

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

HCP No.145/2025

Date of pronouncement: 21.05.2026

Date of uploading: 21.05.2026

**Saddam Husain, Age 33 years, S/o
Mohd. Butt, At Present Central Jail,
Kot Bhalwal, Jammu, Jammu and
Kashmir.**

...Petitioner(s)

**Through father Mohd. Butt, Age 61
years, S/o Mohd. Ismail, R/o Ward
No.4, near GHS Lohai, Tehsil Lohai
Malhar, Thall, District Kathua, J&K**

Through: Mr. Sanchit Verma, Advocate.

Vs

**01. UT of J&K through Commissioner/Secretary,
(Home), Civil Secretariat, Jammu/Srinagar.**

02. District Magistrate, Kathua.

03. Senior Superintendent of Police, Kathua.

04. Superintendent, Central Jail, KotBhalwal, Jammu, J&K.

...Respondent(s)

Through: Mr. Suneel Malhotra, GA.

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

**JUDGMENT
21.05.2026 (ORAL)**

- 01.** Challenge in this petition has been thrown to detention order No. PSA/159 dated 21.05.2025, passed by respondent No.2-District Magistrate, Kathua under Section 8 of the J&K Public Safety Act, 1978 ["PSA"], vide which, petitioner came to be detained.

- 02.** As factual matrix of the case would unfurl, SSP Kathua (the sponsoring authority) vide his communication dated 16.05.2025, on the basis of recommendations of the District Screening Committee, submitted a dossier to District Magistrate, Kathua, the detaining authority, describing the petitioner as OGW, a hard core facilitator of terrorist activities and a great sympathizer of banned terrorist organizations. It was alleged that anti-national activities of the petitioner continue unabated, causing widespread fear and insecurity among general public and are prejudicial to the security of state, peace and tranquility of the region.
- 03.** Recommendation of the sponsoring authority is premised on an FIR No.01/2019 under Section 3-EAO/120-B/121-A RPC of P/S CID CI Jammu and preventive measures initiated against him under Section 126 BNS of P/S Malhar.
- 04.** On the basis of these allegations captured in the dossier, the detaining authority has come to conclude that there are substantial grounds established regarding involvement of the petitioner in serious anti-national activities. He is a staunch facilitator of terrorist activities and always engaged in devising methodologies to disrupt peace prevailing in District Kathua. According to the detaining authority, since petitioner's actions are brazen and provocative which tend to create an environment of insecurity and terror, it necessitates stringent preventive measures against him.
- 05.** Petitioner is aggrieved of the impugned order of detention *inter alia* on the following grounds:

- a. "That the order of detention of the detenue is totally illegal, arbitrary and contrary to the provisions of law and facts of the case and therefore, the same deserves to be quashed.
- b. That the respondent no. 2 has exceeded his jurisdiction the detaining authority has not applied his mind as there is no compelling reasons and cogent material and details available before the detaining authority on the basis of which respondent No.2 has made his subjective satisfaction and passed the detention order, without any valid reasons and facts as such there is complete non application of mind. The provision of the Section 8 of the Public Safety Act which is totally against the mandate of the law and as such, on this ground alone the impugned order is liable to be quashed.
- c. That the respondent no. 2 has not applied his mind properly the respondent has detained the petitioner on the basis of the concocted story with no material on record regarding the involvement of the petitioner in disturbing public peace and order and tranquility and communal harmony as alleged by the respondent in the detention order, that right to liberty is most valuable right of the person and such right cannot be deprived on the basis of mere assumptions by the respondent State without having any proof on record on this ground alone, the impugned order is liable to be quashed.
- d. That the grounds of detention make mention of several alleged activities of the detenu which are prejudicial to the maintenance of Public Order, tranquility, peace and even though no supporting documents regarding such alleged illegal activities of the detenu have been provided to the detenu to facilitate the detenu to make an effective representation against his detention. The detenu has two-fold and independent rights viz. Right to be furnished all the documents and subsequent right of representation against the order of the detention. Both the rights of the detenu have been violated and there is breach of the procedural safeguards as provided under Article 22(5) of Constitution of India. The detenu has been, thus, debarred from making an effective and purposeful representation to the detaining authority and Government against the order of detention, On this ground alone the order of detention deserves to be quashed.

