

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRWP-1001-2026 (O&M)

Date of Decision:24.08.2026

Bala

... Petitioner

Versus

U.T. Chandigarh and Others

... Respondents

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CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Harshit Sethi, Advocate,
Mr. Parvez Chaudhary, Advocate and
Mr. Digvijay Singh, Advocate
for the petitioner.

Mr. Tajeshwar Singh Sullar, Advocate,
Central Govt. Counsel, UOI.

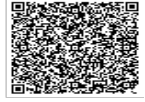
Mr. Amit Jhanji, Senior Advocate with
Mr. Shashank Shekhar Suman, Advocate
for respondent Nos. 1 and 2.

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VIRINDER AGGARWAL, J. (Oral)

1. The petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking issuance of an appropriate writ, particularly in the nature of *Habeas Corpus*, for her immediate release from preventive detention pursuant to detention order bearing No. HIII(2)-2025/15051 dated 01.11.2025 (Annexure P-9), passed by the Home Secretary, Chandigarh Administration.

1.1. The earlier detention order passed against the petitioner was quashed by the Advisory Board vide order dated 08.07.2025 (Annexure P-



5), pursuant to which she was released from detention. However, shortly thereafter, FIR No. 103 dated 04.08.2025 came to be registered against the petitioner along with 21 other persons on the basis of alleged secret information that the accused persons were engaged in the business of narcotic drugs and that, upon search, recovery of contraband could be effected. Significantly, no search was conducted, no recovery was effected, no accused was arrested and, according to the petitioner, no meaningful investigation followed. It is, therefore, alleged that the said FIR was subsequently utilised merely to create fresh material against the petitioner and to furnish a purported basis for passing another detention order.

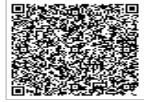
1.2. It is further the petitioner's case that the fresh detention order dated 01.11.2025 was founded substantially upon the material which had already formed the basis of the earlier detention order quashed by the Advisory Board, with the registration of FIR No. 103 dated 04.08.2025 being the only material circumstance subsequently introduced. The petitioner was supplied the grounds of detention and was apprised of her right to make a representation to the Detaining Authority and the Advisory Board. She submitted representations dated 26.11.2025 before the respective authorities. However, it was only on 16.12.2025, i.e. after a substantial lapse of time, that she was informed of her statutory right to make a representation to respondent No.5-Union of India through the Joint Secretary to the Government of India. The petitioner accordingly submitted her representation before the Central Government on 24.12.2025. The detention was thereafter confirmed by the Advisory Board vide order dated 16.01.2026 and is to continue up to 31.10.2026.



1.3. The petitioner assails the detention principally on the ground that there exists no live, proximate and rational nexus between the alleged prejudicial activities relied upon by the Detaining Authority and the necessity for her preventive detention. It is further contended that the detention order substantially resurrects the very material which had earlier failed to sustain the detention, while the subsequent FIR, allegedly relied upon as the fresh circumstance, did not culminate in any recovery, search or arrest.

2. Learned counsel for the petitioner submits that the petitioner's constitutional right under Article 22(5) of the Constitution of India has been rendered illusory by the failure of the authorities to promptly and effectively apprise her of her statutory right to make a representation to the Central Government. It is contended that the delay of approximately 45 days in communicating such right caused serious prejudice to the petitioner and materially impaired her constitutional safeguard against preventive detention. It is further submitted that the representations submitted by the petitioner were required to be considered with utmost expedition and that any unexplained or unreasonable delay in their disposal vitiates the continued detention. Reliance has been placed upon the judgments of the Hon'ble Supreme Court in ***Jaseela Shaji Vs. The Union of India and Others, 2024 (9) SCC 53, Sarabjeet Singh Mokha Vs. District Magistrate, Jabalpur and Others, 2021 (20) SCC 98*** and ***Alfiya A. Vs. State of Kerala & Ors., Law Finder ID No. 2956571***.

