

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

LPA No. 274/2025

Reserved on: 06.08.2026
Pronounced on: 06.10.2026
Uploaded on: 06.10.2026

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

**Abdul Qayoom @ Bittu, Age 44 years,
S/o Sh. Abdul Gani,
R/o Village Kadwah, Udhampur,
District Udhampur, J&K
A/p Central Jail, Kot Bhalwal,
Jammu**

**Through- Nephew
Mohd. Imran, Age 22 years,
S/o Mohd. Fareed,
R/o Village Kadwah, Udhampur,
District Udhampur, J&K**

.... Petitioner/Appellant(s)

Through:- Mr. Sanchit Verma, Advocate
Vs.

- 1. Union Territory of J&K,
through Commissioner/Secretary,
Home Department,
Civil Secretariat, Jammu/Srinagar**
- 2. District Magistrate, Udhampur**
- 3. Sr. Superintendent of Police,
Udhampur**
- 4. Superintendent, Central Jail,
Kot Bhalwal, Jammu**

.....Respondent(s)

Through:- Ms. Priyanka Bhat, Advocate vice
Mrs. Monika Kohli, Sr. AAG.

**CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**
JUDGMENT

1. This intra-Court appeal is directed against the judgment dated 09.10.2025 passed by the learned Single Judge in HCP No. 29/2025, whereby the writ petition preferred by the appellant against the order of detention

dated 24.12.2024, passed on the ground that his activities were prejudicial to the security of the State and warranted his preventive detention, came to be dismissed.

2. The District Magistrate, Udhampur, respondent No. 2, who is the Detaining Authority, passed order of detention bearing No. 14-PSA-2024 dated 24.12.2024, directing detention of the detainee under Section 8 of the Act. The said order was passed on the basis of the dossier and other material submitted by the Senior Superintendent of Police, Udhampur. This order of detention was assailed by the appellant before this Court by way of HCP No. 29/2025.
3. The learned Single Judge, vide judgment dated 09.10.2025, dismissed the writ petition, holding, *inter alia*, that the Detaining Authority had arrived at the requisite subjective satisfaction after considering the material placed before it and that the grounds of detention were definite, proximate and free from ambiguity. The learned Single Judge also recorded that the material relied upon by the Detaining Authority had been supplied to the detainee and that the representation submitted by him had been considered and its result communicated.
4. The judgment dated 09.10.2025 has been assailed by the appellant, *inter alia*, on the following grounds: (i) that the learned Single Judge has failed to consider the fact that the appellant had filed a detailed representation, which was considered and rejected by the competent authority after a gap of more than five months; (ii) that the learned Single Judge has failed to return any finding on the specific ground raised by the appellant that

there was no live and proximate link between the alleged activities attributed to the appellant and the order of detention, which came to be passed after a gap of about 27 years, while reliance was placed upon four FIRs registered in the years 1997 and 1998; (iii) that the Detaining Authority had failed to apply its mind, as there were no compelling reasons, cogent material or specific particulars available before it on the basis of which the requisite subjective satisfaction for passing the detention order could have been validly arrived at; (iv) that the principal recent material relied upon for arriving at such subjective satisfaction was the Daily Diary Report dated 03.11.2024, which, according to the appellant, merely reflected the routine activities/information recorded at the police station and did not disclose whether the alleged information had culminated in registration of any cognizable offence or an FIR; (v) that the learned Single Judge failed to appreciate that the four FIRs relied upon in the grounds of detention related to the years 1997-1998 and that the appellant had already been acquitted in all the said cases, yet the judgments of acquittal were not placed before or considered by the Detaining Authority while arriving at its subjective satisfaction; and (vi) that in the absence of any proximate and compelling material demonstrating the necessity of preventive detention in December 2024, the detention order suffered from non-application of mind and was otherwise unsustainable in law.

