

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

HCP 43/2025

Rouf Ahmad Wani

...Petitioners

Through: Mr. Arif Hussain Bhat, Advocate
Vs.

UT of J&K and others

...Respondent

Through: Mr. Illyas Laway, GA

CORAM:

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

08.10.2026

1. The petitioner has invoked the writ jurisdiction of this Court seeking quashment of Detention Order No. 26/DMA/PSA/DET/2024 dated 24.10.2024, passed by the District Magistrate, Anantnag, in exercise of powers under the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as "the Act"), whereby the petitioner has been ordered to be placed under preventive detention with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The challenge has been laid at the pre-execution stage, the detention order having not been executed against the petitioner.

2. The record reveals that the impugned detention order had not been executed when the present writ petition was instituted. The petitioner claims to have acquired knowledge of the order and the grounds underlying it through reliable sources, whereafter he approached the detaining authority for obtaining certified copies thereof. His request, however, did not yield any response. In these circumstances, this Court, vide order dated 05.03.2025, directed the District Magistrate, Anantnag, to place the detention order on record so as to ascertain whether the same pertained to the petitioner. Pursuant thereto, the respondents produced the detention order on 10.03.2025, which was taken on record. The respondents were also directed to file their response and produce the relevant detention record. Meanwhile, the execution of the impugned detention order was stayed.

3. A perusal of the material subsequently produced before the Court reveals that the impugned detention order has been passed on the basis of a dossier submitted by the Senior Superintendent of Police, Anantnag, vide communication dated 10.09.2024. The grounds of detention principally refer to certain criminal antecedents attributed to the petitioner during the years 2005, 2006 and 2007, besides making reference to FIR No. 16/2020, registered at Police Station Achabal for

offences punishable under Sections 420 and 120-B of the Indian Penal Code.

4. The principal question that arises for consideration is whether the material relied upon by the detaining authority could reasonably furnish a live, proximate and rational basis for recording the subjective satisfaction that the preventive detention of the petitioner was necessary in October 2024 to prevent him from acting in a manner prejudicial to the maintenance of public order. An allied question is whether, in the facts and circumstances of the case, the impugned order can withstand judicial scrutiny notwithstanding that its execution had not taken place.
5. It is well settled that preventive detention is preventive and not punitive in character. Its object is not to punish a person for past conduct but to prevent the commission of anticipated acts prejudicial to the interests specified in the statute. The power of preventive detention, being an exceptional measure which directly impinges upon the fundamental right to personal liberty guaranteed under Article 21 of the Constitution of India, is required to be exercised with circumspection and upon material bearing a rational nexus with the necessity for detention. Although the satisfaction contemplated under the preventive detention law is essentially subjective, such

satisfaction is not beyond the reach of judicial review. The Court is entitled to examine whether the material relied upon is relevant, whether it bears a reasonable and proximate connection with the object sought to be achieved, and whether the statutory power has been exercised for a purpose contemplated by law. Past incidents, which have become remote in point of time, cannot ordinarily constitute a legitimate foundation for preventive detention unless the surrounding circumstances disclose a continuing and proximate connection between such incidents and the apprehended prejudicial activity.

6. Examined in the light of the aforesaid principles, the material forming the foundation of the impugned detention order suffers from a fundamental infirmity. The principal antecedents relied upon by the detaining authority pertain to the years 2005, 2006 and 2007, whereas the detention order was passed on 24.10.2024. Thus, the incidents forming the substantial basis of the order are nearly two decades old. The considerable lapse of time assumes greater significance when viewed in conjunction with the fact that the petitioner has placed on record orders of acquittal in the criminal cases relied upon against him. In FIR No. 35/2006, the petitioner was acquitted vide judgment dated 16.09.2009; in FIR No. 89/2007, he was acquitted vide

judgment dated 13.05.2017; and in FIR No. 82/2007, the acquittal was recorded vide judgment dated 30.12.2013.

7. It is true that an acquittal in a criminal case does not, by itself and in every circumstance, render the underlying conduct wholly irrelevant for the purposes of preventive detention, the nature and object of criminal prosecution and preventive detention being distinct. Nevertheless, where the detaining authority seeks to rely upon incidents of considerable antiquity, which have also culminated in acquittal, it becomes incumbent upon the authority to demonstrate, from the material before it, how such incidents continue to bear a live and proximate nexus with the necessity for preventive detention. In the present case, the respondents have failed to disclose any material establishing such a connection. There is nothing on record to indicate how incidents attributed to the petitioner in the years 2005 to 2007 could reasonably give rise to an apprehension, in October 2024, that his preventive detention was necessary for maintaining public order. Mere reproduction of old criminal antecedents, without any material demonstrating continuity of prejudicial conduct or a present likelihood of its recurrence, cannot sustain the requisite subjective satisfaction.