3. Notice of motion was issued. Pursuant thereto, respondent-Chandigarh Administration entered appearance and filed a detailed para-



wise reply to the writ petition. In its reply, the respondent-authorities have raised the necessary preliminary objections and, while specifically traversing and controverting the averments and grounds urged by the petitioner, have sought to justify the impugned detention and the action taken by the competent authorities in accordance with law. It has been asserted that the detention of the petitioner is lawful and sustainable and that no violation of the constitutional or statutory safeguards, as alleged, has been occasioned. The respondents-authorities have accordingly prayed for dismissal of the writ petition, being devoid of merit. The said reply, together with the material placed on record in support thereof, has been duly taken into consideration while adjudicating the present proceedings.

3.1. Respondent No.5/Union of India, through the Joint Secretary, Ministry of Finance, Department of Revenue, PITNDPS Unit, New Delhi, has filed a detailed reply asserting due compliance with the statutory procedure under Section 9 of the PITNDPS Act, 1988. It is submitted that the Advisory Board duly considered the petitioner's case and representation, afforded her personal hearing on 05.01.2026 and opined that sufficient cause existed for her detention. The representation dated 24.12.2025, along with the comments of the Detaining Authority and other relevant material, was duly considered by the competent authority and rejected vide Memorandum dated 02.06.2026 (Annexure R-1). Accordingly, the answering respondent No.5 denies any deliberate, unexplained or unreasonable delay and prays for dismissal of the writ petition.



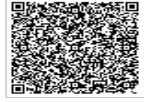
4. Learned counsel for the petitioner reiterates that the petitioner was not promptly informed of her right to make a representation to the Central Government and that the representations submitted by her were not dealt with and decided with the expedition mandated by Article 22(5) of the Constitution of India. It is, therefore, contended that the continued detention of the petitioner stands vitiated for violation of the constitutional safeguards governing preventive detention. Reliance has been placed upon the judgments noticed hereinbefore.

5. Per contra, learned counsel appearing for the Chandigarh Administration and the Union of India submits that mere delay in consideration or disposal of a representation does not, *ipso facto*, invalidate preventive detention, provided such delay is satisfactorily explained and does not demonstrate any want of due diligence on the part of the competent authority. It is contended that the representations of the petitioner were duly processed and considered with reasonable promptitude and that no unexplained or extraordinary delay has been occasioned so as to render the detention constitutionally infirm. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***Licil Antony Vs. State of Kerala and Another, 2014 (1) SCC 326.***

6. In order to appreciate the rival submissions and examine whether the constitutional mandate governing preventive detention has been duly adhered to, it would be apposite to notice, in a chronological sequence, the material dates and events emerging from the record, which are reproduced hereunder:-



- i. The earlier detention order passed against the petitioner was set aside by the Advisory Board vide order dated **18.07.2025** (Annexure P-5).
- ii. Thereafter, FIR No. 103 dated **04.08.2025**, under Section 21 of the NDPS Act, came to be registered at Police Station Sector-39, Chandigarh.
- iii. After a lapse of approximately three months from the registration of the aforesaid FIR, the fresh detention order under Section 3 of the PITNDPS Act was passed on **01.11.2025**.
- iv. On **03.11.2025**, the petitioner was apprised of her right to make a representation to the Home Secretary, Chandigarh Administration, being the Detaining Authority, as well as to the Chief Secretary, Chandigarh Administration and the Advisory Board.
- v. The petitioner submitted her representations before the aforesaid authorities on **26.11.2025**.
- vi. It was only on **16.12.2025** that the petitioner was apprised of her right to make a representation to the Central Government.
- vii. The petitioner thereafter submitted her representation to the Central Government on **24.12.2025**.
- viii. The U.T. Home Department, on **14.01.2026**, called for comments from the Sponsoring Authority in respect of the petitioner's representation dated 26.11.2025.
- ix. In the meantime, the Advisory Board passed the order confirming the petitioner's detention on **16.01.2026**.
- x. The comments of the Sponsoring Authority were furnished on **30.01.2026**.



