HIGH COURT OF JAMMU AND KASHMIR AND LADAKH AT JAMMU

Reserved on 09.09.2022
Pronounced on 21.09.2022

WP(Crl) No. 21/2022

Ravinder Kumar Gupta .....Appellant(s)/Petitioner(s)

Through: Mr. Sakal Bhushan, Advocate

vs

Union Territory of J&K and others ..... Respondent(s)

Through: Mr. Amit Gupta, AAG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. In this writ petition filed through his son, the petitioner has questioned the detention order No. 06/2022 dated 25.05.2022 issued by respondent No. 2, whereby the petitioner has been detained under section 8(1)(a) of the Jammu and Kashmir Public Safety Act, 1978 (for short the Act).

2. It is stated that on 18.05.2022, an FIR No. 53/2022 for commission of offences under section 420, 467, 468, 504 and 506 IPC was registered by the Police of Police Station, Gangyal, Jammu and the petitioner was arrested in connection with the said FIR. The petitioner filed a bail application, that was opposed by the Police and the same was rejected on 25.05.2022. On 26.05.2022 after the expiry of seven days Police remand, the petitioner was produced before the concerned Magistrate and at that time, the detention order dated 25.05.2022 passed by respondent No. 2 was brought to the notice of the learned Magistrate as well as the petitioner. The

petitioner was taken to Kot Bhalwal Jail on 26.05.2022 and a copy of the detention order along with communication dated 25.05.2022 was supplied to the petitioner informing him about his detention order and grounds of detention and dossier dated 21.05.2022 were also furnished to the petitioner.

3. The petitioner has assailed the aforesaid detention order on the following grounds:

(a) That the activities allegedly considered to be prejudicial to the maintenance of public order by respondent No. 2 do not fall within the purview of section 8(3) (b) of the Act.

(b) That the order impugned is a classic example of non-application of mind by respondent No. 2 as the grounds of detention are verbatim reproduction of the contents of the dossier dated 21.05.2022.

(c) That the order of detention has been issued oblivious to the fact that the petitioner was already in custody w.e.f 19.05.2022 in FIR No. 53/2022 and this fact has not been adverted to by respondent No. 2 while issuing the order of detention.

(d) That the non application of the mind by the District Magistrate is further substantiated by the fact that in three FIRs bearing Nos. 95/2006, 103/2006 and 52/2012, the petitioner has been discharged vide orders dated 03.12.2008, 17.12.2011 and 11.12.2018 respectively, by the trial courts.

(e) That at best the grounds in the detention order can be said to constitute an apprehension of breach of law and order and by no stretch of imagination constitute apprehension of breach of public order.

4. Counter affidavit has been filed by the respondents, in which it has been stated that none of the constitutional, statutory or any other legal right of

the petitioner has been violated by the issuance of order of detention as the same was issued after taking into consideration the prejudicial activities of the petitioner, so as to deter him from acting or indulging is such activities. It is stated that the detenue is involved in numerous criminal activities, which are considered prejudicial to maintenance of public order as 21 FIRs have been registered against the petitioner, right from 2006 to 2022, details of which are as under:

