

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.1048 OF 2015**

Bandu Shivaji More
Indian Inhabitant, Age 21 years,
Residing at Ghanchkrar,
Mala Dighanchi, District Sangli

..Petitioner.

versus

1. The State of Maharashtra
Through the Additional
Chief Secretary to the
Government of Maharashtra,
Home Department (Special),
Mantralaya,
Mumbai 400 032.
2. V.S. Singh,
The Principal Secretary to
the Government of
Maharashtra, Mantralaya,
World Trade Centre, 30th Floor,
Mumbai 400 005.
3. The Directorate of Revenue
Intelligence, 13th Sir
Vithaldas Thackersey Marg,
Opp. Patkar Hall, New
Marine Lines, Mumbai.
4. The Superintendent of
Prison, Nasik Road Central
Prison, Nasik Road,
Maharashtra.
5. The Union of India,
through Secretary,
Ministry of Finance,
Janpath Bhavan,
6th floor, Janpath Marg,
New Delhi 110 001.

..Respondents.

**WITH
CRIMINAL WRIT PETITION NO.1049 OF 2015**

Prashant Krushandev Jadhav
Indian Inhabitant, Age 22 years,
Residing at Narsewadi,
Tal : Tasgaon, District Sangli.

..Petitioner.

versus

1. The State of Maharashtra
Through the Additional
Chief Secretary to the
Government of Maharashtra,
Home Department (Special),
Mantralaya,
Mumbai 400 032.
2. V.S. Singh,
The Principal Secretary to
the Government of
Maharashtra, Mantralaya,
World Trade Centre, 30th Floor,
Mumbai 400 005.
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Intelligence, 13th Sir
Vithaldas Thackersey Marg,
Opp. Patkar Hall, New
Marine Lines, Mumbai.
4. The Superintendent of
Prison, Nasik Road Central
Prison, Nasik Road,
Maharashtra.
5. The Union of India,
through Secretary,
Ministry of Finance,
Janpath Bhavan
6th floor, Janpath Marg,
New Delhi 110 001.

..Respondents.

**WITH
CRIMINAL WRIT PETITION NO.1050 OF 2015**

Satyawan Mahadev Suryavanshi
Indian Inhabitant, Age 31 years,
Residing at 131, Puru Gaon,
Narsewadi, Tal : Tasgaon,
District Sangli.

..Petitioner.

versus

1. The State of Maharashtra
Through the Additional
Chief Secretary to the
Government of Maharashtra,
Home Department (Special),
Mantralaya,
Mumbai 400 032.
2. V.S. Singh,
The Principal Secretary to
the Government of
Maharashtra, Mantralaya,
World Trade Centre,
30th Floor,
Mumbai 400 005.
3. The Directorate of Revenue
Intelligence, 13th Sir
Vithaldas Thackersey Marg,
Opp. Patkar Hall, New
Marine Lines, Mumbai.
4. The Superintendent of
Prison, Nasik Road Central
Prison, Nasik Road,
Maharashtra.
5. The Union of India,
through Secretary,
Ministry of Finance,
Janpath Bhavan
6th floor, Janpath Marg,
New Delhi 110 001.

..Respondents.

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Mrs. Aisha M.Z. Ansari with Mrs. Nasreen Ayubi for the Petitioners.

Mr. Jayesh P. Yagnik, A.P.P. for the State.

Mrs. A.S.Pai, Spl.P.P. for Respondent No.3.

Ms. Rebecca Gonsalvez for Respondent No.5.

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CORAM : S.C.DHARMADHIKARI &
A.S. GADKARI, JJ.

14th July, 2015.

