REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO.362 OF 2019

ANKIT ASHOK JALAN …Petitioner

Versus

UNION OF IDNIA AND ORS. …Respondents

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J U D G M E N T

Uday Umesh Lalit, J.

1. This petition under Article 32 of the Constitution of India prays for quashing of the Detention Orders[1] dated 01.07.2019 and for a direction that the detenues be set at liberty.

2. The facts leading to the filing of this petition, in brief, are as under:

(a) On 01.07.2019, Joint Secretary to the Government of India, specially empowered under Section 3(1) of the COFEPOSA Act[2] passed the Detention Orders after being satisfied that with a view to prevent the

1Nos.PD-12001/34/2019-COFEPOSA and PD-12001/35/2019-COFEPOSA, both dated 01.07.2019, issued by the Respondent No.2 against Shri Ashok Kumar Jalan and Shri Amit Jalan respectively

2The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974

detenues from smuggling goods, abetting the smuggling of goods, and dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, in future, it was necessary to make the said Detentions Orders.

b) The detenues were served with the Detention Orders, the grounds of detention and the relied upon documents on 02.07.2019. The grounds of detention, in para 12, recited as under:-

> "You …….. have the right to represent against your detention to the Detaining Authority, to the Central Government as well as to the Advisory Board. If you wish to avail this right, you should send your representation through the Jail Authorities where you are detained, in the manner indicated below:
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> (a) Representation meant for the Detaining Authority should be addressed to the Joint Secretary (COFEPOSA), Government of India, Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau, 6th Floor, B-Wing, Janpath Bhawan, New Delhi-110001.
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> (b) Representation meant for the Central Government should be addressed to the Director General, Central Economic Intelligence Bureau, Government of India, Ministry of

Finance, Department of Revenue, 6th Floor, B-Wing, Janpath Bhawan, New Delhi-110001.

(c) Representation meant for the Advisory Board should be addressed to the Chairman, COFEPOSA Advisory Board, Delhi High Court, Sher Shah Road, New Delhi-110002.

(c) On 18.07.2019 the cases of the detenues were referred to the Central Advisory Board[3] along with the grounds of detention and relied upon documents.

(d) On 22.07.2019 representation dated 17.07.2019 made on behalf of both the detenues, addressed to the Joint Secretary (COFEPOSA), Government of India, Ministry of Finance, Department of Revenue was received through the Presidency Correctional Home, Alipore, Kolkata. The representation stated *inter alia*:-

"9….(iii) To enable me to make an effective representation at the earliest opportunity, I may please be forthwith provided with-

a) a copy of the Retraction Petition of Shri Anand stated to be relied upon in the grounds of detention;

b) a copy of the pen-drive or CD/DVD of the CCTV footage directed by the CMM to be submitted on 18th

3 The Central Advisory Board, Delhi High Court, New Delhi

June, 2019 may please be provided to me and may please be shown to me on a laptop or any other device.

10. Kindly note that unless the aforesaid prayers are considered expeditiously, I am unable to make my final representation to the Central Government and the Advisory Board, etc. Therefore, the instant representation may please be considered as expeditiously as possible in true spirit of Article 22(5) read with Articles 14 & 21 of the Constitution of India."

(e) On 24.07.2019, the representation was forwarded to the Sponsoring Authority, namely, DRI, Kolkata for its comments which were received on 29.07.2019. Said representation as well as the para-wise comments received from the Sponsoring Authority were forwarded on 31.07.2019 to the Central Advisory Board. The meeting of the Central Advisory Board was scheduled to be held on 02.08.2019.

(f) On 02.08.2019 itself, Writ Petition No.1840 of 2019 preferred on behalf of the detenues was allowed by the High Court[4] on the grounds that when the detenues were in judicial custody and there was no imminent possibility of their release on bail and when not even a bail application was preferred by them, the power of preventive detention ought not to have

4The High Court of Delhi at New Delhi

been exercised; and, that non-placement of relevant material in the form of retraction petition of one Shri Anand and its non-consideration by the Detaining Authority vitiated the Detention Orders. The High Court thus quashed the Detention Orders and directed that the detenues be released forthwith.

(g) In its Meeting dated 02.08.2019, the Central Advisory Board recorded that since the Detention Orders were quashed, there was no possibility of proceeding further in the matter.

(h) The decision of the High Court was challenged in Criminal Appeal No.1746 of 2019 in this Court, which by its Judgment and order dated 22.11.2019 set aside the view taken by the High Court. While allowing the appeal, the detenues were directed to be taken into custody forthwith. The Detaining Authority was thereafter informed by the Jail Superintendent on 27.11.2019 that the detenues were received in custody in pursuance of the decision of this Court.

(i) On 02.12.2019 a direction was issued to process the files of the detenues for reference to the Central Advisory Board. After obtaining appropriate approval, the case was referred to the Central Advisory Board on 05.12.2019 stating *inter alia*:-

> "Keeping in view the judgment dated 03.06.2015 of the Apex Court delivered in Crl.Appeal No.829 of 2015 arising out of SLP(Crl) No.2489 of 2015 – Golam Biswas v. Union of India, the said representations will be considered for disposal by the competent authority only after receipt of opinion of the Hon'ble Board."

3. The instant writ petition was filed on or about 16th December, 2019 challenging the stand taken in the communication dated 05.12.2019 that the representation would be considered only after the receipt of the opinion of the Central Advisory Board. It was submitted that the representation ought to be considered independently by the Detaining Authority and without waiting for the report of the Central Advisory Board; and that the delay in consideration of such representation violated the rights of the detenues guaranteed by the Constitution of India. Soon thereafter, another representation reiterating the stand as aforesaid was made by the Advocate for the detenues on 18.12.2019.

4. On 18.12.2019 notice was issued by this Court, whereafter, an affidavit in reply was filed on behalf of the respondents stating *inter alia*:-

(a) On 06.01.2020 a report was submitted by the Central Advisory Board that there was sufficient cause for the detention of the detenues.

(b) After considering the report of the Central Advisory Board and the other material on record, the Central Government confirmed the Detention Orders vide proceedings dated 14.01.2020.

(c) On the same date i.e. 14.01.2020 the Detaining Authority, namely, Joint Secretary (COFEPOSA) rejected the representations dated 17.07.2019 and 18.12.2019 made on behalf of the detenues.

After referring to the decisions of this court in ***Golam Biswas*** v. ***Union of India and Another***[5] ***and K.M. Abdulla Kunhi and B.L. Abdul Khader v. Union of India and others***[6] it was stated that the representations were considered only after the receipt of the opinion of the Central Advisory Board dated 06.01.2020.

5. We heard Mr. Mukul Rohatgi and Mr. Neeraj Kishan Kaul, learned Senior Advocates in support of the petition and Mr. K.M. Nataraj, learned Advocate Solicitor General for the respondents.

6. The learned Counsel for the petitioner accepted that by the time representation dated 17.07.2019 was received by the Detaining Authority, the matter was referred to the Central Advisory Board and since the

5 (2015) 16 SCC 177
6 (1991) 1 SCC 476

Detention Orders were set aside by the High Court on 02.08.2019, the non-consideration of the representation till 02.08.2019, in the facts of the instant case, would not be of any significance. However, in their submission, after the decision of the High Court was set aside by this Court and the detenues were taken back in custody in November, 2019, the non-consideration of and delay in disposal of said representation was more pronounced and relevant. It was submitted:-

(a) A representation against an order of detention can be made to the Detaining Authority where the detention order has been passed by a specially empowered officer of the Central Government as well as to the Central Government and the Central Advisory Board. Para 12 of the grounds of detention, as extracted earlier, was in keeping with this well accepted principle.

(b) The representation made to the Detaining Authority had to be considered by the Detaining Authority independently. The Detaining Authority was not right in waiting till the receipt of the report of the Central Advisory Board.

(c) The consequential delay on part of the Detaining Authority in considering the representation thus violated the constitutional rights of the detenues.

7. On the other hand, Mr. K.M. Nataraj, learned Additional Solicitor General, for the respondents relied upon the decisions of this Court in ***Golam Biswas***[5] and in ***K.M. Abdulla Kunhi***[6] to submit that while the matter was pending consideration before the Central Advisory Board, the representation in question could not be considered and it could be considered only after the receipt of the report of the Central Advisory Board.

8. In the instant case, the facts are clear that:-

a) The Detaining Authority received a letter on 27.11.2019 that the detenues were received in custody. Thereafter the matter was again referred by the Central Government to the Central Advisory Board on 05.12.2019. The communication shows that it was decided that the representations would be considered only after receipt of the opinion of the Central Advisory Board.

b) The opinion of the Central Advisory Board was submitted on 06.01.2020. On 14.01.2020 the Central Government confirmed the Detention Orders and on the same date the Detaining Authority rejected the representations.

9. Following questions therefore arise:-

i) Whether the Detaining Authority was justified in deferring the consideration of the representation till the receipt of the opinion of the Central Advisory Board?

ii) Whether the Detaining Authority ought to have considered the representation independently and without waiting for the report of the Central Advisory Board?

iii) If the answer to the second question is yes, whether the time taken by the Detaining Authority from 27.11.2019 till 14.01.2020 could be characterised as undue and avoidable delay violating the constitutional rights of the detenues?

10. The learned counsel appearing for the parties placed for our consideration various decisions of this Court touching upon the aforesaid first two questions. We may broadly consider those decisions for answering the questions from two perspectives:-

First, on the issue whether a representation can independently be made to and must be considered by the Detaining Authority, who is a specially empowered officer of the concerned Government.

Secondly, whether, in certain circumstances, the Detaining Authority ought to defer consideration of such representation till the report is received from the Advisory Board.

11. As regards the first issue, following decisions are noteworthy:-

A) In ***Ibrahim Bachu Bafan vs. State of Gujarat and others***[7] a Bench of three Judges of this Court, while considering the scope of Section 11 of the COFEPOSA Act and Section 21 of 1897 Act[8], made following observations:-

> **"7.** … …. The heading of Section 11 is "Revocation of Detention Orders". Sub-section (1) authorises revocation by two authorities, namely, — (*a*) if the order has been made by an officer of a State Government, the State Government or the Central Government may revoke the order; and (*b*) if the order has been made by an officer of the Central Government or by a State Government, revocation is permissible by the Central Government. Sub-section (1) of Section 11 indicates that the power conferred under it in the situations envisaged in Clauses (*a*) and (*b*) is exercisable without prejudice to the provisions of Section 21 of the General Clauses Act. That section provides that a power to issue orders includes a power exercisable in the like manner and subject to the like sanction and conditions, if any, to add, to amend, vary or rescind such orders. Under Section 21 of the General Clauses Act, therefore, the authority making an order of detention would be entitled to revoke that order by rescinding it. We agree with the submission of Mr Jethmalani that the words "without prejudice to the provisions of Section 21 of the General clauses Act 1897" used in Section 11(1) of the Act give

7 (1985) 2 SCC 24
8 The General Clauses Act, 1897

> expression to the legislative intention that without affecting that right which the authority making the order enjoys under Section 21 of the General Clauses Act, an order of detention is also available to be revoked or modified by authorities named in clauses (*a*) and (*b*) of Section 11(1) of the Act. Power conferred under clauses (*a*) and (*b*) of Section 11(1) of the Act could not be exercised by the named authorities under Section 21 of the General Clauses Act as these authorities on whom such power has been conferred under the Act are different from those who made the orders. Therefore, conferment of such power was necessary as Parliament rightly found that Section 21 of the General Clauses Act was not adequate to meet the situation. Thus, while not affecting in any manner and expressly preserving the power under Section 21 of the General Clauses Act of the original authority making the order, power to revoke or modify has been conferred on the named authorities."

