

Reserved on : 09.09.2026
Pronounced on : 22.09.2026



IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE DAY OF 22ND SEPTEMBER 2026

PRESENT

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

AND

THE HON'BLE MRS JUSTICE HEMA KULKARNI

WRIT PETITION (HABEAS CORPUS) NO.100019 OF 2026

BETWEEN:

SMT. MALA
W/O. RAJU KALE,
AGED ABOUT 32 YEARS,
OCC.:HOUSEHOLD,
W/O. THE DETENU RAJU
S/O. SHIVAJI KALE,
R/O. WARD NO.10,
SETTLEMENT COLONY,
BAGALKOTE TALUK AND DISTRICT
BAGALKOTE-587101.

...PETITIONER

(BY SRI PRUTHVIRAJ P. HITTALAMANI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY ITS

ADDITIONAL CHIEF SECRETARY,
DEPARTMENT OF HOME AFFAIRS,
VIDHANA SOUDHA,
BENGALURU - 560 001.

2. INSPECTOR GENERAL OF POLICE
NORTHERN RANGE,
BELAGAVI - 590 001.
(DETAINING AUTHORITY).
3. SUPERINTENDENT OF POLICE
DISTRICT BAGALKOTE - 587 101.
4. DEPUTY SUPERINTENDENT OF POLICE
BAGALKOTE SUB-DIVISION,
BAGALKOTE - 587 101.
5. POLICE INSPECTOR
BAGALKOTE TOWN POLICE STATION,
BAGALKOTE - 587 101.
6. SUPERINTENDENT,
CENTRAL PRISON, HINDALAGA,
BELAGAVI - 590 001.

...RESPONDENTS

(BY SRI RAKESH M.BILKI, GOVERNMENT ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA SEEKING ISSUANCE OF A WRIT OF HABEAS CORPUS OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION, QUASHING THE ORDER OF DETENTION BEARING NO.CRIME/MISC/64/NR/2026 DATED 03.07.2026 PASSED

BY RESPONDENT NO.2 AT VIDE ANNEXURE-A, AND CONSEQUENTLY DIRECT THE RESPONDENTS TO FORTHWITH RELEASE THE DETENU - SRI RAJU, S/O SHIVAJI KALE, UNLESS HIS CUSTODY IS REQUIRED IN ANY OTHER CASE.

THIS WRIT PETITION (*HABEAS CORPUS*) HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.09.2026, COMING ON FOR PRONOUNCEMENT THIS DAY **M.NAGAPRASANNA J.,** MADE THE FOLLOWING:-

CORAM: HON'BLE MR. JUSTICE M.NAGAPRASANNA
and
HON'BLE MRS JUSTICE HEMA KULKARNI

CAV ORDER

(PER: HON'BLE MR. JUSTICE M.NAGAPRASANNA)

The petitioner, wife of detenu is before the Court calling in question an order of detention dated 03-07-2026, bearing No.Crime/Misc/64/NR/2026 issued by respondent No.2 and seeking a writ in the nature of *habeas corpus* for release of the detenu.

2. Heard Sri Pruthviraj P. Hittalamani, learned counsel appearing for the petitioner and Sri Rakesh M. Bilki, learned Government Advocate appearing for the respondents.

3. Facts, in brief, germane are as follows: -

The petitioner is the wife of one Raju Kale, the detenu. On 21-06-2026, the 5th respondent/Police Inspector of Bagalkote Town Police Station prepares a report recommending preventive detention of the detenu under the provisions of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as 'the Act' for short). The report of the 5th respondent is forwarded to the 4th respondent and in turn, to the 3rd respondent and ultimately reaches the table of the 2nd respondent/ Detaining Authority. An order dated 03-07-2026 is passed under Section 3(1) of the Act detaining the husband of the petitioner. The detenu then submits a representation to the 1st respondent/State and to the Detaining Authority and also to the Chairperson of PIT/NDPS Custodial Advisory Board through the 6th respondent/ Superintendent, Central Prison, Belagavi. On 28-07-2026, the 2nd respondent - the Detaining Authority dismissed the representation of the detenu. The subject petition is filed

challenging the order of detention dated 03-07-2026 bearing No.Crime/Misc./64/NR/2026.

4. The learned counsel appearing for the petitioner would vehemently contend that the detaining order does not inform the detenu regarding his right to make a representation to the Central Government as obtaining in Section 3 r/w Section 12 of the Act, which empowers the Central Government to revoke the order of detention particularly, when it is passed by an Officer empowered by the State Government. The detenu was granted regular bail in Crime No.79 of 2024 in terms of Section 37 of the Narcotics Drugs and Psychotropic Substances Act, 1985 ('the NDPS Act' for short). The rigour of Section 37 of the NDPS Act requires the Court to be satisfied that there are reasonable grounds to believe that the detenu is not guilty *albeit, prima facie* and is unlikely to commit an offence while on bail. In another crime in Crime No.44 of 2022, the detenu is already convicted and has paid the fine. The report which led passing of the impugned order now refers to those two proceedings which are stale, concluded or sub-judice. In the report, another crime is indicated - Crime No.57 of 2026 in which,

the detenu is not even drawn as an accused. Under Section 9 of the Act, the appropriate Government is required to place the case before the Advisory Board within 5 weeks from the date of detention, which is said to have expired on 07-08-2026. Therefore, on these grounds and particularly on the ground that the detenu was not made aware that he has right to make a representation to the Central Government, the order of detention is a nullity as the right under Article 22(5) of the Constitution of India is violated. He would seek to place reliance on several judgments rendered by the Apex Court and that of this Court, all of which would bear consideration in the course of the order.