- xi. The Chandigarh Administration forwarded the petitioner's representation dated 24.12.2025 to the Central Government on **03.02.2026**.
- xii. The Chief Secretary, Chandigarh Administration, rejected the representation dated 26.11.2025, recording that the Home Secretary had already rejected the same on **23.02.2026**.
- xiii. The Home Secretary/Detaining Authority rejected the representation dated 26.11.2025 on **25.02.2026**.
- xiv. The petitioner's representation addressed to the Central Government was received in the PITNDPS Division of the Central Government on **16.03.2026**.
- xv. Thereafter, on **18.03.2026**, the Central Government called for para-wise comments and the relevant material of the Advisory Board from the Chandigarh Administration.
- Xvi. The Chandigarh Administration furnished the requisite comments and material to the Central Government on **24.05.2026**.
- xvii. Ultimately, the Central Government rejected the petitioner's representation dated 24.12.2025 on **02.06.2026**.

6.2. The aforesaid chronology assumes significance in the context of the constitutional safeguard embodied in Article 22(5) of the Constitution of India. The record reveals that although the detention order was passed on 01.11.2025, the petitioner was apprised of her statutory right to make a representation to the Central Government only on 16.12.2025, i.e. after an unexplained and substantial delay of approximately 45 days. Such belated communication of a vital constitutional safeguard directly bears upon the petitioner's effective and meaningful exercise of the right to make a representation against her



preventive detention. The question, therefore, is whether such delay, in the absence of a satisfactory explanation demonstrating due diligence on the part of the detaining authorities, has impaired the constitutional guarantee under Article 22(5). In this regard, reliance has been placed upon the judgment of the Hon'ble Supreme Court in **Alfiya A. Vs. State of Kerala & Ors.** (supra), wherein the legal position has been enunciated as under:-

“17. It has already been noted that Article 22(5) of the Constitution casts upon the authority making the order of detention two distinct obligations, and that the second of them is to afford the detenu the earliest opportunity of making a representation against the order. That opportunity carries with it, as a necessary concomitant, the obligation of the authority to inform the detenu of the persons or bodies to whom he may address his representation. Where the order of detention has been made by an officer specially empowered under Section 3(1) of the PITNDPS Act, the detenu is entitled to make a representation to that officer, who made the order and who is competent to revoke it, and he must be informed of that right. That such a right, distinct from the right to represent to the State Government, to the Advisory Board and to the Central Government, enures to the detenu and must be made known to him, was settled by a Constitution Bench of this Court in Kamleshkumar Ishwardas Patel v. Union of India, 1995(4) SCC 51, in relation to this very Act among others. The failure to inform the detenu of it renders the opportunity to represent incomplete and deprives him of a valuable safeguard.”

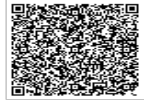
7. In the present case, the chronology noticed hereinbefore discloses a delay of approximately 45 days in apprising the petitioner of her constitutional right to make a representation to the Central



Government. Such a safeguard is not a matter of formality but constitutes an integral facet of the protection guaranteed under Article 22(5) of the Constitution of India. As held by the Hon'ble Supreme Court in *Alfiya A. Vs. State of Kerala & Ors.* (supra), the obligation to communicate the detainee's right to make a representation to the Central Government is independent of any question of prejudice and is required to be discharged by the detaining authority in accordance with law. The constitutional obligation cannot be diluted on the premise that the detainee may have otherwise acquired knowledge of such right or may have independently submitted a representation to the Central Government.

7.1. The significance of prompt compliance assumes greater importance in proceedings under the PITNDPS Act, which authorises preventive detention not by way of punishment for a proved offence, but on the basis of a subjective satisfaction regarding the necessity of preventing a person from engaging in prejudicial activities in future. Preventive detention thus constitutes an exceptional inroad into the fundamental right to personal liberty guaranteed under Article 21 of the Constitution of India. The procedural safeguards engrafted in Article 22(5), therefore, require strict, meaningful and expeditious compliance, and cannot be treated as mere technicalities.

7.2. Once the law casts an affirmative obligation upon the authorities to apprise the detainee, at the earliest possible opportunity, of her right to make a representation to the Central Government, any substantial and unexplained delay in communicating such right assumes constitutional significance. The responsibility lies squarely upon the



detaining authorities and cannot be shifted upon the detainee on the ground that she ultimately came to know of the right or exercised it subsequently. The effectiveness of the constitutional safeguard lies in its timely communication, enabling the detainee to exercise the right at the earliest and thereby secure expeditious consideration of her challenge to the detention.

