

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

(Through Video Conferencing)

*Reserved on: 06.10.2023*

*Pronounced on: 07.10.2023*

*CJ Court*

*LPA No. 198/2023*

1. Union Territory of J&K Through .....Appellant/Petitioner(s)  
Additional Chief Secretary to  
Government, Home Department, Civil  
Secretariat, Jammu/Srinagar.
2. Divisional Commissioner Kashmir,  
Srinagar.
3. Sr. Superintendent of Police, Srinagar,  
Kashmir.

Through :- Mr. Mohsin Qadri, Sr. Advocate with  
Ms. Maha Majeed, Advocate.

v/s

Abdul Qayoom Bhat, Aged 55 Years, .....Respondent(s)  
S/O Late Ab. Ahad Bhat, R/O Nowgam,  
A/P Old Chanpora Pamposh Colony,  
Srinagar

Through :- Mr. Sheikh Mushtaq, Advocate.

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

**JUDGMENT**

**(N. KOTISWAR SINGH-CJ)**

**01.** The present appeal has been preferred against the order dated 10.05.2023 passed by learned Single Judge (*hereinafter also referred to as the "Writ Court"*) in WP(Crl.) No. 155/2023 titled, "*Abdul Qayoom Bhat Vs. UT of J&K and Ors.*", whereby the learned Writ Court while issuing

notice to the respondents observed that a prima facie case has been made out for staying the operation of detention order issued by the respondent No. 2 under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988 (*hereinafter referred to as the 'Act'*).

The main grievance of the appellants is that the learned Single Judge ought not have stayed the operation of detention order at the first instance on the day of motion. It has been submitted that it will be against the well settled principle that in the matter of preventive detention, the Court ought be very careful in passing any interim order of suspending the detention order at the pre-execution stage.

**02.** The present respondent approached this Court by filing a writ petition, registered as WP(Crl.) No. 155 of 2023, challenging the detention order No. Div. Com K/35/2023 dated 27.04.2023 passed by the appellant No. 2-Divisional Commissioner, Srinagar, on the grounds, *inter-alia*, (a) that the detention order is illegal, bad in law and violative of Article 21 of the Constitution of India; (b) that he was falsely implicated in FIR No. 04/2022 u/s 8/22 of NDPS Act of P.S. Chanapora, in which, he was granted bail by the competent court on 11.11.2022 and while he was on bail, the aforesaid detention order was passed, (c) that the said detention order was never served upon writ petitioner and it was merely left at his residence when he was out of his residence and, as such, it was never executed. It has been also submitted that there is no proximate link between the past conduct of the petitioner and the date of detention order and the detaining authority has not shown any awareness that the petitioner was already admitted to bail and, as such, it was issued mechanically without application of mind.

**03.** The learned Writ Court upon motion and after hearing the counsel for the petitioner was of the view that a prima facie case has been made out for staying the operation of the detention order and, accordingly, passed the impugned order dated 11.05.2023, staying the detention order.

**04.** In order to appreciate the rival contentions of the parties, it would be fruitful to go through the impugned interim order, which is reproduced herein below:-

- “1. Heard learned counsel for the petitioner.
2. Petitioner is seeking quashing of preventive detention order No. Div. Com K/35/2023 dated 27.04.2023 passed by the Divisional Commissioner, Kashmir under purported exercise of power under Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988, thereby ordering the preventive detention of the petitioner. This detention order has been passed in furtherance to a requisition from the Senior Superintendent of Police (SSP) Srinagar, made twice firstly on 08.02.2023 and later on 19.04.2023.
3. In the grounds of detention, the petitioner’s conduct warranting his preventive detention has been related to an FIR No. 04/2022 registered under Section 8/22 of Narcotic Drugs & Psychotropic Substances Act, 1988 registered with the police Station Chanapora, Srinagar. In relation to this case, the learned counsel for the petitioner submits that the petitioner has come to be granted bail as is forthcoming from a bail docket dated 11.11.2022, issued by the Court of 3<sup>rd</sup> Additional Sessions Judge, Srinagar, addressed to In-Charge Central Jail, Srinagar, with respect to release of the petitioner from the custody.
4. Learned counsel for the petitioner submits that the case is pending trial before the criminal Court afore referred and the petitioner is attending the proceedings in the case in conformity with the bond, personal as well as surety submitted and as such, the presence of the petitioner is very much available but despite that the preventive detention order having been so passed has so far not been executed upon the petitioner.
5. Learned counsel for the petitioner submits that the impugned order of detention has been passed more as part of a ritual rather than with any conscious application of mind to the facts and the circumstances of the case, warranting such like indulgence to