In the case of Syed Asiya Andrabi v. State & Ors, HCP 173/2017, decided on 30.08.2017, the detention order of petitioner was set aside by this Hon'ble Court for the fact petitioner to alleged activities. The relevant part of the judgment is noted below:

"On the basis of the law laid down above, what can be said is that the grounds of detention are vague in almost all respects. These do not state as to where the activities, attributed to the detenue, took place. Each such accusation had to be explained by reference to the relevant material, which, in turn, had to be provided to the detenue so that a semblance fairness could be attached to the order of detention. This has not been done. This vagueness in the grounds of detention impinges on the fundamental rights of the detenue guaranteed under Article 22(5) of the Constitution of India and it cannot stand."

- e. That the respondent no.2 and 3 have neither communicated to the petitioner that he can make a representation before the detaining

authority and the respondents are under the legal obligation to mention this fact to the petitioner so that he can make a representation to the detaining authority and by not giving such opportunity would constitute an infraction of the valuable constitutional right guaranteed under Article 22(5) of the Constitution of India and Section 13 of the J&K Public Safety Act, 1987. It is further submitted that the respondent is not only under legal obligation to inform the petitioner about his legal right of representation before the advisory board, but it is also the paramount duty of the respondents to bring the detainee before the advisory board so that he can make an effective representation before the advisory board and also inform the detainee about his legal right so that he can be represented by a counsel of his choice and by not providing this facility and by not informing the petitioner about his legal right to make an effective representation before the advisory board is totally violative of the fundamental right of the petitioner which has been enshrined in the Constitution of India and even on the single ground the order of detention deserves to be quashed.

- f.** That the detainee is deprived of his right to make the effective representation. On this count also the impugned order and grounds are liable to be quashed and set-aside., Because the detenu has not been furnished the material relied upon by the detaining authority. The impugned order has been admittedly passed by the detaining authority after perusing the dossier. However, the said material has not been furnished to the detainee.
- g.** That it is incumbent upon the respondent no. 2 to approve the order of detention from the respondent no. 1, which has been passed against the petitioner within 12 days of making the order, and if the order of detention has not approved by the respondent no. 1 within 12 days, the detention of the detainee becomes illegal. In the present case, the detention of the petitioner becomes illegal and unjustified because neither the respondent no. 2 has got the order of detention approved from the respondent no. 1 nor provided the copy of the order which has been passed by the respondent no. 1 to petitioner, so that the valuable right of the petitioner to make a representation before the detaining authority has been curtailed, as such, the detention of the petitioner become illegal and same deserves to be set aside.
- h.** That it is pertinent to mention here that the respondent no. 2 and 3 are under the legal obligation to communicate the detention order, to the petitioner in the language, which the petitioner understands. The photocopy of the detention order which was supplied to the detainee, it is obligatory and legal obligation and responsibility of the respondents to communicate the detention order to the petitioner in a language which the petitioner can understand well and also provide the grounds of detention and the material in a translate script which the petitioner can understand so that he can make an effective representation before the detaining authority and the non-communication and non-serving the copy of the detention order to the petitioner in a language which the petitioner can understand, would constitute a violation of the valuable constitutional right under Article 22(5) of the Constitution of India, on this single

ground the detention order is bad in law and as such, the same deserves to be set aside.

- i. That the order of detention has been passed by the respondents on imaginary grounds and in colorable exercise of power and the respondent no. 2 has not applied his mind properly because ground of detention also does not indicate any such activity of the petitioner which fall within the parameters of Section 8 of the Jammu and Kashmir Public Safety Act, 1987 and by imposing such provision make the order of detention become illegal and the same deserves to be set aside. It is further submitted that the respondent no. 2 has imposed Section 8 of the J&K Public Safety Act, 1987, against the petitioner which clearly shows that the detaining authority has not applied his mind properly and not hold subjective satisfaction before the passing of the order of detention, which clearly reflects from the order of detention passed by the respondent no.2 is simply imposing the Section 8 of the J&K Public Safety Act without mentioning under which clause the petitioner case falls which shows that the respondent no.2 has not applied his mind properly and on this ground alone the detention order is bad in the eyes of law and deserves to be set aside.
- j. That the ground of detention mentioned in the order are replica of the dossier with interplay of some words here and there which exhibits that the respondent no. 2 has not applied his mind at the time of the passing of the order, and as such, on this count also, the order impugned order is bad and the same deserves to be set aside.
- k. That non-mentioning about the granting of bail in the detention order is serious lapse which in turn gives rise to the inference that there is non-application of mind on the part of detaining authority. Hon'ble Apex Court in the case of "Anant Sakharan Raut v. State of Maharashtra and another" reported in AIR 1987 SC 137:
"We hold that there was clear non application of mind on the part of detaining authority about the fact that the petitioner was granted bail when the order of detention was passed. In the result we set aside the judgment of the Bombay High Court under appeal, quash the order of detention and direct that the petitioner be released forth with....."
- l. That it is obligatory on the part of the detaining authorities and advisory board to supply all the relevant documents i.e. dossier, grounds of detention and other related documents to the petitioner and non-providing the same renders the order of detention illegal and bad in law. It is further submitted that in the present petition the respondents had not provided order of detention including all the copies of the detention order and other related documents to the petitioner as a result of which it will violate the valuable right of the petitioner guaranteed under Article 22(5) of the Constitution and Section 13 of the J&K Public Safety Act, 1987 and even on this sole ground the order of detention deserves to be set aside.
- m. That the detention of the petitioner has been ordered in sheer disregard and derogation to the provisions of the Jammu and Kashmir Public Safety Act, 1987 in as much as the respondent no. 2 while ordering detention of the petitioner under the said Act has not complied the provisions of the said Act in its totality, which fact is

