

[]

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

HCP No. 124/2025

Reserved on: 12.02.2026

Date of

pronouncement: 19.02.2026

Date of uploading: 19.02.2026

*Whether the operative part or full
judgment is pronounced Full*

Liaqat Ali @ Liaqatu, Age 34 years Petitioner(s)/Appellant(s)
s/o Sharief Mohd. R/o Korepunnu,
Tehsil Marheen District Kathua
presently lodged in District Jail,
Udhampur, through his mother Mst.
Balo Bibi, Age 55 years w/o Sharief
Mohd R/o Village Korepunnu Tehsil
Marheen District Kathua.

Through: Mr. Usman Salaria, Advocate.

vs

01. UT of Jammu and Kashmir through Respondent(s)
Principal Secretary, Home Department,
Government of J&K, (UT), Civil
Secretariat Jammu/Srinagar.

02.Divisional Commissioner, Jammu,
Rail Head Complex, Jammu, J&K.

03.Superintendent District Jail,
Udhampur.

04.Senior Superintendent of Police,
Kathua.

Through: Mrs. Monika Kohli, Sr. AAG.

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

JUDGMENT

01. The petitioner through his mother has invoked writ jurisdiction of this
Court for the quashment of detention order No. PITNDPS 12 of 2025

dated 15.03.2025, passed by respondent No.2-Divisional Commissioner, Jammu, vide which, he came to be detained.

- 02.** Background facts of the case are that SSP, Kathua, vide his letter dated 25.02.2025 submitted a dossier whereby four criminal cases under NDPS Act were elaborated against the petitioner. Though, he was bailed out in said cases, but it was alleged that he was a habitual drug trafficker and was still active in Drug trafficking in district Kathua. Case was examined on the basis of various parameters and it was found that his continuous illegal activities of drug peddling were detrimental, as such, SSP, Kathua recommended for appropriate orders under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PITNDPS). The respondent-detaining authority on the perusal of this dossier and recommendation of District screening committee has come to the conclusion that detainee was engaged in repeated Drug trafficking, which posed a great threat to the health and welfare of the people, therefore with a view to prevent him from indulging in similar activities, he passed the impugned order, whereby petitioner was directed to be detained.
- 03.** Petitioner has questioned the impugned order, *inter alia*, on the following grounds:

- a. That the Detention order passed by the respondent No. 2 deserves to be quashed on the ground that the detaining authority while passing the detention order has not applied its mind and has passed the detention order against the petitioner dated 15-03-2025 in a casual manner, the detaining authority has in his detention order stated in para

No. 3 that the dozier submitted by the respondent No. 4 that a case was challaned before the District and Sessions Court, Pathankot on 19-06-2023 in FIR No. 5/2023 under section 15/29/61/85 of NDPS Act which is incorrect, in fact, on the date of passing of detention order dated 15-03-2025. Petitioner was already acquitted of the charges under the offences as stated in FIR No. 5/2023. As such, the order of detention deserves to be quashed and the petitioner deserves to be set at large.

- b. For that the other offences in FIR as stated in the dozier submitted by the respondent No. 4, the case is still pending before the court of learned sessions judge, Kathua and the case vide FIR No. 259/2024 of P/S Rajbagh, Kathua which is under investigation, as such, trial/investigation doesn't mean that the petitioner has committed the offence and his detention is in the interest to public. Moreover, the principle of "Innocent until proven guilty" should have been followed, as such, the detention order deserves to be quashed.
- c. For that the respondent No. 1 has been approached by way of representation but the respondent No. 1 has neither communicated nor decided the representation pending disposal before the respondent No. 1 since 01-08-2025 and no consideration of the representation of the detenu dated 01-08-2025 by the respondent No. 1 is infringement of Article 22(5) of the Constitution of India, as such, the detention order passed by the respondent No. 1 is vitiated and deserves to be quashed. Copy of the representation and postal receipts is enclosed herewith and marked as Annexure-V. The respondent No. 1 is duty bound to communicate the reply and decision taken on the representation pending disposal before the respondent No.

1, the respondent No. 1 has pigeon holed the representation which is against law. A citizen who is detained for the period of more than 5 months has the right to know about the decision taken by the respondent No. 1 in his representation nor communicated to the petitioner in the language he understands and the detention order is also vitiated as the material relied upon by the respondents has never been furnished to the petitioner which clearly shows failure on the part of detaining authority and is also attracted by section 13 of the J&K Public Safety Act, as such, detention order deserves to be quashed.