It was, thus, accepted that by virtue of Section 21 of 1897 Act, *the authority making an order of detention would be entitled to revoke that order by rescinding it* and that conferment of power under Section 11 of the COFEPOSA Act was done without affecting in any manner and expressly preserving the power under Section 21 of 1897 Act of the original authority making the order.

B) A Bench of two Judges of this Court in ***State of Maharashtra and another vs. Smt. Sushila Mafatlal Shah and others***[9] took

9 (1988) 4 SCC 490

a slightly different view. This Court framed following questions in para 11:-

> **"11.** ……
>
> (*1*) Does an order passed by an officer of the State Government or the Central Government, specially empowered for the purposes of Section 3(1) by the respective government, make him the detaining authority and not the State Government or the Central Government as the case may be, and obligate him to inform the detenu that he has a threefold opportunity to make his representations i.e. the first to himself and the other two to the State Government and the Central Government.
>
> (*2*) Whether for the purposes of the Act, there is any difference between an order of detention passed by an officer of the State Government or the Central Government, solely in exercise of the powers conferred on him under Section 3 by the respective government and an order of detention passed by the State Government or the Central Government as the case may be through an officer who in addition to conferment of powers under Section 3 is also empowered under the Standing Rules framed under the Rules of Business of the government, to act on behalf of the government.
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> (*3*) Whether by reason of the fact that an order of detention is passed by an officer of the State Government or the Central Government specially empowered to act under Section 3 of the Act, a detenu acquires a constitutional right to have his representation first considered by the very officer issuing the detention order before making a representation to the State Government and the Central Government."

While considering the scheme of the COFEPOSA Act, including the ambit of Section 11, it was observed:-

> **"19.** We may now examine the scheme of the Act and have a closer look at the provisions set out above to find out whether the Act provides for a differentiation being made between detention orders made by the government and those made by specially empowered officers so as to confer an additional right of representation to detenus subjected to detention under detention orders falling in the latter category. At the outset, it needs no saying, that any government, be it Central or State, has to function only through human agencies viz. its officers and functionaries and that it cannot function by itself as an abstract body. Such being the case, even though Section 3(1) provides for an order of detention being made either by the Central Government or one of its officers or the State Government or by one of its officers, an order of detention has necessarily to be made in either of the situations only by an officer of the concerned government. It is in acceptance of this position we have to see whether an order of detention, if passed by an officer of the government specially empowered under Section 3(1) but not further empowered under Rules of Business of the government to act would have the effect of making the concerned officer the detaining authority and not the concerned government itself. The answer to the question has to be necessarily in the negative for the following reasons. It has been specifically provided in Section 2 (*a*) that irrespective of whether an order of detention is made by the Central Government or one of its duly authorised officers, the "appropriate government" as regard the detention order and the detenu will be the Central Government only and likewise whether an order of detention is made by a State Government or one of its duly authorised officers the "appropriate government" would be the State Government only as regards the detention order and the detenu concerned. Secondly, irrespective of whether an order of detention is made by the State Government or by one of its officers, the

obligation to forward, within ten days a report to the Central Government in respect of the order is cast only upon the State Government. Thirdly, in the matter of making a reference of the case of a detenu to the Advisory Board under Section 8(*b*), the duty of making the reference is cast only on the Central Government or the State Government as the case may be, and not on the officer of the Central Government or the State Government if he makes the order of detention in exercise of the powers conferred on him under Section 3(1). Lastly, Section 11, which deals with the powers of revocation of the State Government and the Central Government provides that notwithstanding that an order of detention had been made by an officer of a State Government, the concerned State Government as well as the Central Government are entitled to revoke or modify the order of detention. Similarly, as per clause (*b*) notwithstanding that an order of detention has been made by an officer of the Central Government or by a State Government, the Central Government has been empowered to revoke or modify an order of detention. The section does not confer any power of revocation on an officer of the Central or State Government nor does it empower the Central or State Government to delegate the power of revocation to any of its officers. We may further add that even though Section 11 specifies that the powers of revocation conferred on the Central Government/State Government are without prejudice to the provisions of Section 21 of the General clauses Act, this reservation will not entitle a specially empowered officer to revoke an order of detention passed by him because the order of the specially empowered officer acquires "deemed approval" of the State or Central Government, as the case may be, automatically and by reason of such deemed approval the powers of revocation, even in terms of Section 21 of the General clauses Act will fall only within the domain of the State Government and/or Central Government. In *Sat Pal* v. *State of Punjab*[10] the nature of the power of revocation conferred on the State and the Central Government came to be construed and the court held that "(*t*)he

10 (1982) 1 SCC 12

power of revocation conferred on the appropriate government under Section 11 of the Act is independent of the power of confirming or setting aside an order of detention under Section 8(*f*)". It was further adumbrated as follows: (SCC p. 17, para 10)

> "The power under Section 11(1)(*b*) may either be exercised on information received by the Central Government from its own sources including that supplied by the State Government under Section 3(2), or, from the detenu in the form of a petition or representation. It is for the Central Government to decide whether or not, it should revoke the order of detention in a particular case. The use of the words 'at any time' under Section 11, gives the power of revocation an overriding effect on the power of detention under Section 3."

These observations were made by the court when considering the question whether a detenu was entitled to concurrently make representations to the State Government and the Central Government against an order of detention passed by the State Government and whether in such circumstances the State Government could contend that the question of the Central Government considering the representation would arise only after the State Government had considered the representation and rejected it.

20. Consequently, the resultant position emerging from the Act is that even if an order of detention is made by a specially empowered officer of the Central Government or the State Government as the case may be, the said order will give rise to obligations to be fulfilled by the government to the same degree and extent to which it will stand obligated if the detention order had been made by the government itself. If that be so, then it is the concerned government that would constitute the detaining authority under the Act and not the officer concerned who made the order of detention, and it is to that government the detenu

> should be afforded opportunity to make representation against the detention order at the earliest opportunity, as envisaged under Article 22(5) and not to the officer making the order of detention in order to provide the detenu an opportunity to make a further representation to the State Government and thereafter to the Central Government if the need arises for doing so. Though by reason of Section 3(1) a specially empowered officer is entitled to pass an order of detention, his constitutional obligation is only to communicate expeditiously to the detenu the grounds of detention and also afford him opportunity to make representation to the appropriate governments against his detention. The only further duty to be performed thereafter is to place the representation made by the detenu before the concerned officer or the Minister empowered under the Rules of Business of the government to deal with such representation if the detenu addresses his representation to the officer himself."

It was thus held that the constitutional obligation of a specially empowered officer entitled to pass an order of detention would only be to communicate expeditiously to the detenue the grounds of detention and also to afford him opportunity to make representation *to the appropriate Governments* against his detention. All the aforesaid three questions as posed in Para 11 were answered in the negative.

C) In ***Amir Shad Khan vs. L. Hmingliana and others***[11], a Bench of Three Judges of this Court observed:-

> **"3.** …….. There can be no doubt that the representation must be made to the authority which has the power to rescind or revoke the decision, if

11 (1991) 4 SCC 39

need be. Our search for the authority must, therefore, take us to the statute since the answer cannot be found from Article 22(5) of the Constitution read in isolation. As pointed out earlier that clause casts an obligation on the authority making the detention order to afford to the detenu an earliest opportunity to make a representation against the detention order. If we are to go by the statement in the grounds of detention our search for that authority would end since the grounds of detention themselves state the authorities to which the representation must be made. The question must be answered in the context of the relevant provisions of the law. Now as stated earlier by clause (5) of Article 22 a dual obligation is cast on the authority making the detention order one of which is to afford to the detenu an earliest opportunity of making a representation against the order which obligation has been met by informing the detenu in the grounds of detention to whom his representation should be addressed. But the authority to which the representation is addressed must have statutory backing. In order to trace the source for the statutory backing it would be advantageous to notice the scheme of the Act providing for preventive detention. Section 2(*b*) defines a detention order to mean an order made under Section 3. Sub-section (1) of Section 3 empowers the Central Government or the 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, to make an order of detention with respect to any person with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from doing any one of the five prejudicial acts enumerated thereunder. Sub-section (2) of that section provides that 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. It is evident from this provision that whenever a detention order is made by the State Government or its officer specially empowered for that purpose an obligation is cast on the State Government to forward a report to the Central Government in respect of that order within ten days. The purpose of this provision is clearly to enable the Central Government to keep an eye on the exercise of power under Section 3(1) by the State Government or its officer. Then comes sub-section (3) which reads as under:

> 3. (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."

This provision is clearly intended to meet the obligation cast by Article 22(5) that the grounds of detention shall be communicated 'as soon as may be'. The legislation has, therefore, fixed the outer limit within which the grounds of detention must be communicated to the detenu. Thus the first part of the obligation cast by Article 22(5) is met by Section 3(3) of the Act. Section 8 provides for the Constitution of Advisory Boards. This section is clearly to meet the obligation of sub-clause (*a*) of clause (4) and sub-clause (*c*) of clause (7) of Article 22 of the Constitution. Section 8(*f*) which has some relevance provides that in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the

person concerned, the appropriate government shall revoke the detention order and cause the person to be released forthwith. This provision clearly obliges the appropriate government to order revocation of the detention order if the Advisory Board reports want of sufficient cause for detention of that person. Then comes Section 11 which reads as under:

> "11. *Revocation of detention orders.*— (1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 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."

Sub-section (2) is not relevant for our purpose. It is obvious from a plain reading of the two clauses of sub-section (1) of Section 11 that where an order is made by an officer of the State Government, the State Government as well as the Central Government are empowered to revoke the detention order. Where, however, the detention order is passed by an officer of the Central Government or a State Government, the Central Government is empowered to revoke the detention order. Now this provision is clearly without prejudice to Section 21 of the General Clauses Act which lays down that where by any Central Act a power to issue orders is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions, if any, to rescind any order so issued. Plainly the authority which has passed the order under any Central Act is

empowered by this provision to rescind the order in like manner. This provision when read in the context of Section 11 of the Act makes it clear that the power to rescind conferred on the authority making the detention order by Section 21 of the General Clauses Act is saved and is not taken away. Under Section 11 an officer of the State Government or that of the Central Government specially empowered under Section 3(1) of the Act to make a detention order is not conferred the power to revoke it; that power for those officers has to be traced to Section 21 of the General Clauses Act. Therefore, where an officer of the State Government or the Central Government has passed any detention order and on receipt of a representation he is convinced that the detention order needs to be revoked he can do so by virtue of Section 21 of the General Clauses Act since Section 11 of the Act does not entitle him to do so. If the State Government passes an order of detention and later desires to revoke it, whether upon receipt of a representation from the detenu or otherwise, it would be entitled to do so under Section 21 of the General Clauses Act but if the Central Government desires to revoke any order passed by the State Government or its officer it can do so only under clause (*b*) of Section 11(1) of the Act and not under Section 21 of the General Clauses Act. This clarifies why the power under Section 11 is conferred without prejudice to the provisions of Section 21 of the General Clauses Act. Thus on a conjoint reading of Section 21 of the General Clauses Act and Section 11 of the Act it becomes clear that the power of revocation can be exercised by three authorities, namely, the officer of the State Government or the Central Government, the State Government as well as the Central Government. The power of revocation conferred by Section 8(*f*) on the appropriate Government is clearly independent of this power. It is thus clear that Section 8(*f*) of the Act satisfies the requirement of Article 22(4) whereas Section 11 of the Act satisfies the requirement of the latter part of Article 22(5) of the Constitution. The statutory provisions, therefore, when read in the context of the relevant clauses of Article 22, make it clear that they are intended to satisfy the

> constitutional requirements and provide for enforcement of the right conferred on the detenu to represent against his detention order. Viewed in this perspective it cannot be said that the power conferred by Section 11 of the Act has no relation whatsoever with the constitutional obligation cast by Article 22(5)."