5. We have heard learned counsel for the parties and perused the material available on record.

6. The questions which arise for consideration in the present appeal are whether the representation submitted by the detainee was considered with the promptitude mandated under Article 22(5) of the Constitution of India and whether, on the facts and material available before the Detaining Authority, there existed a live and proximate link between the alleged prejudicial activities of the detainee and the necessity of passing the order of preventive detention on 24.12.2024.
7. The constitutional safeguard contained in Article 22(5) of the Constitution assumes particular significance in matters of preventive detention, where a person is deprived of his personal liberty without a regular trial. The obligation of the authorities is not confined to affording an opportunity to the detainee to make a representation, but extends to considering such representation and communicating the decision thereon with the expedition which the nature of the right demands.
8. The Hon'ble Supreme Court has time and again held that the representation submitted by the detainee must be considered and disposed of at the earliest. In **“Sarabjeet Singh Mokha vs. The District Magistrate, Jabalpur and others”**, 2021 SCC Online SC 1019, the Hon'ble Supreme Court has held as under:

“22...Article 22(5) reflects a keen awareness of the framers of the Constitution that preventive detention leads to the detention of a person without trial and hence, it incorporates procedural safeguards which mandate immediacy in terms of time. The significance of Article 22 is that the representation which has been submitted by the petitioner must be disposed of at an early date. The communication of the grounds of detention, as soon as may be, and the affording of the earliest opportunity to submit a representation against the order of detention

will have no constitutional significance unless the detaining authority deals with the representation and communicates its decision with expedition.”

9. Similarly, in **‘Kundanbhai Dulabhai Shaikh vs. District Magistrate, Ahmedabad and others’**, (1996) 3 SCC 194, the Court has quashed the detention order only on the ground of delay in disposal of the representation. It was held as under:

“...it was provided that inordinate and unexplained delay in the disposal of representation would make the continued detention of a person, illegal and unconstitutional. In Devi Lal Mahto v. State of Bihar & Anr., AIR (1982) SC 1548, the continued detention was held to have become bad on account of the indifferent attitude of the Government in not attending to the representation for about 10 days.”

10. Tested on the aforesaid principles, in the present case assumes significance. The representation on behalf of the detainee was submitted on 24.01.2025 and was received by the respondents on 28.01.2025. The record further reveals that the Additional District Magistrate, Udhampur, vide communication dated 25.04.2025, addressed to the Principal Secretary, Home Department, J&K, Jammu, sought the status of the representation submitted by the detainee. The said communication clearly demonstrates that, even by 25.04.2025, the representation had not been dealt with.
11. The representation was ultimately considered and rejected by the District Magistrate, Udhampur, on 19.06.2025. Thus, from the date of its receipt on 28.01.2025 till its consideration on 19.06.2025, there intervened a period of nearly five months. No satisfactory explanation for this considerable delay has been placed on record by the

respondents. The issue, therefore, is not whether the representation was eventually considered, but whether it was considered with the promptitude mandated by Article 22(5) of the Constitution.

12. The Hon'ble Supreme Court in '**Rajammal v. State of T.N. and another, AIR 1999 SC 684**', has held that it is for the authority concerned to explain the delay, if any, in disposing of the representation. The relevant observations read as under:

“...The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.”

13. Preventive detention being an exceptional restraint upon personal liberty, the constitutional requirement of expeditious consideration of the representation cannot be treated as a mere matter of form. In the absence of any satisfactory explanation for the prolonged delay, the constitutional safeguard afforded to the detainee under Article 22(5) stands infringed. The continued detention of the detainee, therefore, cannot be sustained in view of such violation of the constitutional safeguard.
14. Another aspect of the matter is that the order of detention was passed on 24.12.2024, whereas the four FIRs relied upon against the detainee pertain to the years 1997 and 1998. The question is whether those past incidents, after such a long lapse of time, could legitimately furnish the

basis for arriving at the requisite subjective satisfaction regarding the necessity of preventive detention in December, 2024.

15. It is no doubt well settled that preventive detention is not punitive in character and that past conduct may, in a given case, constitute relevant material for arriving at the subjective satisfaction of the Detaining Authority. At the same time, there must exist a live and proximate link between the prejudicial activities relied upon and the necessity of detention. The passage of time between the alleged prejudicial activities and the detention order assumes significance where such delay is substantial, as the causal connection may thereby stand snapped.
16. In '**T.A. Abdul Rahman v. State of Kerala**', (1989) 4 SCC 741, the Hon'ble Supreme Court considered the effect of delay between the alleged prejudicial activity and the order of detention and held that the question whether the live link between the prejudicial activity and the purpose of detention has been snapped depends upon the facts and circumstances of each case. The Court further held that where there is undue and long delay between the prejudicial activity and the passing of the detention order, the Court has to examine whether the Detaining Authority has satisfactorily explained such delay and whether the causal connection has thereby been broken. The principle was reiterated in '**Rajinder Arora v. Union of India**', (2006) 4 SCC 796.
17. In the present case, the four FIRs relied upon in the grounds of detention were registered in the years 1997 and 1998. The order of detention, however, came to be passed on 24.12.2024. Thus, there is a gap of about

26 years between the incidents forming the basis of the said FIRs and the order of detention. The appellant has also specifically asserted that he had been acquitted in all four cases but still they were relied upon as part of the material forming the basis of detention.