deprive citizen of India of his personal liberty as guaranteed under Article 21 the Constitution of India. The most important aspect of the case is that the petitioner has been enlarged on bail with effect from 11.11.2022, whereas the detention order has come to be passed on 27.04.2023, meaning thereby in the intervening period the concerned Police Authority had the full opportunity of knowing the whereabouts and the movements of the petitioner and about his conducting himself or not in accordance with the bail bond furnished by him to the concerned criminal Court but still the sponsoring authority, i.e., SSP, Srinagar, as well as detaining authority, the Divisional Commissioner, Kashmir, had no fact at their disposal to be set up a case against the petitioner to warrant his detention under the Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988.

6. Prima facie case is made out.
7. Issue notice to the respondents.
8. Petitioner to furnish registered postal coves within seven days whereupon the Registrar Judicial, Srinagar to issue notice.
9. In the meantime, the operation of the detention order No. K/35/2023 dated 27.04.2023 shall remain stayed.
10. List on 12.06.2013."

**05.** Mr. Mohin Qadri, learned Sr. AAG appearing for the appellants has submitted that the learned Writ Court has committed a grave error in staying the operation of the detention order on grounds which could not have invoked to challenge the said detention order. He submits that it has been provided under Section 6(a) of the Act that any order passed under Section 3(1) shall not be deemed to be invalid or inoperative merely because one or some of the grounds are (i) vague (ii) non-existent (iii) not relevant (iv) not connected or not proximately connected with such person or (v) invalid for any reason whatsoever. It has been further provided under Section 6(a) that it is not, therefore, possible to hold that the Government or officer making such an order would have been satisfied as provided in sub-section (1) of section 3 with reference to the remaining ground or grounds and made the

order of detention. Further, it has been provided under Section (6)(b) of the Act that the Government or officer making the order of detention shall be deemed to have made the order of detention under sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds.

**06.** It has been submitted by Mr. Mohsin Qadri, learned Sr. AAG that perusal of the impugned order dated 10.05.2023 would indicate that the learned Writ Court was persuaded to take the view that a prima facie case has been made out on the ground that a criminal case is pending before the Court, in which he was granted bail and, as such, he was very much available before the authorities and the detention order was passed more as a part of ritual rather than any conscious application of mind and the facts and circumstances did not warrant deprivation of his personal liberty as guaranteed under Article 21 of the Constitution in India.

**07.** The learned Writ Court was persuaded to take the said view for the reason that writ petitioner was already enlarged on bail with effect from 11.11.2022, whereas the detention order came to be passed on 24.07.2023, meaning thereby that in the intervening period, the authority had the full opportunity of knowing the whereabouts and movement of the petitioner and about his conduct and also about his activities, and if these were contrary to the conditions of the bail, and there was no material at the disposal of the detaining authority i.e. Divisional Commissioner, Srinagar to setup the case against the petitioner to warrant his detention under the Act.

**08.** Mr. Mohsin Qadri, learned Sr. AAG further submits that the alleged aforesaid reasons of non-existent or non-relevant grounds, cannot be

the reason to invalidate the order of detention in view of the provisions of Section (6)(a) of the Act. In view of that, there was no reason to suspend the detention order. It has been further submitted that perusal of the detention order would clearly show that detention order was not issued merely because the writ petitioner was involved in a criminal case i.e., FIR No. 04/2022 under Section 8/22 of NDPS Act under Police Station, Chanapora, but based on certain other inputs received by the detaining authority as mentioned in the grounds of detention.

