

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(Crl) no. 95/2023

Umar Nazir Bhat

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

Through: Mr. M. Ashraf Wani, Advocate

Vs.

UT of JK and others

...Respondent(s)

Through: Mr. Harris Khan, Assisting counsel vice
Mr. Mohsin Qadiri, Sr. AAG

CORAM:

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

08.05.2026

1. The petitioner, being aggrieved by Order No. DMS/PSA/27/2022 dated 08.04.2022 passed by the District Magistrate, Srinagar, whereby he was directed to be placed under preventive detention on the ground that his activities were allegedly prejudicial to the maintenance of public order, has filed the present criminal writ petition seeking quashment of the said order before its execution and prior to its confirmation by the competent authority.
2. The petitioner contends that he has been falsely implicated by Police Station Maisuma in various FIRs in which he was never arrested, as the said FIRs were allegedly registered only to falsely implicate him. It is further averred that the petitioner had obtained anticipatory bail in the said FIRs, which was initially granted for a limited period and subsequently made absolute.
3. It is further submitted that the impugned detention order was passed on 08.04.2022 and, being valid only for a period of six months, has lost its efficacy with the passage of time. Since the order has not been executed till date, it continues to pose a threat to the petitioner's personal liberty. According to the petitioner, the impugned order is unsustainable in the eyes of law and has become stale owing to efflux of time.

4. The petitioner further submits that no prejudicial activity has been attributed to him since the year 2017 and, therefore, there exists no proximate or live link between the alleged activities and the impugned detention order. On these grounds, the petitioner seeks issuance of a writ of certiorari for quashing of the detention order dated 08.04.2022.
5. The petitioner has annexed copies of various orders passed in FIR Nos. 06/2015, 47/2015, 28/2022, 60/2008, etc., to demonstrate that the criminal cases registered against him by the respondents were false and motivated. It is contended by the respondents that the object of preventive detention is not to punish a person for past conduct, but to prevent him from indulging in activities prejudicial to the security of the State. The basis of such detention, according to the respondents, is the subjective satisfaction of the detaining authority, which in the present case found it necessary to detain the petitioner to prevent him from acting in a manner prejudicial to the interests of the State.
6. The respondents further contend that the petitioner has been found involved in several criminal activities which are highly objectionable and pose a serious threat to the maintenance of security of the State. It is stated that, considering his prejudicial activities, the police agency recommended his preventive detention. Acting upon the dossier submitted by the police, the respondent District Magistrate recorded subjective satisfaction that preventive detention of the petitioner was necessary with the sole object of preventing him from acting in any manner prejudicial to the security of the State. It is also contended that merely because the petitioner has been granted bail in the criminal cases does not debar the detaining authority from passing an order of preventive detention against him.
7. During the course of hearing, the respondents produced the detention record, according to which the Senior Superintendent of Police, vide communication dated 07.04.2022, submitted a dossier before the District Magistrate, Srinagar. Acting upon the said dossier and in exercise of powers under Section 8 of the Jammu and Kashmir Public Safety Act, 1978, the District Magistrate passed the impugned order directing

preventive detention of the petitioner and his lodgement in Central Jail, Kot Bhalwal, Jammu, for such period as may be notified, unless confirmed by the Government.

8. The grounds of detention reveal that as many as 23 FIRs had allegedly been registered against the petitioner between the years 2009 and 2015, accusing him of involvement in incidents of stone pelting leading to registration of offences under Sections 307, 336, 332, 427, 147 and 148 RPC. All the FIRs were stated to have been registered at Police Station Maisuma. According to the respondents, the activities attributed to the petitioner were highly objectionable in nature and were aimed at disturbing peace and tranquillity and promoting secessionist tendencies in the Union Territory of Jammu and Kashmir.
9. It was further alleged that the petitioner, along with other like-minded persons, propagated the ideology of secessionist elements by implementing organized programmes aimed at challenging the sovereignty of the country, thereby disrupting public order and tranquillity. The respondents contended that the activities of the petitioner were highly prejudicial to the maintenance of public order and, therefore, warranted immediate preventive measures.
10. Subsequently, by way of corrigendum dated 21.04.2022, the place of lodgement of the petitioner was changed from Central Jail, Kot Bhalwal, Jammu, to Central Jail, Srinagar. The dossier submitted by the police authorities was also supported by details of the aforesaid 23 FIRs.
11. Learned counsel for the petitioner submitted that under the provisions of the Act of 1978, the maximum permissible period of detention could not exceed two years and, in the present case, the impugned order had outlived its efficacy. It was argued that neither the dossier nor the grounds of detention were ever supplied to the petitioner. Even otherwise, the material placed on record only indicated registration of FIRs between the years 2009 and 2015 and there was not even a whisper of any prejudicial activity attributable to the petitioner after the year 2015. It was further contended that in all the criminal cases relied upon by the respondents, the petitioner had either never been arrested or had obtained bail orders

immediately upon learning about the cases. It was never the case of the respondents that the petitioner had violated any condition of bail or indulged in any unlawful activity thereafter. Accordingly, it was argued that the grounds forming the basis of the detention order had become stale and lacked proximity with the impugned order.

