

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

Reserved on: 04.08.2026

Pronounced on: 14.08.2026

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*Whether the operative part
or full judgment is
pronounced: **Full***

HCP No.92/2026

TASADUQ HUSSAIN DAR

...PETITIONER(S)/APPELLANT

*Through: - Mr. Malik Fahdul Haq, Advocate, with
Mr. Salfi Izhar & Ms. Sana Jamal, Advocates.*

Vs.

U T OF J&K & ORS.

...RESPONDENT(S)

Through: - Mr. Ilyas Laway, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged the detention order passed by respondent No.2-District Magistrate, Anantnag against him at its pre-execution stage. It is pertinent to mention here that the writ petition has been filed by the petitioner on the basis of his apprehension that the detention order has been issued against him by respondent No.2. However, neither copy of the order of detention nor its particulars have been placed on record by the petitioner.

2) According to the petitioner, copy of order of detention has not been furnished to him despite submitting a written application dated 13.07.2026 before respondent No.2-

District Magistrate, Anantnag. It has been submitted that the petitioner has been implicated in FIR No.126/2025 for offenses under Sections 61, 111, 318(4) and 351 of the BNS, registered with Police Station, Anantnag, in which he has already been granted bail by the trial court on 08.05.2025 and the charge sheet in the case has already been filed before the competent court. It has been submitted that in a petition filed by co-accused challenging the said charge sheet, this Court has passed an interim order on 27.04.2026 and the proceedings in the charge sheet to the extent of said co-accused have been stayed. According to the petitioner, he has come to know from reliable sources that an order for his detention under the provisions of the Jammu and Kashmir Public Safety Act has been issued against him by respondent No.2.

3) The petitioner has challenged the order of his detention at pre-execution stage on the grounds that the same has been issued to frustrate the order granting bail in his favour. It has been contended that the petitioner was already in judicial custody for a considerable period of time and the respondents had every opportunity to execute the detention warrant against him but they did not choose to do so and immediately when the petitioner was granted bail, the respondents have decided to execute the detention warrant.

It has been further contended that the petitioner is suffering from serious medical conditions and his prolonged detention in the absence of adequate medical facilities would amount to violation of his fundamental right to life guaranteed under Article 21 of the Constitution. It has been further contended that the order of detention has been issued against the petitioner in violation of the statutory safeguards and that the order is based upon stale grounds. It has been contended that even though warrant of detention has been issued long back, yet the respondents have deliberately chosen not to execute it, as a result of which, the grounds of detention have become stale and have lost their proximate nexus.

4) The notice of the petition was issued to the respondents and respondent No.2-District Magistrate, Anantnag, filed his counter affidavit to the writ petition. In the counter affidavit it has been submitted that the petitioner has been ordered to be detained under the provisions of Jammu and Kashmir Public Safety Act in terms of order No.04/DMA/PSA/DET/2026, dated 02.07.2026, with a view to prevent him from acting in any manner prejudicial to maintenance of public order. It has been contended that the detention order issued against the petitioner is based on sufficient material as the petitioner was found to be indulging in activities prejudicial to the maintenance of public order.

5) According to the respondents, the order of detention could not be executed well in time because the petitioner is evading his arrest and he has remained at large. It has been contended that the petitioner is willfully evading his arrest, which is clear from communication dated 21.07.2026 received from Senior Superintendent of Police, Anantnag. It has been submitted that in view of abscondence of the petitioner, Senior Superintendent of Police has made a request for taking action under Section 12 (a) of the Public Safety Act, whereafter, a detailed report was submitted by District Magistrate, Anantnag, before the Chief Judicial Magistrate, Anantnag, requesting for initiation of proceedings against the petitioner in terms of the provisions of Section 12(a) of the J&K Public Safety Act. It has been submitted that the Chief Judicial Magistrate, Anantnag, has passed an order on 25.07.2026, whereby a proclamation under Section 84 of the BNSS has been issued against the petitioner directing him to appear before District Magistrate, Anantnag, by or before 24th August, 2026.

6) It has been contended that the petitioner is a habitual offender and he has been found involved in as many as five FIRs, the latest one being FIR No.126/2025. It has been submitted that repeated involvement of the petitioner in criminal cases reflects his persistent tendency towards

unlawful activities and disregard for rule of law, which has compelled the detaining authority to pass the detention order.

7) I have heard learned counsel for the parties and I have also perused record of the case, including the detention record produced by learned counsel for the respondents.

8) Before proceeding to deal with the grounds raised by the petitioner for assailing the detention order, it is necessary to notice the legal position as regard the scope of judicial review of a detention order prior to its execution. The Supreme Court has, in the case of **Additional Secretary to Government of India and others vs. Smt. Alka Subhash Gadia and anr**, 1992 Suppl. (1) SCC 496, observed that the scope of judicial review of a detention order prior to its execution is very limited. It has been held that 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 considerations and where the authority which passed it had no authority to do so.

9) In **Deepak Bajaj vs. State of Maharashtra and anr**, AIR 2009 SC 628, the Supreme Court has held that the grounds enumerated in **Alka Subhash Gadia's** case (supra) 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.