**09.** In this regard, the learned Sr. AAG has referred to the grounds of detention, in which it has been clearly mentioned that the writ petitioner is a drug addict and main peddler in his area and had lured youths into the menace of drugs and he had been selling drugs in Srinagar city among mature youths to facilitate his illicit trade and his modus operandi is to procure drugs from various areas and sell it at higher price amongst the school going youths/other prospective drug addicts, in connection with which, he was apprehended by the police in FIR No. 04/2022 u/s 8/22 NDPS Act of Police Station Chanapora, Srinagar.

**10.** The ground of detention further mentions that the contraband materials seized from him were sent to Forensic Science Laboratory, Srinagar to ascertain their veracity and the report in respect of FIR No. 04/2022 suggests that:-

- a) Tapentadol Hydrochloride was detected in the exhibit No. NA-178/22 which is a Narcotic Analgesic.
- b) Tramadol Hydrochloride and Acetaminophen was detected in the exhibit Nos-NA-179/22 to NA-179-C/22 which is Narcotic Analgesic and Antipyretic drug.
- c) Alprazolam (Tranquillizer) was detected in the exhibit No. NA-180/22.

The ground of detention further mentions that he is an active member of the drug mafia engaged in selling drugs to the younger generation and the reports received from field agencies are suggestive of the fact that he is clandestinely dealing in illegal business of narcotics and in order to carry out his illicit trade he has been exploiting the immature minds of the younger generation by making them dependent on drugs and make them habitual addicts and having supplied the drugs by charging hefty amounts to the immature youths, which in turn, has exposed them to different kinds of immoral and illegal criminal tendencies, such as, resorting to thefts and other illegal activities in order to purchase drugs from him and, accordingly, in the light of the aforesaid activities of the writ petitioner, the Divisional Commissioner in order to prevent him from further committing any offence issued the preventive detention order under the provisions of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988, to detain him.

**11.** Mr. Mohsin Qadri, learned Sr. AAG, accordingly, submits that the detaining authority after proper application of mind as per the inputs received from various sources, had passed the aforesaid detention order. It has been submitted that the menace of drugs in Kashmir is quite serious and has spoilt a large number of youths and families, as such, the said detention order was issued in the interest of society to prevent illicit trafficking in banned drugs and the question of violating the individual liberty of the writ petitioner will not come in the way of the larger public interest. Learned Sr. AAG submitted that this was not a case, where the learned Writ Court ought

to have passed the stay order at initial stage without calling for records and, as such, this order deserves to be vacated.

**12.** Mr. Sheikh Mushtaq, learned counsel appearing for the respondent, the writ petitioner (respondent herein) on the other hand, has vehemently opposed the submissions made by the learned Sr. AAG for the appellants.

**Firstly**, it has been submitted that this being an interlocutory order, no appeal will lie.

**Secondly**, the appeal is barred by limitation, in as much as, there is a delay of 149 days and, as such, unless the delay is condoned, the appeal may not be considered.

**Thirdly**, it has also been submitted that there is nothing illegal about the prima facie satisfaction arrived by the learned Writ Court based on which of which the impugned detention order dated 27.04.2023 was stayed.

**13.** It has been submitted that the detention order was issued to punish the writ petitioner before the conclusion of the trial. It is on record and not in dispute that the writ petitioner was already arrested in connection with the aforesaid FIR No. 04/2022 registered under Section 8/22 of the Act with the Police Station Chanapora, Srinagar in connection with which he was already granted bail by the concerned court on being satisfied about his innocence. However, in order to frustrate the bail granted by the competent Court, the detaining authority had issued this detention order. It has been submitted that if the writ petitioner had been engaged in any illegal act, which would amount to violation of the terms and conditions of the bail, the



authorities were at liberty to seek revocation of the bail order rather than issue the detention order.

**14.** Learned counsel appearing for the respondent has also submitted that there was no material at all, on the basis of which the preventive detention order could have been issued. Apart from the allegation that he was apprehended in connection with the aforesaid FIR, there is no evidence, on the basis of which aforesaid detention order could have been issued.

**15.** It has been further submitted that there is no proximity between the alleged commission of offence and the date of passing the detention order. In fact, the writ petitioner was granted bail on 11.11.2022 by the Court in connection with the alleged offence and the authorities passed the detention order on 27.04.2023, which is after more than four months of the passing of the bail order. Thus, it cannot be said that there is live link between his alleged offence and the detention order.