1.	Case FIR No. 27/2002 U/s 447, 379 RPC of P/S Gangyal
2.	Case FIR No. 61/2004 U/s 447 and 147 RPC of P/S Gangyal
3.	Case FIR No. 95/2006 U/s 420 and 120-B RPC of P/S Gangyal
4	Case FIR No. 101/2006 U/s 420 RPC of P/S Gangyal
5	Case FIR No. 103/2006 U/s 420 RPC of P/S Gangyal
6	Case FIR No. 09/2007 U/s 420 and 447 RPC of P/S Gangyal
7	Case FIR No. 24/2007 U/s 420 RPC of P/S Gangyal
8	Case FIR No. 53/2005 U/s 341, 323 and 385 RPC of P/S Channi Himmat
9	Case FIR No. 57/2006 U/s 353, 447-A and 34 RPC of P/S Channi Himmat
10	Case FIR No. 09/2007 U/s 467, 468, 471 and 447 RPC of P/S Channi Himmat
11	Case FIR No. 128/2005 U/s 405 and 446 RPC and 3/25 Arms Act of P/S Bahu Fort
12	Case FIR No. 163/2011 U/s 420, 467, 468, 471 and 120-B RPC of P/S Gangyal
13	Case FIR No. 171/2011 U/s 341. 504 and 506 RPC of P/S Gangyal
14	Case FIR No. 31/2012 U/s 419, 420, 467, 468, 471 and 120-B/34 RPC P/S R. S. Pura, Jammu
15	Case FIR No. 42/2012 U/s 453, 471, 464, 469, 504, 506, 352, 341 and 120-B of RPC, 3/25 Arms Act of Police Station, Gandhi Nagar, Jammu
16	Case FIR No.52/2021 U/s 420 RPC of Police Station, Gangyal
17	Case FIR No. 19/2011 U/s 420, 120-B RPC of Police Station, Crime Branch, Jammu
18	Case FIR No. 6/2019 U/s 419, 420, 465, 467, 468, 471 RPC of Police Station, Crime Branch, Jammu
19	Case FIR No. 182/2021 U/s 409 and 120-B IPC of P/S Channi Himmat
20	Case FIR No. 42/2022 U/s 420, 467, 468, 452, 323, 504 and 506 IPC of P/S Bahu Fort, Jammu
21	Case FIR No. 53/2022 U/s 420, 467, 468, 504 and 506 IPC P/S Gangyal

As the ordinary law has not been proved to be adequate to deter him from indulging in repeated acts of such nature, the law enforcing agency was left with no option but to request respondent No. 2 to detain the petitioner under the provisions of the Act. Accordingly, the respondent No. 2 after perusing the report of the sponsoring agency while exercising the powers

conferred under section 8(1)(a) of the Act, issued the detention order in question whereby the detenue was directed to be lodged in Central Jail Kot Bhalwal, Jammu for a maximum period with a view to prevent him from indulging in such activities. It is further averred that the petitioner was arrested in FIR No. 53/2022 and as there was every apprehension that the detenue would secure bail and start his criminal activities again, so to prevent him from indulging in such activities again, the order of detention was issued. Lastly, it is stated that the provisions of the Act have been complied in its letter and spirit while issuing the order of detention.

5. The petitioner, in response to the counter affidavit filed by the respondents, filed a supplementary affidavit, in which factum of submitting representation was pleaded by the petitioner.

6. Mr. Sakal Bhushan, learned counsel for the petitioner submitted that the activities considered by the respondent No. 2 to be prejudicial to the maintenance of public order do not fall within the realm of activities prejudicial to the maintenance of public order as defined in section 8(3)(b) of the Act. He further laid much stress that the detention order suffers from the vice of non application of mind, as in all FIRs there are no allegations against the petitioner regarding stabbing, rioting and further having links/association with other criminals. He further argued that the non application of mind by the respondent No. 2 is evident from the fact that while issuing the order of detention, there is no whisper in the order of detention about the fact that the petitioner was already in custody at the time of issuance of detention order. Mr. Bhushan further argued that no missing revenue record has been recovered from the petitioner as falsely alleged in FIR No. 122/2021.

7. Mr. Amit Gupta, learned AAG representing respondents vehemently argued that the petitioner is a land grabber and has earned notoriety for illegally grabbing the properties of innocent citizens and because of his criminal activities of land grabbing, there was threat to the maintenance of public order, that necessitated the issuance of order of detention against the petitioner. He further argued that the allegations of land grabbing would fall within the definition of mischief as mentioned in 8(3)(b) of the Act. Mr. Gupta further argued that mere non-mentioning of the fact about the arrest of the petitioner at the time of issuance of detention order by the respondent No. 2 in the detention order would not have any effect upon the validity of detention order, as in the dossier prepared by the respondent No. 3, it has been specifically mentioned that the petitioner has been arrested in a case and if he is bailed out, he will indulge in similar kind of activities. In a nutshell, the argument of Mr. Gupta is that the order of detention is to be read in conjunction with the dossier prepared by the respondent No. 3.

