

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

**CJ Court**

**LPA No. 229/2025 in  
HCP No. 47/2025**

**Reserved on: 18.11.2025**

**Pronounced on: 27.11.2025**

**Uploaded on: 27.11.2025**

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

**Jugal Kishore @ Lucky,**

S/O Inder Dev Sharma R/O Village Hathal  
Saleri, Tehsil Sunderbani, District Rajouri,  
Presently lodged at Central Jail, Kot Bhalwal,  
Jammu Through his father namely Inder Dev  
Sharma, Age 65 years

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

Through: Mr. Jagpaul Singh, Advocate.

**Vs**

**1. Union Territory of Jammu and  
Kashmir**

Through Commissioner cum Secretary to  
the Government, Home Dept., Civil  
Secretariat, Jammu.

**2. Divisional Commissioner, Jammu**

**3. Senior Superintendent of Police,  
Rajouri**

**4. Superintendent Central Jail, Kot  
Bhalwal, Jammu**

..... Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG.

**Coram: HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**JUDGMENT**

**Oswal-J**

1. The appellant was detained in terms of Order No. PITNDPS 42 of 2024 dated 12.11.2024 (for short 'the order impugned') issued by respondent

No. 2 (for short 'the Detaining Authority') under the provisions of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short 'the Act') and being aggrieved of the detention, the appellant had assailed the order dated 12.11.2024 through the medium of HCP No. 47/2025, but the HCP preferred by the appellant was dismissed by the Writ Court vide judgment dated 25.09.2025.

2. In this intra-court appeal filed by the appellant through his father, the appellant has assailed the judgment dated 25.09.2025 rendered by the learned Writ Court on various grounds, *inter alia*, that the learned Writ Court has not appreciated the failure on part of the Detaining Authority to consider the representation of the appellant in its right perspective and further that the respondent No.1 took more than two months in deciding the representation. It is further contended that the learned Writ Court has ignored the fact that the last illegal activity attributed to the appellant was in respect of FIR registered one year prior to the issuance of detention order, which snapped the live link between the grounds of detention and purpose of detention.
3. Mr. Jagpaul Singh, learned counsel for the appellant has submitted that there was delay in passing the order of detention as the last illegal activity attributed to the appellant was in respect of FIR No. 295/2023 registered on 09.12.2023 with Police Station, Gandhi Nagar for commission of offences under Sections 8/21/22/25/29 of NDPS Act, whereas the order of detention was passed on 12.11.2024. He has further submitted that the representation submitted by the appellant through his father against the order of detention was never decided by the Detaining

Authority, and respondent No. 1 decided it only belatedly. He has vehemently argued that these grounds alone were sufficient for the learned Writ Court to quash the order of detention, but the learned Writ Court has not considered these vital aspects of the case.

4. *Per contra*, Ms. Monika Kohli, learned Senior AAG appearing for the respondents has submitted that the appellant was found to be involved in similar, repeated offences, which is evident from the fact that he was involved in three such offences within a span of eighteen months, as such, order of detention was rightly passed against the appellant. She has further submitted that the appellant was provided all the documents relied upon by the Detaining Authority while passing the order of detention at the time of execution of detention order and that there is no illegality in the order of detention, that is why the learned Writ Court dismissed the HCP preferred by the appellant.
5. Heard learned counsel for the parties and perused the detention record.
6. The record depicts that through communication dated 02.11.2024 accompanied with the dossier, respondent No. 3 requested respondent No. 2 to detain the appellant under the Act. In the dossier, reference was made to the following four FIRs registered against the appellant:

- i. **FIR No. 295/2023** registered with Police Station, Gandhi Nagar for commission of offences under Sections 8/21/22/25/29 NDPS Act.
- ii. **FIR No. 61/2022** registered with Police Station, Janipur for commission of offences under Sections 8/21/22/26/27-A/29 NDPS Act.
- iii. **FIR No. 58/2022** registered with Police Station, Sunderbani for commission of offences under Sections 8-A/21/22/29 NDPS Act.

- iv. **FIR No. 199/2017** registered with Police Station, Kathua for commission of offences under Sections 8/21/22 NDPS Act.
7. Besides these FIRs, reference was also made to the complaint filed under Section 126/129/136 of BNSS of Police Station, Sunderbani.
8. The respondent No. 2, considered the dossier along with accompanying material, framed the grounds of detention on 12.11.2024 and issued the order of detention dated 12.11.2024 in respect of detention of the appellant under the Act. In the grounds of detention, the last illegal activity attributed to the appellant is in respect of FIR No. 295/2023 registered with Police Station, Gandhi Nagar for commission of offences under Sections 8/21/22/25/29 NDPS Act. The allegations against the appellant are that on 09.12.2023 during patrolling at about 20.13 hours, one vehicle bearing registration No. PB70D/0044 was found stationed near Devta Temple Park, Shanti Nagar, in which the appellant along with two other associates were sitting. On seeing the Police Party, they tried to flee from the spot, but the Police Party apprehended them. During personal search of the appellant, 7/8 grams of heroin-like substances was recovered. The appellant was granted bail by the court. Prior to this FIR, two FIRs i.e. one FIR No. 61/2022 was registered with Police Station, Janipur for commission of offences under Sections 8/21/22/26/27-A/29 NDPS Act on 02.06.2022 and another FIR No. 58/2022 was registered with Police Station, Sunderbani for commission of offences under Sections 8-A/21/22/29 NDPS Act was registered on 26.08.2022.
9. The first contention raised by the appellant is that the order of detention has been issued on stale grounds, as the last illegal activity attributed to