JUDGMENT (PER A.S. GADKARI, J.) :

The present Petitions under Article 226 of the Constitution of India have been preferred by the Petitioners, challenging the separate orders dated 4th February, 2015 passed by the Respondent No.2 in exercise of powers under Section 3(1) of the Conservation Of Foreign Exchange and Prevention Of Smuggling Activities Act, 1974 ('COFEPOSA Act' for short). All the three impugned orders are the orders of preventive detention against the detenues therein. Writ Petition No.1048 of 2015 has been preferred by the brother of detenu Ramdas Shivaji More. Writ Petition No.1049 of 2015 has been preferred by the cousin brother of detenu Pandurang Ramchandra Jadhav @ Popat Jadhav. Writ Petition No.1050 of 2015 has been preferred by the cousin brother of detenu Sagar Vishnu Suryavanshi. The detention orders dated 4th February, 2015 passed in exercise of powers conferred by Section 3(1) of the COFEPOSA Act which are the subject matter in Writ Petition No.1048 of 2015 and Writ Petition No.1050 of 2015 have been passed with a view to prevent the detenues therein, in future from engaging in transporting of smuggled

goods. The impugned order dated 4th February, 2015 in Writ Petition No.1049 of 2015 has been passed in exercise of powers conferred by Section 3(1) of the COFEPOSA Act by the Respondent No.2, the Detaining Authority with a view to prevent him in future from smuggling of goods. All the aforesaid three orders of preventive detention passed under the CAFEPOSA Act have been served upon the respective detenues along with the grounds of detention on 5th February, 2015 and the detenues have been detained in Nashik Road Central Prison.

The learned counsel appearing for the respective parties unanimously submitted before us that though the cases relate to three different detenues, the facts / dates involved and grounds of challenge raised in the present Petitions are almost identical and hence, we are deciding all the cases by one common order.

2. Shorn of unnecessary details the brief facts leading to the passing of the impugned detention orders dated 4th February, 2015 by the Respondent No.2, which can be gathered from the grounds of detention, can briefly be stated thus :-

(i) That the Directorate of Revenue Intelligence (DRI), Ahmedabad Zonal Unit received specific information that the detenues viz. Ramdas Shivaji More (detenu in Writ Petition No.1048 of 2015) and Sagar Vishnu Suryavanshi (detenu in Writ Petition No.1050 of 2015) were

travelling by Train No.12262 (Howrah-CST Doronto Express) which had departed from Howrah at 08.20 AM on 9th September, 2014 and was scheduled to arrive at Mumbai Chhatrapati Shivaji Terminus Railway Station at 11.00 AM on 10th September, 2014 and both of them were carrying a total of around 20 kgs. of smuggled Foreign Marked Gold Bars (FMGB) and were seated in bogie No.A-3 on seat Nos.23 and 24 and were expected to alight at Mumbai Chhatrapati Shivaji Terminus Railway Station. On the basis of the said specific information, combined operation was undertaken by the officers of the Directorate of Revenue Intelligence (DRI), Ahmedabad Zonal Unit along with the officers of Mumbai Zonal Unit. That in pursuance of the specific information received by the officers of the DRI, the Intelligence Officers boarded the said train at Igatpuri Railway Station in the said compartment in which detenues Ramdas More and Sagar Suryavanshi were travelling. The said officers identified both of the said detenues.

(ii) That when the said train crossed Shahad Railway Station and had a brief halt at the signal, the detenues Ramdas More and Sagar Suryavanshi suddenly got down at the said signal. The officers of the DRI followed and intercepted the said two detenues at Shahad Railway Station and questioned about possession of gold bars. The detenues though initially denied any possession, subsequently admitted the possession of smuggled gold bars. As the place was not conducive for search and for further proceedings, the said two detenues viz. Ramdas