8. Heard and perused the record including record of detention.

9. A perusal of the detention record reveals that the Advisory Board has opined that there is sufficient cause for detention of the detenue under Section 8 of the Act and the Government has also confirmed order of detention by virtue of order dated 14.07.2022 after receipt of opinion from the Advisory Board.

10. A perusal of the dossier dated 21.05.2022 reveals that the occupation of the petitioner has been mentioned as property dealer/land grabber and in the dossier prepared by the sponsoring agency, the allegations against the petitioner are that he has indulged in land grabbing but simultaneously, it has also been stated that the petitioner has indulged in various criminal

activities such as assault, stabbing, rioting, impersonation, possessing fire arms and having close links with criminals. In the dossier, reference to 21 FIRs as mentioned above, was made but while issuing the detention order, respondent No. 2 has relied upon only 12 cases arising out of FIR No. 95/2006 U/s 420 and 120-B RPC of P/S Gangyal, FIR No. 103/2006 U/s 420 RPC of P/S Gangyal, Case FIR No. 163/2011, U/s 420, 467, 468, 471, 120-B RPC of Police Station, Gangyal, FIR No. 171/2011 U/s 341, 504, 506 RPC of Police Station, Ganyal, FIR No. 31/2012 U/s 419, 420, 467, 468, 471 and 120-B/34 RPC of Police Station, R. S. Pura, FIR No. 42/2012 U/s 453, 471, 464, 469, 504, 506, 352 and 120-B, 341 RPC, 3/25 Arms Act of Police Station Gandhi Nagar, FIR No. 52/2012 U/s 420 RPC of Police Station, Gangyal, FIR No. 19/2011 U/s 420, 120-B RPC of P/S Crime Branch, Jammu, FIR No. 6/2019 U/s 419, 420, 465, 467, 468, 471 RPC of P/S Crime Branch, Jammu, FIR No. 182/2021 U/s 409, 120-B RPC of Police Station, Channi Himmat, FIR No. 42/2022 U/s 420, 467, 468, 452, 323, 504 and 506 IPC Police Station, Bahu Fort and FIR No. 53/2022 U/s 420, 467, 468, 504 and 506 IPC Police Station, Gangyal.

11. Except four FIRs those are registered in the years 2019, 2021 and 2022, all the other FIRs relied upon by the detaining authority pertain to the years, 2006 to 2011. More so, in FIR No. 103/2006 and FIR No. 52/2012, the petitioner has already been discharged by the learned trial court. It appears that the respondent No. 3 has not brought this fact to the notice of respondent No. 2, which the respondent No. 3 ought to have brought. Further in FIR No. 163/2011, the investigation has been pending for the last more than a decade. In FIR Nos. 171/2011, 31/2012, 42/2012, 52/2012 and 19/2011, the charge sheets have been filed and there are no allegations

that the petitioner has jumped over the bail. In FIRs registered in the years, 2019, 2021 and 2022, the investigation is still continuing. In three FIRs as mentioned above, the petitioner stands discharged and the said fact has not been disputed by the respondents and in majority of FIRs, either charge sheets have been filed or the investigation is still continuing. Though, there is substance in the argument of the petitioner that orders of discharge were required to be brought to the notice of respondent No. 2 by the sponsoring agency but nonetheless, on this ground only, order of detention cannot be quashed as the order of detention has not been issued on the basis of these FIRs only but other FIRs as well.

12. This Court is of the considered view that the FIR ranging from the year 2006 till 2019 could not have formed the basis for issuance of detention order being of remote in nature, but these FIRs have been considered by the respondent No. 2 so as to demonstrate that the petitioner is having criminal antecedents right from the year 2006.

13. In FIR No. 182/2021 registered under sections 409 and 120-B IPC, the allegations were with regard to the missing of some revenue records and an enquiry by the revenue authority revealed that some unknown persons in connivance with concerned revenue officials and also in connivance with some unknown beneficiaries hatched the conspiracy and committed criminal breach of trust and destroyed, damaged and misplaced the vital public documents and official records. The petitioner also figures as one of the accused and it is alleged that some of the records were also recovered from him. This fact has been seriously disputed by the petitioner during arguments.