D. The apparent conflict between the decisions of this Court in ***Sushila Mafatlal Shah***[9] and ***Amir Shad Khan***[11] came up for consideration before a Constitution Bench of this Court in ***Kamleshkumar Ishwardas Patel vs. Union of India and others***[12] and the question was posed as under:-

> **"2.** When an order for preventive detention is passed by an officer especially empowered to do so by the Central Government or the State Government, is the said officer required to consider the representation submitted by the detenu?"

The matter was considered as under:-

> **"6.** This provision has the same force and sanctity as any other provision relating to fundamental rights. (See: *State of Bombay* v. *Atma Ram Shridhar Vaidya*[13]**.**) Article 22(5) imposes a dual obligation on the authority making the order of preventive detention: (*i*) to communicate to the person detained as soon as may be the grounds on which the order of detention has been made; and (*ii*) to afford the person detained the earliest opportunity of making a representation against the order of detention. Article 22(5) thus proceeds on the basis that the person detained has a right to make a representation against the order of detention and the aforementioned two

12 (1995) 4 SCC 51
13 1951 SCR 167 = AIR 1951 SC 157

obligations are imposed on the authority making the order of detention with a view to ensure that right of the person detained to make a representation is a real right and he is able to take steps for redress of a wrong which he thinks has been committed. Article 22(5) does not, however, indicate the authority to whom the representation is to be made. Since the object and purpose of the representation that is to be made by the person detained is to enable him to obtain relief at the earliest opportunity, the said representation has to be made to the authority which can grant such relief, i.e., the authority which can revoke the order of detention and set him at liberty. The authority that has made the order of detention can also revoke it. This right is inherent in the power to make the order. It is recognised by Section 21 of the General Clauses Act, 1897 though it does not flow from it. It can, therefore, be said that Article 22(5) postulates that the person detained has a right to make a representation against the order of detention to the authority making the order. In addition, such a representation can be made to any other authority which is empowered by law to revoke the order of detention.

… … …

14. 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 a 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.

… … …

> **23.** If the power of revocation is to be treated as the criterion for ascertaining the authority to whom representation can be made, then the representation against an order of detention made by an officer specially empowered by the State Government can be made to the officer who has made the order as well as to the State Government and the Central Government who are competent to revoke the order. Similarly, the representation against an order made by the State Government can be made to the State Government as well as to the Central Government and the representation against an order made by an officer specially empowered by the Central Government can be made to the officer who has made the order as well as to the Central Government."

After considering relevant decisions, this Court did not accept the law laid down in ***Sushila Mafatlal Shah***[9] and observed:-

> **"30.** The decision in *Sushila Mafatlal Shah*[9] proceeds on two premises: (*i*) Article 22(5) does not confer a right to make a representation to the officer specially empowered to make the order; and (*ii*) under the provisions of the COFEPOSA Act when the order of detention is made by the officer specially empowered to do so, the detaining authority is the appropriate Government, namely, the Government which has empowered the officer to make the order, since such order acquires "deemed approval" by the Government from the time of its issue.
>
> **31.** With due respect, we find it difficult to agree with both the premises. Construing the provisions of Article 22(5) we have explained that the right of the person detained to make a representation against the order of detention comprehends the right to make such a representation to the authority which can grant such relief i.e. the authority which can revoke the

order of detention and set him at liberty and since the officer who has made the order of detention is competent to revoke it, the person detained has the right to make a representation to the officer who made the order of detention. The first premise that such right does not flow from Article 22(5) cannot, therefore, be accepted.

32. The learned Judges, while relying upon the observations in *Abdul Karim*[14] and the decisions in *Jayanarayan Sukul*[15], *Haradhan Saha*[16] and *John Martin*[17] have failed to notice that in these cases the Court was considering the matter in the light of the provisions contained in Section 7(1) of the Preventive Detention Act, 1950, whereby it was prescribed that the representation was to be made to the appropriate Government. The observations regarding consideration of the representation by the State Government in the said decisions have, therefore, to be construed in the light of the said provision in the Preventive Detention Act and on that basis it cannot be said that Article 22(5) does not postulate that the person detained has no right to make a representation to the authority making the order of detention.

33. The second premise that the Central Government becomes the detaining authority since there is deemed approval by the Government of the order made by the officer specially empowered in that regard from the time of its issue, runs counter to the scheme of the COFEPOSA Act and the PIT NDPS Act which differs from that of other preventive detention laws, namely, the National Security Act, 1980, the Maintenance of Internal Security Act, 1971, and the Preventive Detention Act, 1950.

34. In the National Security Act there is an express provision [Section 3(4)] in respect of orders made by the District Magistrate or the Commissioner of Police

14 (1969) 1 SCC 433
15 (1970) 1 SCC 219 [Jayanarayan Sukul vs. State of West Bengal]
16 (1975) 3 SCC 198 [Haradhan Saha vs. The State of West Bengal and others]
17 (1975) 3 SCC 836

under Section 3(3) and the District Magistrate or the Commissioner of Police who has made the order is required to forthwith report the fact to the State Government to which he is subordinate. The said provision further prescribes that no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government. This would show that it is the approval of the State Government which gives further life to the order which would otherwise die its natural death on the expiry of twelve days after its making. It is also the requirement of Section 3(4) that the report should be accompanied by the grounds on which the order has been made and such other particulars as, in the opinion of the said officer, have a bearing on the matter which means that the State Government has to take into consideration the grounds and the said material while giving its approval to the order of detention. The effect of the approval by the State Government is that from the date of such approval the detention is authorised by the order of the State Government approving the order of detention and the State Government is the detaining authority from the date of the order of approval. That appears to be the reason why Section 8(1) envisages that the representation against the order of detention is to be made to the State Government. The COFEPOSA Act and the PIT NDPS Act do not require the approval of an order made by the officer specially empowered by the State Government or by the Central Government. The order passed by such an officer operates on its own force. All that is required by Section 3(2) of the COFEPOSA Act and the PIT NDPS Act is that the State Government shall within 10 days forward to the Central Government a report in respect of an order that is made by the State Government or an officer specially empowered by the State Government. An order made by the officer specially empowered by the State Government is placed on the same footing as an order made by the State Government because the report has to be forwarded to the Central Government in respect of both such orders. No such report is required to be forwarded to the Central Government

in respect of an order made by an officer specially empowered by the Central Government. Requirement regarding forwarding of the report contained in Section 3(2) of the COFEPOSA Act and the PIT NDPS Act cannot, therefore, afford the basis for holding that an order made by an officer specially empowered by the Central Government or the State Government acquires deemed approval of that Government from the date of its issue. Approval, actual or deemed, postulates application of mind to the action being approved by the authority giving approval. Approval of an order of detention would require consideration by the approving authority of the grounds and the supporting material on the basis of which the officer making the order had arrived at the requisite satisfaction for the purpose of making the order of detention. Unlike Section 3(4) of the National Security Act there is no requirement in the COFEPOSA Act and the PIT NDPS Act that the officer specially empowered for the purpose of making of an order of detention must forthwith send to the Government concerned the grounds and the supporting material on the basis of which the order of detention has been made. Nor is it prescribed in the said enactments that after the order of detention has been made by the officer specially empowered for that purpose the Government concerned is required to apply its mind to the grounds and the supporting material on the basis of which the order of detention was made. The only circumstance from which inference about deemed approval is sought to be drawn is that the order is made by the officer specially empowered for that purpose by the Government concerned. Merely because the order of detention has been made by the officer who has been specially empowered for that purpose would not, in our opinion, justify the inference that the said order acquires deemed approval of the Government that has so empowered him, from the date of the issue of the order so as to make the said Government the detaining authority. By specially empowering a particular officer under Section 3(2) of the COFEPOSA Act and the PIT NDPS Act the Central Government or the State Government confers an independent power on

the said officer to make an order of detention after arriving at his own satisfaction about the activities of the person sought to be detained. Since the detention of the person detained draws its legal sanction from the order passed by such officer, the officer is the detaining authority in respect of the said person. He continues to be the detaining authority so long as the order of detention remains operative. He ceases to be the detaining authority only when the order of detention ceases to operate. This would be on the expiry of the period of detention as prescribed by law or on the order being revoked by the officer himself or by the authority mentioned in Section 11 of the COFEPOSA Act and Section 12 of the PIT NDPS Act. There is nothing in the provisions of these enactments to show that the role of the officer comes to an end after he has made the order of detention and that thereafter he ceases to be the detaining authority and the Government concerned which had empowered him assumes the role of the detaining authority. We are unable to construe the provisions of the said enactments as providing for such a limited entrustment of power on the officer who is specially empowered to pass the order. An indication to the contrary is given in Section 11 of the COFEPOSA Act and Section 12 of the PIT NDPS Act which preserve the power of such officer to revoke the order that was made by him. This means that the officer does not go out of the picture after he has passed the order of detention. It must, therefore, be held that the officer specially empowered for that purpose continues to be the detaining authority and is not displaced by the Government concerned after he has made the order of detention. Therefore, by virtue of his being the detaining authority he is required to consider the representation of the person detained against the order of detention.

… … …

36. It appears that the decision in *Ibrahim Bachu Bafan*[7], a decision of a Bench of three Judges, was not brought to the notice of the learned Judges

deciding *Sushila Mafatlal Shah*[9]. For the reasons aforementioned we are of the view that the decision in *Sushila Mafatlal Shah*[9] insofar as it holds that where an order of detention made by an officer specially empowered for the purpose, representation against the order of detention is not required to be considered by such officer and it is only to be considered by the appropriate Government empowering such officer, does not lay down the correct law.

… … …

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 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.

12. With the judgment of the Constitution Bench of this Court in ***Kamleshkumar***[12]**,** the law on the first issue is well settled that where the detention order is made *inter alia* under Section 3 of the COFEPOSA 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 would result in denial of the right conferred on the person detained to make a representation.* Further, such right of the detenue has been taken to be in addition to the right to make the representation to the State Government and the Central Government. It must be stated that para 12 of the grounds of detention in the instant case, as quoted hereinabove, is in tune with the law so declared by this Court.

13. We now move to the second issue and consider the decisions of this Court on the point:-

A) In ***Pankaj Kumar Chakrabarty and others vs. The State of West Bengal***[18] a Constitution Bench of this Court considered the matter where orders of detention were passed by the District Magistrates under Section 3(1)(a)(ii) and (iii) read with Section 3(2) of 1950 Act[19]. As stated in

18 (1969) 3 SCC 400 = (1970) 1 SCR 543
19 The Preventive Detention Act, 1950

paragraph 2 of the decision, the case of the detenue was placed before the Advisory Board on 21.09.1968. A representation against the order of detention was made to the State Government on 21.10.1968. An opinion was given by the Advisory Board on 06.11.1968 that there was sufficient cause for detention of the person concerned, whereafter the order was confirmed on 11.11.1968. While in the case considered in paragraph 4, the representation was made after the case was referred to the Advisory Board. In the light of these facts, following two questions were framed:-

> **"6.** On these contentions two questions arise: (*i*) whether there is on the appropriate Government the obligation to consider the representation made by a detenue, and (2) if there is, whether it makes any difference where such a representation is made after the detenu's case is referred to the Advisory Board."