More and Sagar Suryavanshi were brought to the DRI Office at Mumbai and a detail search was taken in the presence of the Gazetted Officers of the DRI. On being questioned, both the detainees informed the DRI officers that the gold bars were strapped around their waist, using a cloth. After removing the said cloth straps from the waist of the detainees, 8 pieces weighing 1 kg. each of yellow Foreign Marked Gold Bars were found in the said strap with Ramdas and 7 pieces of 1 kg. each of Foreign Marked Gold Bars were found in possession of Sagar. The said Foreign Marked Gold Bars were bearing serial numbers along with markings. That as per the grounds of detention, it appears that in all 15 Foreign Marked Gold Bars weighing 1 kg. each were found in possession of detainees Ramdas More and Sagar Suryavanshi during search and seizure procedure of the DRI officers. That the said two detainees were interrogated by the DRI officers and during interrogation, it was revealed that the said Foreign Marked Gold Bars were collected by both the said detainees at New Jalpaiguri, West Bengal from an unknown person. It was also revealed that one Vijay Shrikhande and Pandurang Jadhav @ Popat Jadhav (detenu in Writ Petition No.1049 of 2015) smuggled the said gold into India and they are the employers of detainees Ramdas More and Sagar Suryavanshi. It was further revealed that under the instructions of detenu Pandurang Jadhav @ Popat Jadhav, detainees Ramdas More and Sagar Suryavanshi brought the said gold from New Jalpaiguri to Mumbai. It was revealed that the Indian currency which was found in the

possession of the said two detainees viz. Ramdas and Sagar was given to them by their employers Vijay Shrikhande and detenu Pandurang Jadhav alias Popat Jadhav as expenses for carrying the said smuggled gold to Mumbai. It was also revealed in the investigation that the detainees Ramdas and Sagar had on earlier occasion also brought the said smuggled gold bars from Bagdogra / New Jalpaiguri and other eastern parts of India to Mumbai under the directions of Pandurang Jadhav alias Popat Jadhav.

(iii) That after taking into consideration the evidence and all the documents available on record, the Investigating Agency / Sponsoring Authority placed the same before the Detaining Authority and the Detaining Authority after being subjectively satisfied, issued the present detention orders dated 4th February, 2015 against the detainees therein as contemplated under Section 3(1) of the COFEPOSA Act. The said orders are impugned herein.

3. It is thus clear that all the detainees in the aforesaid three Writ Petitions are the members of the same syndicate and therefore, the Sponsoring Authority moved the proposal of the said three detainees with the Detaining Authority for preventively detaining them from indulging into the said activities mentioned herein.

4. Heard Mrs. Aisha Ansari with Mrs. Nasreen Ayubi for the Petitioners, Mr. J P. Yagnik, A.P.P. for the State, Mrs. A.S.Pai, Spl.P.P. for

the Respondent No.3 and Ms. Rebecca Gonsalvez for the Respondent No.5 at length. We have also perused the record produced by the learned counsel appearing for the respective parties.

5. Though the Petitioners have taken various grounds in the Writ Petitions thereby challenging the impugned orders of detention dated 4th February, 2015 passed by the Respondent No.2, the learned counsel appearing for the Petitioners confined her challenge to the impugned order to grounds Nos.(iv) and (vii) of paragraph 5 in the Petition which deals predominantly with the breach of Article 22(5) of the Constitution of India, without prejudice to various other grounds which she has raised while assailing the order of detention.

With reference to ground (iv) raised in paragraph 5 of the Petition, she submitted that the Detaining Authority has not taken into consideration the entire material available on record at one time. That the Detaining Authority before passing the detention order has in piecemeal considered the documents purported to have been placed before it and therefore, the impugned orders of detention cannot be said to have any sanctity of law. She further contended that even in replies filed by the Detaining Authority, the said fact with reference to ground No.(iv) of paragraph 5 of the Petition has not been elaborated and/or properly explained by the Detaining Authority and therefore, after taking into consideration the contemporaneous record, an adverse inference has to be drawn against the Detaining Authority and

the impugned orders of detention be held as malafide *ab initio*, null and void.