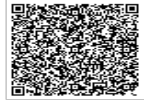
7.3. Equally, the constitutional mandate does not end with the communication of the right. A representation, once made, is required to be considered and decided with utmost expedition and without avoidable or unexplained delay. In matters involving preventive detention, where liberty stands curtailed without a judicial determination of guilt, every authority entrusted with consideration of the representation is constitutionally obligated to act with the highest degree of diligence and promptitude. Any unexplained hiatus in the decision-making process must, therefore, be examined with corresponding strictness. The Hon'ble Supreme Court in ***Alfiya A. Vs. State of Kerala & Ors.*** (supra) has reiterated the aforesaid principles, the relevant portion whereof reads as under:-

“20. There is also an unexplained delay in dealing with the representation. Even if the order of confirmation dated 19.03.2026 is treated as the first decision upon the representation dated 13.02.2026, a period of 34 days had elapsed before such consideration. A further period of eight days elapsed before the rejection was communicated to the detenu on 27.03.2026. No separate order deciding the representation has been placed before us. Nor has any satisfactory or day-to-day explanation been



furnished for the time taken either to consider the representation or to communicate the decision. The general statement that the representation was examined together with the opinion of the Advisory Board does not explain the delay. It instead reinforces the conclusion that the representation was not treated as an independent constitutional process requiring immediate attention.”

8. There can be no quarrel with the proposition that delay in consideration of a representation does not, *ipso facto*, vitiate preventive detention, provided such delay is satisfactorily explained and is demonstrably attributable to circumstances beyond the control of the concerned authority. However, where the delay remains unexplained or reflects want of diligence, the constitutional safeguard under Article 22(5) is rendered illusory. The Hon’ble Supreme Court in ***Jaseela Shaji Vs. The Union of India and Others*** (supra), while reiterating the principles enunciated in ***Tara Chand Vs. State of Rajasthan and Others, 1981 (1) SCC 416***, has held that unexplained delay in transmitting a representation from the jail to the competent authority constitutes gross negligence and extreme callousness in dealing with the representation of a detainee. In ***Tara Chand*** (supra), a delay of one month and five days in forwarding the representation by the jail authorities to the Government was held to demonstrate gross negligence and extreme callousness. The Hon’ble Supreme Court further underscored that the obligation of the appropriate Government or the Detaining Authority to afford the detainee the earliest opportunity to make a representation and to consider the same with expedition is distinct and independent of its obligation to place the



representation, along with other relevant material, before the Advisory Board for enabling it to form its opinion.

9. The insistence upon expedition in the consideration of a representation is not merely procedural but flows from the constitutional mandate itself. In ***Vijay Kumar Vs. State of Jammu and Kashmir, 1982 (2) SCC 43***, the Hon'ble Supreme Court found that a delay of 14 days in transmitting the representation from Jammu to Srinagar, followed by a further delay of 19 days in deciding the same, was sufficient to vitiate the detention. The decision reinforces the principle that, once a representation is made, every stage through which it is required to travel must be traversed with the requisite promptitude and diligence.

10. The constitutional character of the right of representation has been repeatedly emphasised by the Hon'ble Supreme Court. In ***Sk. Abdul Karim and Others Vs. State of West Bengal, 1969 (1) SCC 433***, it was unequivocally held that the right of representation guaranteed under Article 22(5) of the Constitution of India constitutes a valuable constitutional right and is not a mere formality. The corresponding obligation of the authorities is, therefore, required to be discharged in its true constitutional spirit and not as a ritualistic or mechanical exercise.

10.1. In ***Rashid S.K. Vs. State of West Bengal, 1973 (3) SCC 476***, the Hon'ble Supreme Court reiterated the imperative of prompt consideration of a representation made by a detainee and emphasised that the constitutional obligation under Article 22(5) casts a duty upon the competent authority to consider such representation with the requisite urgency. The continued detention of a person without ensuring timely and



meaningful consideration of the representation would run contrary to the very purpose of the constitutional safeguard and, where the delay remains unexplained, would render the detention constitutionally unsustainable.

