

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

Reserved on 10.09.2026
Pronounced on 18.09.2026
Uploaded on: 18.09.2026
Whether the operative part or full
Judgment is pronounced: **Full**

HCP No. 45/2026

Baldev Raj th. wife Bholi Devi Appellant(s)/Petitioner(s)

Through: Mr. Prince Khanna, Adv.

vs

U. T. of J&K and others Respondent(s)

Through: Mr. Pawan Dev Singh, Dy.AG

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioner has challenged detention order bearing No. PSA 03 of 2026 dated 06.02.2026 issued by District Magistrate, Jammu (hereinafter to be referred as the Detaining Authority). In terms of the said order, the petitioner, namely, Baldev Raj *alias* Raju (for short, the detenue) has been placed under preventive detention in order to prevent him from acting in any manner prejudicial to the maintenance of the public order.
2. The petitioner has contended that respondent No. 3, Senior Superintendent of Police, Jammu, has not brought all the relevant facts and material to the notice of the Detaining Authority, respondent No. 2 herein, inasmuch as, the petitioner had already

been detained under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances(PITNDPS) Act in terms of detention order bearing No. PITNDPS 09 of 2023 dated 19.04.2023, whereafter, he was set at liberty in terms of the judgment passed by the Division Bench of this Court on 19.09.2024. It has further been contended that whole of the material, on the basis of which, the grounds of detention have been formulated, has not been furnished to the petitioner. It has further been contended that the petitioner had made a representation through his wife before the Detaining Authority as well as before the State Advisory Board, but the said representation was never considered nor the result of the said representation was conveyed to the petitioner. It has also been contended that the proceedings in respect of as many as 05 FIRs out of 14 FIRs mentioned in the grounds of detention had culminated, but this fact was not brought to the notice of the Detaining Authority by the sponsoring agency. It has further been contended that the impugned order of detention suffers from non-application of mind because the grounds of detention are exact replica of the dossier formulated by the sponsoring agency. It has been contended that having regard to the nature of allegations made in the grounds of detention, the same cannot form a basis for

passing an order of preventive detention under the Public Safety Act.

3. Respondent No. 2-Detaining Authority has filed its affidavit in answer to the writ petition. In the affidavit, it has been submitted that all the procedural safeguards guaranteed under Article 22(5) of the Constitution have been adhered to by the Detaining Authority while effecting preventive detention of the detainee/petitioner. It has been further contended that the petitioner is a habitual criminal, and he has been violating the rule of law blatantly by involving himself in illicit trafficking of narcotic drugs such as heroin and liquor. It has been further submitted that 14 FIRs have been registered against the detainee/petitioner and his repeated involvement in criminal cases clearly demonstrates that ordinary criminal law has proved insufficient to deter him from continuing his unlawful activities.

4. Thus, according to the respondents, the activities of the petitioner pose a serious threat to public order. It has been contended that the whole of the material relied upon for formulating the grounds of detention, comprising 232 leaves, has been furnished to the petitioner, regarding which he has executed a receipt. It has also been contended that the representation of the petitioner was considered by the Government and vide communication dated

19.05.2026 addressed to Superintendent, District Jail Bhadarwah, the petitioner was informed about the rejection of his representation. It has further been contended that merely because of similarity in some sentences of the Police dossier and the grounds of detention, it cannot be stated that the Detaining Authority has not applied its mind independently to the material before it. It has further been submitted that the petitioner was informed about his right to make a representation before the Government as well as before the Detaining Authority. To lend support to the stand taken in the counter affidavit, the respondents have also produced the detention record.

5. I have heard learned counsel for the parties and perused the record, including the detention record produced by the respondents.
6. Learned counsel for the petitioner, while seeking quashment of order of detention, has projected various grounds, but his main thrust during the course of arguments was on the ground that the representation filed by the petitioner against his preventive detention has not been considered by the Authority, thereby violating his constitutional and statutory rights guaranteed under Article 22(5) of the Constitution and the J&K Public Safety Act.
7. In the above context, a perusal of the detention record reveals that the representation of the petitioner addressed to the Detaining

Authority was received by the said authority on 16.03.2026. It appears that the Detaining Authority forwarded the said representation to the Government vide its communication dated 23.04.2026, whereafter the Home Department of the Government sought report from the Criminal Investigation Department (CID) vide communication dated 25.04.2026. The requisite report was forwarded by the CID to the Home Department vide communication dated 14.05.2026, whereafter on 19.05.2026, the representation of the petitioner was disposed of by rejecting the same. In this regard, a communication came to be issued by the Home Department to District Magistrate, Jammu, on 19.05.2026 informing him about the disposal of the representation of the detainee/petitioner. A copy of the said communication was also sent to Superintendent, District Jail, Bhardarwah for its onward transmission to the detainee. It is not clear as to whether or not the information with regard to the rejection of the representation of the petitioner was communicated to the petitioner, as there is no receipt of detainee, in this regard, on the file of the detention record.