fully corroborated from the fact that the order of detention has not so far been served upon the petitioner.

- n.** That the District Magistrate, Kathua i.e. respondent no. 2 has signed the detention order of the petitioner on mere apprehension which action of the respondent no.2 is totally baseless and the reason for ordering the detention of the petitioner is a gospel truth only to clip the freedom of citizen without any application of mind. The respondent no.2 has failed to mention details of any material put before him for his satisfaction. The respondent no. 2 has in fact adopted an irresponsible approach while ordering detention of the petitioner which renders the order impugned bad in the eyes of law and the said detention order of the petitioner is liable to be quashed.
- o.** That the order of detention impugned in this writ petition suffers from fatal legal infirmities which are mandatory in nature and violation of such provisions make the order of detention illegal and bad in the eyes of law and is liable to be set aside. As the petitioner has not been provided the relevant documents alongwith the grounds of detention even after his detention up till now or any other incriminating material on the basis of which the respondent no. 2 has ordered the detention of the petitioner. This has caused severe prejudice to the fundamental rights of the petitioner and the petitioner could not make any representation to the concerned authority.
- p.** That Hon'ble Division Bench of this Court in the case of Tariq Ahmad vs. State of J&K and Ors.; 2017 (3) JKJ 684 has, while dealing with a similar issue, held that non-communication of the fact that the detainee can make a representation to the detaining authority, till the detention order is not approved by the Government, would constitute an infraction of a valuable constitutional right guaranteed under Article 22(5) of the Constitution of India as also of the right under Section 13 of the Jammu and Kashmir Public Safety Act, 1978. It has been further held that such non-communication would invalidate the order of detention. On this ground alone impugned order is required to be quashed.
- q.** That the grounds of detention were supplied to the petitioner and the order passed by the respondent no. 2 is short of satisfaction as provided under Section 8 of Jammu and Kashmir Public Safety Act, 1987. This thing must appear in the face of the order and order must disclose that the detaining authority has not assumed complete satisfaction in respect of all matters as envisaged in Section 8 of the Act. It is enough for the arrested person kept under detention to say that he is under wrongful detention and burden lies on the State or the Detaining authority to satisfy the Hon'ble Court that the detention is not illegal. It is incumbent on the State to satisfy the Hon'ble Court that the order of detention is legal and in conformity with the provisions which are mandatory and strictly in accordance with constitution safeguards provided in Article 22(c) of the Constitution of India.
- r.** That viewed from any angle, the order impugned suffers from serious legal infirmities and illegalities and therefore, the same is liable to be quashed.

