

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

HCP No. 157/2025

Reserved on: 05.02.2026
Pronounced on : 20.02.2026
Uploaded on : 20.02.2026
Whether the operative part or full
judgment is pronounced: Full

Koushal Sharma

....Petitioners

Through:- Mr. Jagpaul Singh, Advocate.

V/s

UT of J&K & Ors

.....Respondents

Through:- Mrs. Monika Kohli, Sr. AAG.

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

(JUDGMENT)

01. The petitioner, through the medium of the present petition, has challenged order No. PITNDPS 61 of 2025 dated 10.10.2025 (hereinafter to be referred to as **("impugned order of detention")**) issued by respondent No. 2-Divisional Commissioner, Jammu whereby he has been placed under preventive detention with a view to prevent him from indulging in activities relating to illicit traffic of Narcotic Drugs and Psychotropic Substances.

02. The petitioner has assailed the impugned order of detention on the grounds that the said order has been issued by respondent No. 2 in an arbitrary manner without

application of mind. It has been contended that the petitioner has not been apprised about his right to make a representation before the Central Government. It has been further contended that petitioner is a teenager and by passing the impugned order of detention, respondent No. 2 has misused his powers. It has also been contended that DDR reports mentioned in the grounds of detention do not relate to any activities pertaining to illicit trafficking of drugs, therefore, the same could not have been made the basis for passing the impugned order of detention.

03. It has also been contended that the petitioner has already been booked in two FIRs and there were no compelling reasons for the detaining authority to pass the impugned order of detention instead of dealing with the petitioner under normal criminal law. It has been further contended that translated version of the material relied upon for passing the impugned order of detention has not been furnished to him. It has also been contended that the allegations made in the grounds of detention are vague, lacking in material particulars and on the basis of such allegations, no effective representation could have been made by the petitioner.

04. It has been further contended that an application for cancellation of bail of the petitioner had already been moved before the court of learned Additional Sessions Judge, Udhampur but without waiting for final outcome of the said application, the impugned order of detention has been passed.

05. The petition has been contested by the respondents by filing counter affidavit of the detaining authority viz respondent No. 2. In the counter affidavit, it has been submitted that representation of the petitioner was considered by respondent No. 2 and the same was rejected. It has been submitted that the information regarding rejection of representation of the petitioner was duly conveyed to him through Superintendent, Central Jail, Kot Bhalwal, Jammu. It has been further contended that the impugned order of detention has been passed in consonance with law.

06. It has been submitted that after perusal of the record, the detaining authority came to the conclusion that it was imperative to detain the petitioner because after getting bail, he was again involved in illicit trafficking of narcotic drugs, which was posing serious threat to the public order as well as to the health and welfare of the people. It has been submitted that ordinary law has failed to detain the petitioner from indulging in similar activities.

07. According to the respondents, whole of the material, on the basis of which grounds of detention have been formulated, has been provided to the petitioner and contents of the same have been explained to the detainee in Hindi and Dogri languages, which he understands. It has been further submitted that the petitioner was informed about his right to make representation before the Government as well as before the detaining authority. It has been further submitted that all

the statutory and legal requirements were followed by the respondents while executing the detention order against the petitioner. The respondents have also produced detention record to lend support to their contentions.

08. I have heard learned counsel for the parties and perused record of the case including the detention record which has been produced by the respondents.

09. Learned counsel for the petitioner has raised numerous grounds for assailing the impugned order of detention but his main focus was on the ground that his representation against the impugned order of detention has not been considered by the detaining authority viz respondent No. 2. It has also been contended that respondent No. 1 has not considered the representation of the petitioner but has forwarded the same to the Advisory Board, which has no jurisdiction to either reject or accept the representation.

10. A perusal of the detention record reveals that the petitioner has made representation dated 18.10.2025, which has been addressed to the Home Department and a copy thereof has been sent to respondent No. 2-the detaining authority for its consideration. The record further reveals that the representation addressed to the Government was forwarded to the Advisory Board in terms of communication dated 23.10.2025 addressed by the Home Department to the Advisory Board. Vide order dated 03.11.2025, the Advisory Board rejected the representation of the petitioner whereafter

the impugned order of detention issued against the petitioner came to be confirmed by the Government in terms of order dated 14.11.2025.

11. The record further reveals that after confirmation of the impugned order of detention, the Government sought comments of the CID regarding representation of the petitioner vide its communication dated 17.11.2025 and on 26.11.2025, the Government rejected the representation of the petitioner and addressed a communication to Divisional Commissioner, Jammu with a copy to Superintendent, Central Jail, Kot Bhalwal, Jammu for conveying the information to the petitioner. It seems that the information regarding rejection of representation of the petitioner has been conveyed to him through concerned jail.

12. In the face of the aforesaid facts, which have emanated from the detention record, the contentions raised by the petitioner have to be analyzed in the light of the settled legal position on the subject so as to determine as to what would be the effect upon the impugned order of detention in case the representation against the same has been considered and rejected by the Government but no consideration to the representation has been accorded by the detaining authority.

