HC-KAR

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 30TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV

AND

THE HON'BLE MRS JUSTICE K.G.SHANTHI

HABEAS CORPUS NO. 100010 OF 2026

BETWEEN:

SMT. NILOFER
W/O. MEHBOOB DAULA,
AGE: 32 YEARS,
OCC: HOUSEHOLD,
R./O H NO. 35,
WARD NO.10, RANITOTA,
BALLARI 583 101.

...PETITIONER

(BY SRI. R. M. JAVED AND SRI. ANWAR BASHA, ADVOCATES)

Digitally signed by SAMREEN AYUB DESHNUR
Location: High Court of Karnataka, Dharwad Bench

AND:

1. STATE OF KARNATAKA
   REP BY SECRETARY
   DEPT. OF HOME (LAW AND ORDER)
   AMBEDKAR VEEDHI,
   VIDHANA SOUDHA,
   BENGALURU-560001.

2. INSPECTOR GENERAL OF POLICE
   BALLARI RANGE, BALLARI-583 201

3. SUPERINTENDENT OF POLICE
   BALLARI DIST,
   BALLARI 583 201.

4. POLICE INSPECTOR
BRUCEPET P. S.
BALLARI-583 201.

5. SUPERINTENDENT
CENTRAL PRISON,
BALLARI-583 101.

…RESPONDENTS

(BY SRI. PRAVEEN K. UPPAR, AGA FOR R1 TO R5)

THIS WPHC IS FILED UNDER ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA, PRAYING TO:

a) ISSUE A WRIT ORDER OR DIRECTION IN THE NATURE OF CERTIORARI AND QUASH THE ORDER PASSED BY RESPONDENT NO.2 IN NO.24/CB/BVA/2026 DT. 12.02.2026 (ANNEXURE-A) AND

a) ISSUE A WRIT ORDER OR DIRECTION IN THE NATURE OF CERTIORARI AND QUASH THE ORDER PASSED BY RESPONDENT NO.2 IN NO.24/CB/BV/2026 DT. 12.02.2026 (ANNEXURE-B) AND THEREBY THE HUSBAND OF PETITIONER I.E, DAULA @ S. DAULA @ MAHABOOB DAULA S/O. MABUBASHA BE SET AT LIBERTY AND

b) GRANT SUCH OTHER RELIEF/S THAT THIS HON'BLE COURT DEEMS FIT, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV
AND
HON'BLE MRS JUSTICE K.G.SHANTHI

ORAL ORDER

(PER: HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV)

1. The present petition has been filed seeking quashing of the order of detention dated 12.02.2026 at Annexure A. The petitioner has sought the release of her husband, who has been detained pursuant to the said order. Annexure-A is the order of detention dated 12.02.2026, while the grounds of detention are contained in Annexure-B. It is noticed that, in terms of Annexure-A, the order of detention dated 12.02.2026 has been passed. The Advisory Committee has also expressed its opinion and the opinion of the Advisory Committee dated 27.04.2026 is produced along with the proceedings.

2. The limited facts relevant for the purpose of adjudication of the present petition are that Respondent No. 2 is stated to have passed the detention order against the husband of the petitioner. Such order has been passed under the provisions of the Prevention of Illicit

Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as the 'Act').

3. Though various contentions have been raised by both sides, the legal contention urged by the petitioner is that the proceedings of detention is vitiated due to non-consideration of the petitioner's representation expeditiously. Reliance is placed on the judgment of the Apex Court in **Jayanarayan Sukul V/s State of West Bengal*, AIR 1970 SC 675*** and it is contended that non-consideration of the representation within a reasonable time would be fatal and would vitiate the proceedings of detention.

4. It is to be noticed that the case of the petitioner is that, soon after the order of detention was passed, the petitioner sought various documents, which were furnished only after collecting a sum of ₹1,884/- on 13.03.2026 towards the cost of furnishing such documents. According to the petitioner, this itself prevented her from making an effective representation. It

is further submitted that the representation on the basis of available material was made to the competent authority on 24.02.2026, and a copy of the postal acknowledgment is enclosed. It is submitted that the representation on the basis of available material was made to all the authorities and, in fact, the petitioner was constrained to make the representation without the benefit of the documents sought through an RTI application, which were received only in the month of March 2026. The postal acknowledgment is enclosed at the relevant annexure.

5. Without entering into the various contentions on merits or the grounds of detention, the limited legal question that requires consideration is whether non-consideration of the petitioner's representation expeditiously would render the continued detention impermissible and vitiate the proceedings?

6. The representation made by the petitioner in the month of February has been considered by the authority only on 27.06.2026, and a copy of the order passed

thereon has been placed on record. It is relevant to notice that the report of the Advisory Committee constituted under Section 9 of the Act was submitted on 27.04.2026.

7. It is essential to note that the right to make a representation is a constitutional right under Article 22(5) of the Constitution of India and forms part of the fundamental rights guaranteed thereunder. Article 22(5) of the Constitution of India reads as follows:

> *"22(5) When any person is detained in pursuance of an order made under any law providing for preventing 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."*

8. The Apex Court, in the Constitution Bench judgment in ***Jayanarayan Sukul'***s case (referred to supra), has made certain observations. The relevant observations contained in paragraph Nos. 16 to 20 read as follows:

"16. In view of the fact that there is a fundamental right of the detenu to have the representation considered by the, appropriate Government such right will be rendered meaningless if the Government will not deal with the matter expeditiously but at its own will and convenience. In the case of Khairul Haque W.P. No.246 of 1969, D/-10-9-1969 (reported in 1969-2 SCWR 529) (supra) the petitioner made a representation on 23rd June, 1969. The Advisory Board made its report in 11th August, 1969 on 12th August, 1969, the Governor confirmed the order of detention. On 29th August, 1969 the Governor rejected the petitioners representation. The delay was not explained in the case. The disposal of the representation by the Government after the receipt of the Report of the Advisory Board was found by this Court to raise a doubt there whether the Government considered the representation in an independent manner. This independent consideration by the appropriate Government is implicit in Article 22 of the Constitution.