5. *Per contra*, the learned Government Advocate appearing for the respondents would submit that the Advisory Board is now constituted and the order of reference is now placed before the Advisory Board. Since it was yet to be constituted, the report was not placed before the Advisory Board within the time stipulated. He would submit that the detenu is involved in repeated crimes of the same nature. Therefore, to prevent him from committing the offences over again, based on the report of the 5th respondent,

action is taken by the 2nd respondent. He would submit that the detenu is very well aware of the fact that he can represent to the Central Government. Therefore, there is no violation of law in his submission.

6. We have given our anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. At the outset, it becomes necessary to notice the statutory architecture under which the impugned order of detention has sprung. Sections 3 and 12 of the Act, which bear relevance to the issue at hand, read as follows:

"3. Power to make orders detaining certain persons.—

(1) The Central Government or a State Government, or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner) that, with a view to

preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained.

(2) When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order.

(3) For the purposes of clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention."

....

....

....

12. Revocation of detention orders.—(1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified—

- (a) notwithstanding that the order has been made by an officer of a State Government, by that State Government or by the Central Government;**
- (b) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government.**

(2) The revocation of a detention order shall not bar the making of another detention order under Section 3 against the same person."

A conjoint reading of the afore-quoted provisions would make the statutory scheme unmistakably clear. Sub-section (1) of

Section 3 clothes the competent Detaining Authority with the power to direct preventive detention of a person, including a foreigner, if the Authority arrives at the requisite satisfaction that such detention is necessary with a view to preventing the person from engaging in an illicit traffic in narcotic drugs and psychotropic substances. The power is preventive in character, but its exercise results in the most serious curtailment known to personal liberty - detention without trial. The procedural safeguards surrounding such power, therefore, cannot be regarded as empty formalities.

8. Section 12 of the Act as afore-quoted, operates in a different, though closely connected, sphere. It deals with revocation or modification of an order of detention. Sub-section (1) thereof, without prejudice to Section 21 of the General Clauses Act, 1897, permits an order of detention to be revoked or modified at any time. Significantly, notwithstanding that the detention order may have emanated from an Officer of the State Government, the statute confers upon the Central Government an independent power to revoke or modify such order. Sub-section (2) merely clarifies

that revocation of one order of detention does not create an embargo upon making of another order under Section 3 of the Act against the very same person, should circumstances so warrant.

9. If the statute confers upon the Central Government, the power to revoke an order of detention, the detenu must necessarily have an effective opportunity to invoke that power by making a representation. A right to make a representation, if kept beyond the knowledge of the person whose liberty is taken away, would be a right existing only on paper. The right becomes real and meaningful only when the detenu is made aware that such a representation can be made and to whom it can be made.

10. The admitted fact obtaining in the case at hand is that, the detenu was **not informed of his right to make a representation to the Central Government** against the order of detention. The contention that the detenu may otherwise have been aware of such a right cannot rescue the detention from the consequence that follows. The duty is upon the Detaining Authority to communicate the right; it cannot be shifted upon the detenu to

discover it for himself. What the law commands to be communicated cannot be presumed to have been known.

11. The interpretation of the afore-quoted provisions need not detain this Court for long or compel it to delve deep into the matter. Jurisprudence is replete with pronouncements of the Apex Court, followed consistently by coordinate Benches of this Court, elucidating the contours of this very right and the corresponding obligation of the Detaining Authority. The Apex Court in the case of **KAMLESHKUMAR ISHWARDAS PATEL v. UNION OF INDIA**¹, holds as follows:

"....

38. Having regard to the provisions of Article 22(5) of the Constitution and the provisions of the COFEPOSA Act and the PIT NDPS Act the question posed is thus answered: Where the detention order has been made under Section 3 of the COFEPOSA Act and the PIT NDPS Act by an officer specially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation to the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so results in denial of the right

¹ (1995) 4 SCC 51

conferred on the person detained to make a representation against the order of detention. This right of the detenu is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorised by a State Government and to the Central Government where the detention order has been made by an officer specially empowered by the Central Government, and to have the same duly considered. This right to make a representation necessarily implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation and the failure to do so results in denial of the right of the person detained to make a representation."

11.1. The Apex Court in the case of **ALFIYA A. v. STATE OF KERALA²**, following the judgment in the case of **KAMLESHKUMAR ISHWARDAS PATEL** *supra* holds as follows:

"....

"THE RIGHT OF REPRESENTATION AND ITS CONSIDERATION

- 16) The issue which requires determination concerns the right of the detenu to make a representation against the order of detention and the manner in which the representation actually made by him was dealt with. This ground goes to the legality of the detention as a whole, and for the

² SLP (Crl.) No.8439 of 2026 decided on 28-07-2026

reasons that follow we are of the opinion that it is well founded.

- 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*, 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.****
- 18) In the present case, the order of detention was made by the Detaining Authority in exercise of the power conferred upon an officer specially empowered under Section 3(1) of the PITNDPS Act. **The detenu was informed that he could make representations to the State Government, the Advisory Board and the Central Government. He was not separately informed that he was entitled to make a representation to the officer who had made the order of detention in exercise of the specially conferred statutory power. The omission is evident from the detention order itself. The fact that the detenu nevertheless addressed one of his representations to the Detaining Authority cannot cure the failure to**

inform him of that constitutional right. The obligation was upon the authority to communicate the right and could not depend upon whether the detenu independently became aware of it.

....

