

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

HCP 269/2025

MUZAFER AHMAD SHEIKH **... Petitioner(s)**

Through: Mr. M. Ashraf Malik, Advocate

Vs.

**UNION TERRITORY OF J AND K AND
ORS.** **...Respondent(s)**

Through: Mr. Ilayas Laway, GA

CORAM:
HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
19.02.2026

1. The petitioner in the instant petition filed under Article 226 of the Constitution has sought quashment of Detention Order No. 13/DMA/PSA/DET/2025 dated 26.04.2025 (for short “the impugned order”) passed by respondent No. 2 (herein for that “the detaining authority”) under and in terms of the provisions of J&K Public Safety Act, 1978 (for short the Act of 1978).
2. The petitioner has challenged the impugned order on multiple grounds urged in the petition.
3. Counter affidavit has been filed to the petition opposing the same on the premise that the detention of the petitioner came to be ordered on the basis of dossier and other material furnished to the detaining authority by the sponsoring agency and that the detaining authority

ordered the preventive detention of the petitioner after fulfilling all statutory requirements and following Constitutional guarantees, while stating further that the order of detention came to be executed upon the petitioner on 28.04.2025 and, accordingly, the grounds of detention as well as the warrant of detention were read over and explained to him in the language he fully understood in lieu whereof, he, the petitioner subscribed his signatures thereof and that the petitioner was also informed that he can make a representation against his detention to the detaining authority or to the Government and that the detention case of the petitioner was placed before the Advisory Board which opined in favour of the detention of the petitioner and consequently the order of detention came to be confirmed by the Government vide order dated 03.06.2025.

(A) Rejoinder affidavit has also been filed by the petitioner to the counter affidavit filed by the respondents, stating therein that the impugned order has been passed purportedly in view of the alleged involvement of the petitioner in three criminal cases being FIR Nos. 92/2016, and 98/2016 Registered with Police Station, Dooru and FIR No. 155/2017 registered with Police Station Banihal and that post release in the said FIR's, no activity alleged to be prejudicial to the security of the State or public order has been attributed to the petitioner thereby there is no live link qua the FIRs in question being remote in point of time and the impugned order.

Heard learned counsel for the parties and perused the record.

4. Notwithstanding multiple grounds of challenge urged by the petitioner against the impugned order, the counsel for the petitioner confined the challenge against the impugned order primarily to the ground that the impugned order owes its origin to the alleged involvement of the petitioner in three FIR's which are remote in point of time having no live link with the impugned order as no activity muchless either prejudicial to the security of the State or public order has been

attributed to the petitioner after the registration of the said FIRs thereby rendering the impugned order legally invalid.

Learned counsel for the petitioner would further contend that a representation against the impugned order came to be submitted by the petitioner on 28.05.2025, which, however, came to be decided by the respondents belatedly on 12.08.2025, without explaining delay in deciding the same thereof, **therefore**, vitiates the impugned order.

5. On the contrary, the learned counsel for the respondents, would defend the impugned order and while opposing the aforesaid submissions of the counsel for the petitioner would contend that the sponsoring agency after noticing the activities of the petitioner having been found to be prejudicial to the security of the State, post release of the petitioner in the aforesaid FIRs, the detaining authority validly found it imperative to detain the petitioner under preventive law.

Learned counsel would further submit that the delay occurred in disposal of the representation on account of seeking of necessary comments from sponsoring agency and that otherwise also delay in disposal of the representation would not vitiate the impugned order but would render the continuous detention invalid.

6. Insofar as the aforesaid first plea raised by the counsel for the petitioner is concerned, record bares testimony to the fact that that the detaining authority has taken cognizance of the involvement of the petitioner in aforesaid three FIR's and has seemingly based its opinion as well as drawn subjective satisfaction thereby for preventive detention of the petitioner, and although the sponsoring agency in the dossier has stated that the petitioner has got involved in activities prejudicial to the security of the State post release in the said FIR's, yet no details of any such activity have been spelt out in the dossier and the detaining authority seemingly has without application of its independent own mind ordered the preventive detention of the petitioner.

Besides the FIR's in question admittedly are remote in point of time viz-a-viz the impugned order, and as such the live link essential for preventive detention is found missing in the detention case of the petitioner.

Perusal of the record also tends to show that both the sponsoring agency as well as the detaining authority seemingly have merely referred and reflected the past criminal history of the petitioner without indicating therein the record or the impugned order including the grounds, any compelling reasons owing thereby, necessitating the preventive detention of the petitioner. Thus, it is manifest that the detaining authority has acted in a mechanical manner and has failed to apply its independent mind while ordering preventive detention of the petitioner in terms of the impugned order.

