, but that in our view has to be done under the said laws and taking recourse to preventive detention laws would not be warranted. Preventive detention involves detaining of a person without trial in order to prevent him/her from committing certain types of offences.

But such detention cannot be made substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes which the detenue may have committeed. After all, preventive detention in most cases is for a year only and cannot be used as an instrument to keep a person in perpetual custody without trial.

17. The appeal is allowed, and the order of preventive detention dated 17.10.2016 is held to be unsustainable and is set aside. The detenu is ordered to be set at liberty forthwith unless wanted in any other case. This order shall be without prejudice to the prosecution of the detenu under the ordinary laws of the land.

In Criminal Appeal No. 733 of 2021 (Arising out of SLP (Criminal) No. 4729 of 2021titled Banka Sneha Sheela - Appellant versus The State of Telangana & Ors - Respondents)relied upon by learned counsel for the petitioner, Hon'ble Supreme Court while holding that when the offences complained against detenue are of a nature which can be dealt under the ordinary law of land, taking recourse to the provisionsof preventive detention is contrary to the constitutional guarantees enshrined under Article 19 and 21 of Constitution, in para 20, 22 held as under:

20. In Rekha v. State of Tamil Nadu, (2011) 5 SCC 244, a 3-Judge Bench of this Court spoke of the interplay between Articles 21 and 22 as follows:

"13. In our opinion, Article 22(3)(b) of the Constitution of India which permits preventive detention is only an exception to Article 21 of the Constitution. An exception is an exception, and cannot ordinarily nullify the full force of the main rule, which is the right to liberty in Article 21 of the Constitution. Fundamental rights are meant for protecting the civil liberties of the people, and not to put them in jail for a long period without recourse to a lawyer and without a trial. As observed in R. v. Secy. of State for the Home Deptt., ex p Stafford [(1998) 1 WLR 503 (CA)] : (WLR p. 518 F-G) " ... The imposition of what is in effect a substantial term of imprisonment by the exercise of executive discretion, without trial, lies uneasily with ordinary concepts of the rule of law." Article 22, hence, cannot be read in isolation but must be read as an exception to Article 21. An exception can apply only in rare and exceptional cases, and it cannot override the main rule.

14. Article 21 is the most important of the fundamental rights guaranteed by the Constitution of India. Liberty of a citizen is a most important right won by our forefathers after long, historical and arduous struggles. Our Founding Fathers realised its value because they had seen during the freedom struggle civil liberties of our countrymen being trampled upon by foreigners, and that is why they were determined that the right to individual liberty would be placed on the highest pedestal along with the right to life as the basic right of the people of India.xxx xxx xxx

17. Article 22(1) of the Constitution makes it a fundamental right of a person detained to consult and be defended by a lawyer of his choice. But Article 22(3) specifically excludes the applicability of clause (1) of Article 22 to cases of preventive detention. Therefore, we must confine the power of preventive detention to very narrow limits, otherwise the great right to liberty won by our Founding Fathers, who were also freedom fighters, after long, arduous and historical struggles, will become nugatory." This Court went on to discuss, in some detail, the conceptual nature of preventive detention law as follows:

"29. 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.

> 30. 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."

[emphasis supplied] In an important passage, this Court then dealt with certain general observations made by the Constitution Bench in HaradhanSaha v.The State of West Bengal (1975) 3 SCC 198 as follows:

> "33. No doubt it has been held in the Constitution Bench decision in HaradhanSaha case [(1975) 3 SCC 198 : 1974 SCC (Cri) 816] that even if a person is liable to be tried in a criminal court for commission of a criminal offence, or is actually being so tried, that does not debar the authorities from passing a detention order under a preventive detention law. This observation, to be understood correctly, must, however, be construed in the background of the constitutional scheme in Articles 21 and 22 of the Constitution (which we have already explained). Article 22(3)(b) is only an exception to Article 21 and it is not itself a fundamental right. It is Article 21 which is central to the whole chapter on fundamental rights in our Constitution. The right to liberty means that before sending a person to prison a trial must ordinarily be held giving him an opportunity of placing his defence through his lawyer. It follows that if a person is liable to be tried, or is actually being tried, for a criminal offence, but the ordinary criminal law (the Penal Code or other penal statutes) will not be able to deal with the situation, then, and only then, can the preventive detention law be taken recourse to.
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> 34. Hence, the observation in SCC para 34 in HaradhanSaha case [(1975) 3 SCC 198 : 1974 SCC (Cri) 816] cannot be regarded as an unqualified statement that in every case where a person is liable to be tried, or is actually being tried, for a crime in a criminal court a detention order can also be passed under a preventive detention law.
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> 35. It must be remembered that in cases of preventive detention no offence is proved and the justification of such detention is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence.

