

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

Case No. HCP No. 51/2025

Reserved on : 21.08.2025  
Pronounced on : 17.10.2025  
Uploaded on : 17.10.2025  
Whether the operative part or full  
judgment is pronounced

**Farooq Ahmed, S/o Sh. Abdul Hamid**  
**R/o Viilage Sadotra Tehsil Lohal Malhar**  
**District Kathua.**  
**Through his next friend/Sister**  
**Smt. Shafiqua Begum D/ Sh. Abdul Hamid**  
**R/o Village Punara, Tehsil and District Udhampur**  
**Presently lodged at District Jail, Udhampur.**  
**Farooq Ahmed, S/o Sh. Abdul Hamid**  
**R/o Viilage Sadotra Tehsil Lohal Malhar**  
**District Kathua.**  
**Through his next friend/Sister**  
**Smt. Shafiqua Begum D/ Sh. Abdul Hamid**  
**R/o Village Punara, Tehsil and District Udhampur**  
**Presently lodged at District Jail, Udhampur.**

.....Petitioner(s)/Appellant(s)

Through:- Mr. Sayed Wakar Shah, Advocate

V/s

**1.The Union Territory of Jammu and Kashmir**  
**through the Financial Commissioner**  
**(Additional Chief Secretary) Home Department,**  
**Civil Secretariat, Jammu.**  
**2. The District Magistrate, Udhampur.**  
**3. The Superintendent, District Jail, Udhampur.**

.....Respondent(s)

Through:- Mr. Sumeet Bhatia, GA

**CORAM:**

**HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE**

**JUDGMENT**

1. Through the medium of the instant petition, the petitioner seeks quashment of Detention Order No.-O2-PSA-2025 dated 08.03.2025 passed by the District Magistrate, Udampur (respondent No.2) under

Jammu and Kashmir Public Safety Act, 1978, whereby detenu, namely, Farooq Ahmed S/o Sh. Abdul Hamid R/o Viilage Sadotra Tehsil Lohal Malhar, District Kathua, has been placed under preventive detention to prevent him from prejudicial activities which are prejudicial to security of the State.

2. Petitioner seeks quashment of the detention order on the following grounds:-

- (i) That copies of the material referred in the ground of detention, statements of witnesses, seizure memo and other related relevant documents, were not provided to the petitioner, the same had made the impugned detention order as illegal as the petitioner fails to make an effective representation to the respondents. In view of this the detention Order No.-O2-PSA-2025 dated 08-03-2025 is required to be quashed;
- (ii) That the family members of the petitioner were never informed about the detention of the petitioner;
- (iii) That the Constitutional safeguards as provided in Article 22(2) of the Constitution of India were violated; therefore, the impugned detention order is required to be quashed;
- (iv) That petitioner was never referred to the Advisory Board;
- (v) That petitioner was not supplied with the copies recovery memos, statements if any, recorded under Section 161 Cr.P.C. and other incriminating material collected by the police during investigation in the aforementioned report based on which the impugned detention order has been passed;
- (vi) That petitioner was not supplied the translated version of the documents that were in English language and he only understands Kashmiri/Gojri. The respondent had violated the fundamental right of the petitioner as provided under Article 22(5) of the Constitution of India;
- (vii) That the petitioner filed a presentation dated 01.04.2025 addressed to respondents 1 & 2 seeking withdrawal of Order No.02-PSA-2025 dated 08-03-2025, whereby he was detained under 'The Prevention of Public Safety Act', but the representation remain unattended;

3. Respondents have filed affidavit stating therein that the SSP Udhampur vide dossier No: conf/2025/72-75 dated: 01.02.2025 along with the supporting documents reported that the petitioner has consistently associated himself with known criminal elements and has demonstrated admiration for individuals involved in anti-social activities. Intelligence reports indicate that he has established affiliations with terrorist organizations and has actively participated in activities detrimental to security of the state including sharing sensitive information about local infrastructure, intelligence, and security force movements, poses a significant threat to security of State. This hindered law enforcement and counter-terrorism operations, leading to the failure of numerous search operations and the escape of terrorists.

4. It is also stated by respondents that after examining the whole record annexed with the dossiers it was found that the petitioner's anti-national activities within the jurisdiction of the deponent, as detailed in his personal file, have placed him on the radar of P/S Basantgarh. He is officially classified as an Over Ground Worker (OGW) and his actions have directly impacted local security operations. The DD Reports and beat book entries provide concrete evidence of his suspicious behaviour and underscore the urgent need for further investigation and appropriate action.