- 21) **We accordingly hold that the safeguards attaching to the right of the detenu to make a representation against his detention were not observed.** The detenu was not informed of his right to represent to the Detaining Authority who had made the order. **The record does not disclose any independent decision upon the representation by the Detaining Authority in exercise of his own statutory power. The consideration disclosed by the respondents was undertaken only as part of the subsequent confirmation exercise, and even that consideration was attended by an unexplained delay. These infirmities violate Article 22(5) of the Constitution and are sufficient to render the continued detention of the detenu illegal.**

CONCLUSION

- 22) **The infirmities noted above are not mere technical or procedural irregularities capable of being cured by substantial compliance. They concern the enforcement of the constitutional right guaranteed by Article 22(5) to a person detained without trial. Once a mandatory constitutional safeguard governing preventive detention is found to have been violated, the continued detention cannot be sustained. The High Court did not examine whether the representation submitted by the detenu received the independent and expeditious consideration required by Article 22(5) of the Constitution. Since that issue bears directly upon the legality of the continued detention, the judgment of the High Court cannot be sustained."**

11.2. A coordinate Bench of this Court in the case of **AMREEN v. COMMISSIONER OF POLICE**³, follows the judgment of the Apex Court in the case of **KAMLESHKUMAR ISHWARDAS PATEL** (*supra*) holds as follows:

" "

20. It is the contention of the petitioner that the detaining authority should have apprised him to make representation to the Central Government seeking revocation of the same under Section 12 of the Act.

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 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 detinue is the main affected person in the matter. Only if the detinue is apprised by State Government making of such a report to the Central Government, he gets an opportunity

³ 2025 SCC OnLine Kar.20389

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 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.***"

11.2.1. The co-ordinate Bench of this Court in the afore-quoted judgment holds that the Detaining Authority is required to communicate to the detenu regarding his right to make a representation seeking revocation or modification of the detention order passed by the State Government.

11.3. The High Court of Manipur in identical circumstances in the case of **WAHENGBAM BIMAL MEITEI v. DISTRICT MAGISTRATE, IMPHAL WEST DISTRICT**⁴, holds as follows:

" "

15. This takes this Court to the second point which turns on the detaining authority not having informed the detenu about his right to make a representation to the Central Government. The reason as to why Central Government is one of the entities which should consider a representation is owing to Section 14 of NSA about which there is allusion and elaboration elsewhere supra in this order. As regards non-communication to detenu about his right to make a representation to Central Government also, there is no disputation that the grounds of detention does not mention about detenu's right to make a representation to Central Government. All that the State contends is the Central Government *vide* letter dated 11-3-2026 informed the State Government that the detaining authority has to inform the detenu about his right to make a representation to the Central Government and pursuant to this letter, on 12-3-2026, the detenu was informed about his right to make a representation to the Central Government. In this regard, we revert to the declaration of law made in *Kamleshkumar*. In *Kamleshkumar*, Supreme Court made it clear that Article 22(5) imposes a dual obligation on the detaining authority. While one obligation is to communicate to the detenu the grounds as soon as the same is made, the second obligation is to afford the person detained "earliest opportunity" of making a representation against the order of detention. In this case, the detention order was made on 20-2-2026, grounds were drawn up on 23-2-2026 and served on the detenu on 24-2-2026 but the detenu was admittedly

⁴ 2026 SCC OnLine Mani 239

informed about his right to make a representation to the Central Government only on 12-3-2026 that too after the Central Government alerted the State Government/R-1 that R-1 has a duty to inform the detenu that he has a right to make a representation to the Central Government. Therefore, the detenu has been deprived of "earliest opportunity" which Hon'ble Constitution Bench in *Kamleshkumar* has held to be a principle enshrined in Article 22(5). We respectfully follow *Kamleshkumar* and hold that the second obligation of the State has not been discharged in the case at hand, this vitiates the impugned preventive detention order and the impugned preventive detention order is liable to be dislodged on this ground also.

16. This Court also respectfully follows the principle in *Jaseela Shaji case being Jaseela Shaji v. Union of India*, (2024) 9 SCC 53. In *Jaseela Shaji case* also, Supreme Court reiterated the twofold obligation on the detaining authority vide Article 22(5) i.e. the obligation to communicate the grounds as early as possible and also afford earliest opportunity to the detenu for making a representation. *Jaseela Shaji case* also arises under the COFEPOSA. Relevant paragraph in *Jaseela Shaji* is para 24 and the same reads as follows:

'24. It can thus be seen that this Court in M. Ahamedkutty, in unequivocal terms, has held that the constitutional requirements under Article 22(5) of the Constitution of India are twofold viz.: (1) the detaining authority must, as soon as practicable, after the detention communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention. It has further been held that the right is to make an effective representation and when some documents are referred to or relied on in the grounds of detention, without copies of such documents, the grounds of detention would not be complete. In unequivocal terms, it has been held that the detenu has the right to be furnished with the grounds of detention along with the documents so referred to or relied on. It has been held that failure or even delay in furnishing

those documents would amount to denial of the right to make an effective representation.”

(Emphasis supplied at each instance)

11.3.1. The High Court of Manipur in the afore-quoted judgment, following the exposition of law in **KAMLESHKUMAR ISHWARDAS PATEL** *supra*, holds that Article 22(5) of the Constitution of India casts a dual and corresponding obligation upon the Detaining Authority. The first is to communicate to the detenu, with the expedition constitutionally mandated, the grounds on which the order of detention has been founded; the second, and equally sacrosanct, is to afford to the detenu the earliest opportunity of making an effective representation against such order. The two obligations travel together. Communication of the grounds without communication of an effective avenue to assail the detention would render the constitutional safeguard truncated and illusory.

11.4. On a blend of the afore-quoted judgments of the Apex Court and those rendered by the coordinate Benches of this Court, particularly the judgment in AMREEN *supra*,

which arose in circumstances substantially identical to those obtaining in the case at hand, the position in law emerges with unmistakable clarity. Where the Central Government is statutorily clothed with the power to revoke an order of preventive detention, the corresponding right of the detenu to make a representation before that Authority cannot remain concealed from him. If the Detaining Authority fails to communicate to the detenu his right to make such a representation to the Central Government seeking revocation of the order of detention, the failure is not a mere procedural aberration capable of being brushed aside as inconsequential. It cuts at the very root of the constitutional safeguard engrafted under Article 22(5) of the Constitution of India and renders the continued detention constitutionally vulnerable.

