

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(Crl) No.654/2022
CrIM No.1203/2022

Reserved on: 03.09.2026

Pronounced on: 14.09.2026

Uploaded on: 14.09.2026

Whether the operative part or full
judgment is pronounced: Full

Firdous Ahmad Dar

S/O Abdul Rashid Dar
R/O Halmulla Sangam
Bijbehara, District Anantnag.

...Petitioner(s)

Through: Adv. Wajid Mohammad Haseeb.

Vs.

1. Union Territory of J&K

through Addl. Chief Secretary,
Home Department,
Civil Sectt. Srinagar.

2. District Magistrate, Anantnag.

3. Sr. Superintendent of Police,
Anantnag.

...Respondent(s)

Through: GA Ilyas Nazir Laway.

CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE
JUDGMENT

1. Through the medium of the instant petition, the petitioner has called in question the order of detention bearing No. **39/DMA/PSA/DET/2022** dated **25.06.2022**, passed by respondent No.2-District Magistrate, Anantnag under Section 8 of the Jammu and Kashmir Public Safety Act,

1978 (for short, "*the Act*") whereby the petitioner has been ordered to be detained with a view to prevent him from acting in any manner prejudicial to the security of the State.

2. Learned counsel for the petitioner, while assailing the impugned order, has raised several grounds. The main contention is that the detention order, though passed on **25.06.2022**, was not executed for a considerable period of time; that the petitioner had approached this Court and an interim order was passed, but the respondents did not take effective steps for vacation of the said interim order; that the delay in execution of the detention order cannot be attributed to the petitioner; that Section 12 of the Public Safety Act specifically deals with the powers available to the authorities in relation to an absconding person; that if the petitioner had, assumingly, been absconding or concealing himself so as to prevent execution of the detention order, the respondents should have taken effective measures contemplated under Section 12 of the Public Safety Act; that the failure to invoke or pursue such statutory measures belies the respondents' assertion that the petitioner was deliberately evading execution of the detention order.
3. Another limb of the argument is that one of the FIRs namely **FIR No. 384/2007** out of four FIRs against the petitioner, had culminated in the petitioner's acquittal on

25.10.2018; that the petitioner had also been granted bail in the other criminal cases and that such material facts were either not placed before the Detaining Authority or were not considered by it; that the detention order, therefore, suffers from non-application of mind and the subjective satisfaction recorded therein stands vitiated.

4. Per contra, learned counsel appearing for the respondents, in line with the reply filed by them, has opposed the petition. It is submitted that the detention order could not be executed because the petitioner after managing to of the detention order, the warrant of detention and other connected documents, had thereafter deliberately evaded his arrest; that a person who himself evades execution of a detention order cannot be permitted to take advantage of the delay occasioned by his own conduct; that the material placed before the Detaining Authority disclosed that the activities of the petitioner were highly prejudicial to the security of the State; that the reference has been made to the various charge-sheets and criminal cases registered against the petitioner, including allegations concerning possession of arms; that the detention order represents a genuine exercise of preventive jurisdiction and that this Court, while exercising writ jurisdiction, ought not to substitute its subjective satisfaction for that of the Detaining Authority.

5. Heard learned counsel for the parties also gone through the pleadings and considered the same.
6. At the outset, it needs to be emphasised that preventive detention is an extraordinary power. It is qualitatively different from punitive detention. Its object is not to punish a person for an act already committed, but to prevent him from engaging in conduct which is apprehended to be prejudicial to the security of the State or maintenance of public order.
7. The Constitution Bench of the Supreme Court in **Haradhan Saha v. State of West Bengal** reported as **(1975) 3 SCC 198** explained this distinction and held that preventive detention is based upon a reasonable prognosis of the future behaviour of a person founded upon his past conduct and surrounding circumstances. The fact that criminal prosecution is also possible does not, by itself, exclude the power of preventive detention.
8. At the same time, the extraordinary nature of the power makes it incumbent upon the Detaining Authority to strictly comply with the constitutional and statutory safeguards. The subjective satisfaction contemplated by the Act must be genuine, founded upon relevant material and arrived at after consideration of all material facts having a bearing upon the necessity for preventive detention.