12. Per contra, learned counsel for the respondents argued that this Court, vide order dated 04.04.2023, had stayed the operation of the impugned detention order dated 08.04.2022 before the same could be executed. It was contended that merely because the order remained unexecuted on account of the interim protection granted by the Court would not render the detention order redundant or ineffective. According to the respondents, the validity of the order was required to be examined in light of the grounds of detention and the subjective satisfaction arrived at by the detaining authority. It was submitted that as many as 23 FIRs had been registered against the petitioner involving allegations of stone pelting, unlawful assembly, attempt to murder and breach of public peace, which clearly demonstrated that his activities were prejudicial to the security of the State and maintenance of public order. The detention order, therefore, was passed to prevent the petitioner from continuing such activities. It was further argued that where the liberty of an individual comes into conflict with the larger interests of public order and security of the State, individual liberty must yield to the larger national interest.
13. It was further submitted by the respondents that, having regard to the nature of activities allegedly committed by the petitioner, the authorities responsible for maintenance of national security and public order were justified in arriving at the requisite subjective satisfaction for his preventive detention. According to the respondents, preventive detention is intended to protect society and not to punish an individual for past conduct. It was also argued that the petitioner had failed to demonstrate any violation of the statutory provisions governing preventive detention.
14. Reliance was placed upon the judgment reported in **2015 (12) SCC 127** to contend that where a person has dangerous antecedents and is involved

in multiple criminal cases, it cannot be said that there existed no reasonable basis for ordering preventive detention against him.

15. In rebuttal, learned counsel for the petitioner, relying upon the judgment of a Coordinate Bench of this Court in *Attaullah Malik v. UT of J&K*, OWP 884/2017 D.O.D 12.10.2023 argued that even at the pre-execution stage, a detention order can be challenged if the circumstances disclose that the order is unsustainable in law. It was submitted that the petitioner had never absconded and remained available throughout, yet no effort was made by the respondents to execute the detention order. This, according to the petitioner, cast serious doubt upon the genuineness of the subjective satisfaction recorded by the detaining authority. It was pointed out that the detention order had been passed on 08.04.2022, whereas the interim stay order came to be passed only on 04.04.2023, and during this entire period no attempt whatsoever was made to execute the order. It was, therefore, argued that the unexplained delay in execution of the detention warrant vitiated the detention order itself.
16. Reliance was also placed upon the judgment of the Hon'ble Supreme Court in *Deepak Bajaj v. State of Maharashtra*, wherein it was held that where a detenu approaches the Court at the pre-execution stage and is able to demonstrate that the detention order is ex facie illegal, there is no reason for the Court to refuse interference and compel the detenu to first undergo detention, only to be released later upon quashment of the order.
17. I have heard learned counsel for the parties at length and perused the record produced before the Court.
18. There is no dispute with regard to the settled legal position that preventive detention is preventive and not punitive in nature. Article 22(5) of the Constitution of India read with Section 13 of the Jammu and Kashmir Public Safety Act guarantees to the detenu the right to be informed, as soon as may be, of the grounds on which the detention order has been passed, so as to enable him to make an effective representation against the same. In the present case, admittedly, after the passing of the detention order dated 08.04.2022, there appears to have been no serious effort on the part of the respondents to execute the same, and the order

remained confined to official records only. Initially, the petitioner was directed to be lodged in Central Jail, Kot Bhalwal, Jammu, but by subsequent corrigendum dated 21.04.2022, the place of lodgement was changed to Central Jail, Srinagar.

19. The detention order is founded upon 23 FIRs allegedly registered at Police Station Maisuma for offences under Sections 307, 147, 148, 336, 353, 427 and 121 RPC as well as Section 3 of the PDD Act. According to the respondents, registration of these FIRs between the years 2009 and 2015 constituted sufficient material to arrive at the conclusion that the activities of the petitioner were prejudicial to public order and tranquillity and posed a threat to the security of the Union Territory of Jammu and Kashmir. It was further apprehended that if the petitioner remained at large, he would continue indulging in unlawful activities detrimental to public peace and order. However, the last FIR relied upon by the respondents pertains to the year 2015. The record is conspicuously silent as to the status of those cases, namely whether the petitioner had been arrested therein, whether he had been enlarged on bail, or whether any further unlawful conduct was attributed to him thereafter. Significantly, from the year 2015 till the passing of the detention order in 2022, no material has been placed on record demonstrating involvement of the petitioner in any activity prejudicial to public order or security of the State.
20. Though the respondents alleged that the petitioner used to compel shopkeepers in Maisuma and Gowkadal to shut their shops in support of hartal and bandh calls, no particulars whatsoever have been furnished indicating any such activity after the year 2015 or immediately prior to the issuance of the detention order. The allegation that the petitioner was associated with persons seeking to disturb normalcy in the Kashmir Valley remains vague and unsupported by any proximate material. While such allegations, if substantiated, may indeed be serious in nature, there must nevertheless exist a live and proximate link between the alleged activities and the order of preventive detention. In the present case, there appears to be a complete absence of such proximity between the last