17. In the case of Durga Show, W. Ps. Nos. 198, 205 of 1969, D/- 2-9-1969 = (reported in 1969-2 SCWR 439) three petitioners were set at liberty. There the representation of one detenu was received on 29th May, 1969, and was rejected on 11th August. In another case the representation of the detenu was received on 18th June, 1969 and was rejected by the Government on 16th August, 1969. In the third case the representation of the detenu was received on 28th June, 1969 and was rejected on 14th July, 1969. In the case of Durga Show,

W. P. Nos. 198, 205, 206 of 1969, D/- 2-9-1969 = (reported in 1969-2 SCWR 439) (supra) the opinion of this Court in the case of Sk. Abdul Karim, W. P. No. 327 of 1968, D/- 31-1-1969 = (AIR 1969 SC 1028) (supra) was re-stated by emphasising the the legal obligation of the appropriate Government to consider the representation of the detenu "as soon as it is received by it".

18. It is established beyond any measure of doubt that the appropriate authority is bound to consider the representation of the detenu as early as possible. The appropriate Government itself is bound to consider the representation as expeditiously as possible. The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities.

19. No definite time can be laid down within which a representation of a detenu should be dealt with save and except that it is a constitutional right of a detenu to have his representation considered as expeditiously as possible. It will depend upon the facts and circumstances of each case whether the appropriate Government has disposed of the case as expeditiously

as possible for otherwise in the words of Shelat. J. who spoke for this Court in the case of Khairul Haque, W. P. No. 246 of 1969, D/-10-9-1969 = (reported in 1969-2 SCWR 529) (supra) "it is obvious that the obligation to furnish the earlier opportunity to make a representation loses both its purpose and meaning".

20. Broadly stated, four principles are to be followed in regard to representation of detenus. First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board.

including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It in true that no hard and fast rule can be laid down as to measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, 'the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the Government will not sent the matter to the Advisory Board. If however the Government will not release the detenu the Government will sent the case along with

> the detenu's representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of release of the detenu the Government will release the detenu. If the Advisory Board will express any opinion against the release of the detenu the Government may still exercise the power to release the detenu."

9. The legal position of deciding expeditiously on the representation of the detenue and consequence of unexplained delay in considering the same has been reiterated by a constitution bench of this Court in the case of ***K.M.Abdulla Kunchi and B.L.Abdul Khader V/s. Union of India and others, State of Karnataka and others (1991) 1 SCC 476*** at para 12 which reads as follows:

> *"12. 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 representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in Clause (5) of Article 22 reflects the concern of the*

Framers that the representation 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 facts 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 representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. This has been emphasised and re-emphasised by a series of decisions of this Court. (See: Jayanarayan Sukul v. State of W.B.[10.], Frances Coralie Mullin v. W.C. Khambra[11.], Rama Dhondu Borade v. V.K. Saraf, Commissioner of Police[12] and Aslam Ahmed Zahire Ahmed Shaik v. Union of India[13].)"

10. The representation dated 24.02.2026 has been considered and orders have been passed by the authority on 27.06.2026. On perusal of the order rejecting the representation, though the representation has been rejected, no reasons are forthcoming, nor is any factual basis set out explaining the delayed consideration. Such

consideration was after the report of advisory committee on 27.04.2026.

11. No doubt, the learned Additional Government Advocate would submit that the consideration of the representation was delayed as the file had gone back to the Station House Officer, who forwarded it to the Superintendent of Police belatedly. However, such explanation regarding the movement of the file cannot be accepted, particularly when the representation has been considered only after the report of the Advisory Committee.

12. The Apex Court has emphasized the necessity of expeditious disposal of a representation. In the present case, the report of the Advisory Committee is dated 27.04.2026, whereas the representation has been considered only after the filing of the present petition and during the pendency of these proceedings, more than two months after the report of the Advisory Committee.

13. We also find that it could be stated that there was no independent exercise of mind by the authority, which may have been influenced by the report of the Advisory Board. In light of the unexplained delay in considering the petitioner's representation and taking note of the observations of the Constitution Bench in ***Jayanarayan Sukul'***s as well as ***Sri.K.M.Abdulla Kunhi****'s* case, the present case squarely falls within the category of unexplained delay as contemplated by the Apex Court. Accordingly, noticing the unexplained delay, it is held that the petitioner's fundamental right to an expeditious decision on the representation under Article 22 of the Constitution stands violated. It is held that the continued detention is impermissible and consequently, the order of detention is set aside.

14. All other contentions are kept open. The detenue to be released forthwith and is discharged from detention pursuant to the order of detention at Annexure-A.

15. It is needless to state that liberty is reserved to the State to take appropriate action, if permissible in law.

Sd/-
(S.SUNIL DUTT YADAV)
JUDGE

Sd/-
(K.G.SHANTHI)
JUDGE

VB
List No.: 2 Sl No.: 1