The matter was, thereafter, considered and it was observed:-

> **"10**. It is true that clause 5 does not in positive language provide as to whom the representation is to be made and by whom, when made, it is to be considered. But the expressions "as soon as may be" and "the earliest opportunity" in that clause clearly indicate that the grounds are to be served and the opportunity to make a representation are provided for to enable the detenu to show that his detention is unwarranted and since no other authority who should consider such representation is mentioned it can only be the detaining authority to whom it is to be made which has to consider it. Though clause 5 does not in express terms say so it follows from its provisions that it is the detaining authority which has to give to the detenu the earliest opportunity to make a representation and to consider it when so made whether its order is wrongful or contrary to the law

enabling it to detain him. The illustrations given in *Sk. Abdul Karim case* show that clause 5 of Article 22 not only contains the obligation of the appropriate Government to furnish the grounds and to give the earliest opportunity to make a representation but also by necessary implication the obligation to consider that representation. Such an obligation is evidently provided for to give an opportunity to the detenu to show and a corresponding opportunity to the appropriate Government to consider any objections against the order which the detenu may raise so that no person is, through error or otherwise, wrongly arrested and detained. If it was intended that such a representation need not be considered by the Government where an Advisory Board is constituted and that representation in such cases is to be considered by the Board and not by the appropriate Government, clause 5 would not have directed the detaining authority to afford the earliest opportunity to the detenu. In that case the words would more appropriately have been that the authority should obtain the opinion of the Board after giving an opportunity to the detenu to make a representation and communicate the same to the Board. But what would happen in cases where the detention is for less than 3 months and there is no necessity of having the opinion of the Board? If Counsel's contention were to be right the representation in such cases would not have to be considered either by the appropriate Government or by the Board and the right of representation and the corresponding obligation of the appropriate Government to give the earliest opportunity to make such representation would be rendered nugatory. In imposing the obligation to afford the opportunity to make a representation, clause 5 does not make any distinction between orders of detention for only 3 months or less and those for a longer duration. The obligation applies to both kinds of orders. The clause does not say that the representation is to be considered by the appropriate Government in the former class of cases and by the Board in the latter class of cases. In our view it is clear from clauses 4 and 5 of Article 22 that there is a dual obligation on the appropriate Government and a

dual right in favour of the detenu, namely, (*1*) to have his representation irrespective of the length of detention considered by the appropriate Government and (*2*) to have once again that representation in the light of the circumstances of the case considered by the Board before it gives its opinion. If in the light of that representation the Board finds that there is no sufficient cause for detention the Government has to revoke the order of detention and set at liberty the detenu. Thus, whereas the Government considers the representation to ascertain whether the order is in conformity with its power under the relevant law, the Board considers such representation from the point of view of arriving at its opinion whether there is sufficient cause for detention. The obligation of the appropriate Government to afford to the detenu the opportunity to make a representation and to consider that representation is distinct from the Government's obligation to constitute a Board and to communicate the representation amongst other materials to the Board to enable it to form its opinion and to obtain such opinion.

11. This conclusion is strengthened by the other provisions of the Act. In conformity with clauses 4 and 5 of Article 22, Section 7 of the Act enjoins upon the detaining authority to furnish to the detenu grounds of detention within five days from the date of his detention and to afford to the detenu the earliest opportunity to make his representation to the appropriate Government. Sections 8 and 9 enjoin upon the appropriate Government to constitute an Advisory Board and to place within 30 days from the date of the detention the grounds for detention, the detenu's representation and also the report of the officer where the order of detention is made by an officer and not by the Government. The obligation under Section 7 is quite distinct from that under Sections 8 and 9. If the representation was for the consideration not by the Government but by the Board only as contended, there was no necessity to provide that it should be addressed to the Government and not directly to the Board. The Government could not have been intended to be only a transmitting

> authority nor could it have been contemplated that it should sit tight on that representation and remit it to the Board after it is constituted. The peremptory language in clause 5 of Article 22 and Section 7 of the Act would not have been necessary if the Board and not the Government had to consider the representation. Section 13 also furnishes an answer to the argument of Counsel for the State. Under that section the State Government and the Central Government are empowered to revoke or modify an order of dentention. That power is evidently provided for to enable the Government to take appropriate action where on a representation made to it, it finds that the order in question should be modified or even revoked. Obviously, the intention of Parliament could not have been that the appropriate Government should pass an order under Section 13 without considering the representation which has under Section 7 been addressed to it.
>
> **12.** For the reasons aforesaid we are in agreement with the decision in *Sk. Abdul Karim case*. Consequently, the petitioners had a constitutional right and there was on the State Government a corresponding constitutional obligation to consider their representations irrespective of whether they were made before or after their cases were referred to the Advisory Board and that not having been done the order of detention against them cannot be sustained. In this view it is not necessary for us to examine the other objections raised against these orders. The petition is therefore allowed, the orders of detention against Petitioners 15 and 36 are set aside and we direct that they should be set at liberty forthwith." (Emphasis added)

B. In ***Jayanarayan Sukul***[15]**,** considered by another Constitution Bench of this Court, the order of detention was passed by the District Magistrate under the relevant provisions of 1950 Act. A representation was made by the detenue to the State Government on 23.06.1969. The

case of the detenue was placed before the Advisory Board on 01.07.1969 which reported on 13.08.1969 that there was sufficient cause for the detention. It was only thereafter that the representation was considered and rejected on 19.08.1969. In the context of these facts, it was observed:-

> **"13**. It, therefore, follows that the appropriate authority is to consider the representation of the detenu uninfluenced by any opinion or consideration of the Advisory Board. In the case of *Khairul Haque* v. *State of W.B.*[20] this Court observed that "it is implicit in the language of Article 22 that the appropriate Government, while discharging its duty to consider the representation cannot depend upon the views of the Board on such representation". The logic behind this proposition is that the Government should immediately consider the representation of the detenu before sending the matter to the Advisory Board and further that such action will then have the real flavour of independent judgment.
>
> … … …
>
> **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

20 W.P. No.246 of 1969, decided on 10-9-69

in peril immediate action should be taken by the relevant authorities. (Emphasis added)

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 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*[20] "It is obvious that the obligation to furnish the earliest 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 is true that no hard and fast rule can be laid down as to the 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 send the matter to the Advisory Board. If however the Government will not release the detenu the Government will send 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. (Emphasis Added)
>
> **21.** In the present case, the State of West Bengal is guilty of infraction of the constitutional provisions not only by inordinate delay of the consideration of the representation but also by putting of the consideration till after the receipt of the opinion of the Advisory Board. As we have already observed there is no explanation for this inordinate delay. The Superintendent who made the enquiry did not affirm an affidavit. The State has given no information as to why this long delay occurred. The inescapable conclusion in the present case is that the appropriate authority failed to discharge its constitutional obligation by inactivity and lack of independent judgment."

C) In ***Haradhan Saha***[16] yet another Constitution Bench of this Court considered the distinction between the consideration of representation by the Government and by the Advisory Board as under.

> **"24**. The representation of a detenu is to be considered. There is an obligation on the State to consider the representation. The Advisory Board has adequate power to examine the entire material. The Board can also call for more materials. The Board may call the detenu at his request. The constitution of the Board shows that it is to consist of Judges or persons qualified to be Judges of the High Court. The constitution of the Board observes the fundamental of fair play and principles of natural justice. It is not the requirement of principles of natural justice that there must be an oral hearing. Section 8 of the Act which casts an obligation on the State to consider the representation affords the detenu all the rights which are guaranteed by Article 22(5). <u>The Government</u>

> considers the representation to ascertain essentially whether the order is in conformity with the power under the law. The Board, on the other hand, considers whether in the light of the representation there is sufficient cause for detention. (Emphasis Added)
>
> … … …
>
> **29.** Principles of natural justice are an element in considering the reasonableness of a restriction where Article 19 is applicable. At the stage of consideration of representation by the State Government, the obligation of the State Government is such as Article 22(5) implies. Section 8 of the Act is in complete conformity with Article 22(5) because this section follows the provisions of the Constitution. If the representation of the detenu is received before the matter is referred to the Advisory Board, the detaining authority considers the representation. If a representation is made after the matter has been referred to the Advisory Board, the detaining authority will consider it before it will send representation to the Advisory Board." (Emphasis Added)

It was, thus, clarified that if the representation is received *before* the matter is referred to the Advisory Board, the Detaining Authority ought to consider such representation; and if the representation is made *after* the matter is referred to the Advisory Board, the Detaining Authority would first consider it and then send the representation to the Advisory Board.

D) In ***Frances Coralie Mullin vs. W.C. Khambra***[21], a bench of two Judges of this Court considered the principles laid down in ***Jayanarayan Sukul***[15] and made following observations:-

> **"5.** We have no doubt in our minds about the role of the court in cases of preventive detention: it has to be one of eternal vigilance. No freedom is higher than personal freedom and no duty higher than to maintain it unimpaired. The Court's writ is the ultimate insurance against illegal detention. The Constitution enjoins conformance with the provisions of Article 22 and the Court exacts compliance. Article 22(5) vests in the detenu the right to be provided with an opportunity to make a representation. Here the Law Reports tell a story and teach a lesson. It is that the principal enemy of the detenu and his right to make a representation is neither high-handedness nor mean-mindedness but the casual indifference, the mindless insensibility, the routine and the red tape of the bureaucratic machine. The four principles enunciated by the Court in *Jayanarayan Sukul* v. *State of W.B.* [15] as well as other principles enunciated in other cases, an analysis will show, are aimed at shielding personal freedom against indifference, insensibility, routine and red tape and thus to secure to the detenu the right to make an effective representation. We agree: (1) the detaining authority must provide the detenu a very early opportunity to make a representation, (2) the detaining authority must consider the representation as soon as possible, and this, preferably, must be before the representation is forwarded to the Advisory Board, (3) the representation must be forwarded to the Advisory Board before the Board makes its report, and (4) the consideration by the detaining authority of the representation must be entirely independent of the hearing by the Board or its report, expedition being essential at every stage. We, however, hasten to add that the time-imperative can never be absolute or obsessive. The Court's observations are not to be so understood. There has to be lee-way, depending on the

21 (1980) 2 SCC 275

necessities (we refrain from using the word "circumstances") of the case. One may well imagine a case where a detenu does not make a representation before the Board makes its report making it impossible for the detaining authority either to consider it or to forward it to the Board in time or a case. where a detenu makes a representation to the detaining authority so shortly before the Advisory Board takes up the reference that the detaining authority cannot consider the representation before then but may merely forward it to the Board without himself considering it. Several such situations may arise compelling departure from the time-imperative. But no allowance can be made for lethargic indifference. No allowance can be made for needless procrastination. But, allowance must surely be made for necessary consultation where legal intricacies and factual ramifications are involved. The burden of explaining the necessity for the slightest departure from the time-imperative is on the detaining authority.

… … …

7. We have already expressed our agreement with the four principles enunciated in *Jayanarayan Sukul* v. *State of W.B.*[15]. We would make one observation. When it was said there that the Government should come to its decision on the representation before the Government forwarded the representation to the Advisory Board, the emphasis was not on the point of time but on the requirement that the Government should consider the representation independently of the Board. This was explained in *Nagendra Nath Mondal* v. *State of W.B*[22]. In *Sukul case*[15] the court also made certain pertinent observations at pp. 231-232: (SCC p. 224, para 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

22 (1972) 1 SCC 498

> circumstances of each case whether the appropriate Government has disposed of the case as expeditiously as possible....”