**16.** Learned counsel for the respondents-writ petitioner has relied on the decision of Hon'ble Supreme Court rendered in case titled, "*Deepak Bajaj Vs. State of Maharashtra & Anr., (2008) 16 SCC 14*", in which the Hon'ble Supreme Court by relying on the earlier case of *Additional Secretary to Government of India and ors. vs. Alka Subhash Gadia, (1992) Supp (1) SSC 496* has observed that powers under Article 226 and 22 are wide and are untrammelled by any external restrictions and can reach any executive order resulting in civil or criminal consequences, and where the Court is 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, Court can invoke the extraordinary power of judicial review to interfere with such detention order even prior to their execution.

**17.** It has been submitted by Mr. Sheikh Mushtaq that in the present case it is clear, as also observed by the learned Writ Court that the order was passed for a wrong purpose, inasmuch as, the writ petitioner was already on bail and in order to frustrate the bail order, the said detention order was issued and the detention order was issued to punish the petitioner even before he was convicted. Secondly, this order was passed on vague, extraneous and illegal grounds. In fact there no ground mentioned in the grounds of detention, and, as such, the order passed by the learned Writ Court cannot be said to be illegal and is in accordance with the principles laid down in the aforesaid cases. Mr. Sheikh Mushtaq has also relied upon the judgment of the Hon'ble Supreme Court in "*Saeed Zaqir Hussain Malik Vs. State of Maharashtra and others, (2012) 8 SSC 233*" in support of his contention that because the delay in passing the detention order after more than four and half months against the writ petitioner, who was on bail, the live link between the alleged prejudicial activity and detention order snaps and there is no such explanation for the delay by the detaining authority when it passed the order.

**18.** Mr. Mohsin Qadri, learned Sr. AAG on the other hand relied on the judgment of the Hon'ble Supreme Court in "*State of U.P. and others Versus Sandeep Kumar Balmiki and Ors., 2009 (17) SCC 555*", and has submitted that by staying the operation of the detention order at the very

initial stage without examining the records, the execution of the detention order was frustrated and it amounts to grant of final relief, which is not permissible.

**19.** As we proceed to examine the rival contentions, we will first deal with the preliminary objections raised by the respondent (writ petitioner) in this appeal.

It has been submitted that the order challenged in this LPA being an interim order, no appeal would lie. As regards this, we would like to observe that if any order, though may be passed in the interlocutory stage, has the trappings of a final order or judgment, the aforesaid bar will not come in the way of challenging an interim order. By the impugned interim order dated 10.05.2023, the operation of detention order dated 27.04.2023 has been stayed. In order words, the writ petitioner cannot be detained on the basis of aforesaid detention order 27.04.2023 and he shall be entitled to remain free and such consequential effect is not different from quashing of the detention order and it virtually amounts to nullifying the preventive detention order. The detention order dated 27.04.2023 was in the nature of pre-emptive action to prevent the person from engaging in illicit trafficking in banned narcotic drugs and the said very purpose is defeated if the preventive detention order is stayed. As such, we are of the view that though the impugned order was an interim order, it has all the trappings and consequences of a final order or judgment and, as such, we are of the view that this Letters Patent Appeal will be maintainable.

**20.** Clause 12 of the Letters Patent of the High Court of the Jammu & Kashmir and Ladakh reads as under:-

“12. And we do further ordain that an appeal shall lie to the said High Court of judicature from the judgement (not being a judgement passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence) of one judge of the said High Court or one judge of any Division Court and that notwithstanding anything herein before provided an appeal shall lie to the said High Court from a judgement of “one Judge of the said High Court or one judge of any Division Court, a consistently with the provisions of the civil procedure code, made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the said High Court where the judge who passed the judgement declares that the case is fit one for appeal; but that the right of appeal from other judgements of the judges of the said High Court or of such division court shall be to us, our Heirs or Successors and be heard by our Board of Judicial Advisers for report to us.”