12. The circumstance that the case of the detenu was thereafter placed before the Advisory Board would not cure the constitutional infirmity. Consideration by the Advisory Board and the right of the detenu to make a representation

to the Central Government operate in their respective spheres. One cannot be employed as a substitute for the other. A constitutional safeguard denied at the stage when it ought to have been made available cannot be resurrected by pointing to a subsequent procedural event. The wrong lies in the deprivation of an effective opportunity at the appropriate time, and that wrong cannot be washed away merely because the detention subsequently travelled through the portals of the Advisory Board. Therefore, on this score alone, the order of detention becomes vulnerable.

13. There is yet another circumstance of significance which cannot be lost sight of. It is not in dispute that the detenu had been enlarged on **regular bail after consideration of the rigours of Section 37 of the NDPS Act.** It is equally undisputed that, after such enlargement, there is no allegation that the detenu has breached any condition of bail, attempted to flee from justice, tampered with evidence, intimidated witnesses or otherwise misused the liberty granted to him by the competent Court. Preventive detention cannot become a convenient substitute for

cancellation of bail, nor can the extraordinary power of detention be invoked as a device to neutralise or circumvent an order of a competent Court granting liberty to an accused.

14. The grant of bail does not, by itself, create an impregnable shield against preventive detention. But where a person already stands enlarged on bail, the Detaining Authority must demonstrate, from cogent and proximate material, a compelling necessity for nevertheless invoking the extraordinary jurisdiction of preventive detention. There must be material indicative of a real and imminent propensity to indulge again in prejudicial activity; the subjective satisfaction cannot rest upon the mere existence of the criminal case which had already been considered by the Court while granting bail. Preventive detention looks to the future. It cannot be fashioned into an additional punishment for the past.

15. It therefore becomes imperative to examine whether the order impugned is truly founded upon a compelling preventive necessity or whether preventive detention has been employed

merely to achieve indirectly what the ordinary criminal process could not achieve after the detenu secured his liberty through an order of bail. For such examination, the reasons that animated the Detaining Authority and the order of detention itself require to be noticed.

16. The order of detention reads as follows:

"No.Crime/Misc/64/NR/2026

Date:03-07-2026.

DETENTION ORDER

Whereas I, Sandeep Patil, IPS, Inspector General of Police, Northern Range, Belagavi, specially empowered under Section 3(1) of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (as amended) am satisfied that the person known as to **Raju S/o Shivaji Kale, age 47 years, Caste: Hindu Pardhi @ Harnashikari, resident of ward No.10 Settlement Colony, Taluk and District, Bagalkote** is involved in illegal activities such as possession, transportation, supply and sale of narcotic drugs. You are a habitual drug peddler committing offences punishable under NDPS Act 1988. In order to prevent you from getting involved in illicit traffic of narcotic drugs & psychotropic substances in future, it is necessary to issue this order and place you under preventive custody as per the provisions of PIT-NDPS Act.

Now, therefore, in exercise of the powers conferred by Section 3(1) of the Prevention of Illicit traffic in narcotic drugs and psychotropic substances Act, 1988 (as amended) read with Government Notification **No. HD 01 PND 2026, dated 12-05-2026**, I hereby, direct that **Raju S/o Shivaji Kale, age 47 years, Caste: Hindu Pardhi @ Harnashikari, resident of ward No.10, Settlement Colony, Taluk and District, Bagalkote**, habitual offender of narcotic drugs possession,

transportation, supply and sale, be detained in Central Prison, Hindalaga, Belagavi. The grounds for detention in Kannada along with English version translated copy are enclosed herewith.

This order is issued under my signature and seal on this **3rd day of July, 2026.**

Sd/-
Sandeep Patil, IPS,
Inspector General of Police,
Northern Range, Belagavi.

To

Raju S/o Shivaji Kale, Age 47 years, Caste: Hindu Pardhi @ Harnashikari, resident of ward No.10 Settlement Colony, Taluk and District: Bagalkote.

Through:

The Police Inspector, Bagalkote Town Police Station, Bagalkote District (in duplicate) for execution. PI should execute the original detention order and the grounds of detention to the detinue and obtain acknowledgment on the duplicate copy with his signature, date and time. PI should submit the acknowledgment copy with his report mentioning the date and time of execution of the detention order and the grounds of detention on the detinue.

Copy to:

1. Superintendent of Police, Bagalkote District;
2. Chief Superintendent, Central Prison, Hindalaga, Belagavi;
3. Deputy Superintendent of Police, Bagalkote SDPO, Bagalkote District.

Sd/-
Sandeep Patil, IPS,
Inspector General of Police,
Northern Range, Belagavi."

16.1. The reason for detention is as follows:

"No.: Crime/Misc/64/NR/2026 Date:03-07-2026.

Reasons for Detention

The reasons considered for issuing the detention order No. Crime/Misc/64/NR/2026, dated:03/07/2026 pertaining to Raju S/o Shivaji Kale, age 47 years, Caste: Hindu Pardhi @ Harnashikari, resident of ward No.10 Settlement Colony, Bagalkote, Taluk and District, Bagalkote are as follows:

The Police Inspector, Bagalkote Town Police Station, Bagalkote District has submitted proposal through the Deputy Superintendent of Police, Bagalkote Sub-Division and the Superintendent of Police, Bagalkote District, seeking detention under Section 3(1) PIT NDPS Act, 1988. The said proposal has been verified thoroughly and found that the following cases have been registered against you. The facts in these cases have been considered for detention.