With reference to ground No.(vii) of paragraph 5 of the Petition, she contended that the Petitioner has sent a composite representation to the authorities mentioned in the grounds of detention and there is an in-ordinate delay at the hands of the Respondent No.2 i.e. Principal Secretary (Appeals and Security), while deciding the said representation and further communicating the decision of the same to the Petitioners, thereby committing breach of Article 22(5) of the Constitution of India. She therefore, contended that as there is a breach of the constitutional mandate as contemplated under Article 22(5) of the Constitution of India, the impugned detention orders are required to be quashed and set aside on the ground that the continuous detention of the detenues herein has to be held illegal and vitiated for the breach of the mandate of Article 22 (5) of the Constitution of India.

6. After receipt of the notice of the present Petitions, in response to the Petitions, Mr. Sanjay Khedekar, Deputy Secretary, Home Department, Government of Maharashtra, Mantralaya, Mumbai has filed a detailed affidavit dated 21st April, 2015 on behalf of the Respondent No.2 i.e. the Principal Secretary to the Government of Maharashtra and the Detaining Authority thereby opposing the Petitions. Mr. M.P. Madhavn, Assistant Director of Directorate of

Revenue Intelligence, Mumbai Zonal Unit, Mumbai has also filed a detailed affidavit dated 21st April, 2015 on behalf of the Respondent No.3 opposing the Petitions. Mr. M.L. Sharma, Under Secretary, Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau (COFEPOSA Section) has also filed an affidavit dated 24th June, 2015 for and on behalf of the Respondent No.5.

7. Before we proceed to deal with the contentions raised by the Petitioners, we are at pains to note here that the Respondent No.2 i.e. the Detaining Authority, instead of filing its own affidavit, has authorised Mr. Sanjay Khedekar, Deputy Secretary of his department for justifying “subjective satisfaction” reached by the Detaining Authority i.e. Mr. V.S. Singh (Respondent No.2 herein) and has not bothered to explain the fundamental criteria in a preventive detention order, of “subjective satisfaction” reached by itself. We fail to understand as to how a “subjective satisfaction” reached by a person exercising the authority under a specific statute, can be explained by its sub-ordinate officer, that too only on the basis of the documents on record and particularly, in view of the fact that the Detaining Authority (Mr. V.S. Singh) is still in the office, holding the same charge. We hereby strongly deprecate such practice and direct the Detaining Authority to henceforth file its own affidavits explaining its “subjective satisfaction” till it is holding the said office in every preventive detention matter without relegating or authorising the said task to

anybody else. While expressing our displeasure as aforesaid, we have taken into consideration the settled position of law that the rule of affirming an affidavit by the Detaining Authority cannot be suggested as an inflexible rule applicable to all detention cases irrespective of the circumstances. It is pertinent to note in the present case that the affidavit filed by Mr. Sanjay Khedekar dated 21st April, 2015 in paragraph No.1 itself states that he is affirming the said affidavit on the basis of record and files of the department and the facts within his knowledge. (Underlined supplied for emphasis). But as stated earlier, whenever the Detaining Authority who has reached to the “subjective satisfaction” after wading through and/or perusing the entire material available before it, cannot relegate its personal “subjective satisfaction” and to be expressed by its sub-ordinate authority. An affidavit is affirmed by setting out facts either to the personal knowledge of the deponent or on the basis of the information derived from the perusal of files and records. At best, the deponent such as the present one, can depose on the basis of the later but cannot vouch for the former as some facts are not known personally to him. This could therefore be an assertion on affidavit but entirely unreliable and not carrying any weightage. We are therefore of the considered view as expressed by us in the earlier part of this paragraph that, the Detaining Authority who holds the office must file its personal affidavit explaining the “subjective satisfaction” reached by it.