10) In the present case, the ground urged by the petitioner for assailing the detention order is that the same has been issued with a view to frustrate the order of bail granted in his favour and that the petitioner is not found to have been involved in any such activity which poses any threat to the public order. According to the petitioner, the offences in which he has been booked so far are offences against individuals, having no potential to disturb the public order.

11) A perusal of the grounds of detention, which are available in the detention record, reveals that the petitioner has been found involved in as many as five FIRs since the year 2005. FIR No.717/2005 of Police Station, Anantnag, for offence under Section 379 RPC, relates to incident dated

17.12.2005 with regard to theft of one vehicle bearing registration No.JK03-1507. In the said case, the petitioner is stated to have been acquitted of the charges. Even otherwise, said FIR relates to an incident which is individual in nature, having no impact on the public order. The second case is FIR No.03/2014 registered with Police Station, GRP, Qazigund, third case is FIR No.16/2020 registered with Police Station, Achabal. Both these FIRs are relating to a period which is remote in time and, therefore, cannot form a basis for passing the impugned detention order. The fourth case is FIR No.93/2025 for offence under Section 355 of BNS. The offence alleged against the petitioner is trivial in nature and it is alleged in the said FIR that the petitioner was found roaming in a public place in an intoxicated condition. This is not an act which would affect the public order.

12) The last case which has been registered against the petitioner is FIR No.126/2025. It relates to a complaint lodged by one Tilak Raj, according to whom he was duped by the petitioner into paying an amount of Rs.56.00 lakhs, in lieu of supply of garlic and the petitioner, despite receipt of amount, neither supplied garlic nor refunded the money. It is alleged that during investigation of the case, it was found that the petitioner had duped a large number of people and numerous complaints were received from victims alleging

that they had also been cheated by the petitioner and his associates. In the grounds of detention, it has been stated that it has been the consistent pattern of the petitioner to indulge in fraudulent conduct and receive huge sums under false assurances relating to land transactions, business investments, horticulture ventures and other commercial dealings. The grounds of detention make reference to at least ten individuals who have been allegedly cheated by the petitioner in different transactions, thereby duping them and receiving crores of rupees. The details are given in the grounds of detention. After noticing these incidents, the detaining authority has drawn its satisfaction that repeated involvement of the petitioner in offences of a similar nature has generated widespread fear, resentment and insecurity among the general public, which has prompted the detaining authority to pass the impugned order of detention.

13) There can be no dispute to the legal proposition that involvement of a person in offences which are directed against the individuals and which do not impact the public order, cannot form a basis for passing an order of detention, but in the instant case, the police, while conducting investigation of FIR No.126/2025, has come across a large number of complaints against the petitioner and his associates. These complaints relate to offences pertaining to

cheating and duping of large number of victims, which has sent shockwaves amongst the general public of the area. It is not open to this Court to undertake a judicial review with regard to sufficiency of material for drawing subjective satisfaction about the need to pass detention order against the petitioner, particularly at pre-execution stage. In the present case, the facts narrated in the grounds of detention tend to show that there was material before the detaining authority to draw subjective satisfaction that preventive detention of the petitioner is necessary in the interests of maintenance of public order. Thus, no fault can be found in the order of preventive detention passed by the learned District Magistrate.

14) There is yet another aspect of the matter which restrains this Court from exercising its extraordinary jurisdiction under Article 226 of the Constitution in favour of the petitioner. There is material on record to show that as soon as the petitioner got information about the issuance of impugned order of detention, he has absconded and evaded his arrest. This has prompted the detaining authority to approach the Chief Judicial Magistrate, Anantnag, who vide his order dated 25.07.2026, has declared the petitioner as absconder by issuing proclamation in this regard while proceeding under Section 12(a) of the J&K Public Safety Act.

The Supreme Court has, in the case of **Subhash Popatlal Dave vs. Union of India**, (2014) 1 SCC 280, held that those who evade the process of law cannot be heard to say that their fundamental rights are in jeopardy. It has been further held that where proceedings against the proposed detenu for his declaration as proclaimed offender are initiated, the challenge to the detention orders on live nexus theory is impermissible. The Supreme Court went on to observe that permitting such an argument would amount to enabling the lawbreaker to take advantage of his own conduct, which is contrary to law.

15) In in the face of aforesaid legal position, it is not open to the petitioner to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution by challenging the order of detention at pre-execution stage.

16) That takes us to the ground urged by the petitioner with regard to his medical condition. In this regard, a perusal of the medical record annexed to the writ petition would show that the petitioner has undergone spine surgery somewhere in May 2025 and he has been declared fit to fly by air way back in May 2025. There is nothing on record to show that the petitioner is suffering from any such ailment at present which would endanger his life while being in custody.

17) For what has been discussed hereinbefore, I do not find any merit in this petition. The same is dismissed accordingly.

18) The detention record be returned to learned counsel for the respondents.

(Sanjay Dhar)
Judge

SRINAGAR

14.08.2026

"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **YES/NO**

