HIGH COURT OF JAMMU AND KASHMIR SRINAGAR

 Case No:
 HCP 109/2017
 & HCP 138/2017
 Dated :
 22nd JUNE,2017

 DANISH HASSAN DAR
 VERSUS
 STATE & ORS

ORDER SHEET

CORAM:

HON'BLE MR. JUSTICE M.K.HANJURA- JUDGE.

Whether approved for reporting: yes

FOR THE PETITIONER/s: MR. M.A.QAYOOM **FOR THE RESPONDENT/s**: MR. ASIF MAQBOOL, GA.

(M.K.HANJURA)

1/ The crux of the petitions of the petitioner is that his minor son – Danish Hassan Dar, was arrested under FIR No. 481/2016 by Police Station, Sopore, and after keeping him in custody for quite some time, he was detained under the provisions of Public Safety Act (PSA), 1978 vide impugned order No. 276/DMB/PSA/2017 dated 17th March, 2017 and lodged at Central Jail, Kotbalwal, Jammu. It is further submitted by the petitioner that the detenue was informed about his detention by respondent No.2 in terms of letter dated 17th March, 2017, with which he was also provided the grounds of detention. It is stated that the aforementioned order of detention was not approved by the Government, resultantly, another order of detention bearing No. 05/DMB/PSA/2017 dated 10th April, 2017 came to be passed against the detenue, which is also under challenge by medium of HCP 138/2017.

- 2/ The petitioner has assailed the aforesaid orders of detention chiefly on the ground that the detenue is a minor and, as such, the respondent No.2 had no jurisdiction to detain him under the provisions of PSA of 1978.
- 3/ Heard and considered.

- 4/ Learned counsel for the petitioner has vehemently argued that the detenue, who is a minor, could not have been detained under the provisions of PSA of 1978 and, therefore, the said order cannot withstand the scrutiny of law. To the contrary, the learned counsel representing the other side, has argued that the detention orders of the detenue can be sustained in the eye of law.
- 5/ Learned counsel for the respondents has resisted and controverted the submissions of the petitioner primarily on the ground that the orders of detention give a complete account of the activities of the detenue, which, on their face, are highly prejudicial to the maintenance of public order and, as such, there was every reason for the Detaining Authority to order detention of the detenue under the PSA of 1978.
- 6/ Testing the orders of detention on the touchstone of the provisions governing the subject, the argument of learned counsel for the respondents appears to be a spurious one. It is so because Section 8 VI of 1978 has been amended by Act No. VII of 2012 dated 17th April, 2012. The said amendment is reproduced below verbatim et literatim:
 - "2. Amendment of section 8,Act VI of 1978 In sub section (3) of section 8 of Jammu & Kashmir Public Safety Act, 1978 (hereinafter referred to as "the Principal Act), after clause (c), the following clause shall be inserted namely:
 - "(f) "person" shall not include a citizen of India who has not attained the age of eighteen years for being detained under clauses (a) and (a-1) thereof."
- 7/ The aforesaid amendment, incorporated in section 8, assumes significance in the context of the decision of the instant petitions. What is brought to the fruition from this amendment is that a

person, who has not attained the age of 18 years cannot be detained under the clauses (a & a-1) of Section 8 of the PSA of 1978.

- The operative part of the orders of detention brings it to the fore that the detenue has been detained by the learned District Magistrate, Baramulla, in exercise of powers conferred upon him by clause (a) of section 8 of J&K PSA, 1978. Under such circumstances, the question for consideration here is whether the detenue was a minor at the time of his detention and if so, whether the orders of his detention could have been passed.
- 9/ To substantiate his contention, the petitioner has placed, on record 03 extracts attached as Annexures D,E & F to the writ petition, which are in the shape of Birth Certificate of the detenue issued by Sopore Municipal Council, the Grade Card issued by J&K Board of School Education and the Certificate issued by Govt. Higher Secondary School, Sopore. All these extracts/ certificates depict the date of birth of the detenue as 07th June, 2000. These extracts are public documents and have the presumption of correctness attached to them. From a bare glimpse of these extracts, what gets revealed is that the detenue was less than 18 years of age on the date of the order of his detention, i.e. 17th March, 2017. Therefore, the answer to the question raised above is that the detenue was a minor on the date of his detention and on the analogy of the amendment cited above, his detention could not have been ordered. This, by itself, demolishes the entire edifice on which the orders of detention have been based.
- **10/** Taking a cumulative view of all that has been said and done above, these writ petitions are allowed. Orders of detention bearing NOs. 276/DMB/PSA/2017 dated 17th March, 2017 & 05/DMB/PSA/2017 dated 10th April, 2017, passed by respondent

No.2 – District Magistrate Baramulla, are **quashed** with a further direction to the respondents to forthwith release the person of Danish Hassan Dar S/o Ghulam Hassan Dar R/o Batapora, Sopore, Baramulla, from the preventive custody.

11/ Both the writ petitions are, accordingly, **disposed** of along with connected IAs.

TARIQ Mota SRINAGAR, 22-06-2017

(M.K,HANJURA)