Preventive detention is often described as a "jurisdiction of suspicion" (vide State of Maharashtra v. BhauraoPunjabrao Gawande [(2008) 3 SCC 613 : (2008) 2 SCC (Cri) 128] , SCC para 63). 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 detenu 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.

36. 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) "4. ... May be that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them, and if freedom and liberty are to have any meaning in our democratic set up, it is essential that at least those safeguards are not denied to the detenus." xxx xxx xxx
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> 39. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. The stringency and concern of judicial vigilance that is needed was aptly described in the following words in Thomas Pelham Dale case [(1881) 6 QBD 376 (CA)] : (QBD p. 461) "Then comes the question upon the habeas corpus. It is a general rule, which has always been acted upon by the courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue."" [emphasis supplied]
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> 22. In YummanOngbiLembiLeima v. State of Manipur (2012) 2 SCC 176, this Court specifically adverted to when a preventive detention order would be bad, as recourse to the ordinary law would be sufficient in the facts of a given case, with particular regard being had to bail having been granted. This Court held:
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> "23. Having carefully considered the submissions made on behalf of the respective parties, we are inclined to hold that the (sic exercise of) extraordinary powers of detaining an individual in contravention of the provisions of Article 22(2) of the Constitution was not warranted in the instant case, where the grounds of detention do not disclose any material which was before the detaining authority, other than the fact that there was every likelihood of YummanSomendro being released on bail in connection with the cases in respect of which he had been arrested, to support the order of detention.
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> 24. Article 21 of the Constitution enjoins that: "21. Protection of life and personal liberty.--No person shall be deprived of his life or personal liberty except according to

procedure established by law."

In the instant case, although the power is vested with the authorities concerned, unless the same are invoked and implemented in a justifiable manner, such action of the detaining authority cannot be sustained, inasmuch as, such a detention order is an exception to the provisions of Articles 21 and 22(2) of the Constitution.

25. When the courts thought it fit to release the appellant's husband on bail in connection with the cases in respect of which he had been arrested, the mere apprehension that he was likely to be released on bail as a ground of his detention, is not justified.xxx xxx xxx

27. As has been observed in various cases of similar nature by this Court, the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order. An individual incident of an offence under the Penal Code, however heinous, is insufficient to make out a case for issuance of an order of preventive detention." This judgment was followed in MungalaYadamma v.

State of A.P.(2012) 2 SCC 386, as follows:

> "7. Having considered the submissions made on behalf of the respective parties, we are unable to accept the submissions made on behalf of the State in view of the fact that the decision in Rekha case [(2011) 5 SCC 244 : (2011) 2 SCC (Cri) 596] , in our view, clearly covers the facts of this case as well. The offences complained of against the appellant are of a nature which can be dealt with under the ordinary law of the land. Taking recourse to the provisions of preventive detention is contrary to the constitutional guarantees enshrined in Articles 19 and 21 of the Constitution and sufficient grounds have to be made out by the detaining authorities to invoke such provisions.
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> 8. In fact, recently, in YummanOngbiLembiLeima v. State of Manipur [(2012) 2 SCC 176] we had occasion to consider the same issue and the three- Judge Bench had held that the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws, as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order.

