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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 510/2015

% ***Judgment dated 21.05.2015***

SRI SAHIDUL ISLAM MONDAL @ SAIDUL

ISLAM MONDAL

..... Petitioner

Through: Mr.J.K. Srivastava, Advocate

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr.Sanjay Jain, Additional Solicitor

General with Mr.Neeraj Jain and Ms.Shreya

Sinha, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Pleadings in this matter are complete.
2. Rule D.B. With the consent of counsel for the parties, the present petition is set down for final hearing and disposal.
3. Petitioner has filed the present petition under Articles 226 and 227 of the Constitution of India read with Section 482 Cr.P.C. for issuance of a writ in the nature of Habeas Corpus in the matter of detention of the petitioner, who is detained under Order FN.673/17/2014-CUS VIII dated 26.9.2014, passed by the Joint Secretary, Government of India (COFEPOSA), New Delhi.
4. The necessary facts to be noticed for disposal of the writ petition and as detailed in the petition are that the petitioner is stated to be residing at a village which is situated in the interiors of the State of West Bengal. As per the petition, the native language of the petitioner is Bengali. He is

educated upto *Madhyamik* (equivalent to class 10th) in the vernacular Bengali language. He understands and is conversant with Bengali language alone. According to the petition, this fact is known and accepted by the detaining authority; and also the fact that the knowledge of the petitioner of English language is limited to the extent of signing his name in English, and with difficulty and effort to copy a few lines if given to him in English.

5. The petitioner was lifted on 30.10.2014 from his house and brought to the Presidency Correctional Home, Alipore (Presidency Jail, Alipore), Calcutta. In jail he was served with the detention order dated 26.09.2014 along with the grounds of detention and copies of the documents relied upon; ninety six (96) pages in English were received by him; no translation in Bengali of the aforesaid documents was provided; and even the documents which were originally in Bengali were translated into English. It is also the case of the petitioner that under instructions of the Customs Officers, he read out a letter in English and the petitioner was directed to copy it, which the petitioner did.
6. The first ground urged by counsel for the petitioner being ground A, as set out in the writ petition is that the documents relied upon by the detaining authority were handed over to the petitioner in English, which is a language which he cannot read and understand and the alleged explaining of the documents in Bengali without providing a translation of the said papers is not sufficient compliance of the law and the mandate of Article 22(5) of the Constitution of India. In support of his submission, counsel for the petitioner submits that petitioner is not fluent in English and has studied upto *Madhyamik* (equivalent to class 10th) in vernacular Bengali language, and merely because he has appended his signatures or made an endorsement in English would not mean that he

was in a position to read and understand 96 pages provided to him in a language which he could not understand.

7. Counsel next submits that a representation was made by the wife of the petitioner on 1.12.2014 to the Central Government and similarly a representation of the same date was made by the petitioner to the Advisory Board. The representations could not be made expeditiously, as the petitioner and his wife were handicapped since no translations were provided to them. Additionally, it is contended that the statement of the petitioner was also recorded in Bengali, which would show that he was not conversant with the English language. The petitioner being a resident of a village in interior of the West Bengal, having been educated upto *Madhyamik* in vernacular Bengali medium school, and merely because he had taken English as one of the subjects, it cannot be said that it satisfies the legal requirement of communicating the grounds of detention in a language known to the detenu. In support of his submission, counsel has placed reliance on **Hadibandhu Das Vs. District Magistrate, Cuttack and Anr.** reported at AIR 1969 SC 43 and more particularly paragraph 6, which is reproduced below:

“6. The grounds in support of the order served on the appellant ran into fourteen typed pages and referred to his activities over a period of thirteen years, beside referring to a large number of court proceedings concerning him and other persons who were alleged to be his associates. Mere oral explanation of a complicated order of the nature made against the appellant without supplying him the translation in script and language which he understood would, in our judgment, amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order. The order made by the District Magistrate, Cuttack not having been followed up by service within five days as provided by Section 7(1) of the communication to him of the grounds on which the order was made must be deemed to have become invalid and any subsequent detention of the appellant was unauthorised.”

8. For the same argument, reliance is also placed on **Nainmal Pertap Mal Shah Vs. UOI and Ors.** reported at AIR 1980 SC 2129, wherein the Supreme Court held that merely because the detenu had signed some documents in English, it cannot be presumed that he had working knowledge and was fully conversant with English. Reliance is also placed on **Harikisan Vs. State of Maharashtra and Ors.** reported at AIR 1962 SC 91.
9. In support of his argument that oral translation or explanation given to the person detained would not amount to communicating the grounds to the detenu, reliance is placed on **Surjeet Singh Vs. UOI & Ors.** reported at AIR 1981 SC 1153 and also on **Raziya Umar Bakshi Vs. UOI & Ors.** reported at 1980 SC 1751. Reliance is also placed on **Lallubhai Jogibhai Vs. UOI** AIR 1981 SC 728, wherein the police inspector had explained the ground of detention to the detenu and filed an affidavit stating that he had fully explained the grounds of detention to detenu in Gujarati. The Supreme Court held that it was not sufficient compliance of the mandate of Article 22(5) of the Constitution of India, which requires that the ground of detention must be “communicated” to the detenu. The Supreme Court also held that ‘communicate’ is a strong word and it would mean sufficient knowledge of the basic facts constituting the grounds should be imparted effectively and fully to the detenu in a language which he understands.
10. The second ground raised by counsel for the petitioner is ground ‘J’ as detailed in the writ petition i.e. unexplained delay in deciding the representation made by the petitioner on 5.2.2015. It is contended by counsel for the petitioner that representation dated 05.02.2015 filed by the petitioner was not considered expeditiously and promptly and was

decided only on 18.2.2015, i.e. after 13 days and there is unexplained delay in deciding the representation.

