



2026:AHC:198116-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 1245 of 2026

Lokendra

.....Petitioner(s)

Versus

Union Of India And 3 Others

.....Respondent(s)

Counsel for Petitioner(s) : Ashutosh Ganguli, Masoom Alam
Counsel for Respondent(s) : A.S.G.I., G.A., Shiv Kumar Pal

Court No. - 42

**HON'BLE ATUL SREEDHARAN, J.
HON'BLE ACHAL SACHDEV, J.**

1. Counter affidavit filed today, is taken on record.
2. The petitioner has been detained under the provisions of the PITNDPS Act. The issue before this Court lies within a very narrow compass and that is whether the detenu was informed of his right to file a representation for revocation of the detention order to the detaining authority?
3. Mr. Anoop Trivedi, learned Additional Advocate General appearing on behalf of the State has submitted that the order of detention is fully compliant of the law laid down by the Hon'ble Supreme Court in **Alfiya.A Vs. State of Kerala & Ors., 2026 INSC 810**. In order to appreciate the arguments of the learned Additional Advocate General, reference is made in its entirety to paragraph-2 of the impugned detention order dated 29.01.2026, which reads as under:

"2. यह कि प्रत्यावेदन देना आपका मूल अधिकार है. आप उक्त निरुद्धि आधार के विरुद्ध राज्य सरकार द्वारा गठित मा० परामर्शदात्री परिषद (निरुद्धियां), मा० उच्च न्यायालय, इलाहाबाद, लखनऊ तथा सचिव, भारत सरकार, राजस्व विभाग, वित्त मंत्रालय, नई दिल्ली-110001 एवं

सचिव/ प्रमुख सचिव, गृह विभाग, उत्तर प्रदेश शासन, पांचवा तल, लोक भवन, लखनऊ -226001 को सम्बोधित अपना प्रत्यावेदन, जेल अधीक्षक, जहाँ आप निरुद्ध है, के माध्यम से प्रेषित कर सकते हैं । ”

4. The said paragraph deals with the intimation given to the petitioner with regard to the authorities that he has a right to make the representations to and they are, **firstly** to the Advisory Board constituted by the State Government at the High Court, Allahabad, Lucknow, **secondly**, to the Secretary, Government of India, Department of Revenue, Ministry of Finance and **thirdly**, Secretary/Principal Secretary, Home Department, Government of Uttar Pradesh, Lucknow.

5. Learned Additional Advocate General has referred to paragraph-17 of the judgment passed by the Supreme Court in **Alfiya.A (supra)**, where the Supreme Court held that it is a constitutional mandate of Article 22(5), whereby the authority is under two distinct obligations while making a detention under a preventive detention law and that the second of them, is to afford the detenu the earliest opportunity of making a representation against the order, which according to the Supreme Court, carries a necessary concomitant obligation of the authority to inform the detenu of the persons or bodies to whom he may address his representation. It is relevant to mention here that Alfiya.A's case was also under the PITNDPS Act.

6. Before referring further to the said judgment, it is essential to quote Section 12 of the PITNDPS Act, which reads as under:

"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."

7. Section 21 of the General Clauses Act complements with Section 12 of the PITNDPS Act, which is essentially the power to pass a fresh order of detention against a person whose previous order has been revoked.

8. There is a subtle but discernible difference between **setting aside** an order of detention and a **revocation** of an detention order. While an order passed by the detaining authority may be **set aside** by the **Advisory Board** or by the **Secretary** concerned to the Central Government or the **Secretary** or **Principal Secretary** to the State Government, it is only the detaining authority who passed the order of detention who has a right to **revoke** the order.

9. The difference lies in the effect of an order setting aside an order of detention, and the revocation of a detention order. The Advisory Board consisting of sitting or retired High Court judges and the Secretary to the Government of India who are higher in hierarchy and protocol in comparison to a Secretary or a Principal Secretary to the State Government. A Secretary to the Government of India and the Chief Secretary to a State Government are at s.no. 23 in the order of precedence while the Secretary/Principal Secretary to

the State Government are below the Chief Secretary to the State Government, but who in the scheme of the detention laws has been authorised, like the other two, to set aside an order of detention.

10. The Advisory Board, the Secretary to the Government of India and the Secretary/Principal Secretary to the State Government, have the authority to **set aside** an order of detention. The same is done because the order of detention was passed without jurisdiction, that there was violation of natural justice, arbitrariness and/or procedural infirmity.

11. On the other hand, an order of **revocation** is passed because the original circumstances existing at the time of passing the detention order have changed or that the existence of the order is no longer necessary, and the same is passed by the detaining authority.

12. While an order **setting aside** a detention order by the superior authority would preclude the detaining authority to pass a fresh order of detention on the same set of facts, an order **revoking** a detention order would still authorise the detaining authority to pass a fresh order of detention, maybe on the same set of facts, but on different grounds from the previous order of detention, that has been revoked. The power to proceed afresh after revocation of a detention order is provided explicitly in s. 12 of the PITNDPS Act.

13. Coming back to the **Alfiya.A's** judgment, in paragraph-18, the Supreme Court clearly held in that case that the detenu was not

separately informed that he was entitled to make a representation to the officer, who had passed the order of detention. It further held in that case, that though the detenu had in fact made a representation to the detaining authority, the same did not cure the illegality, as the obligation upon the authority to communicate the right of the detenu to represent to the detaining, could not depend upon whether the detenu independently became aware of it. Such is the strong view taken in favour of personal liberty by the Supreme Court in **Alfiya.A's** case in paragraph-18.

14. Coming back to the factual aspects of the arguments put forth by the learned Additional Advocate General that, the detenu was informed about his right to make a representation to the the Secretary/Chief Secretary, Home Department, Govt. of U.P., who in effect was the detaining authority, the strict requirement of the law as laid down in **Alfiya.A's** judgement was complied with is concerned, this Court, with utmost respect begs to differ.

15. The opinion that the third authority to whom the representation could be made as per paragraph-2 is the detaining authority is incorrect because the third authority is not the detaining authority, but the authority that can **set aside** the order of detention even though, it was the same officer who had passed the order of detention, but was acting in his capacity as the State Government having the authority to **set aside** the order of detention. It is only when the detenu is made aware of his right to represent specifically to the detaining authority, who alone was vested with the right to **revoke** the order of detention, can it be said that the

requirement voiced strongly by the Supreme Court in **Alfiya.A's** judgment, was complied with. That intimation was not given specifically to the detenu in this case regarding the detaining authority, who also happens to be the same officer, acting as the State Government.

16. In all, the detenu ought to have been informed of his right to make the representations to four authorities. Authority No.1 is the Advisory Board, Authority No.2 is Central Government, Authority No. 3 is State Government and **Authority No. 4 is the Detaining Authority**. In this case, the detenu is informed of his right to represent to the Authority No.1,2 and 3 but not to 4.

17. Therefore, this Court is unable to agree with the submissions put forth by the learned Additional Advocate General, that the strict requirements of **Alfiya.A's** judgment were complied with, and holds that the detenu was not specifically informed of his right to represent to the detaining authority.

18. Accordingly, the petition is **allowed** in line with the judgment of the Hon'ble Supreme Court passed in **Alfiya.A (supra)**, impugned order is set aside, and the Petitioner be set at liberty forthwith if not wanted in any other case.

September 21, 2026

Noman

(Achal Sachdev,J.) (Atul Sreedharan,J.)