- s. That vide impugned order, the Detaining Authority has not communicated to the detainee his right to represent against the order, not to speak of the time limit, in which, he could make a representation to it, till approval of the detention order by the Government.
- t. That Hon'ble the Supreme Court of India in catena of judgments, repeatedly emphasized that maintenance of Public Order is not to be abused or ought to serve as a ruse for overreaching the ordinarily criminal procedure which is meant to deal with the cases of commission of offences relatable to law and order scenario.
- u. That in case of "Ramesh Yadav Vs. District Magistrate, ETAH and others" reported in (1985) 4 Supreme Court 232 Hon'ble the Supreme Court of India has envisaged to resist temptation to prefer and substitute easy expedience of a preventive detention to more cumbersome punitive detention mode of dealing with the persons. Respondents with a stroke of pen completely eroded the substantive laws and stated that the Criminal Justice system of this country failed to deter petitioner which reflects complete non application of mind by the respondents.
- v. The detention of the detainee has been ordered on the basis of preventive action U/S 128 BNSS only. Investigation is part and parcel of criminal justice system and respondents are shying away from doing their duty and haphazardly using preventive detention laws.
- w. That the detainee was not informed that within what time frame he can make a representation against his detention order to the detaining authority or to the respondent no. 1 & 2, which is in total violation of the rights of the detainee as guaranteed under Article 22 of the constitution. On this ground also, the order passed by the Respondent No.2 is bad in law and deserves to be quashed.
- x. The detention of the detainee has been ordered on the basis of one FIR, which has been lodged in the year 2019 only and which is registered on 28-05-2019, the case had no proximity of time with the detention order. Live and proximate link between the past conduct of the detainee and the imperative need to detain have to be harmonized to rely upon the alleged illegal activities of the detainee. Old and stale incidents shall be of no use as has been held by Hon'ble Apex Court in "Sama Aruna Vs State of Telangana & Anr." reported as (2018) 12 SCC 150.
- y. That the view taken by the Hon'ble Supreme Court in "Rushikesh Tanaji Bhoite vs. State of Maharashtra & Ors." Reported in (2012) 2 SCC 72 wherein the Apex Court observed that:

"9. In a case where detainee is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction." "

10. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detainee would have effected the satisfaction of the detaining authority but suffice it to say that non-placing and non- consideration of

the material as vital as the bail order has vitiated the subjective decision of the detaining authority.”

- 06.** It is contention of the petitioner that impugned order is contrary to the spirit of Article 22(5) of Constitution of India and Section 13 PSA. According to the petitioner, the detaining authority on the basis of dossier submitted by the sponsoring authority has passed the impugned order, without application of mind and without evaluating the allegations against him.
- 07.** It is also contended that as per the grounds of detention, preventive action against the petitioner were initiated under Section 126 BNSS, however, outcome of these proceedings were never made known to him. It is next contended that in the grounds of detention, a reference has been made to DDR No.05 dated 14.04.2025 of P/S Malhar, whereas copy of the said DDR was never supplied to the petitioner. According to the petitioner, the DDR entry is a unique model adopted by the respondents-detaining authority to make a fabricated story to project him as a hard core criminal.
- 08.** Petitioner has invoked writ jurisdiction of this Court for the quashment of impugned order and his consequent release from the detention.
- 09.** The plea has been opposed on the other side by the respondents, primarily on the ground that no fundamental, legal or statutory right of the petitioner is found to have been violated.
- 10.** It is contention of the respondents that impugned order came to be passed by the detaining authority after due consideration of the

dossier submitted by SSP, Kathua because petitioner was found continuously and repeatedly involved in anti-national activities thereby posing a persistent threat to the security of the state.

11. According to the respondents, the material relied by the detaining authority including the FIR would show a continuous pattern of conduct on the part of the petitioner to threaten law and order.
12. It is contention of the respondents that total 39 leaves including grounds of detention, detention warrant and all relevant documents were not only supplied to the petitioner but duly read over and explained to him in the language he fully understood and his signatures as a token of receipt were obtained by the executing officer. The petitioner and his father namely Mohd. Butt were informed about detention of the petitioner and the grounds on which he came to be detained. He was afforded fair opportunity to make representation against the impugned order to the Government within the stipulated time period, if he so desires. In response, the petitioner represented against his detention before the competent authority and the Home Department vide communication No. Home/PB-V/328/2025/(7650718) dated 19.09.2025 intimated the detaining authority that after considering the representation, same was found to be without merit. This communication was endorsed to the Superintendent, Central Jail, Kot Bhalwal, Jammu, who vide his letter dated 13.08.2025 has informed the detenu regarding disposal of the representation.

