

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(Crl) No.283/2023

CrIM No.810/2023

Reserved on: 17.09.2026

Pronounced on: 25.09.2026

Uploaded on: _____

Operative part or full judgment: Full

Owais Ahmad Shunda

S/O Abdul Hamid Shunda

R/O Maisuma,

District Srinagar.

...Petitioner(s)

Through: Adv. Shabir Ahmad Bhat vice
Adv. M.Ashraf Wani.

Vs.

1. Union Territory of J&K

through Financial Commissioner,
Home Department,
Civil Sectt. Srinagar.

2. District Magistrate,
Srinagar.

3. Sr. Superintendent of Police,
Srinagar.

4. SHO Police Station Maisuma.

...Respondent(s)

Through: Sr.AAG Mohsin Qadri with
Assisting Counsel Haris Khan.

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

JUDGMENT

1. The instant petition has been filed under Article 226 of the
Constitution of India seeking quashing of detention Order

No.DMS/PSA/28/2022 dated 08.04.2022 passed by the respondent No.2-District Magistrate, Srinagar, under the Jammu & Kashmir Public Safety Act, 1978 (for short, “the Act”).

2. The main grievance of the petitioner is that the aforesaid detention order, though passed on **08.04.2022**, has never been executed upon the petitioner; that the petitioner has continued to remain at liberty and despite the passage of considerable time, the respondents have neither executed the detention order nor placed on record any satisfactory explanation for the delay in its execution; that the detention order has been founded upon case FIR Nos. 54/2009, 55/2009 and 74/2009 registered under Sections 307, 147, 148, 149, 147, 332, 336, 427, 436 RPC in Police Station, Maisuma and alleged activities which are remote in point of time; that there is no activity attributed to the petitioner since **2017**, whereas the impugned detention order came to be passed only on **08.04.2022**; that the petitioner had already been enlarged on bail in the criminal cases relied upon by the detaining authority.
3. Respondents, though have not produced the detention record, however, contended in the counter affidavit filed on their behalf that the purpose of the preventive detention is detaining a person and not to punish him for something he has done but to prevent him from doing it; that where individual liberty comes into conflict with an interest of the

‘security of State’ or ‘Public Order’, then the liberty of the individual must give way to the larger interest of the nation; that in view of the activities of the petitioner, the police recommended his preventive detention and in this behalf submitted dossier supported by relevant material to the District Magistrate concerned, who after its examination found the preventive detention of the petitioner necessary, the impugned detention order was passed with the sole aim and object to deter the petitioner from acting in alleged activities, prejudicial to the ‘security of the State’.

4. Learned counsel for the petitioner, while reiterating the grounds urged in the petition, would argue that the very fact that the detention order of the petitioner had remained unexecuted for such a long period demonstrates that there was no immediate or compelling necessity to detain the petitioner; that the continued liberty of the petitioner for such an extended period has snapped the live and proximate link between the alleged prejudicial activity and the preventive purpose sought to be achieved by the impugned order; that the detention order has, in any event, lost its efficacy with the passage of time and if the respondents still consider preventive detention necessary, they would have to consider the matter afresh on the basis of the circumstances obtaining at the relevant time.

- 5.** Learned counsel appearing for the respondents, ex-adverso, contended that the impugned order has been passed after due consideration of the material placed before the detaining authority and upon its subjective satisfaction that preventive detention of the petitioner was necessary; that even grant of bail in criminal offence cannot debar the detaining authority to order preventive detention of an individual when preventive detention of such individual is found necessitated, as is the case in respect of the petitioner herein.
- 6.** Heard learned counsel for the parties and considered the submissions made at the bar.
- 7.** Preventive detention constitutes an exceptional measure affecting the cherished right of personal liberty guaranteed under Article 21 of the Constitution. The power of preventive detention, though constitutionally recognised, has to be exercised strictly in accordance with the constitutional and statutory safeguards.
- 8.** The distinction between preventive detention and punitive detention is fundamental. Preventive detention is not intended to punish a person for an act already committed, but to prevent him from engaging in prejudicial activities in future. Consequently, there must exist a live and proximate link between the past conduct relied upon and the necessity of preventing the person from acting in a prejudicial manner in future.

