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

HCP NO. 78/2025
CM NO. 2723/2025

*Reserved on: - 01.10.2026*
*Pronounced on: - 09 .10.2026*
*Uploaded on: - 09 .10.2026*
*Whether the operative part or full judgment is pronounced: - full*

**GULZAR AHMAD BHAT**

….. Appellant/petitioner(s)

Through: -

*Mr. Wajid Mohammad Haseeb, Advocate*

**V/s**

**UNION TERRITORY OF J&K AND ORS.**

….. Respondent(s)

Through: -
*Mr. Ilyas Nazir Laway, GA*

**CORAM:**
**HON'BLE MR JUSTICE RAJESH SEKHRI, JUDGE**

**JUDGMENT**

**01**. Petitioner has invoked writ jurisdiction of this Court, for the quashment of detention order dated 30.01.2025, passed by respondent No. 2— District Magistrate, Anantnag, at the pre-execution stage, vide which he has been directed to be detained under the provisions of Public Safety Act, 1978 ["PSA"].

**02**. As factual matrix of the case would unfold, Senior Superintendent of Police (SSP), Anantnag, on 21.01.2025, produced the record such as dossier and other connected documents against the petitioner to District Magistrate, Anantnag—respondent No. 2, thereby highlighting that activities of the petitioner were prejudicial to

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the maintenance of public order of the UT of J&K. It was alleged that petitioner has a criminal history. He was involved in FIR No. 172/2017 and FIR No. 66/2018. On 10.01.2024, Police Station, Anantnag, received source information that despite declaration of Tahreek-e- Hurriyat, J&K, an unlawful association, under, Unlawful Activities (Prevention) Act, 1967 [UA(P)A], by the Government of India, in terms of notification dated 31.12.2023, activities of the association were still in operation. Members of the said unlawful association were spreading anarchy among general masses and they are trying to destabilize peace and tranquility.

**03.** On the basis of aforesaid allegations, a case FIR No. 14/2024 under Section 10, 13 of UAPA came to be registered against the petitioner in police Station, Anantnag. According to the sponsoring officer, the petitioner during questioning in the said FIR disclosed that he was a member of Tahreek-e-Hurriyat, a banned organization. He maintained close contact with the associates of the organization. He arranges finances and logistic support to enable the organization to run its unlawful activities and pose threat to the peace and tranquility of the UT of J&K. Due to insufficient evidence, though arrest of the petitioner could not be affected in the FIR, but he was bound down and released on surety bond. His activities were kept under surveillance and soon after comprehensive evidence is collected by the investigating agency, petitioner and his associates will be formally arrested. According to the sponsoring agency, petitioner is adhering to the commandments of his associates and it is highly compounded with risk to keep such anti-national elements at liberty.

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**04.** On the basis of the aforesaid dossier and the grounds of detention, the detaining authority has come to the conclusion that in the backdrop of the aforesaid facts and evidence, it has become necessary to detain the petitioner under preventive detention with a view to prevent him from doing any act, which will breach public peace and order.

**05.** Petitioner is aggrieved of the impugned order, primarily on the ground of delay on the part of the sponsoring authority to propose his detention from the date of last criminal activity attributed to him in the year 2024 and further delay on the part of the detaining authority to pass the impugned order of detention on 30.01.2025 from the date his detention was proposed by the sponsoring officer on 21.01.2025. Petitioner has also questioned the impugned order on the ground of failure on the part of the executing agency to execute the detention order.

**06**. The plea has been opposed on the other side by the respondents, primarily on the ground that impugned order could not be executed by the concerned authorities in time because execution of detention warrants are subject to strict observance of the procedural compliance, including risk assessment/intelligence input checks etc. According to the respondent, despite strenuous efforts by the concerned executing agency, petitioner willfully evaded his arrest until impugned order came to be stayed by this Court. It is contention of the respondents that petitioner has no *locus standi* to challenge the order of detention until he surrenders.

**07**. Respondents have prayed for dismissal of the present petition.

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**08**. Having heard rival contentions of the parties, I have gone through the detention record.