13. It is contention of the respondents that since there was every likelihood of the petitioner repeating anti-national activities, therefore, his detention was indispensably required to ensure security of the state and maintenance of peace in the region. Respondents have prayed for dismissal of the petition.
14. Having heard the rival contentions, I have gone through the detention record.
15. The petitioner, at the foremost is affront to his detention on the ground that the detaining authority embarked upon to pass the impugned order of detention without waiting for the outcome of the preventive measures initiated against him on 21.09.2024.
16. The Magistrate under Section 129 BNSS has been empowered to require security for good behaviour from repeat offenders such a robbers, thieves or those involved in kidnapping, extortion, forgery or protecting thieves or breaching public peace to execute a bond for up to 03 years, to ensure safety of the community. The target individuals also include those habitually commit or abet offences related to Drugs and Cosmetics Act, Foreigners Act, Customs Act and laws relating to hoarding, profiteering or corruption. The provision also covers the persons deemed so “desperate and dangerous” that there being at large without security, is hazardous to the community.
17. Pertinently, if immediate measures pending inquiry are necessary Magistrate is also vested with the power to require an individual to execute an interim bond under Sub-Section 3 of Section 135. Ordinarily, the detention or imprisonment for breach, follows the non-

compliance of final bond executed under Section 136 BNSS and generally it occurs only after a final order is passed following a complete inquiry.

- 18.** It is manifest from the above that preventive measures envisaged under Chapter IX of BNSS is a regulatory process, under the criminal justice framework and designed to prevent recurring criminal conduct of an individual. The provision has been inserted with an avowed object to protect public order by requiring the individuals to show cause as to why they should not execute a bond for good behavior.
- 19.** On the other hand, preventive detention under the Public Safety Act, is a separate executive measure, independent of preventive measures under BNSS. The fact that an individual is facing security proceedings for good behavior under BNSS does not legally debar the executive from invoking PSA. True it is that both the measures can co-exist, but there is a caveat.
- 20.** When a person is facing preventive measures for good behavior within a framework of chapter IX BNSS, detaining authority in such circumstances must demonstrate the “compelling reasons” and an independent application of mind that why the security proceedings for good behavior initiated against him were proved insufficient to prevent him from engaging in an activity prejudicial to the public order. Therefore, though preventive detention under PSA can be legally invoked by the executive during the continuation of proceedings under Chapter IX BNSS, but it must meet the strict legal standards and reflect an independent application of mind.

21. In the present case, neither the recommending authority-SSP, Kathua nor the detaining authority-respondent No. 2 has demonstrated any compelling reason as to why the security proceedings initiated against the petitioner under Section 126 BNSS were found insufficient.
22. There cannot be two opinions to the settled position of law that security of the state and maintenance of public peace, tranquility and order is absolute prerogative of the executive. Subjective satisfaction of the detaining authority to detain a person when he refuses to desist from his past activities is not subject to objective assessment of the Court. The High Court in exercise of its writ jurisdiction has no power to substitute its satisfaction with one of the detaining authority and decide whether in the circumstances of a case an individual should be detained or not. However, personal liberty of a citizen cannot be infringed on dogmatic assertions of the executive.
23. The Administration cannot be allowed to trample over the liberty of its citizens in an arbitrary and perfunctory fashion. The conduct of the detaining authority exercising such a vast jurisdiction is required to be reasonable and in consonance with the concept of justice and fairness. It is the rule of a law which should dictate the detaining authorities to act in a manner which is lawful, reasonable and fair and in tune with the concept of fundamental right of life and liberty enshrined in Article 21 of Constitution of India.
24. Reverting to the case, the grounds of detention, after a passing reference to the Magisterial proceedings initiated against the petitioner, under Section 126 BNSS are ominously silent about

further details. There is nothing to indicate further that whether petitioner was served upon a show cause notice by the Executive Magistrate or whether he was required to execute an interim bond as an immediate measure under Section 135(3) BNSS and if he executed any such bond whether he violated the conditions thereof. In nutshell, neither the detaining authority has recorded any compelling reason prompting him to invoke PSA against the petitioner nor reflected an independent application of mind as to why preventive measures proved insufficient to prevent him from engaging in activities prejudicial to the security of the state. Preventive detention under PSA cannot be ordered unless there is emergency based justification which ordinary law of the land cannot address.

25. In addition to the preventive measures, the impugned order traces its origin to the solitary FIR No. 01 of 2019 whereby it was alleged that a source information was received that two unknown persons were found roaming in suspicious conditions near Army Camp Ratnuchak Jammu and were taking photos, making videos of important roads etc. with the help of their mobile phones and sending the same through Whatsapp to the head of terrorists groups sitting across the border at Pakistan. During investigation, they disclosed their names as Mushtaq Ahmed and Nadim Akhter. They further disclosed that they were constantly in touch with Mohd. Amin Bhat @ Abu @ Haroon and they were taking the photographs/videos of Armed establishment on the direction of Pak based handlers. Their mobile phones came to be seized during further investigation. Both of them also disclosed that

Abdul Karim, Saddam Hussain (the petitioner), Mohd. Saleem and Safdar Ali were also involved. The investigation of this FIR culminated in the presentation of charge sheet.