E) In ***K.M. Abdullah Kunhi***[6], in view of the conflict between two decisions of this Court the matter was referred to the Constitution Bench as is clear from paragraphs 1 and 2 of said decision:-

> **“1.** A Division Bench of this Court while expressing the view that the decisions in *V.J. Jain* v. *Shri Pradhan*[23]and *Om Prakash Bahl* v. *Union of India*[24] require reconsideration has referred these matters to the Constitution Bench.
>
> **2.** It is convenient at this point to refer to the statement of law laid down in the aforesaid two cases. In both the cases, as in the present case, the persons were detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (‘the Act’). The detenu made representation to the appropriate government. By then the Advisory Board was already constituted and it was scheduled to meet to consider the case of the detenu. The government forwarded the detenu’s representation to the Advisory Board. The Advisory Board considered the case of the detenu and also the representation and submitted report expressing the opinion that there was sufficient cause for the detention of the person. The government after considering that report confirmed the order of detention. It appears that the representation of the detenu was not considered before confirming the detention order and it came to be considered and rejected only thereafter. In *V.J. Jain case*[23] this Court observed that the representation of the detenu should be considered by the detaining authority as early as possible before any order is made confirming the detention. The confirmation of the detention order without the consideration of

23 (1979) 4 SCC 401
24 W.P. No.845 of 1979, decided on October 15, 1979

> representation would be invalid and the subsequent consideration of the representation would not cure the invalidity of the order of confirmation. This view has been reiterated in the unreported judgment in *Om Prakash Bahl case*[24]."

In that case the detention orders were passed by the State Government under Section 3(1)(iv) of the COFEPOSA Act. The representations were made by the detenues on 17.04.1989 which, however, could not be considered immediately as certain information and comments were required. In the meantime, the case was referred to the Advisory Board which in its report dated 20.04.1989 found that there was sufficient cause for the detention. On 27.04.1989, the detention was confirmed by the State Government. Thereafter, the representations were considered on 6th and 7th May, 1989 by the State Government and by the Central Government on 23.05.1989. In the backdrop of these facts, the question that arose was:-

> **"5.** The principal question for consideration is whether the confirmation of detention order upon accepting the report of the Advisory Board renders itself invalid solely on the ground that the representation of the detenu was not considered and the subsequent consideration of the representation would not cure that invalidity. At the outset it may be made clear that there is no argument addressed before us that there was unexplained delay in considering the representation of the detenu. Indeed, counsel for the petitioners very fairly submitted that they are not raising the question of delay. They also did not argue that the rejection of the representation after the

> confirmation of detention was not an independent consideration."

After considering the relevant decisions on the point, including ***Pankaj Kumar Chakrabarty***[18]***, Jayanarayan Sukul***[15]***, Haradhan Saha***[16] and ***Frances Coralie Mullin***[21] this Court observed:-

> **"15.** In *Frances Coralie Mullin case*, the detenu's representation was received by the detaining authority on December 26, 1979. Without any loss of time copy of the representation was sent to the customs authorities for their remarks which was obviously necessary because the information leading to the order of detention was collected by the customs authorities. The facts were undoubtedly complex since the allegations against the detenu revealed an involvement with an international gang of dope smugglers. The comments of the customs authorities were received on January 4, 1980. The Advisory Board was meeting on January 4, 1980 and so there could be no question of the detaining authority considering the representation of the detenu before the Board met, unless it was done in a great and undue haste. After obtaining the comments of the customs authorities, it was found necessary to take legal advice as the representation posed many legal and constitutional questions, so, after consultation with the Secretary (Law and Judicial) Delhi Administration, the representation was finally rejected by the Administrator on January 15, 1980. It was held that if there appeared to be any delay it was not due to any want of care but because the representation required a thorough examination in consultation with investigation agencies and advisers on law.
>
> **16.** We agree with the observations in *Frances Coralie Mullin case*. The time imperative for consideration of representation can never be absolute or obsessive. It depends upon the necessities and the time at which the representation is made. The representation may be received before the case is

referred to the Advisory Board, but there may not be time to dispose of the representation before referring the case to the Advisory Board. In that situation the representation must also be forwarded to the Advisory Board along with the case of the detenu. The representation may be received after the case of the detenu is referred to the Board. Even in this situation the representation should be forwarded to the Advisory Board provided the Board has not concluded the proceedings. In both the situations there is no question of consideration of the representation before the receipt of report of the Advisory Board. Nor it could be said that the government has delayed consideration of the representation, unnecessarily awaiting the report of the Board. It is proper for the government in such situations to await the report of the Board. If the Board finds no material for detention on the merits and reports accordingly, the government is bound to revoke the order of detention. Secondly, even if the Board expresses the view that there is sufficient cause for detention, the government after considering the representation could revoke the detention. The Board has to submit its report within eleven weeks from the date of detention. The Advisory Board may hear the detenu at his request. The constitution of the Board shows that it consists of eminent persons who are Judges or persons qualified to be Judges of the High Court. It is therefore, proper that the government considers the representation in the aforesaid two situations only after the receipt of the report of the Board. If the representation is received by the government after the Advisory Board has made its report, there could then of course be no question of sending the representation to the Advisory Board. It will have to be dealt with and disposed of by the government as early as possible. (Emphasis added)

… … …

19. There is no constitutional mandate under clause (5) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention. As long as the government without delay considers the representation with an unbiased

mind there is no basis for concluding that the absence of independent consideration is the obvious result if the representation is not considered before the confirmation of detention. Indeed, there is no justification for imposing this restriction on the power of the government. As observed earlier, the government's consideration of the representation is for a different purpose, namely, to find out whether the detention is in conformity with the power under the statute. This has been explained in *Haradhan Saha case*, where Ray, C.J., speaking for the Constitution Bench observed that the consideration of the representation by the government is only to ascertain whether the detention order is in conformity with the power under the law. There need not be a speaking order in disposing of such representation. There is also no failure of justice by the order not being a speaking order. All that is necessary is that there should be real and proper consideration by the government.

20. It is necessary to mention that with regard to liberty of citizens the court stands guard over the facts and requirements of law, but court cannot draw presumption against any authority without material. It may be borne in mind that the confirmation of detention does not preclude the government from revoking the order of detention upon considering the representation. Secondly, there may be cases where the government has to consider the representation only after confirmation of detention. Clause (5) of Article 22 suggests that the representation could be received even after confirmation of the order of detention. The words 'shall afford him the earliest opportunity of making a representation against the order' in clause (5) of Article 22 suggest that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under Section 8 of the Act. But if the detenu does not exercise his right to make representation at that stage, but presents it to the government after the government has confirmed the order of detention, the government still has to

> consider such representation and release the detenu if the detention is not within the power conferred under the statute. The confirmation of the order of detention is not conclusive as against the detenu. It can be revoked suo motu under Section 11 or upon a representation of the detenu. It seems to us therefore, that so long as the representation is independently considered by the government and if there is no delay in considering the representation, the fact that it is considered after the confirmation of detention makes little difference on the validity of the detention or confirmation of the detention. The confirmation cannot be invalidated solely on the ground that the representation is considered subsequent to confirmation of the detention. Nor it could be presumed that such consideration is not an independent consideration. With all respect, we are not inclined to subscribe to the views expressed in *V.J. Jain*, *Om Prakash Bahl* and *Khairul Haque cases*. They cannot be considered to be good law and hence stand overruled."

Two situations were considered in paragraph 16 by this Court. One, where the representation is received just before the case is referred to the Advisory Board and there is no time to dispose of the representation before such reference; and second, where the representation is received after such reference to the Advisory Board. It was observed that, "……*In both the situations there is no question of consideration of the representation before the receipt of report of the Advisory Board…. It is proper for the government in such situations to await the report of the Board."* The reasons for such observations were given in the latter part of paragraph 16 and in paragraphs 19 and 20.

F) In ***Golam Biswas***[5], the order of detention under the COFEPOSA Act was passed on 27.05.2014. A representation was made to the Central Government on 08.07.2014. The reference was made to the Advisory Board on 18.07.2014 which reported on 27.08.2014 that there was sufficient cause for detention. Thereafter, the detention was confirmed on 05.09.2014. In the meantime, the representation which was pending with the Central Government, was rejected on 21.07.2014. A bench of two Judges of this Court considered the submission in paragraph 11 and 15 as under:-

> **"11.** To start with the dates setting out the intervening events are not in dispute. To repeat, the detenu had submitted his representation on 8-7-2014 and the same was pending consideration on merit before the Central Government on 18-7-2014, the date on which the matter was remitted to the Advisory Board under the Act. The representation was rejected on 21-7-2014 when the matter was pending before the Advisory Board. The Advisory Board concluded its proceedings and gave a finding sustaining the order of detention on 27-8-2014. Unmistakably, thus, the detenu's representation which was pending at the time of remittance of the matter to the Advisory Board was not forwarded to it and instead was rejected by the Central Government during the pendency of the proceedings before the Advisory Board.
>
> … … …
>
> **15.** As admittedly, the detenu's representation dated 8-7-2014, pending with the Central Government, the appropriate Government in the case, was not forwarded to the Advisory Board and was instead rejected during the pendency of the proceedings

> before the Advisory Board, we are constrained to hold that the detention of the detenu is constitutionally invalid. The rejection of the representation by the Central Government later on 21-7-2014 during the pendency of the proceedings before the Advisory Board is of no consequence to sustain the detention. Consequently, the order of confirmation as well is rendered non est by this vitiation. In view of the determination made on the above aspect of the debate, we do not consider it necessary to dilate on the other pleas raised on behalf of the detenu. In the result, the appeal succeeds. The impugned judgment and order is set aside. The orders of detention as well as the order of confirmation are hereby annulled. The detenu is directed to be set at liberty, if not wanted in any other case."

Thus, failure on part of the appropriate Government to forward the representation to the Advisory Board and rejection thereof while the proceedings were pending before the Advisory Board, were the points on which the relief was granted to the detenue.

14. In the context of the second issue stated earlier, the principles that emerge from the decisions referred to above are:-

A) In ***Pankaj Kumar Chakrabarty***[18], it was laid down:-

> *"the petitioners had a constitutional right and there was on the State Government a corresponding constitutional obligation to consider their representations irrespective of whether they were made before or after their cases were referred to the Advisory Board"*

According to this decision it was immaterial whether the representations were made before or after the cases were referred to the Advisory Board.

B) In ***Jayanarayan Sukul***[15], the reason for immediate consideration of the representation was stressed in para 18 as under:-

> *"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."*

Thereafter four principles that must be followed in regard to consideration of the representation of a detenue were dealt with in paragraph 20; the second principle being:-

> *"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."*

It was thus stated that the consideration of the representation must be entirely independent of the action by the Advisory Board.