8. The Respondent No.3 i.e the Sponsoring Authority in its affidavit dated 21st April, 2015, in response to ground No.(iv) of paragraph 5 of the Petition, which deals with the consideration by the Detaining Authority of the documents in piecemeal and thereby vitiating the detention order has stated that the proposal of detention was initiated by the said authority of the detainees on 18th November, 2014. That it was placed before the Screening Committee on 25th November, 2014. That the said proposal along with other relied upon documents were forwarded to the Detaining Authority on 19th December, 2014. The said proposal along with other relied upon documents was received by the Detaining Authority on 20th December, 2014. Thereafter on 5th January, 2015 a letter was received from the Detaining Authority calling upon the Sponsoring Authority for certain information and clarification and a reply to the said letter was forwarded on 7th January, 2015. It is specifically mentioned in the said affidavit that, the further generated documents (underlined supplied for emphasis) were forwarded on 9th January, 2015 to the Detaining Authority and on 4th February, 2015 the Detaining Authority contemporaneously issued the order of detention against all the detainees.

9. The Detaining Authority in paragraph 6 of its affidavit dated 21st April, 2015 in response to ground Nos.5(ii), (iii) and (iv) of the Petitions collectively, while replying the same has stated that on 3rd January,

2015, the Detaining Authority gave remarks that the Sponsoring Authority should submit the requisite information in person on 7th January, 2015 and as per the directions of the Detaining Authority, the additional information was called by the letter dated 5th January, 2015. That the Sponsoring Authority forwarded the information (underlined supplied for emphasis) by the letter dated 7th January, 2015. That the said information was scrutinized on 8th January, 2015 and 9th January, 2015 and thereafter after taking into consideration the said 'forwarded information' by the Sponsoring Authority, the Detaining Authority issued the finalized orders dated 4th February, 2015.

It is to be noted here that though the Sponsoring Authority has specifically mentioned in its affidavit that they forwarded the 'further generated' documents on 9th January, 2015 to the Detaining Authority, the Sponsoring Authority at the first instance and the Detaining Authority thereafter has not at all explained what were the further generated documents. The Detaining Authority has mentioned only about the 'forwarded information' by the Sponsoring Authority on 7th January, 2015. There is no consistency about the nature of documents and the information received by the Detaining Authority. It is further clear that the Detaining Authority has not at all explained about what was the forwarded information by the Sponsoring Authority which was taken into consideration by the Detaining Authority before reaching to the subjective satisfaction for issuing the detention orders. It appears that there is no consistency in the stand taken by the said

two Authorities which ultimately led the Detaining Authority to pass the detention orders. It clearly shows the non-application of mind by the Detaining Authority and in our opinion, the detention orders stand vitiated for the same.

10. We are of the considered opinion that the Detaining Authority has considered the proposal of the Sponsoring Authority in piecemeal while reaching to the subjective satisfaction and according to us, the subjective satisfaction reached by the Detaining Authority stands vitiated for considering the proposal and/or the documents submitted or forwarded by the Sponsoring Authority in piecemeal and therefore, the detention orders stand vitiated by non-application of mind. If what is forwarded is a document, then the fundamental difference between supplying information and forwarding a document ought to have been noted. A document by plain dictionary meaning "is a piece of written, printed or electronic matter that provides information or evidence, or that serves as an official record". Information means "facts or knowledge provided or learned". Therefore, either the subjective satisfaction is based on document subsequently generated or on information, but that is not clear at all. Such a satisfaction is of no legal sanctity and cannot be sustained and have to be held as null and void.

11. Alternatively and with reference to ground No.5(vii) of the

Petition, learned counsel for the Petitioners contended that there is an inordinate and unexplained delay at the instance of the Respondent No.2 in considering the composite representation made by the detenues to the authorities mentioned in the grounds of detention. The Respondent Nos.1 and 2 in its affidavit dated 21st April, 2015 sworn by Mr. Sanjay Khedekar, in response to said ground 5(vii) of the Petitions, in its paragraph No.9 has stated that a composite representation of the detenues dated 2nd March, 2015 was forwarded by the Superintendent, Nashik Road Central Prison, Nashik by its letter dated 2nd March, 2015 which was received by its office on 4th March, 2015. That the parawise comments on the points raised in the said representation were prepared on the basis of the record available with the office of the Detaining Authority. The note was put up by the concerned Section Officer on 5th March, 2015 which was approved by the Deputy Secretary on the same day. That on 6th March, 2015 and 8th March, 2015 were holidays. It has been further stated that the Detaining Authority was busy in work related to Assembly session on 7th March, 2015, 9th March, 2015 and 10th March, 2015. After considering the representation of the detenues and the parawise comments prepared on the basis of the available record, the Principal Secretary (Appeals and Security) and the Detaining Authority rejected the representation on 11th March, 2015. That the draft rejection intimation letter was submitted by the concerned Assistant on 12th March, 2015. That the Section Officer endorsed it on 12th March, 2015 which was approved by

