

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

**HCP No. 78/2023
CM No. 7069/2023**

Mohd Yaqoob Alias Yuka Alias
Lambu Th. Bashir Ahmed

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

Through: Mr. M. A. Goni, Sr. Advocate with
Mr. S. Tanzeel Illahi, Advocate

Vs

UT of J&K and ors.

..... Respondent(s)

Through: Mr. Pawan Dev Singh, Dy. AG

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
19.09.2024

Oral

1. The petitioner herein has filed the instant petition for quashing of detention Order No. 21 PSA of 2023 dated 18.10.2023 (For short 'the impugned order') passed by respondent 2 herein (For short 'the Detaining Authority') in terms of the provisions of the J&K Public Safety Act of 1978 (For short 'the Act of 1978').
2. The impugned order is being challenged by the petitioner in the instant petition on multiple grounds.
3. **Counter affidavit** to the petition stands filed by respondent 2 i.e. the Detaining Authority wherein the petition is being opposed *inter alia* on the premise that the petitioner came to be detained on account of his criminal activities prejudicial to public order warranting his preventive detention and that in the process of detaining of the petitioner, subjective

satisfaction came to be drawn by the Detaining Authority while observing procedural safeguards and fulfilling the constitutional requirements.

Heard learned counsels for the parties and perused the record.

4. Mr. M. A. Goni, Senior appearing counsel for the petitioner while making his submissions in line with case set up in the petition urged only two grounds of challenge notwithstanding the multiple grounds of challenge urged in the petition and would contend that the Detaining Authority while detaining the petitioner has remained totally oblivious to the fact that detainee stands enlarged on bail in the FIRs referred to and relied upon by the Detaining Authority in the grounds of detention and has also shown complete non awareness about the facts that the detainee had been previously detained by the Divisional Commissioner in terms of order of detention No. 06 of 2019 dated 24.09.2019 on account of alleged involvement of the petitioner in two FIRs being FIR No. 159/2018 and FIR No. 72/2019 registered with Police Station, Bari Brahmana also having been relied upon by it for the purpose of detaining the petitioner in terms of the impugned order. Mr. Goni thus would insist that the said non awareness about the said facts of the Detaining Authority reflects its complete non application of mind in the matter which as such, would vitiate the impugned order.
5. On the contrary, Mr. Pawan Dev Singh, Dy. AG appearing counsel for the respondents while opposing the submissions of Mr. Goni would reiterate the contentions raised in the counter affidavit filed to the petition and would insist that the order of detention came to be passed by the Detaining Authority validly and legally after deriving subjective

satisfaction having taken into consideration the criminal activities of the petitioner being prejudicial to the public order.

6. Having regard to the aforesaid rival submissions of the appearing counsels for the parties, a closer examination of the record became imperative perusal whereof reveals that indisputably the petitioner has been admitted to bail in the aforesaid FIRs as has been noticed in the preceding paras and the Detaining Authority has failed to take cognizance of the said facts either having remained oblivious to the same or else not having been furnished any information thereto by the sponsoring agency in this regard. In both cases, the Detaining Authority can safely be said to have ordered the detention of the detinue under preventive detention without drawing subjective satisfaction having overlooked the aforesaid facts. Besides the detention record produced by the counsel for the respondents manifestly show that the respondents have not indicated therein the said record or else in the grounds of detention that any steps or measures were taken by them against the bail orders obtained by the petitioner in connection with the FIRs supra, in case the petitioner have had continued with his alleged criminal activities and have taken recourse to the preventive detention as a short cut measure which in law is not permissible.

In so far as earlier detention order passed by the Divisional Commissioner against the petitioner on 24.09.2019 is concerned, perusal thereof reveals that two FIRs being FIR No. 159/2018 and FIR No. 72/2019 have had been relied upon therein by the Divisional Commissioner and that the same FIRs have again being relied upon by the Detaining Authority while detaining the detinue in terms of the impugned order. Law in this regard

is no more res integra and stands settled by the Apex Court in case titled as '**C. B. Kahar vs. N. L. Kalna**' reported in **AIR 1989 SC 1234** wherein it has been held that if the order of detention comes to an end either by revocation or by expiry of the period of detention, there must be fresh facts for passing a subsequent order and that when a detention order is quashed by the court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction for passing a fresh order because once the court strikes down an earlier order by issuing rule it nullifies the entire order.

7. Viewed thus, what has been observed, considered and analyzed hereinabove, the impugned order is not legally sustainable.
8. Thus, the instant petition deserves to be allowed and is accordingly allowed, as a consequence whereof, the impugned Order No. 21 PSA of 2023 dated 18.10.2023 is quashed with a direction to the respondents including the concerned Jail authorities to release the detenue forthwith from preventive detention unless required in any other case.
9. The detention record produced by the counsel for the respondents is returned back to the counsel for the respondents in the open Court.
10. **Disposed of.**

(Javed Iqbal Wani)
Judge

Jammu
19.09.2024
Neha-II

Whether the order is speaking: Yes
Whether the order is reportable: Yes