21. In this regard we refer to the decision of the Hon’ble Supreme Court rendered in *Midnapore Peoples' Co-operative Bank vs Chunilal Nanda & Ors, 2006 (5) SCC 399* wherein the Hon’ble Supreme Court has categorically specified that the interim orders which would fall within the category of judgment so as to attract Clause 15 of the Letters Patent (corresponding to Clause 12 of the High court of Jammu and Kashmir and Ladakh). The Supreme Court has clarified certain categories for interim orders where appeal under Letters Patent Appeal would not lie are, (i) routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment, (ii) orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

In *Midnapore Peoples' Co-operative Bank* (supra), it was held that

“12. We will next consider as to whether an intra-court appeal under clause 15 of the Letters Patent was available against the interlocutory order dated 20-11-1998 containing the directions on merits of the dispute. Clause 15 of the Letters Patent provides for an appeal from a “judgment” of a Single Judge in exercise of original jurisdiction to a Division Bench. In *Shah Babulal Khimji v. Jayaben D. Kania*<sup>7</sup> the scope of clause 15 of the Letters Patent was considered. This Court held:

“The concept of a judgment as defined by the Code of Civil Procedure seems to be rather narrow and the limitations engrafted by sub-section (2) of Section 2 cannot be physically imported into the definition of the word ‘judgment’ as used in clause 15 of the Letters Patent because the Letters Patent has advisedly not used the terms ‘order’ or ‘decree’ anywhere. The intention, therefore, of the givers of the Letters Patent was that the word ‘judgment’ should receive a much wider and more liberal interpretation than the word ‘judgment’ used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems to us that the word ‘judgment’ has undoubtedly a concept of finality in a broader and not a narrower sense. In other words, a judgment can be of three kinds:

(1) *A final judgment.*—\* \* \*

(2) *A preliminary judgment.*—\* \* \*

(3) *Intermediary or interlocutory judgment.*—Most of the inter-locutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order 43 Rule 1 and have already been held by us to be judgments within the meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not covered by Order 43 Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote. (SCC pp. 55-56, para 113)

\* \* \*

... in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. (SCC p. 57, para 115)

\* \* \*

... any discretion exercised or routine orders passed by the trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice to one party or the other cannot be treated as a judgment otherwise the appellate court (Division Bench) will be flooded with appeals from all kinds of orders passed by the trial Judge. ...

... the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings. (SCC p. 58, para 119)”

7: (1981) 4 SCC 8

It was thus, held in *Shah Babulal Khimji* (supra) that the word 'judgment' should receive a much wider and more liberal interpretation than the word 'judgment' used in the Code of Civil Procedure. The nature of the order will have to be examined in the context of the facts obtaining in the case, to ascertain whether it affects a vital aspect in the proceeding.

**22.** Keeping the aforesaid principles in mind what can be noticed is that preventive detention order dated 27.04.2023 was issued in order to prevent the writ petitioner from committing illicit trafficking in narcotic drugs and psychotropic substances, for which the detaining authority felt it necessary to keep him in detention, as a preventive measure and not to punish him. However, the said purpose of preventing him in indulging in the aforesaid illicit trafficking in narcotic drugs will be frustrated if he is let lose by staying the operation of the detention order, which in effect, is not different from the final order of quashing the detention order. Thus, in the facts and circumstances of the case, we are satisfied that though the impugned order dated 10.05.2023 was an interim order, but it had the effect of a final order qua the detention of the writ petitioner by allowing him to remain free to engage in illicit trafficking in narcotic drugs which by the detention order

sought to prevent on the basis of the materials available before the detaining authority. Accordingly, we are satisfied that the said interim order dated 10.05.2023 passed by the learned Single Judge which has the trappings of a final order is appealable.