> 9. No doubt, the offences alleged to have been committed by the appellant are such as to attract punishment under the Andhra Pradesh Prohibition Act, but that in our view has to be done under the said laws and taking recourse to preventive detention laws would not be warranted. Preventive detention involves detaining of a person without trial in order to prevent him/her from committing certain types of offences. But such detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes which the detenu may have committed. After all, preventive detention in most cases is for a year only and cannot be used as an instrument to keep a person in perpetual custody without trial. Accordingly, while following the three-Judge Bench decision in Rekha case [(2011) 5 SCC 244 : (2011) 2 SCC (Cri) 596] we allow the appeal and set aside the order passed by the High Court dated 20-7-2011 [The High Court dismissed the same vide MunagalaYadamma v. State of A.P., WP (Cri) No. 13313 of 2011, order dated 20-7-2011 (AP)] and also quash the detention order dated 15-2-2011, issued by the Collector and District Magistrate, Ranga Reddy District, Andhra Pradesh."

Ratios of the judgments (supra) settles the legal controversy, that if the offences complained of against the detenue are of a nature which can be dealt with under the ordinary law of land,the detention cannot be made substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes and bringing the detenue/offender to book, after all, preventive detention in most cases is for a year only and cannot be used as an instrument to keep a person in perpetual custody without trial.

11. In view of the settled position of law, it is apt to reiterate here, that detention record submitted by learned Dy. AG reveals that the detenue has received 40 leaves of the papers pertaining to the detention order. It is noteworthy to mention here, that against the detenueas many as 13 FIRs of different police stations jurisdictions have been registered in District Kathua.Out of the 13 FIRs, three (03) FIRs viz;FIR No. 146/2012, FIR No. 172/2014 and FIR No. 169/2016 pertain to attempt to murder cases under Section 307 RPC against the detenue.Detention record does not depict that statements of prosecution witnesses under Section 161 Cr.P.C, site plans as well as all the memos prepared by the investigating officers have been supplied to the detenue. Non-supplying of the whole of the detention material to the detenue has debarred him from making effective representation to the detaining authority about his detention which is infraction of a valuable constitutional right guaranteed to the detenue under Article 22 (5) of Constitution of India r/w Section 13 of J&K Public Safety Act 1978 which makes the order of detention invalid. In depth perusal of the detention record further demonstrates, that the detention order issued by Respondent No. 02 is the verbatim copy of the dossier supplied by Respondent No. 03 (SSP Kathua), which further speaks volumes about the non-application of mind on part of the detaining authority, which does not justify the preventive detention, and in view of the settled position of law discussed above, the detention order is invalid and requires its quashment. It is borne in mind, that the detention order and other relevant material relied by the detaining authority has been supplied to the detenue/petitioner in English/Urdu language and not in Hindi/Punjabi/Dogri language which the detenue/petitioner understands, therefore, non-supply of the same in the language which the detenue understands violates the provision of law and makes the detention order invalid and liable

to be quashed.It is apt to mention here, that the detention of the detenue/petitioner is for maximum period of one year or in other cases can be maximum period for two years. The record depicts that the petitioner/detenue has been booked in as many as 13 FIRs in District Kathua. In view of the legal position settled, the remedies to deal with the petitioner under the ordinary criminal law are sufficient, as in some of the FIRs petitioner/detenue has been indicted for commission of offences of attempt to murders under Section 307 RPC for which the petitioner could be punished for imprisonment for a term upto 10 years or life imprisonment.If the ordinary criminal law is sufficient to punish the detenue/petitioner for higher punishment, the detention cannot be made substitute for the ordinary law and absolve the investigating authorities/the prosecution of their normal functions of investigating crimes and bringing the criminals to book.

12. For all what has been discussed above, instant petition is allowed, and detention order No. PSA/105 dated 03.05.2021 bearing endorsement No. DMK/JC/2021-22/289-96 dated 03.05.2021 of District Magistrate Kathua for detention of Kawaljeet Singh @ Kabbu S/o Amarjeet Singh R/o Jasrota Tehsil and District Kathua is quashed. Petitioner shall be released from preventive custody forthwith if not wanted in any other case. The detention record be handed over to Mr. Dewakar Sharma, learned Dy. AG.

(MOHAN LAL) JUDGE JAMMU 17.03.2022 "Amir"