You Raju, son of Shivaji Kale, aged about 47 years, born on 1-06-1979 residing at Settlement Colony under Bagalkote Town Police Station limits along with your wife Mala. Your mother tongue is Kannada language, you can speak Kannada and also the language of the Haranshikari community. You have not received any formal education.

You are an Indian citizen residing at the above address. You are aware that the collection, transportation and sale of narcotics is an illegal act and a punishable offence, yet you have a tendency to repeatedly commit the crime of collecting, transporting and trading in narcotics. Despite knowing that the collection, supply and sale of narcotics are illegal acts and punishable offences, you are frequently involved in collection, supply, transportation and sale of ganja as a business profession for at least last 5 years. While you were supplying/selling narcotics, the police officers have conducted raids and registered the following cases. The following cases registered against you have been considered for your detention.

Sl. No.	Police Station	Cr.No.Sec. of law	Court CC No./Spl.No.	Status
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1.	Bagalkote Town	Cr.No.44/2022 U/s 20(b)(ii)A NDPS Act.	C.C.No. 4208/2022	Convicted on 17.09.2024 (Hon'ble Court imposed Rs.5,000/- Fine)
2.	Bagalkote Town	Cr.No.79/2024 U/s 20(b)(ii) (B) NDPS Act.	SPL.No. 4/2025	PT, Next Date 09-07- 2026 Argument
3.	Bagalkote Town	Cr.No.57/2026 U/s 20(b)(ii)A NDPS Act.	UI	To collect FSL Report

1. Bagalkote Town Police Station Cr.No.44/2022 u/s 20(b)(ii)(A) of the NDPS Act, 1985.

On 1-06-2022 at about 3.40 pm. Credible information was received regarding possession and sale of ganja by you within the limits of Bagalkote Town Police Station. Acting upon the information, police personnel conducted verification and found you were in possession of approximately 164 grams of ganja near your shed situated at Settlement Colony, Bagalkote. The investigation disclosed that the ganja was being possessed for the purpose of unlawful sale and distribution. A case was accordingly registered against you under the provisions of the NDPS Act.

During the course of investigation, legal action was initiated against you. Subsequently, you obtained bail on 12.12.2022 from the competent court and appeared before the Investigating Officer as directed. Upon completion of investigation, charge sheet was filed before the jurisdictional court. The case was tried in C.C. No.4208 of 2022 before the competent court. Upon appreciation of the evidence placed on record, you have been convicted on 17-09-2024 and sentenced to pay a fine of ₹5,000/-.

2. Bagalkote Town Police Station Cr.No.79/2024 U/s 20(b)(ii)(B) of the NDPS Act, 1985.

On 21-11-2024, acting upon credible information regarding illegal sale of ganja, the then Police Inspector of Bagalkote Town Police Station conducted a raid on police road near Kerudi Cancer Hospital towards Bajaj showroom, Bagalkote. During the raid, you found in possession of

approximately 3.171 kilograms of ganja intended for illegal sale and distribution. The quantity recovered and the circumstances surrounding the seizure indicated that you are actively involved in trafficking of narcotic drugs for unlawful monetary gain.

You were apprehended on 22-11-2024 and produced before the jurisdictional court and was thereafter remanded to judicial custody and Hon'ble Court granted you bail on 06-12-2024. Investigation was completed and charge sheet was filed before the competent Court on 22-12-2024.

The case is presently pending trial before the Principal District and Sessions Court, Bagalkote in Sol. Case No.4 of 2025. The matter is pending for the next hearing date 09/07/2026 for argument.

This case assumes considerable importance because it demonstrates that notwithstanding your previous prosecution and conviction, you continued to engage in narcotic trafficking activities. The recovery of a substantially larger quantity of ganja further indicates escalation in your unlawful activities and strengthens the inference that you were actively involved in the illegal trade of narcotic substances.

3. Bagalkote Town Police Station Cr.No.57/2026 U/s 20(b)(ii)(A) of the NDPS Act, 1985.

On 04.06.2026 at about 4.37 PM, police personnel detected illegal sale of ganja near Muchkandi Cross, Bagalkote. During the course of the operation, accused Smt. Mala W/o Raju Kale was found allegedly selling ganja and a case was registered under the NDPS Act.

During investigation Smt. Mala disclosed that the ganja had been supplied by you and that she was selling the same at your instance. Based upon the materials collected during investigation and the statements recorded, your involvement has been proved. Accordingly, notice under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 was issued to you and you were directed to cooperate with the investigation and appear before the Investigating Officer as required.

Investigation in the manner is presently under progress. The case is under investigation for the want of FSL report.

Based on your past 5 years criminal activities you have been arrested many times and sent to judicial custody by the Hon'ble Court. Even after, you have not shown any signs of reformation. You violated bail conditions and orders of Hon'ble Court and continuously you have indulged in drug trafficking and selling which has adversely affected the health of public, youth and has ruined youth wealth of the country and also negative impact on the economy of the country. You do not respect the laws of this land.

Considering your past activities, it is highly likely that you will continue to possess, supply, transport and sell drugs in the future. The cases registered against you and the documents presented before me have confirmed that, if you are not detained as a deterrent due to your serious criminal activities/behaviour, you will continue to collect, supply, transport and sell the drugs systematically.

Considering the aforementioned reasons, it is appropriate to keep you in custody under the PIT NDPS Act. Therefore, in order to prevent you from such activities and in view of protecting the health of the youth of the country, it is appropriate to order preventive detention under Section 3(1) of the PIT NDPS Act.

Considering the aforementioned reasons, I hereby order you, **Raju S/o Shivaji Kale, age 47 years, Caste: Hindu Pardhi @ Harnashikari, resident of ward No.10 Settlement Colony, Bagalkote, Taluk and District, Bagalkote** to be detained under sub-section (1) of section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 for the purpose of controlling the illegal activities, possession, supply, sale and trafficking of narcotic drugs.