14. In FIR No. 42/2022, allegations are that the complainant lodged report that accused Sadeeq Poswal with some associates committed a forgery, prepared an agreement to sell and posted on facebook that 01 kanal of State land has been sold for Rs. 01 crore 10 lacs under khasra No. 331 Village Channi Rama, Opposite Wave Mall and construction is going on, despite notice to JMC and Tehsildar, but the complainant has neither signed such agreement nor prepared any sale deed and has no knowledge/relation with the said plot. The accused posted such defamatory post on social media. Later on, the accused called the brother of the complainant who is a Lecturer by profession and manhandled him.

15. In FIR No. 53/2022, allegations are that the complainant lodged a written complaint that he had purchased land measuring 15½ marlas under khasra No. 549 in Greater Kailash from one Abdul Majid, which was registered in his name. Further he came to know that the said land was illegally occupied by one Ravinder Gupta @ Gola Shah, petitioner herein. When he visited his house to ask him to vacate the said land, the petitioner abused and threatened him of dire consequences.

16. These three FIR Nos. 182/2021, 42/2022 and 53/2022 seem to have prompted the sponsoring agency to request the respondent No.2 to detain the petitioner under the Act and on the dossier prepared by the sponsoring agency, respondent No. 2 issued the order of detention.

17. Now, it is to be seen as to whether on the basis of FIRs mentioned above, it can be said that the detention of the petitioner was necessary for maintenance of public order. Under section 8 (1) of the Jammu and Kashmir Public Safety Act, the government may detain any person if the government is satisfied that the detention is necessary with a view to

prevent such person from acting in any manner prejudicial to the maintenance of public order. Section 8 (3) of the Act defines the activities those are considered as prejudicial to the maintenance of public order and the same is reproduced as under:

> "(3) For the purposes of sub-section (1),
>
> [(a) Omitted]
> (b) "acting in any manner prejudicial to the maintenance of public order" means-
> (i) promoting, propagating, or attempting to create feelings of enmity or hatred or disharmony on the ground of religion, race, caste, community, or region;
> (ii) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of mischief within the meaning of section 425 of the Indian Penal Code where the commission of such mischief disturbs or is likely to disturb public order;
> (iii) attempting to commit or committing or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment of a term extending to 7 years or more where the commission of such offence disturbs or is likely to disturb public order;
> (iv) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment of a term extending to seven years or more, where the commission of such offences disturbs, or is likely to disturb public order ."

18. In **Vijay Narain Singh v. State of Bihar reported in (1984) 3 SCC 14**, the Apex Court has observed as under:

> "*32*. … It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. *It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court*."

19. Also in **Union of India v. Yumnam Anand M.reported in (2007) 10 SCC 190**, Apex Court has observed as under:

> "In case of preventive detention no offence is proved, nor any charge is formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. But at the same time, a person's greatest of human freedoms i.e. personal liberty is deprived, and, therefore, the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however technical, is mandatory. The compulsions of the primordial need to maintain order in society, without which enjoyment of all rights, including the right of personal liberty would lose all their meanings, are the true justifications for the laws of preventive detention. *This jurisdiction has been described as a "jurisdiction of suspicion", and the compulsions to preserve the values of freedom of a democratic society and social order sometimes merit the curtailment of the individual liberty. To lose our country by a scrupulous adherence to the written law, said Thomas Jefferson, would be to lose the law, absurdly sacrificing the end to the means. No law is an end itself and the curtailment of liberty for reasons of State's security and national economic discipline as a necessary evil has to be administered under strict constitutional restrictions. No carte blanche is given to any organ of the State to be the sole arbiter in such matters.*"

20. Ours is a democratic country and the personal liberty of the individual cannot be curtailed except according to the procedure established by law. If the law provides for curtailment of personal liberty under certain contingencies/conditions, then such conditions/contingencies must exist, then only, the personal liberty of an individual can be curtailed and that too according to the procedure prescribed by the law. The perusal of detention order reveals that in all the FIRs, the allegations against the petitioner are with regard to the commission of offences, which do not fall within the realm of "public order" as defined by section 8(3) of the Act as there are no allegations against the petitioner regarding his activities affecting public at large. The allegations may amount to law and order issue but in no manner can be said to have disturbed the public order. In **Mallada K Sri Ram v. State of Telangana, 2022 SCC OnLine SC 424**, Apex Court has considered the distinction between "law and order" and "public order" and observed as under:

> **12.** The distinction between a disturbance to law and order and a disturbance to public order has been clearly settled by a Constitution Bench in *Ram Manohar Lohia* v. *State of Bihar*. **The Court has held that every disorder does not meet the threshold of a disturbance to public order, unless it affects the community at large.** The Constitution Bench held:
> "51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. **Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before if can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action** under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.
> 52. **It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State**. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."
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> (**emphasis supplied**)

21. In **Banka Sneha Sheela v. State of Telangana reported in 2021(9) SCC 415**, where the detention order was issued on the basis of five FIRs registered under sections 406,420 and 506 IPC, Apex Court held as under:

> "9. …learned counsel appearing on behalf of the petitioner has raised three points before us. First and foremost, he said there is no proximate or live connection between the acts complained of and the date of the detention order, as the last act that was complained of, which is discernible from the first 3 FIRs (FIRs dated 12-12-2019, 12-12-2019

> and 14-12-2019), was in December 2019 whereas the detention order was passed 9 months later on 28-9-2020. He then argued, without conceding, that at best only a "law and order" problem if at all would arise on the facts of these cases and not a "public order" problem, and referred to certain judgments of this Court to buttress the same. He also argued that the detention order was totally perverse in that it was passed only because anticipatory bail/bail applications were granted. The correct course of action would have been for the State to move to cancel the bail that has been granted if any further untoward incident were to take place.
> 12. While it cannot seriously be disputed that the detenu may be a "white collar offender" as defined under Section 2(x) of the Telangana Prevention of Dangerous Activities Act, yet a preventive detention order can only be passed if his activities adversely affect or are likely to adversely affect the maintenance of public order. "Public order" is defined in the Explanation to Section 2(a) of the Telangana Prevention of Dangerous Activities Act to be a harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave widespread danger to life or public health.
> 14. There can be no doubt that for "public order" to be disturbed, there must in turn be public disorder. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects "law and order" but before it can be said to affect "public order", it must affect the community or the public at large.
> 15. There can be no doubt that what is alleged in the five FIRs pertain to the realm of "law and order" in that various acts of cheating are ascribed to the detenu which are punishable under the three sections of the Penal Code set out in the five FIRs. A close reading of the detention order would make it clear that the reason for the said order is not any apprehension of widespread public harm, danger or alarm but is only because the detenu was successful in obtaining anticipatory bail/bail from the courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the detenu, there can be no doubt that the harm, danger or alarm or feeling of insecurity among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is make-believe and totally absent in the facts of the present case.
> 32. On the facts of this case, as has been pointed out by us, it is clear that at the highest, a possible apprehension of breach of law and order can be said to be made out if it is apprehended that the detenu, if set free, will continue to cheat gullible persons. This may be a good ground to appeal against the bail orders granted and/or to cancel bail but certainly cannot provide the springboard to move under a preventive detention statute. We, therefore, quash the detention order on this ground…."

22. Both the above mentioned decisions have been followed by Hon'ble Apex Court in case titled **" Shaik Nazneen vs. The State of Telangana and Ors."** bearing no. Criminal Appeal NO. 908 OF 2022 (@ SLP (CRL.) NO. 4260 OF 2022, decided on 22.06.2022, wherein it has been held that in two recent decisions, this Court had set aside the detention orders which were passed, under the same Act, i.e., the present Telangana Act, primarily

relying upon the decision in Dr. Ram Manohar Lohia case (supra) and holding that the detention orders were not justified as they were dealing with a law and order situation and not a public order situation.