**23.** Coming to the other issue of delay in filing this appeal, we have noted from the Office Note that there is a delay of 79 days and though the respondent/writ petitioner has not filed any objections to this application for condonation of delay and sought for filing an objection, yet the learned counsel for the respondent (writ petitioner) has extensively argued on the merits of the case and there is nothing left to be heard even if the delay is condoned subsequently. As such, we are of the view that postponing consideration on account of the application for condoning the delay would merely cause delay in a matter concerning a preventive detention relating to an obnoxious act of engaging in illicit trafficking in narcotic drugs and psychotropic substances. Thus, considering the fact that any further delay in the appeal would also prolong the proceeding before us, we have proceeded to examine this issue on merits, inasmuch, as the issue raised is of paramount public importance not only from the legal point of view, but we are dealing with a case involving drugs which has a pernicious effect on our society and, as such, any delay in dealing with this appeal may not be in public interest. Accordingly, we have proceeded to examine this appeal on merits by condoning the delay in filing this appeal. The matter would have been otherwise, if the Ld. Counsel for the respondent/writ petitioner had not argued extensively on the merits of the case.

24. Coming to the merits of the case, there can be no denying the fact that this Court in exercise of Article 226 of the Constitution of India can entertain a petition relating to preventive detention even in a pre-arrest or pre-execution stage. The scope of such consideration and interference has been clearly laid down by the three Judges' Bench of the Hon'ble the Supreme Court in, *Subhash Popatlal Dave Vs. Union of India and Anr., (2012) 7 SCC 533*, in which the Hon'ble Supreme Court had discussed in detail the scope of the interference at the pre-arrest/pre-execution stage, by referring to the earlier decision in *Alka Subhash Gadia* (supra). In the aforesaid case of *Subhash Popatlal Dave (2012)* (supra), it held that the order of preventive detention can be challenged beyond the five conditions enumerated in *Alka Subhash Gadia* (supra). The said decision was reiterated in the subsequent case of *Subhash Popatlal Dave vs. Union of India, (2014) 1 SCC 280*. However, it was also held that the order of detention cannot be set aside merely due to long-lapse of time on the specious plea that there is no live link between the order of detention and subsequent situation, even if such detention order has been challenged at the pre-execution stage.

25. The Hon'ble Supreme Court in the subsequent decision in *Subhash Popatlal (2014)* (supra) held that while the order of detention can be challenged at the pre-execution stage on different grounds in addition to the five exceptions carved out in *Alka Subhash Gadia's* case (1992) (supra), yet, if the petitioner had taken recourse of legal remedy to challenge the order of detention before it was executed, it is not open to him to contend that it should be quashed because there is no live link between the existing and consequential situation and previous situation when the order of detention



was passed over-looking that the petitioner has succeeded in by challenging it at pre-execution stage.

26. In this regard it would be apt to refer to para 6 of the decision in *Subhash Popatlal Dave (2014)* (supra) as follows,

“11. ....This Court in a series of decisions, some of which have been referred to hereinafter have consistently dealt with this question and have been pleased to hold that merely because the execution of the detention order has taken long years before it could be executed, the proposed detenu cannot be allowed to take advantage of the passage of time during which the detention order remain pending and thereafter take the plea that the order of detention is fit to be quashed due to its pendency on which the authorities had no control specially when the order of detention is allowed to be challenged before the appropriate court even at the pre-execution stage on any ground that may be available to him except of course the materials which has weighed with the authorities to pass the order of detention as it is obvious that justifiability of the material cannot be gone into at the pre-execution stage since the order of detention and the ground for such order is yet to be served on the proposed detenu as the proposed detenu was absconding or evading the execution of the order on him for one reason or the other.”

27. It was further observed in para 20 that,

“20. It is also not possible to lose sight of the fact that if the petitioners and the appellants had preferred not to challenge the order of detention at the pre-execution stage or had not evaded arrest, the grounds of detention would have been served on them giving them a chance to challenge the same but if the petitioners and the appellants have taken recourse to the legal remedy to challenge the order of detention even before it was executed, it is not open for them to contend that it should be quashed because there is no live link between the existing/subsequent situation and the previous situation when the order of detention was passed overlooking that they succeeded in pre-empting the order by challenging it at the pre-execution stage never allowing the matter to proceed so as to examine the most crucial question whether there were sufficient material or grounds to pass the order of detention.” (emphasis added)

28. In the present case, it may be mentioned that the detention order was passed on 27.04.2023, but the same could not be executed and the

detention order remained unexecuted for about 7 days and within a week's time the writ petitioner managed to obtain the interim order. However, we are not at this stage making any observation anymore, so as not to prejudice the case of the petitioner when the matter will be heard finally by the learned Writ Court.