You have the opportunity to appeal against your detention order to the Detaining Authority, the Government and the Advisory Board. If you wish to avail your self of this opportunity, you may submit appeal through the Superintendent of the Central Jail where you are detained.

1. If you want to submit your request to the Detaining Authority, submit it to the address of Inspector General of Police, Northern Range, Belagavi.
2. If the request is to be submitted to the Government, to be submitted to the Additional Chief Secretary, Home Department, Government of Karnataka, Vidhana Soudha, Bengaluru.
3. If the request is to be submitted to the Advisory Board, to be submitted to the address of the Chairman, PIT NDPS Act Advisory Board, Karnataka State High Court.

The above factors considered for your detention are stated in terms of Article 22 of Part V of the Constitution of India and Section 3(3) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

Sd/-
Sandeep Patil, IPS
Inspector General of Police,
Northern Range, Belagavi.

To

Raju S/o Shivaji Kale, age 47 years, Caste: Hindu Pardhi @ Harnashikari, resident of ward No.10 Settlement Colony, Bagalkote, Taluk and District: Bagalkote.

Sd/-
Sandeep Patil, IPS
Inspector General of Police,
Northern Range, Belagavi."

The Detaining Authority proceeds on the premise that the detenu has been **habitually engaged in possession, transportation, supply and sale of ganja for about five years,** and that ordinary criminal proceedings have failed to deter him.

Reliance is principally placed upon **three criminal cases**. In Crime No.44/2022, involving about **164 grams of ganja**, the detenu was ultimately convicted on 17-09-2024 and sentenced to a fine of ₹5,000. In Crime No.79/2024, approximately **3.171 kilograms of ganja** was allegedly recovered. The detenu was arrested on 22-11-2024, granted bail on 06-12-2024, and the case is presently pending trial. The Detaining Authority treats the larger quantity involved in this case as demonstrating an **escalation of the alleged narcotic activity despite the earlier prosecution and conviction**. The immediate or proximate circumstance relied upon is **Crime No.57/2026**. In that case, the detenu's wife was allegedly found selling ganja on 04-06-2026 and is stated to have disclosed during investigation that the ganja had been supplied by the detenu and was being sold at his instance.

17. Significantly, the detenu himself was issued notice under Section 35(3) of the BNSS to cooperate with the investigation, and the investigation remains pending awaiting the FSL report. On the cumulative strength of these cases, the Detaining Authority records that earlier arrests, judicial custody and criminal proceedings have

not resulted in reformation and further alleges that the detenu violated bail conditions and continued trafficking in narcotic substances, thereby adversely affecting public health and the youth.

18. But, what bears unmistakable notice is that the prosecution has **never sought cancellation of bail in Crime No.79 of 2024**, which is the only crime presently pending against the detenu. The grounds of detention make a sweeping assertion that the detenu has violated the conditions of bail. If that were indeed so, the law did not leave the prosecution remediless. The prosecution was always at liberty to approach the competent Court, place the alleged violation before it and seek cancellation of bail. Curiously, no such application has ever been filed.

19. This circumstance assumes significance. When the ordinary law provides a specific remedy for dealing with breach of conditions of bail, the extraordinary jurisdiction of preventive detention cannot be invoked as a substitute for that remedy. What the prosecution has not even attempted to achieve by seeking

cancellation of bail cannot be permitted to be achieved through the backdoor of preventive detention.

20. It becomes germane to notice Section 37 of the NDPS Act. It reads as follows:

"37. **Offences to be cognizable and non-bailable.**—
(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

- (a) every offence punishable under this Act shall be cognizable;
- (b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—
 - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
 - (ii) where the Public Prosecutor opposes the application, **the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.**

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail."

The bail granted to the detenu is not an ordinary order of bail. It is one granted in the teeth of **Section 37 of the NDPS Act**, a provision which places stringent fetters upon the power of the Court to enlarge an accused on bail. Where Section 37 is attracted, bail can be granted only upon the Court recording satisfaction, on the material before it, that there are reasonable grounds for believing that the accused is **not guilty of the alleged offence and that he is not likely to commit any offence while on bail**. These are the twin conditions which stand as a statutory threshold before liberty can be granted.

21. Therefore, the order granting regular bail to the detenu cannot be brushed aside as an inconsequential circumstance. It necessarily signifies that the competent Court, while exercising jurisdiction under Section 37 of the NDPS Act, did not find the material before it sufficient to deny liberty to the detenu and, more importantly, was satisfied as to the statutory requirement concerning the likelihood of his committing an offence while on bail. The judicial satisfaction so recorded cannot thereafter be rendered

meaningless by a bald executive assertion that the detenu is likely to indulge in identical activities in future.

22. What is striking in the case at hand is that the bail continues to hold the field. It has neither been challenged nor cancelled. No application alleging misuse of liberty or violation of its conditions has been placed before the competent Court. Yet, the very apprehension which Section 37 of the NDPS Act required the Court to consider while granting bail - **the likelihood of the detenu committing an offence while on bail** - is now projected as the foundation for his preventive detention.

23. The Apex Court in the case of **SUSHANTA KUMAR BANIK v. STATE OF TRIPURA**⁵, holds as follows:

"....