**09**. It is trite in law that High Court in exercise of its writ jurisdiction cannot decline to entertain a writ petition against a detention order at the pre-execution stage. High Court is vested with the jurisdiction to exercise such power in proper cases, though the grounds on which writ Court could interfere in such cases at the pre-execution stage are limited in scope.

**10**. Hon'ble Supreme Court in "***Additional Secretary to Government of India Vs. Alka Subash Gadia"; 1992 (1) SCC 496***, has ruled that High Court cannot decline to entertain writ petition against a detention order prior to its execution if it is *prima facie* satisfied that (i) order is not passed under the Act under which it is purported to have been passed (ii) it is sought to be executed against a wrong person (iii) it is passed for a wrong purpose (iv) it is passed on vague, extraneous and irrelevant grounds and (v) the authority which passed it had no authority to do so.

Relevant abstract of the Judgment reads as under:-

> ***" 30.As regards his last contention viz, that to deny a right to the proposed detenu to challenge the order of detention and the grounds on which it is made before he is taken in custody is to deny him the remedy of judicial review of the impugned order which right is a part of the basic structure of the Constitution, we find that this argument is also not well merited based as it is on absolute assumptions. Firstly, as pointed out by the authorities discussed above, there is a difference between the existence of power and its exercise. Neither the Constitution including the provisions of Article 22 thereof nor the Act in question places any restriction on the***

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***powers of the High Court and this Court to review judicially the order of detention. The powers under Articles 226 and 32 are wide, and are untrammeled by any external restrictions, and can reach any executive order resulting in civil or criminal consequences. However, the courts have over the years evolved certain self-restraints for exercising these powers. They have done so in the interests of the administration of justice and for better and more efficient and informed exercise of the said powers. These self-imposed restraints are not confined to the review of the orders passed under detention law only. They extend to the orders passed and decisions made under all laws. It is in pursuance of this self-evolved judicial policy and in conformity with the self-imposed internal restrictions that the Courts insist that the aggrieved person first allow the due operation implementation of the concerned law and exhaust the remedies provided by it before approaching the High Court and this Court to invoke their discretionary extraordinary and equitable jurisdiction under Articles 226 and 32 respectively That jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available. We have while discussing the relevant authorities earlier dealt in detail with the circumstances under which these extraordinary powers are used and are declined to be used by the courts. To accept Shri Jain's present contention would mean that the courts should disregard all these time-honored and well-tested judicial self-restraints and norms and exercise their said powers, in every case before the detention order is executed. Secondly, as has been rightly pointed out by Shri Sibal for the appellants, as far as detention orders are concerned if in every case a detenu is permitted to challenge and seek the stay of the operation of the order before it is executed, the very purpose of the order and of the law under which it is made will be frustrated since such orders are in operation only for a limited period. Thirdly, and this is more important, it is not correct to say that the courts have no power to entertain grievances against any detention order prior to its execution. The***

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> ***courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question."***

**11.** Reverting to the case, petitioner is alleged to have been involved in a couple of crimes against him, i.e, FIR No. 172/2017 under Sections 147, 148, 336, 341 RPC of Police Station, Bijbehara and FIR No. 66/2018 under Sections 147, 148, 149, 336, 307 and 332 RPC of Police Station, Bijbehara. Admittedly, he was bailed out in both the FIRs.

**12**. According to the sponsoring agency and the detaining authority, on 10.01.2024, Police Station, Anantnag, received a source information that despite the fact that Tahreek-e-Hurriyat, J&K, was declared an unlawful association by the Government of India under UAPA, the activities of its members were still operational. They were spreading anarchy among the masses against the national integrity and sovereignty. They were trying to destabilize the peace and tranquility etc. In this respect, a case FIR No. 14/2024 under Sections 10, 13

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UAPA was registered against the petitioner in Police Station, Anantnag. It was further alleged that the petitioner during questioning in the aforesaid FIR disclosed that he was in close contact with his associates of the said organization. He arranges finances and logistic support to enable the banned organization to run its unlawful activities to pose threat to the peace and tranquility of the Union Territory. However, due to insufficient evidence, petitioner could not be arrested. He was bound down and released on surety bond, though his activities were kept under surveillance. According to the sponsoring officer, formal arrest of the petitioner and his associates will be affected soon after the collection of comprehensive evidence against him.