The 4th principle put the obligation upon the appropriate Government to consider the representation as :-

> *"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."*

C) In ***Haradhan Saha***[16], the qualitative difference between consideration of the representation by the Government on one hand and by the Advisory Board on the other, was clarified in para 24 as:-

> *"The Government considers the representation to ascertain essentially whether the order is in conformity with the power under the law. The Board, on the other hand, considers whether in the light of the representation there is sufficient cause for detention."*

The cases where the representations were received before the reference and after the reference were also dealt with in para 29 as :-

> *"If the representation of the detenu is received before the matter is referred to the Advisory Board, the detaining authority considers the representation. If a representation is made after the matter has been referred to the Advisory Board, the detaining authority will consider it before it will send representation to the Advisory Board."*

D) In ***Frances Coralie Mullin***[21], the principle that the consideration by the Detaining Authority of the representation must be entirely

independent of the hearing by the Board or its report was again stressed with emphasis on "*expedition being essential at every stage"*

Para 7 of the decision explained the principles in ***Jayanarayan Sukul***[15] as:-

> "when it was said there that the Government should come to its decision on the representation before the Government forwarded the representation to the Advisory Board, the emphasis was not on the point of time but on the requirement that the Government should consider the representation independently of the Board."

15. These decisions clearly laid down that the consideration of representations by the appropriate Government by the Board would always be qualitatively different and the power of consideration by the appropriate Government must be completely independent of any action by the Advisory Board. In para 12 of the decision in ***Pankaj Kumar Chakrabarty***[18] it was stated that the obligation on part of the Government to consider representation would be irrespective whether the representation was made before or after the case was referred to the Advisory Board. As stated in paragraph 18, this was stated so, as any delay in consideration of the representation would not only be an irresponsible act on part of the appropriate authority but also unconstitutional. The contingency whether the representations were

received before or after was again considered in para 29 of the decision in ***Haradhan Saha***[16]**.** In terms of these principles, the matter of consideration of representation in the context of reference to the Advisory Board, can be put in following four categories:-

A) If the representation is received well before the reference is made to the Advisory Board and can be considered by the appropriate Government, the representation must be considered with expedition. Thereafter the representation along with the decision taken on the representation shall be forwarded to and must form part of the documents to be placed before the Advisory Board.

B) If the representation is received just before the reference is made to the Advisory Board and there is no sufficient time to decide the representation, in terms of law laid down in ***Jayanarayan Sukul***[15] and ***Haradhan Saha***[16] the representation must be decided first and thereafter the representation and the decision must be sent to the Advisory Board. This is premised on the principle that the consideration by the appropriate Government is completely independent and also that there ought not to be any delay in consideration of the representation.

C) If the representation is received after the reference is made but before the matter is decided by the Advisory Board, according to the principles laid down in ***Haradhan Saha***[16], the representation must be decided. The decision as well as the representation must thereafter be immediately sent to the Advisory Board.

D) If the representation is received after the decision of the Advisory Board, the decisions are clear that in such cases there is no requirement to send the representation to the Advisory Board. The representation in such cases must be considered with expedition.

16. There can be no difficulty with regard to the applicability of the principles in the 1st and the 4th stage of the aforesaid categories. The difficulty may arise as regards the application of principles at the 2nd and the 3rd stage. But that difficulty was dealt with sufficient clarity in ***Jayanarayan Sukul***[15] and ***Haradhan Saha***[16] as stated hereinabove. If it is well accepted that the representation must be considered with utmost expedition; and the power of the Government is completely independent of the power of the Advisory Board; and the scope of consideration is also qualitatively different, there is no reason why the consideration by the Government must await the decision by the Advisory Board. None of the

aforesaid cases even remotely suggested that the consideration must await till the report was received from the Advisory Board.

17. However, it was for the first time that the decision in ***K.M. Abdulla Kunhi***[6] laid down in paragraph 16 that it would be proper for the Government in the two situations dealt with in said paragraph to await the report of the Board; those two situations being:-

a) where the representation is received before the matter is referred to the Advisory Board and where there may not be sufficient time to dispose of the representation before referring the case to the Advisory Board, and

b) where the representation is received after the case is referred to the Advisory Board.

It was also laid down:-

> "In both the situations there is no question of consideration of the representation before the receipt of report of the Advisory Board."

18. Since the decision of this Court in ***K.M. Abdulla Kunhi***[6] was rendered by the Constitution Bench of this Court after considering all the earlier decisions on the point including those in ***Pankaj Kumar Chakrabarty***[18], ***Jayanarayan Sukul***[15] and ***Haradhan Saha***[16]**,** we are bound by the principles laid down therein. When the learned counsel for the

petitioner were so confronted, it was submitted by them that the decision in ***K.M. Abdulla Kunhi***[6] dealt with the matter relating to the consideration of representation by the appropriate Government and not in the context where power of detention was exercised by a specially empowered officer as the Detaining Authority. According to them, that would make a huge difference and put the matter in a qualitatively different compass.

19. We now proceed to deal with these submissions.

20. At the outset it must be stated that in ***Pankaj Kumar Chakrabarty***[18] and in ***Jayanarayan Sukul***[15] the orders of detention were passed by the District Magistrates under Section 3(ii) of 1950 Act. The relevant statutory provisions contemplated the concept of approval within 12 days of the passing of such orders of detention passed by the District Magistrates. In ***Haradhan Saha***[16] power was exercised by the District Magistrates under the provisions of the MISA, wherein similar concept of approval on part of the State Government within 12 days of the passing of the order of detention by the District Magistrate was contemplated. The distinction on that count was noted by this Court in para 34 of the decision in ***Kamleshkumar***[12]**.** The orders of detention in these decisions were not passed by a specially empowered officer but by the concerned Government. The same logic regarding deemed approval was extended

initially in ***Sushila Mafatlal Shah***[9] to cases where the orders of detention were passed not by the concerned Government but by a specially empowered officer. The matter was, however, corrected and the distinction in that behalf was succinctly dealt with in ***Kamleshkumar***[12]**.**

21. It must also be borne in mind that in all cases, the appropriate Government would be acting in two capacities; one while considering the representation and the other while taking appropriate decision after a report is received from the Advisory Board that there is sufficient cause for detention. Since the decision would be required to be taken in these two capacities, it was observed in ***K.M. Abdulla Kunhi***[6] that it would be proper for the appropriate Government to wait till the report is received from the Advisory Board in cases dealt with in paragraph 16 of the decision. But such may not be the case with the Detaining Authority who is a specially empowered officer.

22. A specially empowered officer who passes the order of detention, in exercise of special empowerment, has no statutory role to play at the stage when the report is received from the Advisory Board. The report is to be considered by the appropriate Government and not by the specially empowered officer. It may also be relevant at this stage to consider the

element of confidentiality associated with the report of the Advisory Board. Section 8 of the COFEPOSA Act states:-

> **"8. Advisory Board.**- For the purposes of sub-clause (a) of clause (4), and sub-clause (c) of clause (7) of article 22 of the Constitution,-
>
> (a) The Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards each of which shall consist of a Chairman and two other persons possessing the qualifications specified in sub-clause (a) of clause (4) of article 22 of the Constitution;
>
> (b) Save as otherwise provided in section 9, the appropriate Government shall, within five weeks from the date of detention of a person under a detention order make a reference in respect thereof to the Advisory Board constituted under clause (a) to enable the Advisory Board to make the report under sub-clause (a) of clause (4) of article 22 of the Constitution;
>
> (c) The Advisory Board to which a reference is made under clause (b) shall after considering the reference and the materials placed before it and after calling for such further information as it may deem necessary for the appropriate Government or from any person called for the purpose through the appropriate Government, or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard in person, after hearing him in person, prepare its report specifying in a separate paragraph thereof its opinion as to whether or not there is sufficient cause for the detention of the person concerned and submit the same within eleven weeks from the date of detention of the person concerned;

(d) When there is a difference of opinion among the members forming the Advisory Board the opinion of the majority of such members shall be deemed to be the opinion of the majority of such members shall be deemed to be the opinion of the Board;

(e) a person against whom an order of detention has been made under this Act shall not be entitled to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential;

(f) in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith."

23. In terms of Section 8, the report of the Advisory Board is meant only for the consumption of the appropriate Government and apart from the operative part of the report which is to be specified in a separate paragraph as per sub-section (c), the mandate in terms of sub-section (e) is to keep the report of the Advisory Board completely confidential. Thus, a specially empowered officer who may have passed the order of detention, by statutory intent is not to be privy to the report nor does the statute contemplate any role for such specially empowered officer at the stage of

consideration of the opinion of the Advisory Board. The report of the Advisory Board may provide some qualitative inputs for the appropriate Government but none to the specially empowered officer who acted as the Detaining Authority. If that be so, would a specially empowered officer who had passed the order of detention be bound by what has been laid down by this Court in paragraph 16 of the decision in ***K.M. Abdulla Kunhi***[6] in the context of the appropriate Government?

24. It must also be stated here that when ***K.M. Abdulla Kunhi***[6] was decided on 23.01.1991, the decision that was holding the field as to the role of a specially empowered officer who had passed an order of detention, was one rendered in ***Sushila Mafatlal Shah***[9]. The law that was holding the field was the concept of deemed approval as was explained in ***Sushila Mafatlal Shah***[9] and any representation made to such specially empowered officer who had passed the order of detention, in terms of the decision in ***Sushila Mafatlal Shah***[9], could be considered by the appropriate Government itself and not separately by such specially empowered officer. The subsequent decision in ***Amir Shad Khan***[11] was rendered by a Bench of three Judges on 09.08.1991 and the apparent conflict in the decisions between ***Sushila Mafatlal Shah***[9] and ***Amir Shad Khan***[11] was resolved by

the Constitution Bench of this Court in ***Kamleshkumar***[12] rendered on 17.04.1995, i.e. well after the decision in ***K.M. Abdulla Kunhi***[6].

25. Thus, if the law is now settled that a representation can be made to the specially empowered officer who had passed the order of detention in accordance with the power vested in him and the representation has to be independently considered by such Detaining Authority, the concerned principles adverted to in paragraph 16 of the decision in ***K.M. Abdulla Kunhi***[6] would not be the governing principles for such specially empowered officer. It must be stated that the discussion in ***K.M. Abdulla Kunhi***[6] was purely in the context where the order of detention was passed by the appropriate Government and not by the specially empowered officer. The principle laid down in said paragraph 16 has therefore to be understood in the light of the subsequent decision rendered by another Constitution Bench of this Court in ***Kamleshkumar***[12].

26. In the light of the aforesaid discussion, our answer to first two questions is that the Detaining Authority ought to have considered the representation independently and without waiting for the report of the Central Advisory Board.

We now come to the 3rd question. The facts in the instant case indicate that the comments of the Sponsoring Authority in respect of the

representation were already received by the Detaining Authority. After receipt of letter on 27.11.2019 that the detenues were received in custody, the time for considering the representation started ticking for the Detaining Authority. But the representation was considered only on 14.01.2020 and the reason for such delayed consideration is that the report of the Central Advisory Board was awaited. We have already found that the Detaining Authority was obliged to consider the representation without waiting for the opinion of the Central Advisory Board. Thus, there was no valid explanation for non-consideration of the representation from 27.11.2019 till 14.01.2020. We must, therefore, hold that complete inaction on part of the Detaining Authority in considering the representation caused prejudice to the detenues and violated their constitutional rights.

27. We are conscious that the view that we are taking, may lead to some incongruity and there could be clear dichotomy when the representations are made simultaneously to such specially empowered officer who had passed the order of detention and to the appropriate Government. If we go by the principle in paragraph 16 in ***K.M. Abdulla Kunhi***[6] it would be proper for the appropriate Government to wait till the report was received from the Advisory Board, while at the same time the

specially empowered officer who had acted as the Detaining Authority would be obliged to consider the representation with utmost expedition. At times a single representation is prepared with copies to the Detaining Authority namely the specially empowered officer and to the appropriate Government as well as to the Advisory Board. In such situations there will be incongruity as stated above, which may be required to be corrected at some stage. However, such difficulty or inconsistency cannot be the basis for holding that a specially empowered officer while acting as a Detaining Authority would also be governed by the same principles as laid down in paragraph 16 of ***K.M. Abdulla Kunhi***[6]**.**

28. Since there was complete inaction on part of the Detaining Authority in the present case, to whom a representation was addressed in dealing with the representation as stated above, we hold that the constitutional rights of the detenues were violated and the detenues are entitled to redressal on that count. We, therefore, allow this Writ Petition and hold the continued detention of the detenues in terms of the Detention Orders to be illegal, invalid and unconstitutional.