8. The only comparatively recent incident referred to in the grounds of detention is FIR No. 16/2020, registered under

Sections 420 and 120-B IPC at Police Station Achabal. Even this material, however, does not establish the necessary nexus with the statutory requirement of maintenance of public order. The distinction between a disturbance of *law and order* and an activity prejudicial to *public order* is well recognised. Every criminal act, however reprehensible, does not necessarily amount to a disturbance of public order. Whereas a breach of law and order may affect particular individuals or a limited section of persons, an activity prejudicial to public order must have such reach, nature or potential impact as to disturb, or threaten to disturb, the even tempo of life of the community or the public at large. The nature of the offence alleged is undoubtedly relevant, but the decisive consideration is its impact, actual or reasonably apprehended, upon public order.

9. In the case at hand, the mere reference to FIR No. 16/2020, involving allegations under Sections 420 and 120-B IPC, does not, without anything further, establish that the alleged conduct of the petitioner had assumed dimensions affecting the maintenance of public order. The grounds of detention do not disclose any specific circumstance demonstrating that the alleged acts had disturbed the normal life of the community or were likely to generate such disturbance as would warrant recourse to the extraordinary measure of preventive detention.

The detaining authority was required to indicate a rational connection between the alleged conduct and the apprehended threat to public order. A bare reference to the registration of a criminal case, without disclosing the nature and extent of its impact upon the community, cannot substitute that essential requirement. The material relating to FIR No. 16/2020, therefore, does not cure the absence of a live and proximate nexus between the petitioner's alleged activities and the necessity for his preventive detention.

10. Another circumstance of considerable significance is the prolonged non-execution of the impugned detention order. The order was passed on 24.10.2024 but remained unexecuted, and the petitioner continued to remain at liberty. The respondents have not furnished any satisfactory explanation for the failure to execute the order during the intervening period. The very foundation of preventive detention is the necessity of preventing anticipated prejudicial conduct. Where the detaining authority considers the immediate detention of a person necessary to avert a threat to public order, an unexplained and substantial delay in executing the order assumes relevance in examining whether the apprehended necessity continued to subsist. Though delay in execution may not, in every case, invalidate a detention order, an unexplained

delay is a material circumstance which may weaken or sever the live link between the grounds of detention and the object sought to be achieved. This consideration assumes particular importance where, as in the present case, the detention order itself rests substantially upon incidents which had already become stale by the date of its issuance.

11. In the present case, the cumulative effect of the remoteness of the principal antecedents, the acquittal of the petitioner in the criminal cases relied upon, the absence of material demonstrating any continuing threat to public order, and the unexplained non-execution of the detention order substantially undermines the very basis of the subjective satisfaction recorded by the detaining authority. The respondents have not placed before this Court any fresh or proximate material capable of demonstrating that the preventive detention of the petitioner was imperative in October 2024. The subsequent FIR of 2020, for the reasons already noticed, does not bridge this gap.

12. There is yet another aspect of the matter which merits consideration. The petitioner was admittedly not furnished a copy of the detention order or the grounds of detention despite having specifically approached the competent authority for certified copies thereof. The order was produced before this

Court only pursuant to the direction issued on 05.03.2025. The constitutional safeguards governing preventive detention, including the right of a detainee to be informed of the grounds of detention and to make an effective representation, are intended to protect personal liberty against arbitrary executive action. This Court is conscious that, at the pre-execution stage, the ordinary safeguards which arise upon actual detention cannot be treated as having been triggered in their entirety. Consequently, the mere non-supply of the grounds of detention before execution cannot, by itself, be equated with a breach of the post-detention constitutional obligation. Nevertheless, the circumstance that the petitioner sought copies of the detention material, which were not furnished to him, forms part of the factual background in which the present challenge has arisen. The petitioner was constrained to approach this Court, and the detention order was brought on record only upon judicial intervention.