5. Respondents also contend that preventive action taken under Section 126 of BNSS Act against the detenu on 16.12.2024 and reports from the Chowkidar and Numberdar, demonstrate his ongoing threat to public safety and security of the state. Notice of detention, grounds of

detention, Dossier of detention and other documents including on the basis of which the petitioner has been detained under Public Safety Act, were properly supplied to the petitioner on 21.03.2025 at the time of execution of detention warrant and contents of detention order and grounds of detention have been read over to the petitioner and explained to him in Dogri/urdu language which he understood and his signature has also been obtained.

6. In the instant case, Government vide Govt. order dated 12.03.2025 approved the order of detention, and after the same was placed before the advisory committee and on its advice, the Government decided the period of detention to be 06 months in the first instance vide G.O. No. Home/PB-v/610 of 2025 dated 11.04.2025, which clearly shows that all the prescribed norm/procedures have been followed in accordance with the provisions of PSA.

7. It is stated that the petitioner had filed a representation before the Commissioner Secretary to Government, Home Department, J&K, to set aside the detention order passed by the District Magistrate, Udhampur and the same has been duly considered and rejected and further the order has been communicated to the petitioner through Superintendent District Jail, Udhampur.

8. I have heard learned counsel for parties and considered the matter.

9. The law on the subject is settled. If detaining authority is apprehensive that in case detenu is released on bail he may again carry on his criminal activities, then in such situation, the authority should oppose the bail application and, in the event, bail is granted, the authority should

challenge such a bail order in the higher forum and that merely on the ground that an accused in detention is likely to get bail, an order of preventive detention should not ordinarily be passed.

10. The Supreme Court in case titled ***Sama Arunav. State of Telengana and another***, AIR 2017 SC 2662, in para 24 observed as under:-

“24. There is another reason why the detention order is unjustified. It was passed when the accused was in jail in Crime No.221 of 2016. His custody in jail for the said offence was converted into custody under the impugned detention order. The incident involved in this offence is sometime in the year 2002-2003. The detenu could not have been detained preventively by taking this stale incident into account, more so when he was in jail. In *Ramesh Yadav v. District Magistrate, Etah and Ors.*, this Court observed as follows:-

“6. On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an under-trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed.”

11. In the present case, the petitioner was not provided with complete copies of the grounds of detention and supporting materials in a language he understands, thus, violating Article 22(5) of the Constitution. The petitioner was not referred to the Advisory Board prior to detention, which is contrary to statutory requirements. The petitioner's representation seeking revocation of the detention order was not duly considered. The detention order appears to be based on stale allegations and lacks sufficient evidence to justify preventive detention. The respondents have failed to demonstrate that procedural safeguards under the PSA and the Constitution were strictly followed.

12. Learned counsel for petitioner has vehemently stated that consideration and rejection of representation of petitioner has not been communicated to detenu and that it was only first time the petitioner came to know about consideration and rejection of representation of petitioner when respondents filed their counter affidavit in which they made mention about rejection of representation and, therefore, failure to communication decision on representation vitiates impugned order of detention.

13. As regards failure in communication of decision on representation against detention, the Supreme Court in ***Sarabjeet Singh Mokja vs. District Magistrate Jabalpur and others***, reported in (2021) 20 SCC 98, has held as under:-

***“D.2 Failure to communicate decision on the representation***

47 Apart from the above position, there is a more fundamental reason for interference with the order of detention- the failure to communicate the rejection to the appellant. The respondent could not furnish proof of the appellant's receipt of the Central Government's rejection of representation dated 24 June 2021. The wireless message dated 28 June 2021, issued from the Ministry of Home Affairs of the Central Government to the Home Department of the State Government, communicated the rejection of the representation submitted by the detenu. The SP of the Central Jail, Jabalpur was directed to serve a copy meant for the detenu. The State Government was also directed to inform the detenu. Though in the writ petition as it was originally filed, there was no specific ground that the rejection of the representation was not communicated to the detenu, a specific ground to that effect was raised in the rejoinder filed before the High Court.

Be that as it may, there is absolutely no material coming forthwith to indicate that the rejection of the representation by the Central Government was communicated to the detenu. The appellant has submitted that it was notified of the rejection of its representation by the Central Government, only when such rejection was furnished as an annexure to the Central Government's counter-affidavit before the High Court. The Central Government's wireless message dated 28 June 2021 directed the SP to collect the appellant's acknowledgement of receipt. However, the respondents were unable to furnish any proof of such acknowledgement. This lends credibility to the appellant's contention that he was never served with a copy of Central Government's rejection of his representation.

.....

49 Article 22(4), in guaranteeing a right to make a representation to the detenu, understandably creates a corresponding duty on the State

machinery to render this right meaningful. In Section D.1 of the judgement, we have detailed this Court's settled precedent on the detenu's right to make a representation and for it to be considered expeditiously- failing which the detention order would be invalidated. However, this right would ring hollow without a corollary right of the detenu to receive a timely communication from the appropriate government on the status of its representation- be it an acceptance or a rejection.

