



CNR: KAHC010329312026

NC: 2026:KHC:39664-DB
WPHC No. 48 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

WRIT PETITION (HABEAS CORPUS) NO. 48 OF 2026

BETWEEN:

AMEREEN BANU
W/O IRFAN PASHA @ BATAN
AGED ABOUT 36 YEARS
RESIDING AT NO.2665
NEW NO.M-22/B
MKDK ROAD MANDI MOHALLA
MYSURU - 570 001
DETENUE: SRI. IRFAN PASHA @ BATAN

...PETITIONER

(BY SRI. R. K. MAHADEVA, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REP. BY ITS ADDITIONAL CHIEF SECRETARY
TO GOVERNMENT
HOME DEPARTMENT
VIDHANA SOUDHA
BENGALURU - 560 001
2. THE ADDITIONAL DIRECTOR
GENERAL OF POLICE LAW AND ORDER
NO.2, NRUPATHUNGA ROAD
BENGALURU - 560 001

Digitally
signed by
RAKSHA
Location:
High Court
of Karnataka



CNR: KAHC010329312026

NC: 2026:KHC:39664-DB
WPHC No. 48 of 2026

3. JAIL SUPERINTENDENT
CENTRAL PRISON
BELLARY DISTRICT
BELLARY - 583 103

...RESPONDENTS

(BY SRI. B N JAGADEESHA, SPP-I ALONG WITH
SRI. THEJESH P., HCGP AND
MS. NAVYASHREE T G., ADVOCATE)

THIS WPHC IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF HABEAS CORPUS OR ANY OTHER WRIT OR ORDER OR DIRECTION QUASHING OF THE DETENTION ORDER DATED 06.04.2026 PASSED IN NO.L AND 0/3/40/2026 PASSED BY THE RESPONDENT NO.2 VIDE ANNEXURE-A THEREBY DETAINING THE DETENUE IN CENTRAL PRISON, BELLARY UNDER THE PROVISIONS OF PIT ACT AND FURTHER DIRECT THE RESPONDENT NO.3 TO RELEASE THE DETENUE I.E., IRFAN PASHA @ BATAN.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

This Writ Petition (Habeas Corpus) is filed challenging the order of preventive detention dated 06.04.2026 passed under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 ("the Act" for short).



CNR: KAHC010329312026

2. We have heard Sri R.K.Mahadeva, learned counsel for the petitioner, Sri B.N.Jagadeesha, learned State Public Prosecutor-I along with Sri Thejesh P., learned High Court Government Pleader and Ms.Navyashree T.G., learned counsel for respondents - State.

3. It is submitted that the order of detention was passed on 06.04.2026 and that, though several grounds have been raised in this writ petition to challenge the order of preventive detention, we notice that a specific ground has been stated in the writ petition, that preventive detention, being an exception to Article 21 of the Constitution of India, requires strict compliance with the provisions of Article 22 of the Constitution of India in the matter of passing the order.

4. It is further contended that, since the order of detention was passed without proper application of mind and without giving the detinue a proper opportunity to submit his representation before the concerned authorities, the order of detention is bad in law.



CNR: KAHC010329312026

5. The learned counsel for the writ petitioner has produced a judgment of this Court in WPHC No.87/2025 dated 23.10.2025 along with the writ petition as Annexure-D. In the said judgment, the preventive detention also arose under the PITNDPS Act and this Court considered the contention of the petitioner therein that the detaining authority ought to have apprised him of his opportunity to make a representation to the Central Government seeking revocation of the order of detention under Section 12 of the Act. Paragraphs 21 and 22 of the judgment dated 23.10.2025 read as under:

"21. There is no dispute that Section 3(2) of the Act requires the State Government to report to the Central Government about the detention order within 10 days of passing of such order. Section 12(1)(b) of the Act confers powers on the Central Government to revoke or modify the order passed by a State Government. Article 22(5) of the Constitution of India requires the authority making the detention order to communicate the detinue the grounds of order and afford him earliest opportunity of making representation against the order.