8. From a perusal of the detention record, it is, thus, clear that the wife of the petitioner had made a representation against the impugned order of detention and the said representation was received by the District Magistrate, Jammu on 16.03.2026. The

representation was ultimately disposed of by the Advisory Board and the Home Department on 19.05.2026. Thus, there is a delay of more than two months in disposing of the representation of the petitioner. It is also clear from the detention record that information about the fate of the representation has not been conveyed to the detenu/petitioner.

9. The question that arises for determination is as to whether consideration of the representation after a period of more than two months from the date of receipt of the same, satisfies the requirement of law.
10. The aforesaid question has been answered by the Supreme Court in the case of **Sarabjeet Singh Mokha v District Magistrate, Jabalpur and others, (2021) 20 SCC 98**. It would be apt to refer to the observations made by the Supreme Court in paragraph 47 of the judgment, which are reproduced as under:

“47. By delaying its decision on the representation, the State Government deprived the detenu 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 to the detenu “as soon as may be” and the affording to the detenu 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 detenu 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 of the representation and by the Central and State Governments in communicating such rejection, strikes at the

heart of the procedural rights and guarantees granted to the detenu. 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 detenu that are fundamental to the laws of preventive detention enshrined in the Constitution.”

11. From the foregoing analysis of law on the subject, it is manifest that delaying the decision on the representation of the detainee amounts to infringement of his valuable right which is available to a detainee in terms of provisions contained in Section 13 of the Jammu and Kashmir Public Safety Act, which makes it obligatory on the Detaining Authority to communicate to the detainee the grounds on which the order of detention has been made within a maximum period of ten days from the date of detention and to afford him the earliest opportunity of making representation against the order of detention. The purpose of furnishing the grounds of detention within a maximum period of ten days is to enable a detainee to make a representation against the order of detention at the earliest opportunity. Thus, a duty is cast upon the Detaining Authority or the Government to consider the said representation at the earliest opportunity. Failure to decide the representation of a detainee within a reasonable time in an expeditious manner strikes at the valuable right of a detainee emanating from the provisions of Section 13

of the Jammu and Kashmir Public Safety Act.

12. In the present case, the respondents have considered the representation of the petitioner after more than two months of its receipt. The record shows that the Detaining Authority has retained the representation of the petitioner with it from 16.03.2026 to 23.04.2026 for more than one month without processing the same and forwarding the same to the Government. There is no explanation forthcoming from the affidavit furnished by the Detaining Authority or from the detention record as to what circumstances prevented the Detaining Authority from forwarding the representation of the petitioner to the Government for more than five weeks. This slackness on the part of the respondents to take a decision on the representation of the petitioner renders impugned order of detention illegal.

13. Apart from the above, in the present petition, the respondents have not placed on record anything to show that the order of rejection was conveyed to the petitioner. Communication dated 19.05.2026 is an inter-departmental communication between the Home Department and the District Magistrate, Jammu, and it is not forthcoming from the record produced by the respondents as to whether the result of the representation has been conveyed to

the detainee/petitioner.

14. The Supreme Court in **Sarabjeet Singh Mokha's case (supra)**, while dealing with the effect of failure to communicate the result of the representation, has held that failure in timely communication of the rejection of the representation is a relevant factor for determining the delay and whether the protection granted to a detainee under Article 22(5) of the Constitution has been violated. It has been further held that failure of the Government to communicate rejection of detainee's representation in a time-bound manner is sufficient to vitiate the detention order.

15. Viewed thus, the instant petition is allowed, and the impugned order of detention is quashed. The detainee/petitioner is directed to be released from the preventive custody forthwith, provided he is not required in connection with any other case.

16. The detention record be returned to the learned counsel for the respondents.

(SANJAY DHAR)
JUDGE

Jammu

18.09.2026

Rakesh PS

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No