the appellant was in respect of FIR No. 295/2023 registered with Police Station, Gandhi Nagar for commission of offences under Sections 8/21/22/25/29 NDPS Act on 09.12.2023. Record depicts that in FIR No. 295/2023 registered on 09.12.2023, the appellant was granted interim bail vide order dated 16.12.2023 by the court of learned Additional Sessions Judge, Jammu and thereafter till the issuance of order of detention, no illegal activity was attributed to the appellant. In the interregnum, it is only the complaint under Section 126/129/136 BNSS, that has been filed by the SHO, Police Station, Sunderbani before the Executive Magistrate, 1<sup>st</sup> Class, Sunderbani. The complaint cites only past incidents and FIRs, on the basis of which it was apprehended that the appellant might engage in illegal activity. Neither in the complaint filed under Section 126/129/136 of BNSS, nor anywhere in the grounds of detention, any illegal activity has been attributed to the appellant after December, 2023. This clearly demonstrates that there was delay of 11 months in issuing the order of detention and this delay of 11 months in issuing the detention order has snapped the live link between the grounds of detention and the purpose of order of detention. Reliance is placed upon the decision rendered by the Apex Court, in case titled as **Arjun Satpal Kumbhar vs. Commission of Police** reported in **2025 Supreme (Online) (SC) 10665**, wherein it has been held that “*substantial delay in issuing the detention order without explanation warrants its quashing*”. In view of above, on this ground only, the order of detention was/is required to be quashed.

10. The appellant's next contention relates to the failure of respondent No.2 to consider and decide the representation, and delay on part of the respondent No. 1 in deciding the representation. Record depicts that the appellant had filed a rejoinder before the learned Writ Court, wherein he had categorically pleaded that there is un-reasonable and unjustifiable delay of almost two months in deciding the representation. It is evident that the representation dated 26.03.2025 was submitted to respondent No. 1 and in terms of communication dated 02.04.2025, Additional Secretary to Government sought comments on the said representation from the Additional Director General of Police, CID, J&K. Thereafter, the representation came to be rejected in terms of order dated 02.06.2025, as is evident from the communication dated 02.06.2025 addressed by respondent No. 1 to respondent No. 2. Moreover, we have not come across any document demonstrating that the appellant was intimated about the decision of representation. The delay caused in deciding the representation, has not been explained by the respondent No.1, as such, this Court is of the considered view that there is a breach of constitutional mandate in not considering and deciding the representation submitted by the appellant with utmost expedition and on this ground also, the order of detention deserves to be quashed.
11. Reliance is placed upon the decision of Apex Court in case titled as **“Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur and others”** reported in (2021) 20 SCC 98, wherein representation was submitted by the detainee on 18.05.2021 but was not considered by the State Government until after the Advisory Board had submitted its report

on 15.06.2021. The Government took another one month in arriving at a decision on the appellant's representation dated 18.05.2021 and no cause was furnished for such delay. The Hon'ble Supreme Court in para 47 has observed as under:

**“47. By delaying its decision on the representation, the State Government deprived the detinue of the valuable right which emanates from the provisions of Section 8(1) of having the representation being considered expeditiously. As we have noted earlier, the communication of the grounds of detention of the detinue “as soon as may be” and the affording to the detinue of the earliest opportunity of making a representation against the order of detention to the appropriate Government are intended to ensure that the representation of the detinue is considered by the appropriate Government with a sense of immediacy. The State Government failed to do so. The making of a reference to the Advisory Board could not have furnished any justification for the State Government not to deal with the representation independently at the earliest. The delay by the State Government in disposing off the representation and by the Central and State Government in communicating such rejection, strikes at the heart of the procedural rights and guarantees granted to the detinue. It is necessary to understand that the law provides for such procedural safeguards to balance the wide powers granted to the executive under the NSA. The State Government cannot expect this Court to uphold its powers of subjective satisfaction to detain a person, while violating the procedural guarantees of the detinue that are fundamental to the laws of preventive detention enshrined in the Constitution.”**

**(emphasis added)**

12. We have examined the judgment rendered by the learned Writ Court and we are of the considered view that the learned Writ Court has not examined the issues in its right perspective, as discussed above by us, as such, the judgment dated 25.09.2025 passed by the Writ Court is not sustainable in the eyes of law and the same is required to be set aside.
13. Accordingly, the instant appeal is allowed and the judgment dated 25.09.2025 passed by the learned Writ Court is set aside. Resultantly, the

order of detention bearing No. PITNDPS 42 of 2024 dated 12.11.2024 is quashed. The appellant is directed to be released from custody forthwith, provided he is not required in any other case.

14. **Disposed of.**
15. Record be returned to Ms. Monika Kohli, learned Senior AAG appearing for the UT of J&K.

(RAJNESH OSWAL)  
JUDGE

(ARUN PALLI)  
CHIEF JUSTICE

Jammu  
27.11.2025  
*Sahil Padha*

Whether the order is speaking: Yes/No.

Whether the order is reportable: Yes/No.

