



4/ Learned counsel for the petitioner has vehemently argued that the detinue, 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 detinue 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 detinue, 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 detinue 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 17<sup>th</sup> 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.

**8/** The operative part of the orders of detention brings it to the fore that the detinue 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 detinue 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 detinue 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 detinue as 07<sup>th</sup> 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 detinue was less than 18 years of age on the date of the order of his detention, i.e. 17<sup>th</sup> March, 2017. Therefore, the answer to the question raised above is that the detinue 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 17<sup>th</sup> March, 2017 & 05/DMB/PSA/2017 dated 10<sup>th</sup> 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)*  
*JUDGE*