29. This Writ Petition is therefore allowed. The Detention Orders are quashed and the detenues are directed to be set at liberty forthwith, unless

their custody is required in connection with any other proceedings or crime.

…….J.
[Uday Umesh Lalit]

…….J.
[Indu Malhotra]

New Delhi;
March 04, 2020.

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 362 OF 2019

ANKIT ASHOK JALAN .....APPELLANT(S)

VERSUS

UNION OF INDIA & ORS. .....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1. I have gone through the detailed judgment authored by Brother Justice Lalit, but am unable to persuade myself to agree with the views expressed by him. For the sake of brevity the facts are not repeated here.

2. In my view, the decision in ***K. M. Abdulla Kunhi and B.L. Abdul Khader*** v. ***Union of India and Others***[1] covers the issue raised, as once the matter has been sent to the Advisory Board, the representation received thereafter is required to be forwarded to it as well. However, the Detaining Authority retains its right to revoke this detention order dehors the opinion of the Central Advisory Board.

1 (1991) 1 SCC 476

3. Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974[2] empowers the Central Government, the State Government or the specially empowered Officer of the rank not below the rank of the Joint Secretary of the Central Government or Secretary of the State Government, to make an order, directing a person to be detained. The Detaining Authority has jurisdiction to revoke the detention order in view of Section 21 of the General Clauses Act, 1897[3], whereas, an appropriate Government passes an order of revocation of detention or confirmation of the order of detention on receipt of the report of the Advisory Board. The consideration for the Detaining Authority for revocation, is to see whether the detention order is in conformity with the power under law whereas, the Advisory Board considers the representation to examine whether there is sufficient cause for detention. The consideration of the Advisory Board is an additional safeguard and not a substitute for the consideration of the representation by the appropriate Government.

4. The first part of the consideration of representation, as to whether the order of detention is in conformity with power under the law, does not make a distinction as to whether the Detaining Authority is the Central or State Government or a specially empowered Officer in that behalf. The consideration for detention by the Detaining Authority is confined to examining whether the order of detention is in conformity with the

2 for short “COFEPOSA Act”
3 for short “1897 Act”

power under the law. On the other hand, the Advisory Board examines if there is sufficient cause for detention. Therefore, once the Government as a Detaining Authority is examining the representation of the detenu for revocation of the detention order, it is only required to examine whether such detention order is in conformity with power under law, whereas, after the recommendation of the Advisory Board, the Government would be examining whether there is sufficient cause for detention. The exercise of jurisdiction by the Government, whilst dealing with the representation as a detaining authority and whilst considering the Advisory Board's recommendation, is in two separate and distinct spheres.

5. The Constitution Bench in ***Jayanarayan Sukul*** v. ***State of West Bengal***[4] considered the detention order under the Preventive Detention Act, 1950. This Court in the aforesaid case, culled out four principles to be followed with regard to the representation of detenu. Such four principles have been recapitulated in the order passed by the Hon'ble Justice Lalit. The power of detention under the aforesaid Act was not vested under the State or Central Government but on the District Magistrate or Additional District Magistrate specially empowered by the State Government. The opinion of the Advisory Board was required to be considered by the appropriate Government who may either confirm the detention order or if in the opinion of the Advisory Board, no sufficient cause for detention is found, then revoke

4 (1970) 1 SCC 219

the detention order. In this factual background, this Court held as under:

> "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 is true that no hard and fast rule can be laid down as to the 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 send the matter to the Advisory Board. If however the Government will not release the detenu the Government will send 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."
>
> (Emphasis supplied)

6. The second part of the consideration of representation of the detenu by the appropriate authority i.e. the Detaining Authority is entirely independent and has no connection to the consideration by the Advisory Board. It has been held that there should not be any delay in

the matter of consideration, but at the same time it has been stated that there is no hard and fast rule that can be laid down as to the time taken by the appropriate authority for consideration, however the Government has to be vigilant with regard to the rights of the citizens. Such rights raise a corelative duty on the State.

7. A two Judge Bench of this Court, in ***Vimalchand Jawantraj Jain*** v. ***Shri Pradhan and Others***[5], examined a case where a specially empowered officer of the State Government had passed a detention order. The representation to seek revocation of the detention was sent to such Officer as the Detaining Authority. The order confirming the detention of the detenu was passed after considering the report of the Advisory Board, by the detaining authority. The Advisory Board reported that there were sufficient causes for the detention of the detenu and after considering such report the order of detention was confirmed. In these circumstances, it was argued that the order of detention had been confirmed by the specially empowered Officer without considering the representation of the detenu. The Bench approved the earlier judgment of this Court in ***Khairul Haque*** v. ***The State of W.B.***[6], wherein it was held as under:

> "3……The fact that Article 22(5) enjoins upon the Detaining Authority to afford to the detenu the earliest opportunity to make a representation must implicitly mean that such representation, must, when made, be

5 (1979) 4 SCC 401

6 W.P. No. 246 of 1969 decided on 10-9-69

considered and disposed of as expeditiously as possible, otherwise, it is obvious that the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning."

8. This Court in ***Vimalchand Jawantraj Jain*** after quoting from ***Khairul Haque's*** case, held as under:

> "4. There are thus two distinct safeguards provided to a detenu; one is that his case must be referred to an Advisory Board for its opinion if it is sought to detain him for a longer period than three months and the other is he should be afforded the earliest opportunity of making a representation against the order of detention and such representation should be considered by the Detaining Authority as early as possible before any order is made confirming the detention. Neither safeguard is dependent on the other and both have to be observed by the Detaining Authority. It is no answer for the Detaining Authority to say that the representation of the detenu was sent by it to the Advisory Board and the Advisory Board has considered the representation and then made a report expressing itself in favour of detention. Even if the Advisory Board has glade a report stating that in its opinion there is sufficient cause for the detention, the State Government is not bound by such opinion and it may still on considering the representation of the detenu or otherwise, decline to confirm the order of detention and release the detenu. The Detaining Authority is, therefore, bound to consider the representation of the detenu on its own and keeping in view all the facts and circumstances relating to the case, come to its own decision whether to confirm the order of detention or to release the detenu."
>
> (Emphasis supplied)

9. In these circumstances, this Court held that the representation of the detenu was not considered by the Detaining Authority before the Advisory Board recommended confirmation of the order of the

detention, thus the Detaining Authority had failed to complete the constitutional obligation imposed upon him in terms of Clause (5) of Article 22.

10. In ***Frances Coralie Mullin*** v. ***W.C. Khambra and Others***[7] an order of detention was passed by the Administrator, Union Territory of Delhi. It was found that the representation submitted by the detenu was forwarded to the Advisory Board. Considering the case of ***Jayanarayan Sukul***, the two Judge Bench of this Court held as under:

> "5..... We agree : (1) the Detaining Authority must provide the detenu a very early opportunity to make a representation, (2) the Detaining Authority must consider the representation as soon as possible, and this, preferably, must be before the representation is forwarded to the Advisory Board, (3) the representation must be forwarded to the Advisory Board before the Board makes its report, and (4) the consideration by the Detaining Authority of the representation must be entirely independent of the hearing by the Board or its report, expedition being essential at every stage. We, however, hasten to add that the time-imperative can never be absolute or obsessive. The Court's observations are not to be so understood. There has to be lee-way, depending on the necessities (we refrain from using the word "circumstances") of the case. One may well imagine, a case where a detenu does not make a representation before the Board makes its report making it impossible for the Detaining Authority either to consider it or to forward it to the Board in time or a case where a detenu makes a representation to the Detaining Authority so shortly before the Advisory Board takes up the reference that the Detaining Authority cannot consider the representation before then but may merely forward it to the Board without himself considering it. Several such situations may arise compelling departure from the time-imperative. But no allowance can be made

7 (1980) 2 SCC 275

> for lethargic indifference. No allowance can be made for needless procrastination. But, allowance must surely be made for necessary consultation where legal intricacies and factual ramifications are involved. The burden of explaining the necessity for the slightest departure from the time- imperative is on the Detaining Authority."
>
> (Emphasis supplied)

11. The judgments of this Court in ***Vimalchand Jawantraj Jain*** and ***Frances Coralie Mullin*** were considered by the Constitution Bench in ***K. M. Abdulla Kunhi*** wherein, the judgment in ***Vimalchand Jawantraj Jain***, ***Khairul Haque*** and ***Om Prakash Bahl*** v. ***Union of India***[8] were overruled and that of ***Frances Coralie Mullin*** was approved. The Constitution Bench held as under:

> "11. It is now beyond the pale of controversy that the constitutional right to make representation under Clause (5) of Article 22 by necessary implication guarantees the constitutional right to a proper consideration of the representation. Secondly, the obligation of the Government to afford to the detenu an opportunity to make representation and to consider such representation is distinct from the Government's obligation to refer the case of detenu along with the representation to the Advisory Board to enable it to form its opinion and send a report to the Government. It is implicit in Clauses (4) and (5) of Article 22 that the Government while discharging its duty to consider the representation, cannot depend upon the views of the Board on such representation. It has to consider the representation on its own without being influenced by any such view of the Board. The obligation of the Government to consider the representation is different from the obligation of the Board to consider the representation at the time of hearing the references. The Government considers the representation to ascertain essentially whether the order is in conformity with the power under the law. The Board,

8 W.P. NO. 845 of 1979 decided on October 15, 1979

> on the other hand, considers the representation and the case of the detenu to examine whether there is sufficient case for detention. The consideration by the Board is an additional safeguard and not a substitute for consideration of the representation by the Government. The right to have the representation considered by the Government, is, safeguarded by Clause (5) of Article 22 and it is independent of the consideration of the detenu's case and his representation by the Advisory Board under cl. (4) of Article 22 read with Section 8(c) of the Act.....”
>
> (Emphasis supplied)

12. Later, while considering the ***Frances Coralie Mullin*** case, the Constitution Bench held that the time-imperative for consideration of the representation of a detenu can never be absolute or obsessive, it depends upon the necessities under which the representation is made. If there is not enough time to dispose of the representation, the representation may also be forwarded to the Advisory Board along with the case of the detenu. This Court held as under:

> “16. We agree with the observations in Frances Coralie Mullin case. The time imperative for consideration of representation can never be absolute or obsessive. it depends upon the necessities and the time at which the representation is made. The representation may be received before the case is referred to the Advisory Board, but there may not be time to dispose of the representation before referring the case to the Advisory Board. In that situation the representation must also be forwarded to the Advisory Board along with the case of the detenu. The representation may be received after the case of the detenu is referred to the Board. Even in this situation the representation should be forwarded to the Advisory Board provided the Board has not concluded the proceedings. In both the situations there is no question of consideration of the representation before the receipt