9. The first question which arises is whether the delay in execution of the detention order renders the same invalid.

10. In **Shafiq Ahmad v. District Magistrate, Meerut**, reported as **(1989) 4 SCC 556**, the Supreme Court held that whether a particular delay is unreasonable depends upon the facts and circumstances of each case. Likewise, in **M. Ahamedkutty v. Union of India** reported as **(1990) 2 SCC 1**, the Supreme Court recognised that where the delay is satisfactorily explained and is attributable to the detenu's own conduct in evading arrest, the live link between the prejudicial activity and the detention may not necessarily be snapped. At the same time, the Court made it clear that mere assertion of abscondence cannot, by itself, furnish an adequate explanation. The principle was also considered in **Naresh Kumar Goyal v. Union of India** reported as **(2005) 8 SCC 276**, wherein the Supreme Court observed that the executing authorities are required to remain vigilant in securing the person against whom the detention order has been passed. Preventive detention cannot be allowed to become a dead letter by administrative inaction.

11. Section 12 of the Public Safety Act specifically deals with a situation where the Government or the authorised Officer has reason to believe that a person against whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed.

The provision enables the authorities to approach the Magistrate and also to direct the person concerned to appear before the specified Officer. The existence of this provision assumes significance where the State seeks to explain prolonged non-execution on the ground that the proposed detenu was absconding. It is true that the language of Section 12 is enabling in nature and failure to invoke each and every measure contemplated therein, cannot by itself, invalidate a detention order. Nevertheless, where a prolonged delay is sought to be justified solely on the ground that the petitioner was absconding, the respondents must place before the Court credible material demonstrating the efforts actually undertaken to secure his presence.

- 12.** There is no absolute rule that delay in execution of a preventive detention order, by itself, automatically invalidates the order. The question has to be examined in the light of the explanation furnished by the respondents and the circumstances responsible for such delay.
- 13.** However, the present case stands on a somewhat different footing. The petitioner asserts that an interim order of this Court was operating and that the respondents did not take effective steps for vacation thereof. If the execution of the detention order was in fact interdicted by a subsisting judicial order, the period during which such order operated cannot ordinarily be

characterised as unexplained administrative delay attributable to the respondents. The question, therefore, is not merely how much time elapsed, but what caused the elapsed time.

14. The Supreme Court in **M. Ahamedkutty (supra)** and **Shafiq Ahmad (supra)** has made it clear that the plea of abscondence has to be examined in the factual context and cannot be accepted merely as a convenient explanation for unexplained delay.

15. In the present case, the assertion of the respondents that the petitioner had obtained knowledge of the detention order and thereafter evaded its execution has to be tested against the contemporaneous record. If the record establishes repeated and genuine attempts to execute the warrant and the petitioner's deliberate evasion, the delay would stand explained. Conversely, if the record reveals that the respondents remained passive and took no effective steps, the mere recital that the petitioner was absconding cannot save the detention order.

16. The respondents have also urged that the petitioner, having evaded execution of the detention order, cannot be permitted to take advantage of the resultant delay.

17. As per perusal of the pleadings, impugned detention order came to be passed by the detaining authority on **25.06.2022** to prevent the petitioner from indulging into

the activities prejudicial to the 'security of State'. Petitioner challenged the same at pre-execution stage on **27.09.2022**, when it was stayed by this Court. In the meantime, petitioner had not absconded or evaded execution of detention order, as he had attended proceedings against him in a criminal case arising out of **FIR No.22/2011** of Police Station, Kothibagh, before the trial court on **30.06.2022**, which had been made basis for invoking his detention. Respondents did not explain or placed on record any material so as to substantiate that they had resorted to the provisions contained under Section 12 of the Public Safety Act in relation to ab absconding person so as to execute the warrant. The respondents, having not taken any step, despite the availability of the petitioner, have thus failed to explain the inordinate delay in execution of the detention order with effect from its passing on **25.06.2022**, which vitiates the detention order itself.