VITAL MATERIAL OR VITAL FACT WITHHELD AND NOT PLACED BY THE SPONSORING AUTHORITY BEFORE THE DETAINING AUTHORITY

23. As noted above, in the case on hand, in both the cases relied upon by the detaining authority for the purpose of preventively detaining the appellant herein, the appellant was already ordered to be released on bail by the concerned Special Court. Indisputably, we do not find any reference of

⁵ 2022 SCC OnLine SC 1333

this fact in the proposal forwarded by the Superintendent of Police, West Tripura District while requesting to process the order of detention. The reason for laying much stress on this aspect of the matter is the fact that the appellant though arrested in connection with the offence under the NDPS Act, 1985, the Special Court, Tripura thought fit to release the appellant on bail despite the rigours of Section 37 of the NDPS Act, 1985. Section 37 of the NDPS Act, 1985 reads thus:

"Section 37. Offences to be cognizable and nonbailable.—(1) *Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974)—*

- (a) *every offence punishable under this Act shall be cognizable;*
- (b) *no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—*
 - (i) *the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
 - (ii) *where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Criminal Procedure Code, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

24. A plain reading of the aforesaid provision would indicate that the accused arrested under the NDPS Act, 1985 can be ordered to be released on bail only if the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. If the appellant herein was

ordered to be released on bail despite the rigours of Section 37 of the NDPS Act, 1985, then the same is suggestive that the Court concerned might not have found any *prima facie* case against him. Had this fact been brought to the notice of the detaining authority, then it would have influenced the mind of the detaining authority one way or the other on the question whether or not to make an order of detention. The State never thought to even challenge the bail orders passed by the special court releasing the appellant on bail.

25. In *Asha Devi v. Additional Chief Secretary to the Government of Gujarat*, 1979 Cri LJ 203, this Court pointed out that:

"... if material or vital facts which would influence the minds of the detaining authority one way or the other on the question whether or not to make the detention order, are not placed before or are not considered by the detaining authority it would vitiate its subjective satisfaction rendering the detention order illegal."

26. In *Sk. Nizamuddin* (supra) this Court observed as under:

"We should have thought that the fact that a criminal case is pending against the person who is sought to be proceeded against by way of preventive detention is a very material circumstance which ought to be placed before the District Magistrate. The circumstance might quite possibly have an impact on his decision whether or not to make an order of detention. It is not altogether unlikely that the District Magistrate may in a given case take the view that since a criminal case is pending against the person sought to be detained, no order of detention should be made for the present, but the criminal case should be allowed to run its full course and only if it fails to result in conviction, then preventive detention should be resorted to. It would be most unfair to the person sought to be detained not to disclose the pendency of a criminal case against him to the District Magistrate."

27. From the above decisions, it emerges that the requisite subjective satisfaction, the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influence his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order.

28. It is clear to our mind that in the case on hand at the time when the detaining authority passed the detention order, this vital fact, namely, that the appellant detenu had been released on bail by the Special Court, Tripura despite the rigours of Section 37 of the NDPS Act, 1985, had not been brought to the notice and on the other hand, this fact was withheld and the detaining authority was given to understand that the trial of those criminal cases was pending.

29. The preventive detention is a serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively detained and, therefore, in prevention detention jurisprudence whatever little safeguards the Constitution and the enactments authorizing such detention provide assume utmost importance and must be strictly adhered to."

23.1. The Apex Court later in the case of **ROSHINI DEVI v. STATE OF TELANGANA**⁶, has held as follows:

"....

⁶ (2026) 7 SCC 302

11. From the aforesaid observations, it is clear that the detaining authority intended to detain the mother of the appellant at any cost. Her conduct during the period from 2016 to 2023 has been kept in mind. If the detaining authority was of the view that the detenu had violated any conditions of bail, steps for cancellation of her liberty could have been taken. That has not been done here.

12. In this regard, we may refer to the decision of this Court in *Ameena Begum v. State of Telangana* [*Ameena Begum v. State of Telangana*, (2023) 9 SCC 587 : (2023) 3 SCC (Cri) 754] , wherein the effect of extraneous factors weighing in the mind of the detaining authority while passing an order of detention has been considered. Incidentally, the order of detention therein was also passed under the 1986 Act. It has been observed in paras 56 to 60 as under : (SCC pp. 623-25)

"56. ... At the same time, the detaining authority ought to ensure that the order does not manifest consideration of extraneous factors. The detaining authority must be cautious and circumspect that no extra or additional word or sentence finds place in the order of detention, which evinces the human factor — his mindset of either acting with personal predilection by invoking the stringent preventive detention laws to avoid or oust judicial scrutiny, given the restrictions of judicial review in such cases, or as an authority charged with the notion of overreaching the courts, chagrined and frustrated by orders granting bail to the detenu despite stiff opposition raised by the State and thereby failing in the attempt to keep the detenu behind bars.

57. What we have expressed above is best exemplified by the observations of the Commissioner in the Detention Order under challenge, which are considered appropriate to be quoted. Therein, the Commissioner inter alia stated as follows:

'The proposed detenu and his associate are notorious offenders and rowdy sheeters....

The proposed detenu was surrendered before the Hon'ble Court in Cr. No. 35/2023 of Falaknuma PS and the Hon'ble Magistrate remanded him to judicial custody, he moved bail petitions in Cr. Nos. 18/2023 of Golconda PS and 35/2023 of Falaknuma PS.

The prosecution has filed suitable counters strongly opposing the grant of bail to him, but the Hon'ble Magistrate granted bail to him in both the cases and ordered for his release. Subsequently, he was released from judicial remand on bail.

As seen from his past criminal history, background and antecedents and also his habitual nature of committing crimes one after the other and his efforts to come out of the prison, I strongly believe that if such a habitual criminal is set free, his activities would not be safe to the society and there is an imminent possibility of his committing similar offences by violating the bail conditions in one of the cases, which would be detrimental to public order, unless he is preventively detained from doing so by an appropriate order of detention.'

58. With respect to the stage of proceedings in the offences which form its basis, the Detention Order states that despite being contested by the State, bail has been granted to the detenu in Crimes Nos. 4 and 5. Insofar as grant of bail to the detenu is concerned, the Commissioner states that:

'I strongly believe that if such a habitual criminal is set free his activities would not be safe to the society and there is an imminent possibility of his committing similar offences by violating the bail conditions in one of the cases, which would be detrimental to public order, unless he is preventively detained from doing so by an appropriate order of detention.'