11. Elaborating his argument further, counsel for the petitioner contends that the reply to the counter affidavit shows that the representation was not treated with a sense of urgency and attention. It is also contended that the law requires that the detaining authority should be the first person to see the representation and decide whether there is any need to send it to some other office and should there be any need of consulting some other authorities. Counsel for the petitioner also submits that in the present case for the first time the detaining authority examined the representation was after 9 days i.e. from 9.2.2015 to 18.2.2015. There is no explanation as to why some junior officer kept on dealing with the representation and why the decision to send the same to the sponsoring authority was taken by such a junior officer.
12. It is also submitted that merely by looking at the representation the detaining authority would have known whether the petitioner was conversant with the English language or not. In support of his submission that merely because there were two holidays between 9.2.2015 and 18.2.2015, this would not come to the aid and rescue of the respondent, as the law with regard to the same is well settled and further the respondent would be well aware in advance about the holidays. In support of his submission counsel for the petitioner has placed reliance on **Dheer Singh Vs. UOI** [WP(Crl.)No.965/1998] and **Sh. Nawal Kishore Ghanshyam Das Bangard Vs. UOI** [WP(Crl.)No.867/1998]. Reliance is also placed on **Mahesh Kumar Chauhan @ Banti Vs. UOI** reported at AIR 1980 SC 1455; **Julia Jose Mavelly Vs. UOI & Ors.** reported at AIR 1992 SC 139.
13. An additional ground (*third ground*) was raised by the petitioner by

filing an additional affidavit which is ground (M). It has been strongly urged by counsel for the petitioner that the representation dated 1.12.2014 filed by the petitioner addressed to the COFEPOSA Board remains undecided by the Central Government and by the detaining authority. It is the case of the petitioner that it is a mandatory requirement that all representations are to be decided by the Central Government and the detaining authority, and in the absence thereof, the order of detention is liable to be quashed.

14. Counsel for the petitioner submits that the respondents have admitted in their counter affidavit that since the representation was addressed to the Central Advisory Board, the respondents were not required to decide the representation. It is the case of the petitioner that the wife of the detenu / petitioner had also made a representation of the same date being 1.12.2014. Additionally the detenu had made a representation of the same date, raising additional grounds, and merely because the representation was addressed to the Advisory Board that cannot be a ground for the Central Government and the detaining authority for not deciding the representation which is a statutory right of the petitioner. Counsel has placed strong reliance on **Shakil Ahmed Ansari Vs. UOI & Ors.** 1996 JCC 473, wherein it has been held that a detenu can submit a representation against the order of detention to the Advisory Board, the detaining authority and the appropriate government, and the authorities are bound to consider the same, and even if a representation is addressed to the Advisory Board, it has to be considered by the detaining authority and the appropriate Government, as they are, empowered to revoke the detention of the detenu. It is submitted that the Division Bench of the High court while deciding **Shakil Ahmed (Supra)** had relied upon the judgments of the Supreme Court reported in JT 1995 (3) SC 639, AIR

1991 SC 1090 and 1995 CrL.L.J. 3703.

15. Elaborating his argument further counsel for the petitioner submits that another Division Bench judgment of the Delhi High Court in the case of **Asif Iqbal Vs. UOI** reported at 1997 JCC 238, the same principle had been followed and the representation addressed to the Central Government with a request that it may be placed before the Advisory Board was not considered by the Detaining authority, upon which the petition was allowed. Reliance is also placed in the case of **Harjinder Singh Vs. UOI & Ors.** reported at 1993 JCC 384 and **Smt. Gracy Vs. State of Kerala and Anr.** reported at JT 1991 (1) SC 371, wherein it was explained that a dual obligation under Article 22(5) of the Constitution of India vests upon the Central Government and the detaining authority, to decide the representation addressed to the detaining authority or to the advisory board or to both, and the Central Government cannot be allowed to say that since the representation has been addressed to the Advisory Board only, the detaining authority and the appropriate Government are not required to consider it. Counsel for the petitioner submits that in the present case, also merely because the representation has been made to the Advisory Board does not mean that the Central Government and the detaining authority are not required to consider the same.
16. Additionally (*fourth ground*) it has been argued that upon reading the additional affidavit, it seems that all the documents were not available with the Screening Committee and the Sponsoring Authority when the grounds of detention were formalized and on this ground alone the detention order is required to be quashed. Reliance is placed on **The State of Maharashtra Vs. Ramesh Kumar** reported at JT 1988 (1) SC 153.