13. This Court is equally conscious that judicial interference with an order of preventive detention at the pre-execution stage is ordinarily confined to the limited grounds recognised by law. The Court cannot undertake an unrestricted examination of the sufficiency of the material or substitute its own satisfaction for that of the detaining authority. However, the present case does

not involve a mere disagreement with the subjective assessment of the detaining authority. The detention order and the material forming its basis have been produced before this Court pursuant to its directions. An examination thereof discloses that the order rests predominantly upon extremely stale antecedents, that the principal criminal cases have culminated in acquittal, that the comparatively later FIR does not disclose any demonstrated threat to public order, and that the order remained unexecuted for a considerable period without satisfactory explanation. These infirmities go to the existence of a rational foundation for the exercise of the statutory power itself. The challenge, therefore, concerns the legality of the exercise of preventive detention powers and not merely the sufficiency or adequacy of the material relied upon.

14. Respondent No. 2, in the objections filed before this Court, has sought to justify the impugned order by asserting that, at the relevant time, the petitioner was indulging in anti-social activities and was habitually engaged in posturing and impersonation, thereby misleading members of the public, particularly gullible youth. It has further been alleged that the petitioner was involved in several FIRs, had been apprehended with drugs, and was engaged in fraudulent dealings and other activities capable of disturbing the peaceful environment of

society. These assertions, however, are couched in general and sweeping terms. No specific incident, with particulars sufficient to establish its nature, proximity and impact upon public order, has been disclosed in support of these allegations. A general allegation that a person is indulging in anti-social activities, or that his conduct may disturb the peaceful environment of society, cannot by itself furnish a lawful foundation for preventive detention. The detaining authority cannot transform an ordinary allegation of criminal or objectionable conduct into a threat to public order merely by employing the statutory expression "prejudicial to the maintenance of public order". The material relied upon must substantiate that conclusion. In the absence of particulars establishing the requisite nexus, such vague and omnibus allegations cannot sustain the impugned order.

15. The legal position in this regard finds support in the judgment of the Supreme Court in *Yumman Ongbi Lembi Leima v. State of Manipur and others*, reported in (2012) 2 SCC 176. In that case, the Supreme Court examined a preventive detention order passed in the year 2011, wherein reliance had been placed, inter alia, upon criminal antecedents relating to the years 1994, 1995 and 1998. The Supreme Court emphasised the necessity of a live link between past conduct and the apprehended

prejudicial activity, and held that the earlier incidents, being remote in point of time, did not furnish the requisite connection with the necessity for detention. The Court reiterated that personal liberty is a cherished constitutional right and that the power of preventive detention must be exercised with due caution and upon a proper appreciation of the relevant facts and circumstances. The principle emerging from the said judgment is that remote antecedents cannot be mechanically relied upon to justify preventive detention in the absence of material demonstrating their continuing relevance to the apprehended threat. The ratio of the aforesaid judgment applies with considerable force to the facts of the present case, where the principal incidents relied upon date back to the years 2005, 2006 and 2007 and have also culminated in acquittal.

16. A coordinate Bench of this Court, in *Zubair Altaf Sheikh v. Union Territory of Jammu and Kashmir*, HCP No. 304/2025, has also interfered with an order of preventive detention, inter alia, on the ground that reliance upon stale criminal antecedents, without demonstrating a sufficient live and proximate nexus with the necessity for detention, could not sustain the exercise of preventive detention powers. The principle underlying the said decision lends further support to the conclusion that the mere existence of past criminal cases,

divorced from any demonstrable present necessity, cannot justify the deprivation of personal liberty by recourse to preventive detention.

17. Upon a cumulative consideration of the material on record and the legal principles governing preventive detention, this Court is of the considered view that the impugned order cannot withstand judicial scrutiny. The foundational incidents are nearly two decades old and have culminated in acquittal. The only comparatively later FIR does not disclose any material establishing a threat to public order of the nature contemplated by the Act. The allegations advanced in the objections are vague and unsupported by specific particulars demonstrating any imminent or continuing prejudicial activity. The prolonged and unexplained non-execution of the detention order further weakens the asserted necessity for preventive detention. The requisite live and proximate nexus between the conduct attributed to the petitioner and the necessity for his preventive detention has, therefore, not been established. The subjective satisfaction recorded by the detaining authority, being unsupported by material bearing a rational connection with the statutory purpose, cannot be sustained.

18. For the foregoing reasons, the writ petition is **allowed**.

Consequently, Detention Order No. 26/DMA/PSA/DET/2024

dated 24.10.2024, passed by the District Magistrate, Anantnag, against the petitioner under the Jammu and Kashmir Public Safety Act, 1978, is hereby **quashed**.

19. Disposed of accordingly.

(SANJAY PARIHAR)
JUDGE

Srinagar
08.10.2026
N Ahmad

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