- d. For that the respondents are duty bound under law where civil/personal liberties of a citizen has been curtailed to take all precautions that the law of Natural justice and fundamental rights of a citizen are not infringed but in the instant case the respondents have not adhered to all these norms and have violated the principles of Rule of natural justice and Fundamental rights as enshrined in Article 14 and 21 of the Constitution of India and have also not adhered to the provisions of Section 13 of Public Safety Act.
- e. That rest of the grounds as may be available to the petitioner under law will be urged at the time of arguments.

- 04.** The respondent-detaining authority in its counter affidavit is affront with the contention that none of the constitutional, legal or statutory right of the petitioner has been infringed and they have complied with all the statutory requirements and constitutional obligations before issuance of the impugned order of detention against him. It is contended that petitioner came to be detained after due compliance of

constitutional guarantees and keeping in mind the object of preventive detention, which is not punitive in nature. The dossier submitted by SSP, Kathua was carefully examined and on the basis of relevant record attached with the dossier, it was found imperative to detain the petitioner under the provisions of PITNDPS Act because ordinary law of land had failed to deter him from indulging in similar activities.

- 05.** It is further contention of the respondents that at the time of execution of impugned detention order, the executing officer provided 145 leaves of all the relevant documents along with detention order and grounds of detention to the petitioner, those were read over and explained to him in the language which he understands. He was also informed about his right to make representation before the Home Department and detaining authority. The detenue filed representation dated 31.07.2025 against the impugned order, which was considered by respondent No. 1-Home Department, but it was found without merit and was disposed of which was forwarded to SSP, Kathua by the detaining authority- respondent No. 2 for onward service upon the detenue.
- 06.** It is thus contended that since detenue was continuously involved in illicit trafficking of Drugs, even after getting bails from various Courts, the impugned detention order issued by respondent No. 2 was confirmed by the Home Department on 01.05.2025 after opinion of the Advisory Board dated 25.04.2025. Respondents have prayed for dismissal of the petition.

07. Having heard rival contentions of the parties, I have given my thoughtful consideration to the facts and circumstances obtaining the case.
08. From a perusal of the grounds of detention, it is manifest that impugned detention order traces its origin to four criminal cases under NDPS Act against the petitioner. Admitted position of fact is that he was bailed out in all the cases. However, the detaining authority is of the view that detainee was a habitual drug trafficker. He is still active in illicit Drug trafficking in district Kathua, which poses a great threat to health and welfare of the people, therefore with a view to prevent him from indulging in similar activities and to secure health and welfare of public at large, it had become imperative to detain him.
09. The petitioner, at the outset, has questioned the impugned order on the ground that it is bad for non-application of mind on the part of detaining authority because in one of the cases he had already been acquitted by the competent Court. A copy of the judgment passed by Special Court, Pathankot reveals that detainee stands acquitted on 21.02.2025 in FIR No. 5/2023, much before impugned order of detention came to be passed on 15.03.2025. Pertinently, this ground has not been disputed by the respondents in the counter affidavit.
10. Hon'ble Supreme Court in **Dharamdas Shamlal Agarwal vs. Police Commissioner; AIR 1989 SC 1282** has held that failure on the part of the sponsoring authority to place the material fact regarding

acquittal of the detenu in a criminal case amounts to non-application of mind of the detaining authority and vitiates subjective satisfaction rendering the detention invalid. It was held that if a vital fact, which would have bearing on the subjective satisfaction of the detaining authority and influence his mind, is withheld or suppressed by the sponsoring authority or ignored or not considered by the detaining authority, before the issuance of detention order, the requisite subjective satisfaction, the formation of which is a condition precedent to the passing of detention order gets vitiated rendering the detention illegal.