26. Pertinently, petitioner came to be enlarged on bail in the said FIR by learned Principal Sessions Judge, Jammu on 13.06.2023. A perusal of the said bail order reveals that out of 18 witnesses cited in the charge sheet, PW Gulam Mohi Din, PW Sanjay Kumar, PW Charanjeet Singh, PW Rajinder Singh and PW Ajay Kumar came to be examined during the trial and they have not whispered a word in their statements to show that petitioner was caught red handed while clicking photographs of army installations or any other security assets of the State. The impugned order of detention and grounds of detention are not only silent about grant of bail to the detainee in the solitary FIR, but also the grounds on which he came to be released on bail which indicates total non-application of mind by the detaining authority.
27. Another ground urged by learned counsel for the petitioner is inordinate delay in the disposal of representation of the petitioner.
28. It is by far a crystallized position of law now that in a case of preventive detention government is not only obliged to afford the detainee an opportunity to make an effective representation but to consider it without unreasonable delay because it involves liberty of a citizen guaranteed under Article 19 of the Constitution of India. It is trite in law that unreasonable delay in the disposal of representation

submitted by the detenu amounts to infringement of Article 22(5) of the Constitution.

29. Hon'ble Supreme Court in **K.M. Abdulla Kunhi and Anr. V. Union of India & Ors.; AIR 1991 SC 574** has held that though there can be no hard and fast rule regarding the timeline within which a representation is required to be considered by the Government and there is no limitation provided under the Constitution or PSA within which a representation is required to be considered and decided by the Government, however, it is manifest from the words **“as soon as may be”**, occurring in Clause (5) of Article 22 of the Constitution that unexplained delay in disposal of representation would amount to infringement of Article 22(5) of the Constitution of India.

Relevant excerpt of the judgment for the ease of reference is extracted below:

“.....5(a) The representation relates to the liberty of the individual, the highly cherished right enshrined in Article 21 of our Constitution. Clause (5) of Article 22 therefore, casts a legal obligation on the Government to consider the representation as early as possible. It is a constitutional mandate commanding the concerned authority to whom the detenu submits his presentation to consider the representation and dispose of the same as expeditiously as possible.

5(b) The words “as soon as may be” occurring in clause (5) of Article 22 reflect the concern of the Framers that the presentation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the fact and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with the requirement however, is that there should not be supine indifference slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be a breach of the

constitutional imperative and it would render the continued detention impermissible and illegal.....”

30. It is evident from the exposition of law by Hon’ble Supreme Court in **K. M. Abdulla Kunhi** (Supra) that unexplained delay in disposal of a representation amounts to infringement of Article 22(5) of Constitution of India. The detaining authority is not only obliged to consider the representation of the detainee, as soon as possible and practicable but also communicate the decision without further waste of time.
31. Consideration of representation on the part of Home and/or detaining authority is not an empty formality. The constitutional imperative under Article 22(5) imposes a dual obligation on the authority propounding the order of preventive detention; viz. (i) he must afford the detainee earliest opportunity of making a representation against his detention; and (ii) he must, as soon as possible, after detention order is passed, communicate the detainee the grounds on which order of detention has been made.
32. A perusal of the record reveals that petitioner preferred the representation dated 24.07.2025 addressed to Additional Chief Secretary, District Magistrate, Kathua and it was received by respondent No.2 to 29.07.2025. This representation came to be disposed of on 19.09.2025 but communicated to the petitioner on 11.10.2025 i.e. after an inordinate delay of 50 days from the date of presentation of the representation. Consideration of representation and consequent communication of the decision taken by the concerned authority cannot be allowed to be pigeon holed for indefinite period of time.
33. As stated, the respondents in the present case have considered and disposed of the representation preferred by the petitioner after an

inordinate and inexplicable delay of 50 days which amounts to infringement of Articles 14 and 21 of Constitution.

- 34. Viewed from any angle, the impugned order of detention does not sustain in the eyes of law. Hence, present petition is allowed and petitioner is immediately directed to be released from the detention, provided he is not involved in any other case.
- 35. Detention record after perusal is returned to learned GA.
- 36. Disposed of along with connected CMs.

(Rajesh Sekhri)
Judge

Jammu
21.05.2026
Eva

Whether the judgment is speaking or not?	Yes
Whether the judgment is reportable or not?	Yes