59. We are of the opinion that the aforesaid excerpts from the Detention Order lay bare the Commissioner's attempt to transgress his jurisdiction and to pass an order of detention, which cannot be construed as an order validly made under the Act. The quoted observations are reflective of the intention to

detain the detenu at any cost without resorting to due procedure. It is neither the case of the respondents that the detenu had not complied with the terms of the notice issued under Section 41-ACrPC, nor has it been alleged that the conditions of bail had been violated by the detenu. It is pertinent to note that in the three criminal proceedings where the detenu had been released on bail, no applications for cancellation of bail had been moved by the State. In the light of the same, the provisions of the Act, which is an extraordinary statute, should not have been resorted to when ordinary criminal law provided sufficient means to address the apprehensions leading to the impugned Detention Order. There may have existed sufficient grounds to appeal against the bail orders, but the circumstances did not warrant the circumvention of ordinary criminal procedure to resort to an extraordinary measure of the law of preventive detention.

60. In *Vijay Narain Singh v. State of Bihar* [*Vijay Narain Singh v. State of Bihar*, (1984) 3 SCC 14: 1984 SCC (Cri) 361], Hon'ble E.S. Venkataramiah, J. (as the Chief Justice then was) observed: (SCC pp. 35-36, para 32)

'32. ... It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. *Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law.* The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. *When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court.'*"

(emphasis in original and supplied)

13. Thus, mere apprehension on the part of the detaining authority that in the event of the detenu being released on bail, she was likely to indulge in similar crimes that would be prejudicial to maintenance of public order would not be a sufficient ground to order her preventive detention.

14. Section 3(1) of the 1986 Act enables the Government, if it is satisfied that a drug offender ought to be prevented from acting in any manner prejudicial to the maintenance of public order, to make an order of preventive detention. The expression "acting in any manner prejudicial to the maintenance of public order" has been defined by Section 2(a) of the 1986 Act. As per the Explanation to the said provision, if any of the activities of the person concerned causes or is calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or a section thereof or in case of a grave widespread danger to life or public health is likely to be caused, such power can be exercised.

15. The order of detention does not indicate in what manner the maintenance of public order was either adversely affected or was likely to be adversely affected so as to detain the detenu. Mere reproduction of the expressions mentioned in Section 2(a) of the 1986 Act in the order of detention would not be sufficient. The detention order ought to indicate the recording of subjective satisfaction by the detaining authority in that regard. It is well settled that there is a fine distinction between "law and order" and "public order". Mere registration of three offences by itself would not have any bearing on the maintenance of public order unless there is material to show that the narcotic drug dealt with by the detenu was in fact dangerous to public health under the 1986 Act. This material is found to be missing in the order of detention."

(Emphasis supplied at each instance)

23.2. The Apex Court in the case of **SUSHANTA KUMAR BANIK** *supra* was considering a circumstance where the detenu

had been granted regular bail in one of the criminal cases and the order granting bail continued to hold the field, without being cancelled. The Apex Court reiterated that preventive detention is a serious invasion upon personal liberty and, therefore, every exercise of such extraordinary power must be scrutinised with meticulous care. They must, therefore, be adhered to with scrupulous exactitude. The rights conferred upon the detenu are not ornamental formalities; they are constitutional imperatives.

23.3. The principle assumes greater significance in the light of the judgment of the Apex Court in the case of **ROSHINI DEVI**. The Apex Court holds that where the Detaining Authority is of the view that the detenu has violated the conditions upon which bail was granted, the course known to law is to initiate proceedings seeking cancellation of such bail. A mere apprehension entertained by the Detaining Authority that, upon being at liberty, the detenu may again indulge in similar offences and thereby act prejudicially cannot, without something more, furnish sufficient justification for resorting to preventive detention.

24. The principle fits the facts of the case at hand on all fours. The detenu has been granted regular bail; the order granting bail continues to subsist; no application seeking cancellation of bail has been filed; and no competent Court has recorded that the detenu has misused the liberty granted to him. More importantly, the bail is one granted after traversing the statutory rigour of Section 37 of the NDPS Act. If the prosecution genuinely believed that the detenu had violated the conditions of bail, the doors of the competent Court were always open for seeking cancellation of that liberty. What could have been urged before the Court for cancellation of bail cannot be permitted to metamorphose into a ground for preventive detention merely because the executive apprehends repetition of similar activity.

25. In the light of the admitted fact that the detenu was not informed of his right to make a representation to the Central Government seeking revocation of the order of detention. The failure strikes at the safeguard guaranteed under **Article 22(5) of the Constitution of India**. Consideration of the detention by the

Advisory Board cannot cure that defect, for one constitutional or statutory safeguard cannot become a substitute for another.

26. Preventive detention cannot be converted into a **parallel mechanism for cancellation of bail**, nor can subjective satisfaction of the executive be permitted to become a substitute for recourse to the ordinary remedies available under criminal law. Thus, the impugned detention suffers from infirmity on more than one front. The cumulative effect cannot be countenanced in law. Hence, the following:

ORDER

- (i) Writ Petition is **allowed**.
- (ii) The detention order bearing No.Crime/Misc/64/NR/2026 dated 03-07-2026, Annexure-A passed by the 2nd respondent is hereby quashed.
- (iii) Writ of *Habeas Corpus* issues to the 6th respondent to release the detainee - Raju Kale, forthwith.

- (iv) Registry is directed to communicate the operative portion of the order to the 6th respondent, forthwith.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

**Sd/-
(HEMA KULKARNI)
JUDGE**

NVJ