MAINTAINABILITY OF HABEAS CORPUS AGAINST CONTINUED DETENTION CAUSED BY SUCCESSIVE ARRESTS AFTER REJECTION OF BAIL

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ABSTRACT

The writ of habeas corpus has long stood as one of the most immediate constitutional safeguards available to a person deprived of personal liberty. Yet Indian courts have, over the decades, developed a cautious rule that habeas corpus ordinarily cannot be invoked once a competent court has already refused bail to the detenu, since doing so risks converting the writ jurisdiction into an appellate forum over bail orders. This paper interrogates that rule in the specific context of what may be termed "revolving door detention," a pattern in which a person, instead of being released on the failure of one proceeding, is kept incarcerated through a chain of fresh arrests, repeated criminal prosecutions, and successive invocations of preventive detention statutes. Using the pending matter of *Haji Abdul Razzak v. State of Madhya Pradesh* as a lens, the paper examines whether the settled bar on habeas corpus survives when the grievance is not against a single bail refusal but against a continuing, cumulative pattern of executive action allegedly designed to defeat liberty altogether. It argues that a rigid, mechanical application of the bail rejection bar is constitutionally unsound when Article 21 and Article 22(1) rights are independently violated. It proposes a doctrinal framework to distinguish genuine habeas grievances from disguised bail appeals.

Keywords: Habeas Corpus, Personal Liberty, Article 21, Article 22, Preventive Detention, National Security Act, Successive Arrests, Grounds of Arrest, Bail Jurisprudence, Constitutional Remedies.

1. INTRODUCTION

There is no remedy in Constitutional law with as many symbolic and practical implications as habeas corpus. The writ, loosely translated as "produce the body," requires a detaining authority to explain, in court, the legal basis for a person's detention. It does not seek to establish guilt or innocence nor, in the first instance, to investigate the merits of bail; it only considers the legality of the detention itself. In India, this remedy is based on Article 32 of the Indian Constitution along with Article 226 of the Indian Constitution, taken together with the substantive guarantees of Article 21 and 22 of the Indian Constitution.[1]

One of the recurring fears of the institutions, however, is that habeas corpus might be used as a backdoor method of re-arguing applications for bail that have been rejected by the ordinary criminal courts. Indian High Courts and the Supreme Court have, therefore, developed a general rule that, if a competent court has considered and denied the bail application, then a petition for habeas corpus challenging the same detention will not ordinarily lie as the detenu already had and has exhausted an adequate alternative remedy.

This is a fairly good rule if the person is subject to one continuous criminal case. It is far more difficult to apply when an individual complains of being detained by a series of new arrests, new criminal complaints and new preventive detention orders, all of which were issued at the time when release under the last one was imminent. This is the question that is rightfully asked in the pending Supreme Court case of *Haji Abdul Razzak v. State of Madhya Pradesh*[2] and is the empirical basis of the present paper.

This paper uses the doctrinal legal method of analysis of Indian constitutional jurisprudence, which works through precedent law, statutory provisions and the pending Razzak case; it identifies how the doctrine of habeas corpus has been limited. Analysis centres on the difference between pattern-detentions and single detention orders, the sufficiency of current jurisprudential tools (particularly the curing doctrine) for such situations, and the suggestion of a three-factor test in pattern-detention cases to be evaluated by the courts. The paper shows that simply refusing to bail people does not adequately explain the coordinated behaviour of the executive in multiple cases.

[1] Constitution of India, 1950, arts. 21, 22, 32, 226.

[2] Haji Abdul Razzak v. State of Madhya Pradesh & Ors., SLP (Crl.) No. 11812/2026 (Supreme Court of India, notice issued July 1, 2026) (India).

2. HABEAS CORPUS: CONCEPTUAL AND CONSTITUTIONAL FOUNDATIONS

Habeas corpus is sometimes said to be a writ of right, not a writ of grace. Once a court is satisfied that the detention is unlawful, it has little discretion not to grant relief. The writ is an old concept of English common law, which was incorporated into the Indian Constitution as a part of the fundamental right to personal liberty under Article 21, supported by the procedural safeguards of Article 22.

