

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

**HCP No. 234/2025**

**Reserved on: 30.04.2026**

**Pronounced on: 05.05.2026**

**Uploaded on: \_\_\_\_\_**

**Whether the operative part or full judgment is pronounced: Full**

**Tariq Ahmad Rah (35 years)**  
**S/O Gh. Hassan Rah**  
**(Through his wife Roozy Jan)**  
**R/O Gundnowroz Bijbehara**  
**District Anantnag.**

...Petitioner(s)

Through: Adv. Mukhtar Ahmad Makroo.  
Adv. Shokiya Rashid.  
Adv. Syed Faheem Andrabi.

**Vs.**

**1. Union Territory of J&K through**  
**Principal Secretary to Govt.**  
**Home Department,**  
**Civil Sectt. Srinagar.**

**2. District Magistrate, Anantnag.**

...Respondent(s)

Through: GA Ilyas Laway.

**CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE**

**JUDGMENT**

1. In exercise of powers under **Section 8 of the Jammu & Kashmir Public Safety Act, 1978** (for short 'the Act'), respondent No.2 - District Magistrate Anantnag (for short 'detaining authority') passed Detention Order No. **23/DMA/PSA/DET/2025** dated **16.05.2025** (for short 'impugned order'), in terms whereof the petitioner Tariq Ahmad Rah (for short 'the detenué') was ordered to be detained under the Act in

order to deter him from acting in any manner prejudicial to the maintenance of 'Public Order' in the UT of J&K.

2. The detenu through the medium of this petition has challenged his detention on the grounds, *inter alia*, that the allegations leveled in the grounds of detention are vague, non-existent, as such, no prudent man can make a representation against such allegations and passing of detention on such grounds is unjustified and unreasonable; that the detenu was arrested by Bijbehara Police in the cases registered as FIR No.09/2025 under section 420 IPC and FIR No.11/2025 under sections 420 and 506 IPC without any specific reason, however, he was granted bail in the said cases; that the detenu was detained under the provisions of Public Safety Act vide impugned detention order without throwing challenge to the bail order granted in aforesaid two FIRs; that the detenu submitted a representation to the detaining authority as also to the Government for his release, pleading that he is a law abiding citizen and has not committed any act which warrants his detention under the provisions of PSA; that neither representation filed by the detenu was considered nor was he produced before the Advisory Board for providing him an opportunity of being heard so that he could prove his innocence; that the relevant material has not been furnished to the detenu and whatever material was furnished to him, it was not possible to make a purposeful representation, thus, the right of the detenu under Article 22 of the Constitution stands violated; that the detenu has filed representation, post-detention, but the same has not been considered till date; that because of non-consideration of his representation, the detention order slapped upon him is liable to be quashed.

3. Respondents have filed their reply/counter affidavit, wherein it is stated that the order of detention was passed by the detaining authority after being satisfied on the basis of the material available including the dossier submitted by Senior Superintendent of Police Anantnag, that it was necessary with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of Public Order, to place the detenu under preventive detention; that the detention of the detenu has been ordered strictly in accordance with the provisions of the Act and the procedural safeguards prescribed under the provisions of the Act and the rights guaranteed to the detenu under the Constitution have strictly been followed in the instant case; that the grounds of detention transpire the activities of the detenu which, on the face of them, are highly prejudicial to the maintenance of Public Order of the UT of J&K, therefore, there was no option left to the detaining authority but to order detention of the detenu under the Act.
4. Heard learned counsel for the parties perused the detention record as made available and considered the same.
5. Learned counsel for the petitioner argued that the representation on behalf of the detenu had been submitted to detaining authority as well as to the Government. It is further argued that despite filing of representation, post-detention, respondents except mentioning that the detenu was also informed about his right to submit representation against his detention, has not responded as to whether any representation was filed and how the same was dealt with.
6. From the perusal of the detention record and which is also evident from the pleadings of the respondents that representation submitted on behalf of the detenu has not been considered by them so far.

7. The detenu through his wife namely Roozy Jan had submitted representation dated 25.06.2025 against his detention to the respondent No.1-Government of J&K through Principal Secretary Home Department through registered postal service on 25.06.2025 and respondent No.2-District Magistrate Anantnag in its office against proper receipt. Copies of the representation as well as receipts thereof have been placed on record as annexure IV along-with petition. Admittedly, as is evident from the copy of representation and receipts thereof, placed on file, the detenu had filed the representation against his detention to the Government of J&K through Principal Secretary to Govt. Home Department and Detaining authority, however, the same has not been contested by the respondents in their response. As such, this Court is left with no option but to accept the stand of the detenu that he has moved representation against his detention, but the same has not been considered.