9. The Supreme Court has repeatedly emphasised that an unexplained and unreasonable delay between the passing of a detention order and its execution may snap such live and proximate link and cast serious doubt upon the genuineness of the subjective satisfaction of the detaining authority. In **Bhawarlal Ganeshmalji v. State of Tamil Nadu** reported as **(1979) 1 SCC 465**, the Supreme Court explained that a live and proximate link must exist between the grounds of detention and the purpose of detention and that such link may be snapped where there is a long and unexplained delay between the detention order and the arrest of the detainee. The Court, however, recognised that where the delay is satisfactorily explained or is attributable to the detainee's own conduct in evading arrest, the position may be different.

10. In **“A. Mohammed Farook v. Jt. Secretary to Government of India”** reported as **(2000) 2 SCC 360**, the Supreme Court dealt specifically with delay in execution of a detention order and held that the detaining as well as executing authorities are required to explain satisfactorily any unreasonable delay in securing the detention of the proposed detainee. In the absence of such explanation, the subjective satisfaction underlying the detention order stands seriously undermined. The principle has subsequently been consistently followed.

11. Likewise, in **Shafiq Ahmed v. District Magistrate, Meerut** reported as **(1989) 4 SCC 556**, the Supreme Court found that undue delay in execution, depending upon the facts and circumstances of the case, could demonstrate absence of a real and genuine apprehension that the proposed detainee was likely to act prejudicially. The Supreme Court has subsequently relied upon this principle in considering delayed execution of preventive detention orders. More recently, in **Sushanta Kumar Banik v. State of Tripura [2022 INSC 1053]**, the Supreme Court reiterated that where there is unreasonable delay between the date of the detention order and the actual arrest of the detainee, and such delay is not satisfactorily explained, it throws considerable doubt upon the genuineness of the requisite subjective satisfaction and snaps the live and proximate link between the grounds of detention and the purpose of detention. The principle is also reflected in **Sama Aruna v. State of Telangana** reported as **(2018) 12 SCC 150**, wherein the Supreme Court held that preventive detention must rest upon a reasonable prognosis of future conduct based upon past conduct and surrounding circumstances, and that stale incidents cannot furnish the necessary live and proximate link with the imperative need for preventive detention.

12. In the present case, the material placed before the Court reveals an unusual feature. The detention order was passed on **08.04.2022**, yet the same was not executed upon the petitioner until **21.08.2023**. It is pertinent to note that this Court, during the pendency of the present proceedings, vide order dated **21.08.2023** stayed the operation of the impugned detention order. Consequently, the period subsequent to **21.08.2023**, during which the order remained stayed by this Court, cannot obviously be attributed to the respondents as a period of delay in execution.

13. The question, therefore, is whether the period between the passing of the detention order on **08.04.2022** and the passing of the interim order dated **21.08.2023** has been satisfactorily accounted for by the respondents. The counter affidavit placed on file does not disclose any convincing explanation demonstrating that the petitioner was absconding, evading arrest, or otherwise frustrating genuine and continuous efforts on the part of the executing agency to secure his detention during the aforesaid period. This aspect assumes significance because the justification for preventive detention is founded upon the existence of an immediate preventive necessity. Where a detention order is passed but is not executed for a considerable period, the detaining and executing authorities are expected to satisfactorily explain the delay.

If the delay is attributable to the proposed detainee, the position may be different. However, where the delay remains unexplained and is not attributable to the petitioner, it assumes constitutional significance.

14. In the present case, there is no material placed before the Court to demonstrate that the petitioner had absconded or had deliberately evaded execution of the detention order during the period from **08.04.2022** (date of detention order) to **21.08.2023** (date of stay order). The subsequent non-execution of the detention order is explained by the order of this Court dated **21.08.2023**, whereby its operation was stayed. Thus, the period covered by the judicial stay cannot be treated as an unexplained administrative delay; nevertheless, the respondents were required to explain the substantial period of more than four and a half month, preceding the stay. The matter assumes greater significance when the nature and chronology of the alleged activities relied upon by the detaining authority are considered. As projected before this Court, the last activity attributed to the petitioner dates back to **2017**, whereas the detention order came to be passed on **08.04.2022**. Thereafter, the order remained unexecuted for a further substantial period until this Court stayed its execution on **21.08.2023**.