7. Records reveals that admittedly the representation of the petitioner dated 28.05.2025, has been decided by the respondents on 12.08.2025 and detention thereby conveyed to the petitioner on 02.09.2025.
8. Insofar as the aforesaid next plea of the counsel for the petitioner regarding delayed disposal of the representation of the petitioner by the respondents is concerned law is no *res-intgra* and stands settled by series of judgments rendered by the Apex court including in case titled as **“State of Manipur Vs. Buyamayum Abdul Hanan 2022 (19) SCC1455”** wherein at paras IV and V following has been observed:-

4. “Before we consider the first submission of learned counsel, a few more facts need be stated. In the writ petition, the petitioner alleged that he had submitted the representation on May 13, 1981, which fact was denied by the respondents in their counter-affidavit; they asserted that the representation was submitted not on May 13, but May 31. This has not been controverted before us by Mr. Garg. It has further been stated in the counter-affidavit and not denied by the petitioner that the petitioner submitted the representation to the Superintendent of the District Jail, Dhanbad, where he was detained, the superintendent District Jail, sent it by registered post on the following day, namely, June 1, and the Home (Special) Department of the

Government received it on June 5. It has been stated further in the counter-affidavit that “the representation contained certain points which needed a report” from the District Magistrate. A copy of the representation was sent on June 10, to the District Magistrate, Dhanbad, through a special messenger, for comments, which were received on June 24. The respondents explained that since the Advisory Board was going to sit for consideration of the petitioner’s case on June 29, they sent the representation of the petitioner to the Advisory Board for consideration and placed the comments of the District Magistrate before the Advisory Board. The Advisory Board’s report was received on June 29 and the following day, the Home Department examined the representation as well as the opinion of the Advisory Board on June 30, and endorsed the file on July 1 to the Chief Minister who approved the detention.

5. But the respondents have not explained their inaction during (i) the period of five days from June 5 to June 10 taken by the Home Department to send the representation to the District Magistrate for his comments; (ii) the period of fourteen days from June 10 to June 24 taken by the District Magistrate to send his comments and (iii) the period of five days from June 24 to June 29 taken by the Home Department in placing the District Magistrate’s comments before the Advisory Board and placing the matter before the Chief Minister. Thus the total period of inaction of the respondents is twenty four days”.

A similar view earlier had been taken by the Apex Court in case titled as “Abdul Nasar Adam Ismail Vs. State of Maharashtra and Ors reported in 2013 (4) SCC 435” wherein at para 16 following has been observed:-

16. The principles which have been laid down by the Constitution Bench and the other judgments which we have referred to earlier can be summarised. Article 22(5) of the Constitution casts a legal obligation on the Government to consider the detenu’s representation as early as possible though no time-limit is prescribed for disposal of the representation, the constitutional imperative is that it must be disposed of as soon as possible. There should be no supine indifference, slackness or callous attitude. Any unexplained delay would be a breach of the constitutional imperative and it would render the continued

detention of the detenu illegal. That does not, however, mean that every day's delay in dealing with the representation of the detenu has to be explained. The explanation offered must be reasonable indicating that there was no slackness or indifference. Though the delay itself is not fatal, the delay which remains unexplained becomes unreasonable. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. 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 the range of delay, but how it is explained by the authority concerned. If the inter-departmental consultative procedures are such that the delay becomes inevitable, such procedures will contravene the constitutional mandate. Any authority obliged to make order of detention should adopt a procedure calculated towards expeditious consideration of the representation. The representation must be taken up for consideration as soon as such representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu.

9. In view of the aforesaid settled position of law, the respondents indisputably have shown a very callous approach in considering and disposal of the representation of the petitioner and have in the process failed in discharge of their Constitutional obligation enshrined under Article 22 (5) of the Constitution. The impugned order thus on this core as well becomes legally untenable.
10. Viewed thus for what has been observed, considered and analysed hereinabove, the impugned order No. Order No. 13/DMA/PSA/DET/2025 dated 26.04.2025 is quashed with a direction to the respondents including concerned Jail authority to release the petitioner from preventive detention unless he is required in any other case.
11. The detention record produced by the counsel for the respondent is returned back in the open Court.

12. Disposed of.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR:
19.02.2026
"S.Nuzhat"

Whether the order is speaking	Yes/No
Whether the order is reporting	Yes/No