**13**. Intriguingly, on the basis of aforesaid unsubstantiated allegations with respect to an incident of 10.01.2024, detention of the petitioner was proposed by the sponsoring agency after more than one year on 21.01.2025. Now, what is interesting is that the detaining authority took nine days to pass the impugned order of detention against the petitioner on 30.01.2025, after it was proposed on 21.01.2025 by SSP, Anantnag and that too without application of mind.

**14**. It is well settled in law that the foundational principles to evaluate the validity of preventive detention order is the doctrine of "live and proximate link" which means that there is logical and timely connection between the offender's past action and proposed legal consequences. It means that when Government proposes to detain a person without prosecution or trial, with a view to prevent him from

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acting in any manner detrimental to the security of the State or the public order and avoid future law and order problem, there must be a strong immediate connection between the past activities and imperative need to detain him. In other words, there should not be staleness in his past connections which are being used to justify his detention. In order words, if a detaining authority delays too long in passing or executing the detention order, "live and proximate link" to the immediate threat is snapped.

**15**. Hon'ble Supreme Court in "**Suresh Mahato Vs. The District Magistrate Burdwan and Ors."; (1975) 3 SCC 554**, held that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenu, such delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority.

**16**. Again, Supreme Court in ***"Sushanta Kumar Banik Vs. State of Tripura and Ors."; 1992 SC 4715***, cautioned the detaining authorities and the executing authorities that it was imperative on their part to remain vigilant in passing the detention orders and executing the same at the earliest from the date of the proposal by the sponsoring authorities because any indifferent attitude on their part would defeat the very purpose of the preventive action. Pertinently, Supreme Court applied the same principle to the cases of delay in passing the order of detention from the date of proposal.

Relevant abstract captured in para 15 reads as below:-

> ***"The adverse effect of delay in arresting a detenu has been examined by this Court in a series of decisions and this Court has laid down the rule in clear terms that an***

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> ***unreasonable and unexplained delay in securing a detenu and detaining him vitiates the detention order. In the decisions we shall refer hereinafter, there was a delay in arresting the detenu after the date of passing of the order of detention. However, the same principles would apply even in the case of delay in passing the order of detention from the date of the proposal. The common underlying principle in both situations would be the "live & proximate link" between the grounds of detention & the avowed purpose of detention.***

**17**. If the present case is approached with the aforesaid principles enunciated by Hon'ble Supreme Court, there is no manner of doubt that there is unexplained and inordinate delay of more than one year not only on the part of the sponsoring officer to sponsor detention of the petitioner in 2025, from the last activity attributed to him in the year 2024, but also on the part of the detaining authority to pass the impugned order of detention on 30.01.2025 after its proposal was made by the sponsoring officer on 21.01.2025. At the top of it, is the failure on the part of the executing agency to arrest the petitioner for more than four months, which undoubtedly has severed "live and proximate link" between the alleged criminal activities of the petitioner and imperative need to detain him now.

**18**. If the sponsoring officer was actually and genuinely concerned about anti-national activities of the petitioner, he was expected to act with greater promptitude in sponsoring his detention and the detaining authority was expected to be even more concerned in making the detention order immediately after his detention was proposed by the sponsoring officer. The petitioner, in view of serious allegations against him would not have been allowed to remain at large to carry on with his anti-national activities. Such unreasonable and unexplained delay on the part of both the sponsoring officer and the

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detaining authority to ensure immediate detention of petitioner, does not commensurate to the fact situation of the case. It throws a considerable doubt not only on the genuineness of the requisite satisfaction of the detaining authority but also on the credibility of the sponsoring officer and the detaining authority respectively in sponsoring detention of petitioner and making the order of detention after a considerable period, which undoubtedly results in snapping "live and proximate link" between the grounds of detention and purpose of detention. Thus, impugned order stands vitiated and deserves to be quashed.

**19**. For the foregoing reasons, present petition is allowed and impugned order is set aside.

**20**. Disposed of along with connected CM(s).

**(RAJESH SEKHRI)**
**JUDGE**

***SRINAGAR***
*09.10.2026*
***"Mohammad Yasin Dar"***

*Whether the Judgment is reportable:* ***Yes***
*Whether the Judgment is speaking:* ***Yes***

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