18. The respondents have also relied upon the Daily Diary Report dated 03.11.2024, reports of the Chowkidar and Numbardar and proceedings initiated under Section 126 of the BNSS as recent material. The existence of such material cannot, by itself, be disregarded merely because the earlier FIRs are old. The question, however, is whether the said recent material, considered in the context of the entire record, furnishes the necessary bridge between the stale incidents of 1997-1998 and the imperative necessity for preventive detention in December, 2024.
19. The respondents, after initiating proceedings under Section 126 of the BNSS, have failed to indicate whether any further proceedings were taken in furtherance to the same. Nothing has been placed on record to show whether notice was served upon the detainee, whether he was called upon to execute any bond, or whether any such bond was thereafter executed and, if so, whether its conditions were violated. The Detaining Authority has also failed to record any reasons to explain as to why the preventive measures were not enough to prevent the detainee from engaging in any activity prejudicial to the security of the State, thus, rendering the order of detention unsustainable.
20. The Daily Diary Report dated 03.11.2024 refers to allegations that the detainee, along with certain other persons, was involved in providing logistic support and shelter to terrorists and records that close surveillance

had been maintained over the persons named therein. However, the material placed before us, when considered in its entirety, does not satisfactorily demonstrate how the allegations contained in the said DDR, or the other recent material relied upon by the respondents, establish a continuing and proximate connection between the alleged conduct of the detainee and the imperative necessity of his preventive detention in December, 2024.

21. The mere reference to antecedents which are separated from the detention order by a period of about 27 years cannot, in our considered view, by itself furnish the requisite live link. Once such a considerable period intervenes, the Detaining Authority is required to demonstrate, from the material placed before it, why those past incidents continued to have a proximate bearing upon the necessity of preventive detention. In the present case, the requisite nexus has not been satisfactorily established.

22. We are also conscious of the principle relied upon by the learned writ Court that while exercising jurisdiction in a matter of preventive detention, does not sit in appeal over the subjective satisfaction of the Detaining Authority and cannot substitute its own satisfaction for that of the authority. That principle is beyond dispute. Judicial review in such matters, however, extends to examining whether the subjective satisfaction has been arrived at on the basis of relevant material, whether the material bears the requisite nexus with the object of detention and whether the constitutional and statutory safeguards have been complied with.

23. Viewed in the aforesaid perspective, the detention of the appellant is unsustainable on two counts. First, the representation submitted on his behalf remained pending for nearly five months without any satisfactory explanation for the delay, thereby infringing the constitutional safeguard guaranteed under Article 22(5) of the Constitution. Second, the material relied upon by the Detaining Authority, when considered in its entirety, fails to establish the requisite live and proximate link between the alleged prejudicial activities of the appellant and the necessity for his preventive detention as on 24.12.2024.
24. For the foregoing reasons, the judgment dated 09.10.2025 passed by the learned Single Judge in HCP No. 29/2025 cannot be sustained and is, accordingly, set aside. Consequently, the order of detention bearing No. 14-PSA-2024 dated 24.12.2024 passed by respondent No. 2, District Magistrate, Udhampur, against the detenue, Abdul Qayoom @ Bittu, S/o Abdul Gani, R/o Village Kadwah, Udhampur, is hereby quashed.
25. The respondents are directed to set the detenue at liberty forthwith, provided he is not required in connection with any other case.
26. The appeal stands **disposed of** accordingly.
27. Detention record be returned to the learned counsel for the respondents by the Registry forthwith.

(Rajesh Sekhri)
Judge

(Sindhu Sharma)
Judge

Jammu:
06.10.2026
Michal Sharma/PS

Whether the judgment is speaking
Whether approved for reporting

:

Yes
Yes