the Deputy Secretary on the same day. That the approved rejection intimation letter was forwarded to the detenues through the Superintendent, Nashik Road Central Prison on 12th March, 2015 and the same was served and received by the detenues on 23rd March, 2015 to which the detenues have acknowledged. It is thus clear that there is a delay of about 12 days from 12th March, 2015 till 23rd March, 2015 at the behest of the Respondent Nos.1 and 2 i.e the Detaining Authority while rejecting and communicating the order of rejection to the detenues. The Sponsoring Authority i.e. the Respondent No.3 in its affidavit dated 21st April, 2015 has with reference to paragraph 5(vii) of the Petition has responded that since parawise comments from the Sponsoring Authority were not called for by the State Government, hence no parawise comments were forwarded to the State Government.

12. Mr. Yagnik, learned APP for the Respondent Nos.1 and 2 has placed reliance on a decision of the Supreme Court in the case of **Abdul Nasar Adam Ismail v. State of Maharashtra and others** reported in **(2013) 4 SCC 435** and in particular, paragraph Nos.14 and 16 therein which read thus :

“14. We shall now turn to the submission that there is delay in disposal of the detenu’s representation by the State Government. Several judgments have been cited by the learned counsel for the appellant. It is not necessary to refer to

all of them because they reiterate the same principles. We may begin with the observations of this Court in *Frances Coralie Mullin v. W.C. Khambra* ((1980) 2 SCC 275). The relevant portion of the said judgment reads thus: (SCC p.279, para 5)

“The time imperative can never be absolute or obsessive”.

In *L.M.S. Ummu Saleema v. B.B. Gujaral*, (1981) 3 SCC 317, it was held : (SCC p.322, para 7)

“The occasional observations made by this Court that each day’s delay in dealing with the representation must be adequately explained are meant to emphasise the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release of the detenu. Law deals with the facts of life. In law, as in life, there are no invariable absolutes. Neither life nor law can be reduced to mere but despotic formulae.”

“16. The principles which have been laid down by the Constitution Bench and the other judgments which we have referred to earlier can be summarised. Article 22(5) of the Constitution casts a legal obligation on the Government to consider the detenu’s representation as early as possible. Though no time limit is prescribed for disposal of the representation, the constitutional imperative is that it must be disposed of as soon as possible. There should be no supine indifference, slackness or callous attitude. Any unexplained delay would be a breach of the constitutional imperative and it would render the continued detention of the detenu illegal. That does not, however, mean that every day’s delay in dealing with the representation of the detenu has to be explained. The explanation offered must be reasonable indicating that

there was no slackness or indifference. Though the delay itself is not fatal, the delay which remains unexplained becomes unreasonable. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or the range of delay, but how it is explained by the authority concerned. If the inter departmental consultative procedures are such that the delay becomes inevitable, such procedures will contravene the constitutional mandate. Any authority obliged to make order of detention should adopt a procedure calculated towards expeditious consideration of the representation. The representation must be taken up for consideration as soon as such representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu.”