8. **Article 22(5)** of the Constitution of India, casts legal obligation on the Government to consider the detenu's representation as early as possible. It is obligatory for the detaining Authority or the Government, as the case may be, to consider the representation of the detenu and pass appropriate orders thereon. There should be no slackness, indifference and callous attitude in consideration of the representation of a person who is detained. Even unexplained delay would render the continued detention of the detenu as illegal. Every day delay in dealing with the representation has to be explained and the explanation offered must be reasonably indicating that there was no slackness or indifference.

9. Hon'ble Supreme Court in the case "**Tara Chand vs State of Rajasthan & Ors., 1980 (2) SCC 321**" has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal. The Supreme Court in another case "**Dr. Rahmatullah vs State of Bihar, AIR 1981 SC 2069**" has held that clause (5) of Article 22 of the Constitution of India, by necessary implication, guarantees the constitutional right to a proper consideration of the representation. The obligation of the Government to afford to the detenu an opportunity to make representation is distinct from the Government's obligation to refer the case of the detenu along with representation to the Advisory Board to enable it to form its opinion and send a report to the Government. **Para-4** of the said judgment will be advantageous to be quoted hereunder:-

*"4. The normal rule of law is that when a person commits an offence or a number of offences, he should be prosecuted and punished in accordance with the normal appropriate criminal law; but if he is sought to be detained under any of the preventive detention laws as may often be necessary to prevent further commission of such offences, then the provisions of Article 22(5) must be complied with. Sub-Article (5) of Article 22 reads:*

*'When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.'*

*This Sub-Article provides, inter alia, that the detaining authority shall as soon as may be communicate the grounds of detention and shall afford him the earliest opportunity of making a representation against the order. The opportunity of making a representation is not for nothing. The representation, if any, submitted by the detenu is meant for*

*consideration by the Appropriate Authority without any unreasonable delay, as it involves the liberty of a citizen guaranteed by Article 19 of the Constitution.*

*The non-consideration or an unreasonably belated consideration of the representation tantamount to non-compliance of Sub-Article (5) of Article 22 of the Constitution.”*

The Supreme Court in the case “**Kundanbhai Dulabhai Sheikh vs. District Magistrate Ahmedabad & Ors. 1996 CrL.J 1981**” quashed the detention order only on the ground of delay in disposing of the representation.

10. Therefore, it is implicit in clause (5) of Article 22 of the Constitution that the Government, while discharging its duty is under legal obligation to consider the representation, which in the case of detinue, has not been considered despite having been filed in the month of June 2025. The contention of the learned counsel for the respondents that the delayed representation had been filed on behalf of detinue, when the Detaining authority, after submission of its record to the Government for confirmation of the detention order had become ‘functus officio’ as such, detaining authority could not consider the same. Detaining authority initially denying in its counter affidavit that any representation was moved and then arguing that it had lost jurisdiction to consider the same, cannot absolve itself of its legal obligation, for consideration of the representation, as detention order passed by it, was to be confirmed/approved or rescinded by the Government. Non-consideration of representation vitiates the detention order. The impugned detention order is, thus, liable to be set aside on this ground alone.

11. The detenu was detained and lodged at District Jail Udhampur in execution of detention order dated 16.05.2025 which was approved by the Government. The petitioner has been detained without specifying his activities, except of that of FIR No. 09/2025 and FIR No. 11/2025 registered against him at Police Station Bijbehara for cheating etc. which cannot be made basis for detention in prevention. No other activity has been shown in the grounds of detention except general and vague accusations showing him as cheating gullible innocent public through fraudulent means and having long history of involvement in such cases.
12. Viewed thus, in the context what has been observed, analyzed and considered in the preceding paras, the instant petition is allowed and consequently the impugned order of detention bearing No. **23/DMA/PSA/DET/2025** dated **16.05.2025**, is quashed. Detenu namely Tariq Ahmad Rah S/O Gh. Hassan Rah R/O Gundnowroz Bijbehara, Anantnag, is directed to be released forthwith, if not required in connection with any other criminal case(s) pending against him.
13. Scanned detention record, as produced, be returned back to the learned counsel for the respondents.
14. Petition is, **disposed of**, accordingly alongwith pending application(s).

**(M. A. CHOWDHARY)**  
**JUDGE**

Srinagar  
May 05, 2026  
*Muzammil. Q*

***Whether the order is reportable:      Yes / No***