15. Thus, there exists not merely a considerable gap between the alleged prejudicial activity and the passing of

the detention order, but also a substantial period between the passing of the detention order and the attempt to secure its execution, without the respondents furnishing a satisfactory explanation for such delay for the period preceding the judicial stay.

16. The cumulative effect of these circumstances is that the live and proximate link between the alleged past conduct and the necessity for preventive detention has been snapped. The Court is conscious that mere passage of time, by itself, is not invariably sufficient to invalidate a detention order. Each case has to be examined on its own facts. However, where the delay in execution is substantial, is not attributable to the proposed detainee, and remains unexplained for the period during which the authorities were free to execute the order, the continued efficacy of the original subjective satisfaction becomes seriously questionable vitiating the detention order itself.

17. It is also necessary to deal with the contention that since the detention order has never been executed, the petitioner ought not to be permitted to challenge it. The law does not impose an absolute bar upon judicial review at the pre-execution stage. In **Additional Secretary to the Government of India v. Alka Subhash Gadia** reported as **1992 Supp (1) SCC 496**, the Supreme Court recognised the power of the constitutional courts to interfere with a

detention order even before its execution in appropriate cases.

18. The present case is, therefore, one where interference at the pre-execution stage is justified because the challenge is not founded merely upon an assessment of the sufficiency of the material before the detaining authority. Rather, the challenge goes to the continued validity of the preventive exercise itself, having regard to the extraordinary and unexplained delay in execution and the consequent snapping of the live and proximate link. It is also necessary to clarify that the submission that the detention order automatically ceased to have validity merely because six months elapsed from the date of its passing cannot, by itself, be accepted as a proposition of law. **Section 18** of the Jammu & Kashmir Public Safety Act, 1978 prescribes the maximum period of detention with reference to the date of detention, and not simply the date on which the detention order was passed. Nevertheless, this does not come to the aid of the respondents in the facts of the present case. The issue before the Court is not whether the statutory maximum period of detention has mechanically expired, but whether, after such a prolonged and unexplained period during which the order has remained unexecuted, the original subjective satisfaction can still furnish a valid basis for preventive detention.

19. On the facts noticed above, the answer has to be in the negative. Preventive detention must bear a reasonable and proximate relationship with the circumstances prevailing at the time when detention is sought to be affected. A detention order cannot be allowed to remain suspended indefinitely and then be executed years later on the assumption that the circumstances which prevailed when the order was passed continue unchanged. The Court is, therefore, satisfied that the prolonged non-execution of the impugned detention order in absence of a satisfactory explanation, coupled with the remoteness of the activities relied upon by the detaining authority, has destroyed the live and proximate nexus which is indispensable to a valid preventive detention order.

20. For the foregoing reasons and having regard to the totality of the circumstances, particularly the considerable remoteness of the alleged prejudicial activities, the substantial delay between the passing of the detention order and its execution, the absence of any satisfactory explanation for the period preceding the order of stay dated **21.08.2023**, and the consequent snapping of the live and proximate link between the alleged past conduct and the necessity for preventive detention, the petition deserves to be allowed.

21. The petition is, accordingly, **allowed** and the detention order bearing **No. DMS/PSA/28/2022** dated

08.04.2022 passed by the respondent No.2-District Magistrate, Srinagar against the petitioner, is hereby **quashed**. The respondents shall not execute or act upon the aforesaid detention order against the petitioner. It is, however, clarified that the period subsequent to **21.08.2023**, during which the impugned detention order remained stayed by the order of this Court, has not been treated as a period of unexplained delay on the part of the respondents.

22. The petition stands **disposed of** accordingly along-with pending application(s).

(M. A. CHOWDHARY)
JUDGE

Srinagar
25.09.2026
Muzammil. Q

Whether the order is reportable: Yes / No