Relevant excerpt of the judgment captured in para 12 for the facility of reference has been extracted below:

“12. From the above decisions it emerges that the requisite subjective satisfaction the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order. It is clear to our mind that in the case on hand, at the time when the detaining authority passed the detention order this vital fact, namely, the acquittals of the detenu in case Nos. mentioned at Serial Nos. 2 and 3 have not been brought to his notice and on the other hand they were withheld and the detaining authority was given to understand that the trial of those cases were pending. The explanation given by the learned counsel for the respondents, as we have already pointed out, cannot be accepted for a moment. The result is that the non-placing of the material fact – namely the acquittal of detenu in the above-said two cases resulting in non-application of minds of the detaining authority to the said fact has vitiated the requisite subjective satisfaction, rendering the impugned detention order invalid.”

11. If present case is approached with the aforesaid principle of law, it appears that either acquittal of the petitioner/detenu was suppressed

by the sponsoring officer-SSP, Kathua or he was ignorant about his acquittal in one of the cases against him, which renders the impugned detention order illegal.

12. Another ground urged by learned counsel for the petitioner is that petitioner approached respondent No. 1 with a representation but neither said representation has been decided nor any decision is communicated to him, which is infringement of Article 22(5) of the Constitution of India. *Per contra*, it is contention of the respondents, that representation dated 31.07.2025, preferred by the petitioner, against his detention was considered by respondent No. 1-Home Department and was found without merit. The decision was forwarded to SSP, Kathua by the detaining authority for onward service upon the detainee.
13. It is settled proposition of law that in cases of preventive detention, appropriate Government is obliged not only to afford the detainee an opportunity to make effective representation, but also consider it without unreasonable delay because it involves liberty of a citizen guaranteed under Article 19 of the Constitution of India. It is also by far crystallized now that unreasonable delay in consideration of representation submitted by a detainee amounts to infringement of Article 22(5) of the Constitution of India.
14. Hon'ble Supreme Court in **K.M. Abdulla Kunhi and Anr. V. Union of India & Ors.; AIR 1991 SC 574** has held that though there can be no hard and fast rule regarding the timeline within which a representation is required to be considered by the Government and there is no limitation provided under the Constitution or PSA within which a representation is required to be considered and decided by the Government, however, it is manifest from the words “**as soon as may be**”, occurring in Clause (5) of Article 22 of the Constitution that unexplained delay in disposal of representation would amount to infringement of Article 22(5) of the Constitution of India. Relevant excerpt of the judgment for the ease of reference is extracted below:

“.....5(a) The representation relates to the liberty of the individual, the highly cherished right enshrined in Article 21 of our Constitution. Clause (5) of Article 22 therefore, casts a legal obligation on the Government to consider the representation as early as possible. It is a constitutional mandate commanding the concerned authority to whom the detainee submits his presentation to consider the representation and dispose of the same as expeditiously as possible.

5(b) The words “as soon as may be” occurring in clause (5) of Article 22 reflect the concern of the Framers that the presentation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the fact and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with the requirement however, is that there should not be supine indifference slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal.....”

- 15.** It is evident from the exposition of law by Hon’ble Supreme Court in **K. M. Abdulla Kunhi** (Supra) that unexplained delay in disposal of a representation amounts to infringement of Article 22(5) of Constitution of India. The detaining authority is not only obliged to consider the representation of the detainee, as soon as possible and practicable but also communicate the decision without further waste of time.
- 16.** Consideration of representation on the part of Home and/or detaining authority is not an empty formality. The constitutional imperative within the meaning of Article 22(5) of Constitution of India imposes a dual obligation on the authority propounding the order of preventive detention; viz, (i) he must, as soon as possible, after detention order is passed, communicate the detainee the grounds on which order of detention has been made and, (ii) he must afford the detainee earliest opportunity of making a representation against his detention. In other

words, the detenue is to be furnished with sufficient particulars to enable him to make a representation.

17. Consideration of representation and consequent communication of the decision taken by the concerned authority cannot be allowed to be pigeon holed for indefinite period of time. Since respondents in their counter affidavit have not furnished any detail with respect to the date of disposal of representation preferred by the petitioner and its onward conveyance to him, it amounts to infringement of Articles 14 21 of Constitution of India.
18. For the foregoing reasons, impugned detention order is found illegal. Hence, present petition is allowed and impugned order is quashed. Petitioner is directed to be released forthwith from detention, provided he is not involved in any other case.
19. **Disposed of.**

(Rajesh Sekhri)
Judge

Jammu
19.02.2026
Sushant

Whether the judgment is speaking? **Yes**
Whether the judgment is reportable? **Yes**