2.1 ARTICLE 21 AND THE SUBSTANTIVE GUARANTEE

It is guaranteed under Article 21 that no person shall be deprived of life or personal liberty except according to procedure established by law. Indian courts have held that, since the late 1970s, the "procedure" which is used to take away a person's liberty is itself "fair, just and reasonable," not just procedure on paper.[3]

2.2 ARTICLE 22(1) AND THE RIGHT TO GROUND OF ARREST

Article 22(1) provides for the right of every arrested person to be informed of the cause of their arrest as soon as may be and to be informed of the right to consult and be defended by a legal practitioner of his choice. Courts have held that this information should be passed on in writing and not just orally, so that the arrested person may exercise his right to challenge the detention meaningfully. A failure to supply written grounds of arrest is treated as a fundamental infirmity going to the root of the detention's legality, not a mere procedural lapse.

2.3 HABEAS CORPUS AS AN INDEPENDENT CONSTITUTIONAL REMEDY

Habeas corpus is a test of the legality of the custody and does not in this context get ousted by the existence of ordinary bail remedies, except where the petitioner is, in substance, attempting to relitigate a refusal of bail under another label.

3. THE DOCTRINAL TENSION: HABEAS CORPUS AND THE BAIL-REJECTION BAR.

This paper has a tension at its core that can be simply expressed. Courts have a fear of permitting habeas corpus to be used as an unlicensed appeal from a bail decision, which is

[3] Maneka Gandhi v. Union of India, AIR 1978 SC 597 (India).

based on respect for the natural course of criminal remedies and the finality of a well-considered bail decision. However, an absolute bar could have the effect of rendering an entirely lawful or abusive 'course' of detention immune from review simply because, in the process, a bail application was rejected.

Where preventive detention laws exist, the difficulty is compounded. Preventive detention differs from ordinary criminal custody because there is no need to establish an offence; it is based on a subjective satisfaction of the executive that there is a potential for harm for a person if they are not detained. Indeed, courts have long been suspicious of successive or repeated preventive detention orders issued by the same court, on essentially the same grounds, because the orders can, in effect, serve as a punishment without the protections afforded by a criminal trial.

When ordinary prosecution and preventive detention are used side by side, one after another, without the other working, a "revolving door" of detention is likely to become a serious problem. Someone can be detained continuously for years without ever being found guilty, and continue to win court challenges to specific detention orders that he or she files over and over.

The burden is exacerbated if preventive detention laws are being used to ensure that prisoners remain in detention for as long as officials see fit. The sequence of orders, none of which is illegal but all of which is aimed at keeping someone incarcerated, creates a unique constitutional issue, whether the repetition for itself, apart from the legality or unlawfulness of any given order, was an overreach by the Executive. Although each of these orders has been condemned in the Razzak case as described below, the repetition itself, irrespective of the legality or unlawfulness of any single order, poses a unique constitutional question: Is there executive overreach in the repetition? Which is the very thing current jurisprudence has not yet addressed in a systematic way.

4. STATUTORY AND INSTITUTIONAL FRAMEWORK

4.1 THE NATIONAL SECURITY ACT, 1980

Preventive detention is allowed by the NSA[4] when the executive believes that the person's actions threaten public order or the security of the State. There are internal safeguards such as a mandatory reference to a State Advisory Board whose members are required to review the

[4] National Security Act, No. 65 of 1980, Acts of Parliament, 1980 (India).

material and provide their own opinion as to whether there is sufficient cause for continued detention. If the Advisory Board does not approve the detention order within the prescribed time as specified in the statute, it shall be revoked. The successive revocations for this reason, as alleged in the Razzak case, show that the safeguard was effective in each instance, but also suggest the question of whether there is any remedy against the use of the safeguard over and over again. This concern is not merely theoretical: official data has repeatedly shown that a substantial proportion of persons detained under the NSA are eventually released without the detention ever being confirmed on merits, which lends weight to the argument that the statute's internal safeguards, while real, do not by themselves prevent misuse through repetition.

4.2 THE BAIL JURISDICTION UNDER THE CRIMINAL PROCEDURE FRAMEWORK

A bail court does not ordinarily review the constitutionality of the arrest process[5], nor does it review whether the arrest in question is part of a pattern of executive overreach a key difference in subject matter that is at the heart of the maintainability question."