13. In the above context, legal position is well settled, in that, not only the Government but even the detaining authority has to consider the representation against the impugned order of detention.

14. The Supreme Court has, in **A.C. Razia Vs. Govt. of Kerala and Ors, (2004) 2 SCC 621** in the context of the COFEPOSA Act, the relevant provisions of which are in *pari materia* with the provisions of PITNDPS Act, made the following observations:

“12. The combined effect of the constitutional and statutory provisions from the point of view of the detenu’s right to make the representation is to provide more than one forum to re-examine or review the case of the detenu and to afford him various means of redressal of his grievance. Thus, the matter could be examined by (i) the Advisory Board (ii) the detaining authority and (iii) the State or Central Governments acting under Section 11 or on receipt of Advisory Boards opinion. This is apart from the power of the Central Government to examine the validity of detention acting suo motu on receipt of report under Section 3(2). Under Section 11 - which is of immediate relevance in the present case, the Central Government has the power to revoke the orders made by (i) the State Government, (ii) an officer specially empowered by the State Government and (iii) an officer specially empowered by the Central Government. The order passed by an officer specially empowered by a State Government can be revoked by the State Government as well.

"The conferment of this power on the Central and the State Governments does not, however, detract from the power that is available to the authority that has made the order of detention to revoke it." This is ensured by the words without prejudice to the provisions of Section 21 of the General Clauses Act" in sub-section (1) of Section 11 (vide observations of the Constitution Bench in paragraph 22 in the case of Kamlesh Kumar vs. Union of India).”

15. Again the Supreme Court in the case of **Ankit Ashok Jalan Vs. Union of India and Ors, (2020) 16 SCC 127** has clearly held that detaining authority has to consider

representation independently without waiting for report of the Advisory Board. The Supreme Court further held that it is a well settled law that representation can be made to the detaining authority and the said authority is vested with power to consider the representation.

16. From the aforesaid position of law, it is clear that right to make a representation to the detaining authority or to the Government is an integral part of Article 22(5) of the Constitution and, therefore, once it is shown that the representation made by a detainee to the detaining authority has not been considered at all, it amounts to infringement of right of a detainee guaranteed under Article 22(5) of the Constitution and the same results in making the impugned order of detention unsustainable in law.

17. In the present case, the record shows that copy of the representation was addressed to the detaining authority and it has been received by the said authority even before the detention order was confirmed by the Government, therefore, the detaining authority by not taking any action on the representation of the petitioner has abdicated its duty which has resulted in infringement of constitutional right of the petitioner, as such, the impugned order of detention is liable to be set aside on this ground alone.

18. It also appears that the Government has not properly approached the representation of the petitioner while considering and rejecting the same. The record shows that

representation of the petitioner was received by the Government before the matter was referred to Advisory Board. It was incumbent upon the Government to accord consideration to the representation of the petitioner before referring the matter to the Advisory Board. Instead of doing so, the Government sent the representation to the Advisory Board and the Board instead of rendering its opinion about the fate of the representation, proceeded to reject the same which is beyond its jurisdiction.

19. In the above context, reference may be made to the judgment of the Supreme Court in the case of **SK. Sekawat Vs. State of West Bengal, (1975) 3 SCC 249**, wherein the Supreme Court has discussed the issue as to in what manner a representation received from a detainee is to be dealt with. Para 3 of the said judgment is relevant to the context and the same is reproduced as under:

“The petitioner, on these facts, contended that the order confirming the detention of the petitioner having been passed by the State Government without considering the representation of the petitioner, the detention of the petitioner was unlawful as being in violation of Art. 22(5) of the Constitution and section 7 of the Maintenance of Internal Security Act, 1971. This contention has great force and it must result in the detention of the petitioner being set aside. It is now well settled by a decision of five judges of this Court in *Jayanarayan Sukula v. State of West Bengal*(1) that the peremptory language of Art. 22(5) of the Constitution and section 7 of the Act makes it obligatory that the State Government should consider the representation of the detenu "as soon as it is received by it". The requirement of Art. 22(5) of the Constitution that

the authority making the order of detention should afford the detenu the earliest opportunity of making a representation against the order of detention would become illusory if there were no corresponding obligation on the State Government to consider the representation of the detenu as early as possible. It is not enough for the State Government to forward the representation to the Advisory Board while seeking its opinion as to whether there is sufficient cause for the detention of the detenu. The State Government must itself consider the representation of the detenu and come to its own conclusion whether it is necessary to detain the detenu.

If the State Government takes the view, on considering the representation of the detenu, that it is not necessary to detain him, it would be wholly unnecessary for it to place the case of the detenu before the Advisory Board. The requirement of obtaining the opinion of the Advisory Board is an additional safeguard for the detenu over and above the safeguard afforded to him of making a representation against the order of detention. The opinion of the Advisory Board, on a consideration of the representation, is no substitute for the consideration of the representation by the State Government. This Court, speaking through Ray, J., as he then was, in [Jayanarayan Sukul v. State of West Bengal](#), (supra) enunciated the following four principles to be followed in regard to the representation of a detenu:

"First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State.

Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the Government will not send the matter to the Advisory Board. If however the Government will not release the detenu the Government will send the case along with the detenu's representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of release of the detenu the Government will release the detenu. If the Advisory Board will express any opinion against the release of the detenu the Government may still exercise the power to release the detenu." It is possible that sometimes the representation of the detenu may be received by the State Government after the case of the detenu has been referred to the Advisory Board. In such a case, so long as the representation is received within thirty days from the date of the detentions the State Government would be bound to forward it to the Advisory Board. But a question may arise as to what would be the duty of the State Government where the representation is received after the expiration of thirty days from the date of detention. It was contended on behalf of the State that in such a case there would be no obligation of the State Government to send the representation to the Advisory Board, because the State Government being bound to place the case of the detenu before the Advisory Board within thirty days from the date of detention, if the representation is not received within the period of thirty days, there can be no obligation of the State Government to forward it to the Advisory Board, We do not wish to express any opinion on this contention as it does not arise for consideration on the facts of the present case. Here the representation of the petitioner was received by the State Government after the Advisory Board had made its report and there could then be no question of sending the representation to the Advisory Board. But the State Government had not yet confirmed the order of detention and it was, therefore, bound to consider the representation of the petitioner. It is obvious that even where the Advisory Board reports that there is in its opinion sufficient cause for the detention of the

detenu, the State Government is not bound to confirm the order of detention. The State Government has to apply its mind, keeping in view all the facts and circumstances relating to the case of the detenu including the opinion of the Advisory Board and come to its own decision whether or not to confirm the order of detention. If, therefore, the State Government has before it at that time the representation of the detenu, the State Government must consider it and take it into account for the purpose of deciding whether to confirm and continue the detention. This view finds support from the following observations of Palekar, J. speaking on behalf of the Court in **B. Sunder Rao and Ors. v. State of Orissa**(1) :

"Secondly having regard to the second principle **referred to above**' the Government cannot absolve itself from considering the representation even at a later stage. We have seen that after the Advisory Board's opinion is received the State Government is bound under **section 11** to consider whether it should confirm the detention order and continue the detention of the person concerned. Since the Government had not considered the representation as soon as it was received nor even at the time of the confirmation and continuation of the detention, the Government had failed in one of its obligatory duties. With regard to the detention of the prisoners and, therefore, for that reason also the detention becomes illegal."

Here in the present case the representation of the Petitioner was received by the State Government before it confirmed the order of detention, but it did not consider the representation and thus "failed in one of its obligatory duties with regard to the detention" of the petitioner. The subsequent consideration and rejection of the representation of the petitioner could not cure the invalidity of the order of confirmation. The detention of the petitioner must, therefore, be held to be illegal and void."

20. Again in the case of **Ankit Ashok Jalan's** (supra), the Supreme Court noted the principles relating to the matter of consideration of representation in the following manner:

“17. In terms of these principles, the matter of consideration of representation in the context of reference to the Advisory Board, can be put in following four categories:-

17.1) If the representation is received well before the reference is made to the Advisory Board and can be considered by the appropriate Government, the representation must be considered with expedition. Thereafter the representation along with the decision taken on the representation shall be forwarded to and must form part of the documents to be placed before the Advisory Board.

17.2) If the representation is received just before the reference is made to the Advisory Board and there is no sufficient time to decide the representation, in terms of law laid down in Jayanarayan Sukul¹⁵ and Haradhan Saha the representation must be decided first and thereafter the representation and the decision must be sent to the Advisory Board. This is premised on the principle that the consideration by the appropriate Government is completely independent and also that there ought not to be any delay in consideration of the representation.

17.3) If the representation is received after the reference is made but before the matter is decided by the Advisory Board, according to the principles laid down in Haradhan Saha, the representation must be decided. The decision as well as the representation must thereafter be immediately sent to the Advisory Board.

17.4) If the representation is received after the decision of the Advisory Board, the decisions are clear that in such cases there is no requirement to send the representation to the Advisory Board. The representation in such cases must be considered with expedition.”

21. From the foregoing analysis of legal position, it is clear that if a representation is received before reference is made to

the Advisory Board, the same has to be considered by the Government whereafter representation along with decision taken on representation has to be forwarded to the Advisory Board. In the present case, admittedly the representation of the petitioner was received by the Government before the case was referred to the Advisory Board but instead of considering the said representation, the Government referred the matter to Advisory Board and forwarded the copy of the representation to the Board. The course adopted by the Government in the present case does not accord with the principles laid down by the Supreme Court in the aforesaid judgment. Thus, on this ground also, the impugned order of detention cannot be sustained.

22. For what has been discussed hereinbefore, the petition is allowed and the impugned order of detention is quashed. The respondents are directed to release the petitioner from the preventive custody forthwith, provided he is not required in connection with any other case.

17. The record be returned to learned counsel for the respondents.

(SANJAY DHAR)
JUDGE

JAMMU
20.02.2026
Naresh/Secy.

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **Yes**