

Serial No. 04

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

**Pronounced on : 29.01.2026
Uploaded on : 30.01.2026**

HCP No. 72/2025
CM No. 3140/2025

Surmu Din

.....Petitioner

Through: Mr. Siddhant Gupta, Advocate

Vs

UT of J&K & Ors.

.....Respondents

Through: Mr. Suneel Malhotra, GA

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE
JUDGMENT (ORAL)**

- 01.** The petitioner has challenged detention order bearing **No. PSA/139 dated 16.01.2025** issued by the respondent No. 2-District Magistrate, Kathua at its pre-execution stage. The impugned order has been passed by the respondent No. 2 in exercise of his powers under Section 8 of the Jammu and Kashmir Public Safety Act, 1978.
- 02.** The ground urged for assailing the impugned order of detention that has been projected by the petitioner is that the respondents have not made any effort to execute the

warrant of detention upon the petitioner though, he was very much available and in fact, he was appearing before the Court to face the criminal proceedings in connection with FIR No. 56/2024 for offences under Sections 8/21/22/29 of *Narcotic Drugs and Psychotropic Substances Act-(NDPS), 1985*, before the court of learned Additional Sessions Judge, Kathua.

03. According to the petitioner, because of inaction of the respondents the impugned order has lost its proximity at pre-execution stage itself and the object that was proposed to be achieved by detaining the petitioner stands defeated which in turn casts a doubt about the subjective satisfaction derived by the detaining authority while passing the impugned order of detention.

04. The petitioner while relying upon the ratio laid down by the Supreme Court in the case of “**A. Mohammed Farook Vs. Joint Secretary to Government of India and Ors.**” (2000) 2 SCC 360 and judgment of this Court in the case of “**Attaullah Malik Vs. State of J&K & Ors.**” in OWP No. 884/2017 decided on 12.10.2023 has contended that because the detaining authority has not taken any

steps for executing the impugned order of detention for a considerable period of time, as such, the impugned order of detention deserves to be quashed.

05. The respondents have contested the writ petition by filing their counter affidavit. In their counter affidavit, it has been submitted that the petitioner is involved in as many as three FIRs bearing Nos. 89/2022 of Police Station, Rajbagh; 56/2024 of Police Station, Rajbagh and 216/2024 of Police Station, Rajbagh.

06. It has been submitted that the detaining authority, after perusing the dossier and other documents produced by the Senior Superintendent of Police-(SSP), Kathua and keeping in view the continuous and repeated involvement of the petitioner in organized criminal activities like theft, drug peddling, smuggling and after application of mind, passed the impugned order of detention with a view to prevent the petitioner from indulging in activities which endanger the public order.

07. It has been submitted that the warrant of detention was forwarded to the Senior Superintendent of Police-(SSP), Kathua for execution but the same could not be executed

upon the petitioner because he has been evading his arrest. It has been further submitted that the Senior Superintendent of Police-(SSP), Kathua vide communication dated 21.08.2025 has reported that detention order could not be executed as the petitioner is absconding and hiding himself to evade the process of law.

- 08.** I have heard learned counsel for the parties and perused the record of the case including the detention record produced by the learned counsel appearing for the respondents.
- 09.** As already narrated, the main and only ground that has been projected by the petitioner for assailing the impugned order of detention is that the respondents have not taken any steps towards execution of warrant of detention upon him nor have they taken any steps for getting the petitioner declared as an absconder, as such, delay in execution of warrant throws doubt upon the genuineness of subjective satisfaction to the detaining authority which in turn vitiates the impugned order of detention.