5. CASE STUDY: HAJI ABDUL RAZZAK V STATE OF MADHYA PRADESH & ORS

5.1 FACTUAL BACKGROUND

The petitioner is alleged to have had an altercation with some influential political personalities regarding mining leases in Madhya Pradesh in 2021 while he was working with his family in the mining business. He was first arrested in August 2021 for attempted murder. During the period that followed, he was subjected to preventive detention orders on three separate occasions, all of which were subsequently withdrawn for failure to obtain approval from the State Advisory Board, under the auspices of the NSA, in August 2021, April 2022 and January 2023.

The petitioner says that this was not an accident, but rather a strategy: new criminal charges or other forms of pressure would be brought against him whenever he was about to be released from one case. To back up his assertion, he cites ancillary executive action taken against him and his family, including the freezing of bank accounts, the demolition of his home and the suspension of mining operations, that he says amounted to a "sustained exercise of executive

[5] Code of Criminal Procedure, No. 2 of 1974, Acts of Parliament, 1973 (India), 439–441 (governing bail jurisdiction).

power in order to maintain his incarceration," rather than the normal course of criminal justice.

5.2 THE HIGH COURT JURISDICTION

The petitioner filed a petition for a writ of habeas corpus under Article 226 of the Constitution challenging the legality of the situation where the police had repeatedly arrested him, subsequently initiated prosecutions and had issued successive preventive detention orders. He said that the petition was not meant to be a substitute for a normal bail application.

The High Court, in the interim, had expressed its concern over the working of the investigating agencies, but finally rejected the writ petition. It followed the precedent of *State of Madhya Pradesh v. Kusum Sahu* that a petition for a writ of habeas corpus cannot lie after the petitioner's bail application has been rejected.

5.3 GROUNDS URGED BEFORE THE SUPREME COURT

In the Supreme Court, the petitioner's counsel presented three main arguments:

- The petitioner's petition before the court was an independent constitutional challenge to his continued detention, as he had never filed a successive bail application before coming before the court, unlike the detenu in Kusum Sahu who only approached the court with a bail application after successive bail applications were rejected.

- The High Court had refused to apply the precedents that recognised that a person had a right to written grounds of arrest, as they had been established in the context of economic offences. The petitioner contends that the constitutional protection under Article 22(1) is not limited to any specific type of offence, and that since the High Court itself found that the petitioner had not received written reasons for the arrest, he was entitled to the protection for any offence.

- In the case of retrospective applicability of favourable precedent, the High Court observed that the situation where a case was decided based on “written grounds of arrest” would apply only prospectively, and thus could not help the petitioner. He argues that it did not establish a new right, but only clarified an existing constitutional guarantee, and that the benefit of such a right could not be denied to him if no one could declare that it was a rule he should disregard in the future.

The Additional Solicitor General, for the State, offered objections as to maintainability of the petition, stating that all such contentions had already been presented to the High Court, which had considered them and found the custody to be lawful when the bail plea was rejected.

5.4 SUPREME COURT'S PRELIMINARY VIEW

During the time of giving notice on the petition, the Bench noted that the subject of rejection of bail was not the only question that could be considered, as larger questions of law had to be considered. Observation, not yet final on merits, indicates judicial openness to considering whether the bail-rejection bar can be applied mechanically to a fact pattern of an alleged continuing course of executive conduct as opposed to a single, discrete detention.

6. ANALYSIS OF THE UNDERLYING PRECEDENTS

6.1 STATE OF MADHYA PRADESH V. KUSUM SAHU

The principle is that a writ of habeas corpus will not be issued on a petition where the petitioner's bail application has already been heard and rejected on the merits, as the remedy in such a case is to seek further bail or to avail of an appellate remedy and not seek a writ afresh.

6.2 MIHIR RAJESH SHAH V. STATE OF MAHARASHTRA

The requirement that grounds of arrest be communicated in writing, and in a manner intelligible to the arrested person, is offence-neutral in principle: it flows from Article 22(1) itself, not from any specific penal or special statute. Mihir Rajesh Shah reaffirmed this the mere oral giving of reasons for arrest does not comply with the constitutional requirement. Whether this rule has retroactive effect or makes available a new right to be enforced from the date of judgment has long been a recurring question in constitutional adjudication.[6]