23. The main allegation against the petitioner is that he is a land grabber. Hon'ble Apex Court in **K. K. Saravana Babu v State of Tamil Nadu, (2008) 9 SCC 89** while examining the validity of the order of detention issued on the basis of specific allegation of land grabbing, has observed as under:

> "4…….The modus operandi of the detenu in both the cases is land grabbing in a clandestine manner. The detaining authority had considered the said aspect and came to the conclusion that in case the detenu is let out on bail he would again indulge in similar type of offences and, therefore, it is imperative to detain him. The order of detention came to be passed keeping in mind the welfare of public who are owning lands as well as the prospective buyers.
> xxxxxxx
> 32. In the instant case, in the grounds of detention, two cases have been enumerated, one of which pertains to the offences punishable under sections 420, 465, 468 read with 471 and 120(B) IPC in Crime No.70 of 2006. Another case pertains to Crime No.364 of 2007 registered under sections 420, 465, 466, 467, 468 read with 471 and 120(B) IPC. The facts of these cases have been carefully examined and even assuming the allegations of these cases as true, even then by no stretch of imagination, the offences committed by the detenu can be called prejudicial to public order. The detenu can be dealt with under the ordinary criminal law if it becomes imperative."

24. In view of the decision of Apex Court the argument of Mr. Amit Gupta that land grabbing would fall within the meaning of "mischief" loses its force. Thus, this Court is of the considered view that the alleged activities as mentioned above, even if are considered as true, still the said activities do not fall within the purview of the activities prejudicial to the maintenance of public order as defined in 8 (3) (b) of the Act.

25. Also, a perusal of the detention order reveals that the respondent No 2 has not shown his/her awareness about the arrest of the petitioner in FIR No. 53/2022 though the arrest of the petitioner in the said FIR has been mentioned in the dossier. This issue is no longer *res integra* that a person

who is already in custody in some substantive offence, can still be detained provided that the detaining authority is of the opinion on the basis of the material placed on record before the detaining authority by the sponsoring agency that the petitioner is in custody, there is likelihood of the detenue being released on bail and further that after being enlarged on bail, there is every likelihood that he would indulge in similar criminal activities. This Court does not find in the order of detention either awareness on the part of respondent No. 2 with regard to the custody of the petitioner in substantive offence or any subjective satisfaction that he was likely to be enlarged on bail. The contention of Mr. Amit Gupta that order of detention is to be read in conjunction with dossier cannot be accepted as the detaining authority is not supposed to act as a mere post office but must be alive to the circumstances necessitating issuance of detention order and it must reflect from the order of detention. On this score also, the detention order is not sustainable in the eyes of law. In **T.P. Moideen Koya v. Govt. of Kerala, (2004) 8 SCC 106,** the Apex Court after considering its various earlier decisions has held as under:

> **21.** In *Binod Singh* v. *District Magistrate* [(1986) 4 SCC 416] there were several criminal cases against the detenu including a murder case in which investigation was in progress. At the time when the detention order was passed, the detenu had not surrendered in respect of the criminal charge. The detention order was served soon after he surrendered in the murder case. The Court then held that from the affidavit of the District Magistrate it did not appear that either the prospect of the immediate release of the detenu or other factors which could justify the detention of a person already in custody, were properly considered in the light of the principles laid down in *Rameshwar Shaw* v. *District Magistrate* [AIR 1964 SC 334] and *Ramesh Yadav* v. *District Magistrate* [(1985) 4 SCC 232] . The principle is that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. There must be cogent material before the authority passing the detention order for inferring that the detenu was likely to be released on bail. In *Kamarunnissa* v. *Union of India* [(1991) 1 SCC 128] after review of all the earlier decisions, the law on the point was enunciated as under in para 13 of the Report:

> "*13*. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (*1*) if the authority passing the order is aware of the fact that he is actually in custody; (*2*) if he has reason to believe on the basis of reliable material placed before him (*a*) that there is a real possibility of his being released on bail, and (*b*) that on being so released he would in all probability indulge in prejudicial activity, and (*3*) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court. What this Court stated in the case of *Ramesh Yadav* [(1985) 4 SCC 232] was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention."

26. In view of the above, this petition is allowed. Detention order No. 06/2022 dated 25.05.2022 passed by respondent No. 2 is quashed. Petitioner (detenue) be set free from the preventive custody, provided his custody is not required in any other case.

(Rajnesh Oswal)
Judge

JAMMU
21.09.2022
Rakesh

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No