Relevant extract is as under:-

“The ultimate objective of this provision can only be the most speedy consideration of his representation by the authorities concerned, for, without its expeditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be defeated. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty-the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion.”

10.2. In ***Jaseela Shaji Vs. The Union of India and Others*** (supra), the Hon’ble Supreme Court, while reiterating the constitutional imperative of expeditious consideration of a representation made by a detainee, has held as under:-

“70. We may only reiterate what has been laid down in the earlier judgments of this Court that the Prison Authorities should ensure that the representations are sent to the Competent Authorities immediately after the receipt thereof. In the present era of technological development, the said representation can be sent through email within a day. It is further needless to reiterate that the Competent Authority should decide such representation with utmost expedition so that the valuable right guaranteed to the detenu under Article 22(5) of the Constitution is not denied. In the matters pertaining to personal liberty of the citizens, the Authorities are enjoined with a constitutional obligation to decide



the representation with utmost expedition. Each day's delay matters in such a case.”

10.3. In ***Sarabjeet Singh Mokha Vs. District Magistrate, Jabalpur and Others*** (supra), the detention order was passed on 11.05.2021 and approved by the State Government on 13.05.2021. The detainee submitted representations before the District Magistrate, the State Government and the Central Government on 18.05.2021, which were communicated to the respective authorities on 20.05.2021. Thereafter, para-wise comments were called for on 02.06.2021 and were furnished on 10.06.2021, whereas the representation was ultimately rejected by the Union Home Secretary only on 24.06.2021. Taking note of the aforesaid chronology, the Hon’ble Supreme Court held that the delay in consideration of the representation had deprived the detainee of the valuable constitutional/statutory right to have his representation considered with the requisite expedition, thereby rendering the continued detention legally unsustainable.

11. Having regard to the aforesaid chronology and the principles governing preventive detention, this Court finds that the constitutional safeguards guaranteed to the petitioner under Article 22(5) of the Constitution of India have not been complied with in their true letter and spirit. In the first instance, there is no satisfactory explanation for the delay of approximately 45 days in apprising the petitioner of her right to make a representation to the Central Government. Such belated communication necessarily curtailed the petitioner's opportunity to avail herself of an important constitutional safeguard at the earliest possible stage and cannot be treated as a mere procedural irregularity.



12. The infirmity is further compounded by the subsequent delay in consideration of the representations. The representation dated 24.12.2025 addressed to the Central Government remained pending until 02.06.2026, i.e. for a period exceeding five months, which reached the concerned division of Central Government after a delay of nearly 3 months on 16.03.2026. Likewise, the representations dated 26.11.2025 were considered by the Chief Secretary only on 23.02.2026 and by the Home Secretary/Detaining Authority on 25.02.2026, after a lapse of nearly three months. The record does not disclose any cogent, compelling or legally acceptable explanation commensurate with the magnitude of these delays. There is delay at every step i.e. informing about rights, forwarding of representations, furnishing of comments and decision of representations. In the age of instant communication this delay in decision of representation of 3 months and 5 months respectively amount to flagrant violation of mandatory provisions of Article 22(5) of the Constitution of India and denial of Fundamental Right of detainee.

13. In matters of preventive detention, where personal liberty stands curtailed without a prior adjudication of guilt, the constitutional obligation to communicate the right of representation and to consider such representation with the utmost expedition assumes heightened significance. The right under Article 22(5) is a substantive constitutional safeguard and the authorities entrusted with its implementation are required to act with due diligence, promptitude and a sense of urgency. The cumulative effect of the unexplained delay in apprising the petitioner of her right to approach the Central Government and the subsequent



inordinate delay in transmission and consideration of the representations by the competent authorities has, in the considered opinion of this Court, rendered the continued detention of the petitioner constitutionally unsustainable.

14. Accordingly, the present writ petition is **allowed**. The detention order dated 01.11.2025 and the consequential continued detention of the petitioner are hereby quashed. The petitioner shall be set at liberty forthwith, if not required in any other case.

15. In view of the final adjudication of the principal matter, all pending miscellaneous and connected applications, if any, arising therefrom or ancillary thereto, shall stand disposed of accordingly. No separate or further order is called for in respect thereof.

24.08.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No