> of report of the Advisory Board. Nor it could be said that the government has delayed consideration of the representation, unnecessarily awaiting the report of the Board. It is proper for the Government in such situations to await the report of the Board. If the Board finds no material for detention on the merits and reports accordingly, the Government is bound to revoke the order of detention. Secondly, even if the Board expresses the view that there is sufficient cause for detention, the Government after considering the representation could revoke the detention. The Board has to submit its report within eleven weeks from the date of detention. The Advisory Board may hear the detenu at his request. The Constitution of the Board shows that it consists of eminent persons who are Judges or person qualified to be Judges of The High Court. It is therefore, proper that the Government considers the representation in the aforesaid two situations only after the receipt of the report of the Board. If the representation is received by the Government after the Advisory Board has made its report, there could then of course be no question of sending the representation to the Advisory Board. It will have to be dealt with and disposed of by the Government as early as possible."
>
> (Emphasis supplied)

13. Later in the same judgment, it was held that there is no constitutional mandate to consider the representation before confirming the order of the detention. As long as, the Government i.e. the Detaining Authority considers the representation without delay and without an unbiased mind, there is no basis for concluding that there has been an absence of independent consideration, before the confirmation of detention. The Court held that there is no justification for imposing the restriction on the power of the Detaining Authority. It was held as under:

> “19. There is no constitutional mandate under Clause (5) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention. As long as the Government without delay considers the representation with an unbiased mind there is no basis for concluding that the absence of independent consideration is the obvious result if the representation is not considered before the confirmation of detention. Indeed, there is no justification for imposing this restriction on the power of the Government. As observed earlier, the Government's consideration of the representation is for a different purpose, namely to find out whether the detention is in conformity with the power under the statute. This has been explained in Haradhan Saha case, where Ray, C.J., speaking for the Constitution Bench observed that the consideration of the representation by the Government is only to ascertain whether the detention order is in conformity with the power under the law. There need not be a speaking order in disposing such representation. There is also no failure of justice by the order not being a speaking order. All that is necessary is that there should be real and proper consideration by the Government.”
>
> (Emphasis supplied)

14. The Constitution Bench of this Court in ***K.M. Abdulla Kunhi*** further examined the situation that if the detenu makes a representation after his detention is confirmed according to the procedure laid down under Section 8 of the COFEPOSA Act, the Government still has to consider such representation and assess whether the detention is not within the power conferred under the law. The Court held as under:

> “20. The words 'shall afford him the earliest opportunity of making a representation against the order' in clause (5) of Article 22 suggest that the obligation of the Government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under Section 8 of the Act. But if the detenu does not

> exercise his right to make representation at that stage, but presents it to the government after the Government has confirmed the order of detention, the Government still has to consider such representation and release the detenu if the detention is not within the power conferred under the statute. The confirmation of the order of detention is not conclusive as against the detenu. It can be revoked *suo motu* under Section 11 or upon a representation of the detenu."
>
> (Emphasis supplied)

15. The aforesaid judgment arises out of the fact that the detention order was passed by the Government, however, it will not make any difference if the detention order had been passed by a specially empowered Officer. The consideration for revocation of a detention order is only whether such detention order conforms to the law. Such consideration is applicable to all detaining authorities, be it the Central Government or the State Government or any specially empowered Officer of the two. No distinction can be drawn between a specially empowered Officer or the State and Central Governments as the consideration herein for revocation of a detention order is restricted to whether or not the detention order conforms to the law.

16. Subsequently, the matter was again placed before the Constitution Bench in ***Kamleshkumar Ishwardas Patel*** v. ***Union of India and Others***[9] on account of the divergent views in the ***State of Maharashtra & Anr.*** v. ***Sushila Mafatlal Shah and others***[10] and

9 (1995) 4 SCC 51
10 (1988) 4 SCC 490

Amir Shad Khan v. ***L. Hmingliana and Others***[11]. It was held that Clause (5) of Article 22 imposes a dual obligation on the authority making the order of preventive detention. Firstly, to communicate to the detenu as soon as may be, the grounds on which the order of detention has been made; and secondly, to afford the detenu the earliest opportunity of making a representation against the order of detention. It was held that in terms of Section 21 of the 1897 Act, the authority which has ordered the detention has the power to revoke the same. Further, the detenu has the liberty to submit his representation to the authority which is competent to revoke the detention. This Court held as under:

> "14. 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, who 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 a 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."

17. The Constitution Bench held that when a detention order has been passed by an Officer specially empowered for that purpose, the detenu

11 (1991) 4 SCC 39

has a right to make a representation against the order of detention to the said Officer. The failure of the Detaining Authority in considering such representation results in the denial of the right conferred on the detenu to make a representation against the order of detention. This right of the detenu is in addition to his right to make a representation to the State and the Central Government.

18. In Criminal Appeal Nos. 764-765 of 1994, the Constitution Bench of this Court in ***Kamleshkumar Ishwardas Patel*** considered three questions which were examined by the Full Bench of the Bombay High Court. The first question was whether a specially empowered officer had an independent power to revoke the order of detention. The second question is not relevant for consideration in the present case. The third question examined was whether the failure to take an independent decision on the revocation of a detention order by the specially empowered officer and merely forwarding the same with a recommendation to reject, results in non-compliance with the constitutional safeguard under Article 22(5) of the Constitution. The order of the High Court on first question was confirmed and that on the third question was set aside.

19. An argument was raised in respect of the third question that failure on the part of the Detaining Authority to consider the representation of the detenu results in a denial of the right of detenu to make a representation recognized under Clause (5) of Article 22, which renders

the detention illegal. In the aforesaid case, it was found that the representation of the detenu was not considered by the Officer making the order of detention and the High Court erred in holding that the failure on part of the Detaining Authority to consider and decide the representation is not vital to the order of detention. Thus, the aforesaid judgment is to the effect that the Detaining Authority is duty-bound to consider the representation of the detenu which is a constitutional mandate under Clause (5) of Article 22 of the Constitution. Such representation has to be decided independently to the recommendation of the Advisory Board and can be accepted dehors the recommendation of the Advisory Board. Thus, the right of detenu is to seek consideration of his representation by the Detaining Authority, including the specially empowered Officer or by State or Central Government. It is constitutionally mandated by Clause (5) of Article 22. Further, as mentioned earlier, the Detaining Authority which includes the State Government or the Central Government, examines whether the detention order is in conformity with law whereas, the appropriate government while considering the recommendation of the Advisory Board examines whether there was sufficient cause for the detention of the detenu. The appropriate government at that stage examines the report of the Advisory Board in respect of the sufficiency of material with regard to detention. The consideration by the Detaining Authority is separate and distinct to the consideration of the

revocation of the detention order and the consideration by the appropriate Government at the time of assessing the recommendation of the Advisory Board. Thus, it is immaterial if the detention order was passed by a specially empowered Officer or the State Government or the Central Government as all such authorities have similar jurisdiction to revoke the detention order. Clause (5) of Article 22 protects the right of the detenu by giving him the right to submit representation, which is required to be considered by the Detaining Authority, provided it is not delayed without any reason. On the other hand, the detention of the detenu beyond three months can be only on the basis of the report of the Advisory Board in respect of sufficiency of material to detain the detenu beyond the period of three months. Such right is conferred on the detenu by clause (4) of Article 22 of the Constitution.

20. The judgment in ***K. M. Abdulla Kunhi*** had been examined by another Division Bench judgment in ***Golam Biswas*** v. ***Union of India and Another***[12], wherein the specially empowered Officer passed two orders of detention. A representation was submitted seeking revocation of the detention order. The consideration of detention of the detenu was referred to the Advisory Board on 8.7.2014. The order of detention was confirmed by the Central Government on 5.9.2014 and the representation was rejected by the Central Government on 21.7.2014. Thus, referring to ***K. M. Abdulla Kunhi*** and reiterating that there is no time limit to dispose of the representation, this Court held as under:

12 (2015) 16 SCC 177

“14. As the quoted text would reveal, in essence, it was reiterated that if a representation is received by an appropriate authority and there is no time to dispose of the same having regard to the time-frame fixed by the Act for reference of the matter to the Advisory Board, the representation must also be forwarded to the Advisory Board along with the records of the detenu. This assumes significance, in our comprehension, in view of the binding nature of the opinion of the Advisory Board, in case, on a consideration of the materials on record it decides to hold against the detention. In case the Advisory Board holds that the detention order is invalid, it is not open for the appropriate Government to continue therewith and it has to essentially revoke the same though the converse may not be the same. In other words, if the Advisory Board upholds the order of detention, it would still be open to the Central Government, depending on the merits of each case, to release the detenu. The fact that the opinion of the Advisory Board against continuance of the order of detention is final vis-à-vis the appropriate Government, in our opinion, is the motivating imperative for requiring the appropriate Government to forward the pending representation to the Advisory Board so as to enable it to traverse the entire panorama of grounds taken against the detention order for an effective, timely and meaningful consideration of the case of the detenu. This requirement as has been essentially recognised and mandated by two decisions of the Constitution Bench of this Court, does not, in any way, undermine the appropriate Government's authority to consider and dispose of such representation of any detenu under the preventive detention law. The right of the Central Government or for that matter any appropriate Government to consider and dispose of a representation of a detenu, preventively detained, has to be harmoniously construed with the obligation cast on it to forward a pending representation to the Advisory Board as has been consistently held in *Jayanarayan Sukul* [*Jayanarayan Sukul* v. *State of W.B.*, (1970) 1 SCC 219 : 1970 SCC (Cri) 92] and *K.M. Abdulla Kunhi* [*K.M. Abdulla Kunhi* v. *Union of India*, (1991) 1 SCC 476 : 1991 SCC (Cri) 613]”

21. This Court held that the representation of the detenu was not forwarded to the Advisory Board and instead rejected during the pendency of the proceedings before the Advisory Board. Thus, the Court was constrained to hold that the detention of the detenu was constitutionally invalid. It was held as under:

> "15. As admittedly, the detenu's representation dated 8-7-2014, pending with the Central Government, the appropriate Government in the case, was not forwarded to the Advisory Board and was instead rejected during the pendency of the proceedings before the Advisory Board, we are constrained to hold that the detention of the detenu is constitutionally invalid. The rejection of the representation by the Central Government later on 21-7-2014 during the pendency of the proceedings before the Advisory Board is of no consequence to sustain the detention. Consequently, the order of confirmation as well is rendered *non est* by this vitiation. In view of the determination made on the above aspect of the debate, we do not consider it necessary to dilate on the other pleas raised on behalf of the detenu. In the result, the appeal succeeds. The impugned judgment and order is set aside. The orders of detention as well as the order of confirmation are hereby annulled. The detenu is directed to be set at liberty, if not wanted in any other case."

22. In view of the aforesaid judgment, I am of the opinion that once the detention order has been made by any of the authorities competent to detain in terms of Section 3 (1) of the COFEPOSA Act, the representation to seek revocation of the detention order can be considered and decided by the Detaining Authority dehors the decision of the Advisory Board and the acceptance of recommendation by the appropriate Government. The consideration for revocation of a

detention order is limited to examining whether the order conforms with the provisions of law whereas the recommendation of the Advisory Board is on the sufficiency of material for detention, which alone is either confirmed or not accepted by the appropriate Government.

23. It would be a matter of prudence and propriety for the Detaining Authority to defer the decision on the representation to revoke the detention order, when the matter is being considered by the Advisory Board, consisting of three Hon'ble sitting Judges of the High Court. The consideration of the representation by the Detaining Authority in these circumstances cannot be said to be delayed as the representation was received after the matter was referred to the Advisory Board.

24. Thus, I do not find any merit in the present writ petition. The same is dismissed.

.....J
(HEMANT GUPTA)

NEW DELHI;
MARCH 4, 2020.