22. No doubt Article 22(5) of the Constitution or Section 9(f) or 12(1)(a) of the Act do not expressly speak about the right of the detinue of being apprised of his right of making representation to the Central



CNR: KAHC010329312026

NC: 2026:KHC:39664-DB
WPHC No. 48 of 2026

*Government in the matter. If there was no need to reconsider the order passed by the State Government or the authority, Section 12 of the Act empowering the Central Government would not have been carved out in the Act by the legislature. The detainee is the main affected person in the matter. Only if the detainee is apprised by State Government making of such a report to the Central Government, he gets an opportunity seeking revocation of the same under Section 12(1)(b) of the Act. Otherwise his fundamental right under Article 22(5) of the Constitution to make representation gets affected. This view of ours gets support from para 14 of the judgment of the Hon'ble Supreme Court in **Kamlesh Kumar's** case referred to supra which reads as follows:*

*"Article 22(5) must, therefore be construed to mean that the person detained has a right to make a representation against the order of detention which can be made not only to the Advisory Board but also to the detaining authority i.e., the authority that has made the order of detention or the order for continuance of such detention, which is competent to give immediate relief by revoking the said order as well as to any other authority which is competent under law to the revoke the order for detention and thereby give relief to the person detained. **The right to make representation carries within it a corresponding obligation on the authority making the order of detention to inform the person detained of his right to make a representation against the order of detention to the authorities who are required to consider such a representation.**"*

(Emphasis supplied)



CNR: KAHC010329312026

6. The learned counsel for the petitioner would contend that, in view of the provisions of Section 3(2) of the Act, there is a specific requirement that the State Government shall report to the Central Government the order of detention within 10 days of the passing of such order. Since Section 12(1)(b) of the Act confers power on the Central Government to revoke or modify such an order, the order of detention served on the writ petitioner should have contained information apprising the detainee that there was also an option to submit a representation to the Central Government.

7. In the instant case, the detainee has been informed of his right to submit a representation to the detaining authority, the State Government, as well as the Advisory Board. However, no information has been given to the detainee that he also has a right to make a representation to the Central Government, which would be required to consider the same under Section 12(1)(b) of the Act. The relevant portion of the order of detention reads as follows:

*"You, Irfan Pasha @ Batan S/o Late Sardar Pasha
@ Athaulla, 32 years, R/o House No.2693, 5th Cross,*



CNR: KAHC010329312026

NC: 2026:KHC:39664-DB
WPHC No. 48 of 2026

M.K.D.K Road, Mandi Mohalla, Mysuru City have the right to represent against your detention order to the Detaining Authority, to the Government as well as to the Advisory Board of Hon'ble High Court. If you wish to avail this right, you should send your representation through jail authorities, where you are detained in the manner indicated below:

- a) Representation to the Detaining Authority should be addressed to the Additional Director General of Police, Law & Order, Police Headquarters, No.2, Nrupathunga Road, Bengaluru - 560001.*
- b) Representation to the Government should be addressed to the Addl. Chief Secretary to Government, Home Department, Govt. of Karnataka, Vidhana Soudha, Bengaluru.*
- c) Representation to the Advisory Board should be addressed to the Chairman, PIT-NDPS Advisory Board. High Court of Karnataka.*

You are further informed that you shall be heard by the Advisory Board in due course, if the Board considers it essential to do so or if you so desire.

The above grounds are communicated to you for the purpose of clause (5) of article 22 of Constitution of India and as required under Section 3(3) Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."



CNR: KAHC010329312026

8. The Division Bench of this Court in WPHC No.87/2025 had considered the specific question whether the order of detention is vitiated for not apprising the petitioner of his right to make a representation before the Central Government. After extracting the provisions of law and having considered the decisions of the Hon'ble Supreme Court in ***Kamaleshkumar Ishwardas Patel v. Union of India*** reported in **(1995) 4 SCC 51**, the Court came to the conclusion that Article 22(5) of the Constitution of India must be construed to mean that the person detained has a right to make a representation against the order of detention which can be made not only to the advisory board but also to the detaining authority, that is, the authority that made the order of detention or the order for continuance of such detention, which is competent to give immediate relief by revoking the order. It was therefore found that the right to make the representation carries within it a corresponding obligation on the authority making the order of detention to inform the person detained of his right to make a representation against



CNR: KAHC010329312026

the order of detention to the authorities who are required to consider such a representation.

9. In the instant case, it is clear that the writ petitioner has not been informed of his right to make a representation to the Central Government, which is competent under Section 12(1)(f) of the Act to revoke the order of preventive detention. In the absence of such information, the order falls foul of the requirements of Article 22(5) of the Constitution of India, which would render the order of detention unsustainable.

10. In the above view of the matter, we pass the following:

ORDER

- i) The Writ Petition (Habeas Corpus) is ***allowed***.
- ii) The impugned detention order dated 06.04.2026 and confirmation order dated 30.06.2026 are set aside.



**NC: 2026:KHC:39664-DB
WPHC No. 48 of 2026**

CNR: KAHC010329312026

- iii) The detenue shall be enlarged and set at liberty, in case, his detention is not required in any other pending case.
- iv) The Registry shall immediately communicate the operative portion of this order to the Superintendent of Central Prison, Bellary, today itself, to facilitate the release of the detenue.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

AM
List No.: 2 Sl No.: 1