13. Mrs. Pai, learned Special PP appearing for the Respondent No.3 has placed reliance on a decision of the Supreme Court in the case of **State of Tamil Nadu and another v. C. Subramani** reported in **(1992) 4 SCC 495** and from the excerpt of paragraph 10 thereof which reads as under :

“10. Thus, the question of any period taken in dealing with the representation has to be decided in the particular facts and circumstances of each case and it cannot be determined on the basis of any rigid period of time uniformly applicable to all cases. A leeway has to be given in considering such representation by the Government and no inference of delay

leading to the violation of constitutional mandate enshrined in Clause (5) of Article 22 can be drawn unless it shows that the authorities dealing with the representation had adopted, an attitude of leisureliness, supine indifference, slackness, unduly protracted procrastination or callous attitude in considering such representation.”

14. We are of the considered view that there cannot be any dispute about the law enunciated by the Supreme Court on the point of deciding the representation made by a detenu. A catena of decisions of the Supreme Court in unequivocal terms lay down the germane principle while deciding a representation by the Authorities while exercising powers under Article 22(5) of the Constitution of India. It is the settled position of law that though the delay itself is not fatal in each and every case, what is necessary and required is that the delay in deciding a representation of a detenu should be reasonable and has to be satisfactorily explained. Unexplained and unreasonable delay in deciding a representation by the Detaining Authority renders the continued detention of the detenu illegal.

15. At this stage a useful reference can be made by us to the celebrated judgment of the Apex Court in the case of **Rama Dhondurao Borade v. V.K. Saraf** reported in **(1989) 3 SCC 172**, wherein the Hon'ble Supreme Court while dealing with the right to make a representation under Article 22(5) of the Constitution of India by a detenu and its legal implications has observed in paragraphs 19 and

20 as under :-

“19. The propositions deducible from the various reported decisions of this Court can be stated thus:

The detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India. Correspondingly, there is a constitutional mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation within reasonable dispatch and to dispose the same as expeditiously as possible. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty--the highly cherished right--which is enshrined in Article 21 of the Constitution.

20. True, there is no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of the word "as soon as may be" occurring in Article 22(5) of the Constitution reflects that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay. What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by

the authority is so unsatisfactory, such delay could vitiate the order of detention.”

16. Thus, while reverting back to the facts of the present case, it is to be noted here that the delay of 12 days which has occurred at the behest of the Respondent Nos.1 and 2 in communicating the decision to the detenues by the Detaining Authority has not at all been explained, least satisfactorily explained by the said authority. The affidavit filed by the Detaining Authority is absolutely silent on this vital aspect, that why it required 12 days in intimating the decision of the Detaining Authority to the detenues in person. A bald statement has been made in the affidavit that the Superintendent, Nashik Road Central Prison vide its letter dated 1st April, 2015 has informed the Detaining Authority that the reply was received by the detenu in jail 23rd March, 2015. It has also not been explained by the said authority that why it required the jail authority a period of about 8 days in informing the Detaining Authority about the communication of the decision of the Detaining Authority to the detenues. After taking into consideration the reply affidavit filed by the Respondent Nos.1 and 2 in response to ground No.(vii) of paragraph 5 of the Petition and in view of the ratio laid down by the Supreme Court in the case of **Rama Borade** (supra), it is thus clear that in present case also, unsatisfactory explanation offered by the authorities concerned in deciding the representation made by the Petitioners expeditiously and

communicating its decision to the detenues forthwith, due promptitude and diligence and with a sense of urgency, without avoidable delay, has vitiated the orders of detention. We are of the confirmed opinion that the breach of Article 22(5) of the Constitution of India at the behest of the Respondents has rendered the continued detention of the detenues illegal. We are, therefore, of the view that the delay as stated herein above is not satisfactorily explained and even the continued detention of the detenues is in violation of the constitutional mandate of Article 22(5) of the Constitution of India and the orders of detention stand vitiated. In view of the peculiar facts of this case, we allow the Petitions and pass the following order :-

Rule in each of these Petitions is made absolute. The order of detention against each of these detenues dated 4th February, 2015 (Annexure A) is quashed and set aside. The detenues are directed to be released forthwith, if not required in any other case.

(A.S. Gadkari, J.)

(S.C. Dharmadhikari, J.)