18. The petitioner has next contended that **FIR No. 384/2007** had culminated in his acquittal on **25.10.2018** and that the petitioner had been granted bail in the other cases, but these material developments were not brought to the notice of or considered by the Detaining Authority.

19. It is settled that an order of preventive detention can be passed even where criminal proceedings are pending and in appropriate circumstances, even after discharge or

acquittal. Acquittal in a criminal case does not, in the abstract, create an absolute bar to preventive detention. The Supreme Court has reiterated that preventive detention and criminal prosecution operate in different fields. But that proposition does not mean that an acquittal or grant of bail, where relevant, can simply be ignored. Where such facts have a material bearing upon the question whether the alleged past conduct continues to furnish a live and rational basis for apprehending future prejudicial activity, the Detaining Authority is required to apply its mind to them.

20. The Supreme Court has repeatedly held that suppression or non-consideration of vital facts having a bearing upon the subjective satisfaction may vitiate the detention order. In **A. Annamalai v. State of Tamil Nadu**, reported as **(2005) 9 SCC 705** and in the line of cases dealing with non-application of mind, the Court has emphasised that relevant material must be considered before the subjective satisfaction is reached.

21. The respondents have relied upon the charge-sheets and the allegations that the petitioner was involved in activities prejudicial to the security of the State, including possession of arms.

22. There can be no doubt that activities involving illegal possession or use of arms, particularly when connected with activities prejudicial to the security of the State,

constitute material which a Detaining Authority is entitled to consider. Preventive detention may be founded upon material which would also constitute the basis of criminal prosecution. However, the mere existence of charge-sheets cannot, by itself, substitute the statutory requirement of subjective satisfaction. The Detaining Authority must demonstrate a rational connection between the material relied upon and the necessity to prevent the petitioner from acting prejudicially in future.

23. The Court is conscious that it does not sit as an appellate authority over the subjective satisfaction of the Detaining Authority. The Court cannot substitute its own opinion for that of the detaining authority merely because another view is possible. At the same time, judicial review is available where the satisfaction is based on irrelevant material, non-application of mind, or the constitutional safeguards have not been complied with. The Supreme Court has repeatedly recognised that the procedural safeguards surrounding preventive detention constitute the principal protection available to a person against deprivation of personal liberty.

24. There is considerable force in the general proposition. In **Additional Secretary to the Government of India v. Alka Subhash Gadia** reported as **1992 Supp (1) SCC 496**, the Supreme Court held that interference with a preventive detention order at the pre-execution stage is

permissible only in exceptional circumstances. The Court identified, *inter alia*, cases where the order is passed for a wrong purpose, is based on vague, extraneous or irrelevant grounds, or where the authority lacked jurisdiction.

25. The power of preventive detention, though undoubtedly available to the State for protecting the security of the State, cannot be exercised mechanically or on the basis of stale, incomplete or selectively presented material. Personal liberty under Article 21 of the Indian Constitution occupies a position of great constitutional importance, and the safeguards incorporated in Article 22 and the statute must receive strict compliance.

26. In the circumstances of the present case, and particularly having regard to the considerable delay in execution of the detention order; the absence of satisfactory material demonstrating effective steps for execution during the relevant period; the subsistence of the interim judicial order and the failure, if established from the record, of the respondents to seek its vacation with due expedition; and the apparent non-consideration of the petitioner's acquittal in FIR No. 384/2007 and the orders of bail in the other criminal cases, this Court is of the considered opinion that the subjective satisfaction recorded by the Detaining Authority cannot be sustained in law.

27. Having regard to the above discussion, the instant petition is **allowed**. The impugned detention Order No. **39/DMA/PSA/DET/2022** dated **25.06.2022** passed under Section 8 of the Jammu and Kashmir Public Safety Act, 1978, is consequently **quashed**.

28. Disposed of, accordingly, alongwith connected application(s).

Srinagar
14.09.2026
Muzammil. Q