10. The Supreme Court in the case of **“Additional Secretary to Government of India and Ors. Vs. Smt. Alka Subash Gada and Anr.” 1992 Suppl. (1) SCC 496** has observed that the scope of judicial review of a detention order prior to its execution is very limited. It has been held that the scope of judicial review in such cases is limited to instances, where the impugned order is not passed under the Act under which it is purported to have been passed ; where the impugned order is sought to be executed against a wrong person ; where the impugned order is passed for a wrong purpose ; where the impugned order has been passed on vague, extraneous and irrelevant consideration and where the authority which passed it had no authority to do so.
11. In **“Deepak Bajaj Vs. State of Maharashtra & Anr.” AIR 2009 SC 628**, the Supreme Court held that grounds enumerated in **Alka Subas Gadia’s case** for entertaining judicial review of a detention order are only illustrative and not exhaustive. It was held that an order of detention at pre-execution stage can be challenged on any ground except on the ground of sufficiency of materials relied upon by the detaining authority in

passing the order of detention as the said ground cannot be gone into by the Court at the pre-execution stage when the grounds of detention have not been served upon the petitioner.

12. Thus, the detention order at pre-execution stage can certainly 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 as the said approach of the executing authority throws a doubt about the genuineness regarding the subjective satisfaction of the detaining authority.

13. Coming into the facts of the present case, the contention of the petitioner is that he was available for being arrested pursuant to the impugned order of detention as he was regularly attending the criminal trial pending against him before the court of learned Additional Sessions Judge, Kathua. In this regard, the petitioner has placed on record a copy of Minutes of Proceedings dated 27.02.2025 recorded by the court of learned Additional Sessions Judge, Kathua in the case arising out of FIR No. 56/2024 of Police Station, Rajbagh.

- 14.** A perusal of the Minutes of Proceedings would reveal that the petitioner was present before the said court on 27.02.2025. This substantiates the contention of the petitioner that he had not absconded but was appearing before the court even after the passing of the impugned order of detention on 16.01.2025.
- 15.** Learned counsel for the respondents has contended that merely because the petitioner had appeared before the court on one occasion does not mean that he was always available for his arrest and for execution of warrant of detention. Factually, learned counsel for the respondents may be correct but the record produced by the respondents suggests that no effort, much less any serious effort has been made by the respondents in executing the warrant of detention against the petitioner.
- 16.** A perusal of the record would reveal that there is hardly any report of any Process Server or Police Official available on record that would go on to indicate that any effort was made to serve the warrant of detention upon the petitioner. It seems that after the petitioner invoked the writ jurisdiction of this Court, a communication

dated 14.08.2025 came to be issued by the detaining authority to the Senior Superintendent of Police-(SSP), Kathua seeking status about the execution of the impugned detention order. The said communication was responded to by the Senior Superintendent of Police-(SSP), Kathua vide communication dated 21.08.2025 informing that the warrant of detention could not be executed because the subject is still absconding and hiding himself to evade the process of law.

- 17.** There is nothing on record worth the name to show that prior to this, any effort was made by the detaining authority to execute the warrant of detention upon the petitioner. In fact, the respondents could not have executed the warrant of detention upon the petitioner once it was stayed by this Court in terms of interim order dated 27.05.2025. If at all, any effort has been made by the respondents for executing the warrant of detention, the same has been made after the execution of the warrant of detention was stayed by this Court and at that stage it was not permissible in law for the respondents to execute the warrant.

18. From the foregoing narration of the facts, it is crystal clear that the respondents have not made any effort much less any serious effort to execute the impugned warrant of detention against the petitioner prior to 27.05.2025 on which date it was stayed by this Court. Therefore, the contention of the respondents that the petitioner was evading his arrest is not substantiated from the record and the same cannot be accepted.
19. For the foregoing analysis of the facts available on record, it can safely be stated that the respondents have shown slackness in executing the warrant of detention upon the petitioner. Consequently, the subjective satisfaction of the detaining authority becomes doubtful which renders the impugned order of detention unsustainable in law. The Supreme Court in somewhat similar circumstances in the case of **A. Mohammed Farook Vs. Joint Secretary to Government of India and Ors. (supra)** has held that subjective satisfaction of the detaining authority in issuing detention order gets vitiated if there is unexplained delay in executing the detention order.

20. For what has been discussed herein before, the impugned order of detention is not sustainable in law. The petition is therefore, **allowed** and the impugned order of detention bearing **No. PSA/139 dated 16.01.2025** is **quashed**.

21. Record be returned.

(SANJAY DHAR)
JUDGE

JAMMU
29.01.2026
SUNIL

