

BLOGS

Mulla Afroz v. Union of India (2026): Supreme Court Rejects Preventive Detention Based Only on Police Confession

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Introduction

The Supreme Court recently dealt with the issue of preventive detention based solely on a custodial confession in *Mulla Afroz v. Union of India & Ors., 2026 INSC 1067*. The Court held that a confession made to a police officer cannot, without independent supporting material, become the only basis for an order under the National Security Act, 1980 (NSA). Such reliance weakens the constitutional safeguard against self-incrimination and affects the detainee's fundamental right to personal liberty.

The Court quashed Mulla Afroz's preventive detention in connection with the 2024 Sambhal violence and imposed ₹10 lakh costs on Uttar Pradesh. It clarified that preventive detention is meant to prevent a future threat, not to keep a person in custody after bail.

Facts of the case

- On 24 November 2024, violence broke out in Sambhal during a survey of a mosque. Four persons died and several FIRs were registered.
- Mulla Afroz was not named in the first FIR. He was arrested about 54 days after the incident, on 17 January 2025, in connection with other cases.
- While he was in custody, the police recorded a confessional statement. The authorities claimed that the statement led to the recovery of a 32-bore pistol.
- Afroz consistently alleged that the confession had been obtained through torture and threats of death. The State did not effectively deny these allegations.
- Afroz was later granted bail in the criminal cases. However, on 13 October 2025, the District Magistrate ordered his preventive detention under Section 3(2) of the NSA.

- The State Government confirmed it for one year. The Allahabad High Court dismissed his challenge in June 2026. Afroz approached the Supreme Court.

Issues before the Supreme Court

The Court mainly considered the following issues -

1. Whether a police confession could by itself support preventive detention.
2. Whether the detention order complied with constitutional and statutory safeguards.
3. Whether the material relied upon by the detaining authority was relevant, reliable and sufficient.
4. Whether the detention was genuinely preventive or was being used to defeat the appellant's release on bail.

Mulla Afroz v. Union of India (2026)

1 ISSUE

Can a police confession alone justify preventive detention under Section 3(2) of the National Security Act, 1980?



2 RULING

No. A police confession alone cannot justify preventive detention without independent, reliable material.



3 WHY?

- **Police** confessions may involve coercion, threats or torture.
- A charge-sheet is not proof of guilt.
- Several criminal cases alone are not enough.
- Undisclosed material cannot sustain detention.



4 CONSTITUTIONAL SAFEGUARDS

- **Article 20(3):** protection against self-incrimination.
- **Article 22(5):** clear grounds of detention and an early chance to make a representation.



5 KEY PRINCIPLE

Preventive detention looks to a real and proximate future threat. It cannot punish a past incident or be used to defeat bail.



6 RELIEF

- Detention and confirmation orders quashed.
- Release directed unless required in another case.
- Uttar Pradesh ordered to pay ₹10 lakh costs.



Relevant Legal Provisions

Section 3(2) of the **National Security Act, 1980** permits preventive detention when the government is satisfied that detention is necessary to prevent a person from acting in a manner prejudicial to national security, public order or essential supplies and services.

Preventive detention differs from ordinary criminal punishment. Criminal law deals with an alleged past offence and requires a trial. The purpose of Preventive detention is to mitigate an anticipated upcoming threat. Since it allows detention without formal conviction, it is considered as an exceptional power.

Article 20(3) of the Constitution protects an accused from being compelled to become a witness against himself. This is the constitutional protection against self-incrimination.

Article 22(5) requires the authority to communicate the grounds of preventive detention to the detainee and give him the earliest opportunity to make a representation against the order. This right is meaningful only when the grounds are relevant, clear and legally capable of being answered.

Section 23 of the **Bharatiya Sakshya Adhiniyam, 2023** (BSA) generally prevents a confession made to a police officer from being proved against an accused. There are only a few legal exceptions to this rule i.e. **statements made properly before a Magistrate** and **information that lead police to discover new evidence**.

What did the Supreme Court hold?

- The Supreme Court held that a confession made before a police officer cannot, by itself and without independent material, form the basis of the “**subjective satisfaction**” required for preventive detention. Police confessions are vulnerable to coercion, threat, inducement and promise. If such a statement cannot generally prove guilt at trial, it cannot alone justify detention without trial.
- The Court found that Afroz’s confession could not be treated as voluntary because his allegations of torture and threats had not been refuted. It therefore could not be relied upon by the detaining authority.

- The Court also examined the other material. The detention order referred to CCTV footage and videos said to identify Afroz as a principal planner of the violence. However, this material had not been supplied to him and was not produced before the courts. Material that is neither supplied to the detainee nor disclosed in proceedings cannot sustain detention.

The authority also referred to alleged phone communications, although the relevant phone data had been erased. A charge-sheet was treated as proof of involvement, but the Court clarified that a charge-sheet reflects the investigating agency's opinion and is not proof of guilt. **The existence of several criminal cases, by itself, is also not enough to order preventive detention**

The Court observed that the same incident and substantially the same material had been used both for the criminal cases and the preventive detention order. The distinction between preventive and punitive detention had therefore become blurred. Detaining a person to keep him in custody after the grant of bail appeared to make **"the process the punishment."**

Case laws referred to by the Court

In *Aruna Kumari v. Government of Andhra Pradesh* and *Senthamilselvi v. State of Tamil Nadu*, observations had been made that a confession could be considered in preventive detention proceedings. The Supreme Court explained that those cases did not directly decide whether a police confession alone could sustain detention. The relevant observations were not the ratio decidendi and could not control the present case.

The Court relied on *Kartar Singh v. State of Punjab* while considering the danger of confessions obtained through coercion, threat or torture. On preventive detention and its exceptional nature, the Court referred to *Haradhan Saha v. State of West Bengal*, *Rekha v. State of Tamil Nadu*, *Ameena Begum v. State of Telangana* and *Pebam Ningol Mikoi Devi v. State of Manipur*. These decisions emphasise that preventive detention cannot replace ordinary criminal law and must be based on a real and proximate future threat.

Directions and Final Relief

The Supreme Court:

- set aside the Allahabad High Court judgment,

- quashed the District Magistrate's detention order and the State Government's confirmation order,
- directed that Afroz be released immediately unless his custody was required in another case,
- and
- directed the State of Uttar Pradesh to pay ₹10 lakh as costs to Afroz within one month.

The Court clarified that it expressed no opinion on the merits of the criminal cases. Those cases must proceed independently and according to law. However, where criminal proceedings are already based on the same incident, a later preventive detention order must face especially careful judicial scrutiny.

Importance of the Judgment

This judgment protects two connected constitutional values i.e. **personal liberty** and **protection against self-incrimination**. It prevents the state from using a legally suspect police confession as a substitute for reliable evidence. It also reminds detaining authorities that “**subjective satisfaction**” is not a blank cheque. The material must be relevant, disclosed where required and capable of supporting the statutory purpose.

For CLAT-PG students, the key distinction is simple, **punitive detention** looks backward at an alleged offence, while **preventive detention** looks forward at an apprehended threat. If the State relies only on the past incident, the charge-sheet and a disputed confession to keep a person imprisoned, preventive detention may become punitive in disguise.

Conclusion

This case strengthens judicial control over preventive detention. The Supreme Court did not say every confession is irrelevant in every such case. It held that a police confession cannot be the sole foundation without independent material, particularly when voluntariness is disputed.

The decision reinforces [Articles 20\(3\)](#) and [22\(5\)](#), personal liberty and the rule that preventive detention must prevent future danger, not punish an accusation being tried through ordinary criminal law.