6.3 PRABIR PURKAYASTHA AND PANKAJ BANSAL

These precedents relate to the need to communicate the grounds of an arrest in writing under special statutes Pankaj Bansal under the PMLA (an economic offence law) and Prabir Purkayastha under the UAPA (a terrorism-related law)[7][8]. The High Court's holding that they

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[6] Mihir Rajesh Shah v. State of Maharashtra & Anr., 2025 INSC 1288 (Nov. 6, 2025) (India).
[7] Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 (India).
[8] Pankaj Bansal v. Union of India, 2023 SCC OnLine SC 1244 (India).

were limited to economic offences and were not bound to extend their reasoning to the petitioner's ordinary criminal prosecution does not gel with what is written in Article 22(1) of the Constitution, which makes no distinction between economic and other types of offences. The need for the giving of reasons is in principle neutral to the offence, as it is not found in any of the special statutory schemes under which those cases arose.

6.4 THE CURING DOCTRINE AND ITS LIMITS

A significant obstacle to the petitioner's case is the settled principle that, in a habeas corpus proceeding, the legality of detention is examined as of the date of the hearing, not the date of the original arrest meaning that a subsequent valid order can 'cure' an earlier illegal one.[9] On a straightforward application of this doctrine, the State's repeated withdrawal and replacement of detention orders in the Razzak matter could be characterised as a series of individually lawful corrections, each curing the defect that preceded it

This paper proposes that such an application would be too mechanical. The curing doctrine was invented to correct an isolated mistake in a valid detention, rather than a series of “cures” that each would be followed by a new “defect” against the same person. When the pattern of the orders is the basis for the constitutional complaint, and not each individual order, the doctrine's application of each successive order as if it were an independent remedy could lead to the doctrine becoming a way to immunize a long string of executive actions from any judicial review whatsoever. The doctrine should therefore be interpreted as having regard to a single correction of a single defect, and not as a license for a series of sequential re-detentions for the same underlying defect.

7. THE "REVOLVING-DOOR DETENTION" PROBLEM

The core of the petitioner's complaint is not merely the individual incidents of arrest, prosecution and preventive detention, but a pattern of them: arrest, prosecution, preventive detention and then arrest again and prosecution again and so on, until the next judicial decision is issued, and so on, and so on. Indian courts have consistently held that the exercise of executive power for a collateral purpose or for an improper purpose, even if the exercise of the individual power is found to be regular on its own, can be a fraud on the Constitution and hence may be subject to judicial scrutiny despite the presence of other remedies against the individual

[9] Kanu Sanyal v. District Magistrate, Darjeeling, (1973) 2 SCC 674 (India).re

acts.[10][11]

This pattern is different from the common situation that is the subject of the bail-rejection bar in three ways. First, the object under review is different: an ordinary habeas petition for one detention seeks to determine whether that detention is lawful, while a revolving-door petition seeks to determine whether a course of executive conduct is being used to evade the constitutional protection of liberty. Second, the remedy petitioner seeks is not the same: the petitioner does not seek a writ court to re-evaluate the facts of any single case and provide a fresh decision on them, but instead asks the writ court to review whether the chain of successive cases is itself unconstitutional. Thirdly, the timing was based on a petitioner challenging the pattern of detention before a successive bail remedy is on a different footing from a petitioner challenging the same remedy after it has been exhausted, as the latter carries a stronger inference of using the habeas corpus as an appellate mechanism.

The multiplicity of this pattern is not the distinguishing feature rather, it is the structure of it, the design element. In case A, a person is released on bail and in case B he is arrested immediately, in case B his acquittal is followed in case C, which is followed in case D by preventive detention. The architecture is not procedurally defensible, each step is. Cumulative effect (intentional or systemic) is detention without adjudication.

8. COMPETING POSITIONS ON MAINTAINABILITY

8.1 ARGUMENTS FAVOURING MAINTAINABILITY

- If there is a bail-rejection bar, a genuine pattern of abuse of the detention power could always be shielded from review, since a bail application will almost inevitably have been rejected at some point in that pattern allowing the executive to effectively insulate such a pattern from judicial oversight.

- Habeas corpus and bail raise different analytically distinct questions: whether something is legal or whether there are 'risk factors' against its release pending trial; a negative response to the second question does not necessarily answer the first, particularly in the case of constitutional non-compliance (e.g., absence of written

[10] Rekha v. State of Tamil Nadu, (2011) 5 SCC 244 (India).
[11] Sama Aruna v. State of Telangana, (2018) 12 SCC 150 (India).

grounds of arrest) being raised independently.