**29.** In view of the above decisions, it is well settled that a detention order can be challenged at the pre-arrest/pre-execution stage on grounds not only confined to the five grounds as enumerated in *Alka Subhash Gadia's* case.

**30.** We will now examine whether the case of the petitioner falls at least under any of the aforesaid five conditions.

**31.** Coming to the first ground as to whether the impugned order was passed under the Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988 Act, it is clear that the impugned detention order was passed under the aforesaid Act.

**32.** The second ground is whether it was sought to be executed against the wrong person. In the present case the detention order was issued in the name of the writ petitioner and there is no issue about the identity of the person against whom the detention order has been issued, i.e., the writ petitioner.

**33.** As regards whether it was passed for wrong purpose, this question in our opinion could not have been considered at the motion stage without calling for the records and examining the same.

We have however, noted that it has been clearly mentioned in the ground of detention that the petitioner is a drug addict and has been

engaged in selling banned drugs and causing serious menace in the locality, and that the petitioner has been selling drugs in Srinagar city among the students. Thus, the purpose for issuing the detention order can be clearly inferred from the aforesaid ground of detention.

**34.** As to whether it was passed on vague grounds, on perusal of the ground of detention, it cannot be said that the grounds are vague. The detaining authority has mentioned specific grounds.

**35.** As regards the fifth ground as to whether the authority which passed the order had no authority to do so, there cannot be any doubt that the Divisional Commissioner was competent to issue such an order.

**36.** Thus, none of the aforesaid five grounds available to challenge the detention order as mentioned in the case of *Alka Subhash Gadia* (supra) appears to be present in the present case.

Ld. Counsel for the respondent (writ petitioner) could not highlight any other ground before us.

**37.** What appears is the learned Single Judge seems to have been swayed by the fact that the petitioner was enlarged on bail on 11.11.2022 and the detention order was passed after about four months on 27.04.2023. However, it appears from the detention order dated 27.04.2023 that the Sr. Superintendent of Police Station, Srinagar after examine the records had move the concerned authorities vide his letter dated 28.02.2023 and also produced the support materials on 19.04.2023. Thereafter, the detention order was passed on 27.04.2023. As such it cannot be said that there was undue delay in the process in passing the detention order after the petitioner was released on bail on 11.11.2022. From the pleadings of the writ petition

relating to the detention order it appears that the authorities were considering the activities of the writ petitioner since his release on bail also and hence, it cannot be said definitively without examining the records that the delay of four and half months had snapped the live link. In our opinion, this is an aspect which could be examined after the records from the detaining authorities were called and considered, and not at the motion stage on the first day of consideration.

**38.** We are satisfied that none of the conditions contemplated in *Alka Subhash Gadia* (supra) was fulfilled as to warrant passing of an interim order of suspension of the detention order. We have also kept in mind the observation of the Hon'ble Supreme Court in *Subhash Popatlal Dave (2014)* (supra) that if the petitioner had taken recourse to the legal remedy to challenge the order of detention even before it was executed, it is not open for him to contend that it should be quashed because there is no live link between the existing/subsequent situation and the previous situation.

We have also noted that even in the case of *Deepak Bajaj* (supra) relied upon by the respondent/writ petitioner, it has been observed by the Hon'ble Supreme Court that entertaining petition against preventive detention order at pre-execution stage should be an exception and not a general rule.

**39.** For the reasons discussed above, we are of the opinion that this is not a case where the learned Writ Court could have passed the interim order suspending the detention order dated 27.04.2023.

**40.** Accordingly, we allow this appeal by setting aside the interim order dated 10.05.2023 passed by the learned Single Judge in WP(Crl.) No.

155/2023 by which of which the operation of detention order dated 27.04.2023 was stayed. Resultantly, the authorities shall execute the detention order no. Div. Com K/35/2023 dated 27.04.2023 passed by the Divisional Commissioner, Kashmir against the writ petitioner.

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

**(N. KOTISWAR SINGH)**  
**CHIEF JUSTICE**

JAMMU  
07.10.2023  
Mihul

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