alleged criminal activity of the year 2015 and the issuance of the detention order in April 2022. Consequently, the grounds of detention, on the face of the record, appear stale and lacking in immediacy.

21. In *Attaullah Malik's* case, "*supra*" the petitioner therein had already been arrested in connection with a criminal case and was in police custody when the detention order came to be passed, yet the same was not executed despite the detenu being readily available to the authorities. The Court noticed an unexplained delay of more than ten months in execution of the detention warrant and held that such inaction on the part of the authorities cast serious doubt upon the genuineness of the subjective satisfaction recorded by the detaining authority. The Court observed that failure to execute the detention warrant despite availability of the detenu clearly reflected slackness and remissness on the part of the authorities, thereby rendering the detention order unsustainable in law.
22. In the present case as well, the detention order was passed on 08.04.2022 and remained unexecuted till the operation thereof was stayed by this Court on 04.04.2023. The respondents have failed to explain as to why no steps were taken to execute the order during the interregnum. It is not even their case that the petitioner had absconded, gone underground or otherwise evaded arrest during the raid period. The record rather suggests that the detention order remained only on paper and was never seriously sought to be implemented. It appears that the petitioner somehow came to know about the existence of the detention order and thereafter filed the present petition on 15.03.2023 challenging the same. Even when confronted during the course of hearing, the respondents were unable to furnish any satisfactory explanation for the delay in execution of the detention warrant.
23. On the contrary, it appears that the petitioner had applied for anticipatory bail in FIR No. 06/2015, FIR No. 28/2022 and FIR No. 60/2008, wherein interim protection had been granted in his favour. It further appears that, at the time of filing of those applications in the year 2022, reports had been called for from the concerned police stations. It was only thereafter

that the respondents appear to have awakened from deep slumber. It is only when the petitioner sought grant of anticipatory bail that the respondents realised that he was required to be booked on the strength of previous FIRs registered prior to the year 2015. FIR No. 28/2022 of Police Station Maisuma does not even find mention in the dossier forming the basis of the preventive action against the petitioner. This clearly indicates that the dossier has been prepared in a casual and mechanical manner, without due regard to the genuineness or relevance of the material relied upon. In fact, it appears that only after the petitioner sought enlargement on anticipatory bail in some of the FIRs did the respondents awaken and initiate the present proceedings. This further demonstrates that, post-2015, the conduct of the petitioner had not given rise to any issue concerning breach of public peace, public order, or public tranquillity. The impugned order, therefore, appears to have been passed in a routine and mechanical manner solely to prevent the petitioner from obtaining anticipatory bail in the earlier FIRs.

24. The fact that, despite the detention order having been issued on 08.04.2022, the same was not executed till the filing of the present petition, further demonstrates that there existed no real urgency warranting invocation of preventive detention against the petitioner. Needless to mention that, once the respondents failed to satisfactorily explain the inordinate delay in executing the detention order, the question that arises is whether the subjective satisfaction so reached stands vitiated. In this regard, the law is well settled by a catena of judgments wherein the Hon'ble Apex Court has emphasized that the detaining authority must satisfactorily explain the inordinate delay in execution of the detention order; failing which, the subjective satisfaction gets vitiated. Reference, in this regard, may be made to **2000 (2) SCC 360**, which has also been relied upon by the co-ordinate Bench of this Court in the judgment referred to hereinabove.
25. Having regard to the aforesaid, it is manifest that the unexplained delay in execution of the warrant of detention vitiates the subjective satisfaction of the detaining authority in issuing the detention order, coupled with the

fact that the respondents have failed to establish any live and proximate link between the alleged prejudicial activities and antecedents of the petitioner after registration of the last FIR in the year 2015.

26. Viewed thus, the impugned detention order bearing No. DMS/PSA/27/2022 dated 08.04.2022 deserves to be quashed and is, accordingly, quashed. The petition is **allowed**.
27. Record be returned.

(SANJAY PARIHAR)
JUDGE

Srinagar
08.05.2026
"Imtiyaz"