- The greater the scrutiny afforded to preventive detention legislation is, the more it is used to circumvent the normal criminal process: repeated use of such legislation against a single individual on similar grounds deserves at least as much scrutiny as any single order would attract.

8.2 ARGUMENTS AGAINST MAINTAINABILITY

- If bail is denied, habeas corpus should not be heard afterward, as this would make the habeas jurisdiction a parallel or supervisory appellate court over the ordinary criminal court, defeating the purpose of finality and hierarchy in the criminal process.

- Judges lack institutional resources to adequately reconstruct and review a multi-year course of action by the prosecution and the executive branch of government in the context of a rushed, abbreviated habeas corpus procedure.

- A wide definition of maintainability would allow strategic pleading, where any bail-appeal claim that didn't result in the bail being rejected could be recast as a “pattern” claim in order to meet the bail-rejection bar.

The arguments favouring maintainability are more persuasive where three conditions are met as developed in the framework below.

9. TOWARDS A DOCTRINAL FRAMEWORK

Based on the preceding analysis, this paper recommends three cumulative factors to consider when evaluating maintainability of a habeas corpus petition after the petitioner is denied bail, instead of a blanket bar:

- Distinctness of grievance: whether the grievance in the habeas petition contains a constitutional infirmity, which may be that the grievance does not include any written grounds of arrest, or that it does not contain any compliance with the mandatory safeguards under a preventive detention statute, which could not have been considered by the bail court.

- Whether a petitioner is challenging a single, specific detention (in favour of the bar) or a series of successive arrests and detention orders that are part of a “coordinated course of action” by the executive (in favour of maintainability).

- Whether the constitutional challenge was made independently and proximately to the alleged violation, or only after successive bail remedies had been exhausted and unsuccessful, which would suggest the petition is, in substance, an appeal against bail rejection rather than an independent constitutional claim.

The three factors play together in an attempt to stop abuse and maintain the integrity of the institutional process of bail. The distinctness requirement guarantees that habeas corpus is not used as a merit reviewing process. Patterns are differentiated from isolated incidents because of the requirement of coordinate action. The timing rule makes it difficult to use habeas as a post-exhaustion appellate mechanism. These two taken together provide a limited but useful exception to the rejection of bail, rather than permitting what could otherwise be an infinite number of bail petitions to be filed as disguised appeals for bail.

If such a scheme were followed, courts would retain the significant institutional principle of the bail-rejection bar in ordinary cases, but have a meaningful remedy in the comparatively rare cases where a person's personal liberty is being challenged by a cumulative use of the machinery of arrest, prosecution, and preventive detention.

10. CONCLUSION

The Supreme Court is now faced with the chance to resolve an important and under-theorised aspect of habeas corpus jurisprudence in the case *of Haji Abdul Razzak v. State of Madhya Pradesh*. The case does not seek to give the Court a license to relax the well-established caution against the use of habeas corpus instead of bail, but rather asks the Court whether this caution has been rendered inapplicable to a fact pattern where the grievance is not a single detention order but instead a recurring pattern of executive action. A fact-sensitive analysis of maintainability, particularly given the constitutional significance of the issue (repeated preventative detention, an alleged failure to provide written grounds of arrest, and a claimed trend of coercive executive action which goes beyond the realm of the criminal process itself) seems to be more in keeping with the constitutional purpose of the writ than a blanket procedural bar.

In addition to the question of "maintainability", courts may also give due consideration to the concrete procedural safeguards against "revolving" detention as the Supreme Court once prescribed specific custodial guidelines to ensure that the power of arrest is not misused.[12] A mandatory cooling-off period before a fresh preventive detention order may be issued against the same person on substantially similar facts, for instance, would give the 'distinctness of grievance' and 'coordinated course of action' factors proposed above a corresponding institutional safeguard on the executive's side, rather than leaving the burden of detecting and challenging the pattern entirely on the detenu. The outcome of this question may well have a long-term impact on the rights of individuals to be protected from the incremental and successive deprivations of liberty that are not addressed by any individual proceeding.

[12] D.K. Basu v. State of West Bengal, (1997) 1 SCC 416 (India).