50 This Court, in considering claims of delay in the appropriate government's dealing with the representation of a detenu, has included delays in communication of such rejection. A two judge Bench of this Court in *State of Punjab v. Sukhpal Singh*<sup>54</sup> had noted that such a delay formed a part of the infraction on the detenu's constitutional right under Article 22(4). Justice K N Saikia, speaking on behalf of this Court, had held:

"19. In the instant case we are satisfied that after receipt of the zerox copy from the Central Government, the State Government took only 13 days including 4 holidays in disposing of the representation. Considering the situation prevailing and the consultation needed in the matter, the State Government could to have been unmindful of urgency in the matter. But the facts remain that it took more than two months from the date of submission of the representation to the date of informing the detenu of the result of his representation. Eight days were taken after disposal of the representation by the State Government. The result is that the detenu's constitutional right to prompt disposal of his representation was denied and the legal consequences must follow."(emphasis supplied)

51 Similarly, a two judge Bench of this Court in *Madan Lal Anand v. Union of India*<sup>55</sup> considered an explanation for a two day delay in communicating a rejection of representation to the detenu in determining laches or negligence on the part of the detaining authority. It noted:

"37. At the hearing of this appeal, the learned counsel for the respondents handed over to us a list of dates showing that a number of holidays intervened between one date and another and hence the apparent delay. It appears that the Collector of Central Excise & Customs received the representation for his comments on January 23, 1989 and handed over the same to the dealing officer for comments on January 24, 1989 and the Collector's comment was made on February 9, 1989. Between January 25, 1989 and February 8, 1989 a number of holidays intervened, namely January 26, 1989 (Republic day), January 28, 1989 and January 29, 1989 (Saturday and Sunday), and February 4, 1989 and February 5, 1989 (Saturday and Sunday). On February 9, 1989, it was sent to the Ministry of Finance (COFEPOSA Cell), New Delhi, and was received by that Ministry on February 10, 1989. February 11, 1989 and February 12, 1989 being Saturday and Sunday were holidays. On February 13, 1989, it was put up before the Joint Secretary, COFEPOSA, and was sent to the Minister of State (Revenue). The file was received back after the rejection of the representation and such rejection was communicated to the detenu on February 20, 1989. The two intervening dates, namely, February 18, 1989 and February 19, 1989 being Saturday and Sunday were holidays.

38. It is clear from the above statement that there was no laches or negligence on the part of the detaining authority or the other authorities concerned in dealing with the representation of the detenu. In *L.M.S. Ummu Saleema v. B.B. Gujaral*[(1981) 3 SCC 317 : 1981 SCC (Cri) 720] it has been observed that the time imperative can never be absolute or obsessive, and that the occasional observations made by this Court that each day's delay in dealing with the representation must be adequately explained are meant to emphasise the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release of the detenu. In the instant case, the detaining authority has explained the delay in the disposal of the representation made by the detenu and, accordingly, the order of detention cannot be rendered invalid on that ground."

(emphasis supplied)

52 At this point, it would also be relevant to mention that this Court in *Union of India v. Saleena*<sup>56</sup>, considered the issue of whether non-communication of the order rejecting the representation by the competent authority would invalidate or vitiate the order of detention. In the facts of that case, though the order of the competent authority rejecting the detenu's representation was not communicated to him, the Under Secretary had informed the detenu of the outcome of the decision. The Court observed that the procedural safeguards under Article 22(5) of the Constitution do not require a communication of the order rejecting the representation by the competent authority or incorporation of the order passed by the competent authority in the order of communication to the detenu. Without commenting on the merits of *Saleena* (supra), we note that the decision was limited to the issue framed which relates to whether an order rejecting the representation must be mandatorily communicated to the detenu by the competent authority.

.....

Based on the precedents of this Court, we hold that the failure of the Central and the State Government to communicate the rejection of the appellant's representation in a time-bound manner is sufficient to vitiate the order of detention."

14. Thus, it has been held by the Supreme Court that it is not only considering and deciding a representation against detention, but it is also the duty and responsibility of Government to communicate such a decision to detenu/petitioner and failure in doing so vitiates detention. In the case in hand as well, decision on representation of petitioner against detention has not been communicated in time bound manner, which is sufficient ground to vitiate impugned order of detention.

15. Accordingly, the detention order No. 02-PSA-2025 dated 08.03.2025 is hereby quashed and set aside. The detenu shall be released forthwith unless detained or arrested in connection with any other lawful proceeding.

16. The instant writ petition is, accordingly, disposed of.

17. Detention record to be returned back to Mr. Sumeet Bhatia, learned GA by the Registrar Judicial of this Court.

**(VINOD CHATTERJI KOUL)**  
**Judge**

**JAMMU**  
**17.10.2025**  
**Bir**