
the respondents have not taken any steps to execute the impugned order of detention upon the petitioner though he was once called to the police station. This, according to the petitioner, *prima facie*, shows that there is no requirement of subjecting him to preventive detention.

3) The respondents have contested the writ petition by filing their reply affidavit, wherein it has been submitted that in the previous past, the petitioner was detained in terms of detention order No.83/DMB/PSA/2016 dated 26.08.2016, which was quashed by this Court whereafter the petitioner was released from custody. It has been contended that the petitioner continued his prejudicial activities in a well-planned manner, as a result of which the impugned order of detention had to be issued against him. It has been submitted that merely because there is delay in execution of the detention order, the same cannot be quashed. It has been further contended that the petitioner cannot challenge the impugned order of detention prior to its execution and if he intends to challenge the same, he has to surrender before the executing agency.

4) The respondents have further submitted that due to ill health of the petitioner, the warrant of detention could not be executed. It has been submitted that the warrant of detention was sent to SHO, P/S Pattan, for its execution

upon the petitioner and he was taken into custody on 06.08.2019. However, the petitioner was not able to breathe properly as he was suffering from severe symptoms of Asthma due to which he was referred to SMHS Hospital, Srinagar, for treatment where he developed several complications of lungs and was referred to Government Chest Diseases Hospital, Srinagar, for further treatment. It has been submitted that the petitioner has remained on continuous treatment since the year 2019 in various hospitals including Government Chest Diseases Hospital, Jammu, and other hospitals in the Valley. It has been submitted that when the petitioner recovered from his long-term illness, he went away and on 09.11.2022, this Court stayed the impugned order of detention and, as such, the same could not be executed upon the petitioner.

5) It has been submitted that the petitioner is an incorrigible secessionist who yields a considerable clout in secessionist circles. It has been contended that anti-national and secessionist activities of the petitioner pose a major threat to the security of the state and that his activities have remained highly objectionable which have been primarily responsible for deteriorating law and order situation in the year 2016. It has been further contended that the impugned order of detention has been passed

strictly in accordance with law governing the field and none of the rights of the petitioner has been violated.

6) I have heard learned counsel for the parties and perused record of the case.

7) The main ground urged by the petitioner in assailing the impugned order of detention is that the respondents have not taken any steps towards execution of the warrant upon him, as such, the delay in execution of the warrant throws a considerable doubt upon the genuineness of the subjective satisfaction of the detaining authority which in turn renders the impugned order of detention unsustainable in law. It has been further contended that the impugned order has lost proximity with the object of detention sought to be achieved under the Act.

8) So far as the legal position as regards the judicial review of a detention order prior to its execution is concerned, the same has been discussed by the Supreme Court in a number of judgments including the judgments delivered in the cases of **Additional Secretary to Government of India & Ors. v. Smt. Alka Subash Gadia & anr.** 1992 Suppl. (1) SCC 496, **Deepak Bajaj v. State of Maharashtra and anr.** AIR 2009 SC 628, and **Subash Popatlal Dave v. Union of India and anr.** (2014) 1 SCC

280. It has been held that the order of detention at pre-execution stage can be challenged on any ground except on the ground of sufficiency of material relied upon by the detaining authority in passing the order of detention as the said ground cannot be gone into by the Court at pre-execution stage when the grounds of detention have not been served upon the detenu. This means that the detention order at pre-execution stage can also be challenged on the ground that the detaining authority has not taken any steps for executing the detention order for a considerable period of time and said approach of the executing authorities throws a doubt upon the genuineness of the subjective satisfaction of the detaining authority.

9) Adverting to the facts of the present case, the impugned order of detention has been passed on 06.08.2019 and the same came to be stayed by this Court on 09.11.2022. Thus, for more than two years it was open to the respondents to execute the impugned order of detention upon the petitioner. The justification given by the respondents for not executing the impugned order upon the petitioner is that he was suffering from ailment and that he was undergoing treatment in various hospitals, as a result of which it was not feasible to put him under custody. To support this contention, the respondents have placed on

record report of the Incharge Police Post, Mirgund, according to which the petitioner is suffering from Asthma from several years and is undergoing medical treatment in various private hospitals including in JVC Hospital, Bemina, Srinagar.

10) The respondents, however, have not placed any material on record to show that the petitioner was suffering from such a serious ailment as would have endangered his life in custody. No medical record pertaining to the petitioner is available in the detention record produced by the respondents that would go on to show that the petitioner was suffering from any serious ailment at the time when the impugned order of detention was passed or immediately thereafter. The detention record does not reveal that any efforts have been made by the executing agency to execute the impugned order of detention upon the petitioner for more than two years till such time the impugned order came to be stayed by this Court. Thus, it can safely be stated that the respondents have shown slackness and remissness in executing the warrant of detention upon the petitioner. This throws considerable doubt about the subjective satisfaction of the detaining authority, thereby rendering the impugned order of detention unsustainable in law. In my aforesaid view, I am

supported by the ratio laid down by the Supreme Court in the case of **Mohd. Farooq v. Joint Secretary to Govt. of India**, (2002) 2 SCC 360.

11) In view of the foregoing discussion, the petition is allowed and the impugned order of detention is quashed.

12) The detention record be returned to learned counsel for the respondents.

**(Sanjay Dhar)
Judge**

SRINAGAR

24.04.2026

"Dhat Aitaf-Deeg"

Whether the **judgment** is reportable: **YES/NO**