17. Mr.Sanjay Jain, learned Additional Solicitor General, submits that the present petition is without any merit and the same is liable to be dismissed. It is submitted that the petitioner is fully conversant with English language. The petitioner has studied upto *Madhyamik* (equivalent to class 10th) in vernacular Bengali language, from the West Bengal Board, successfully in second division. As per the result published the petitioner had English as one of the subjects in class 10 Board examination which is evident from the marks obtained by the petitioner in class 10 Board examinations in the year 1988, a copy whereof has been filed along with the counter affidavit. Counsel contends that the petitioner has knowledge of English language and he can read and write English. Counsel also submits that additionally every page of the documents as well as the order of detention were read out and explained to the petitioner in Bengali, which is his native language, by the Superintendent of Customs, Tentulia Preventive Unit on 30.10.2014 and thereafter the petitioner had put his signatures, acknowledging its receipt. In support of his submission Mr.Jain, learned Additional Solicitor General has placed reliance on a judgment delivered by this court in the case *Sumita Dey Bhattacharya Vs. UOI* [WP(Crl.)No.2118/2014] and more particularly paragraph 14.
18. In reply to ground (J) raised by counsel for the petitioner, learned Additional Solicitor General submits that there was no delay in deciding the representation dated 5.2.2015. Relevant portion of the counter affidavit reads as under:

“J. That the contents of ground J are misconceived, wrong and denied. It is submitted that there has been no delay in consideration and final disposal of the dated 05.02.2015 (sic. representation dated 05.02.2015) at different stages and levels. Further, the time period effectively taken by the Detaining

Authority in disposal of the representation after receipt of comments of the Sponsoring Authority was only about 7 working days as revealed by the following table:

Date of Representation	05.02.2015
Date on which received	09.02.2015
Date on which sent to Customs (Preventive) Kolkata	10.02.2015
Date on which comments received	17.02.2015
Date of submission to DA	18.02.2015
Date of reply	18.02.2015
** 14 th and 15 th February, 2015 being Holidays.	

19. With regard to the submissions made by counsel for the petitioner that the representation dated 01.12.2014 not having been decided by the detaining authority or the Central Government, learned Additional Solicitor General has contended that neither this representation was addressed to the detaining authority nor to the Central Government nor a copy thereof was supplied to them and it was addressed only to the Advisory Board. Reliance is placed on **D. Anuradha Vs. Joint Secretary & Anr.** reported at (2006) 5 SCC 142; **Smt.K.Aruna Kumar Vs. Govt. of Andhra Pradesh & Ors.** reported at (1988) 1 SCC 296; and **State of Uttar Pradesh Vs. Zavad Zama Khan** reported at (1984) 3 SCC 503 and more particularly paragraph 13, in support of his submission that successive representation cannot be made, more particularly when the representation in question does not raise any fresh ground. Counsel submits that the identical grounds were raised by the wife of the detenu in her representation of the same date, which was duly decided within a period of 5 days. Paragraph 13 of the judgment **State of Uttar Pradesh (Supra)** reads as under:

“13. The principle that emerges from all these decisions is that the power of revocation conferred on the Central

Government under s. 14 of the Act is a statutory power which may be exercised on information received by the Central Government from its own source including that supplied by the State Government under sub-s. (5) of s. 3 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, In the present case, the detenu was not deprived of the right of making a representation to the detaining authority under Art. 22(5) of the Constitution read with s. 8(1) of the Act. Although the detenu had no right to simultaneously make a representation against the order of detention to the Central Government under Art. 22(5) and there was no duty cast on the State Government to forward the same to the Central Government, nevertheless the State Government forward the same forthwith. The Central Government duly considered that representation which in effect was nothing but a Representation for revocation of the order of detention under s. 14 of the Act. That being so, it was not obligatory on the part of the Central Government to consider a second representation for revocation under s. 14. We may profitably refer to Phillippa Anne Duke's case, *supra*, where in somewhat similar circumstances it was held that failure of the Central Government to consider a representation for revocation of an order of detention under s. 11(1)(b) of the COFEPOSA Act handed over to the Prime Minister during her visit to England did not render the continued detention invalid. It was observed:

"Representations from whatever source addressed to whomsoever officer of one or other department of the Government cannot be treated as a representation to the Government under s. 11(8)(b) of the COFEPOSA Act."

20. With regard to the additional grounds raised by counsel for the petitioner that material documents were not placed before the detaining authority prior to passing the detention order, while relying on the time-chart filed by the respondent along with the additional counter affidavit, it is submitted that at the time when the detention order was passed, the entire material and documents were provided to the detaining authority which is evident from the time-chart, the documents were received from

the sponsoring authority and examined on 28.7.2014; additional documents were received on 5.9.2014, further clarification was sought on 9.9.2014; documents were again received on 12.9.2014; on 23.9.2014 a request was sent to the sponsoring authority to depute an officer well conversant with the case with details for final discussion and only thereafter detention order was passed on 26.9.2014.

21. We have heard counsel for the parties and considered their rival submissions and have also gone through the documents which have been filed along with the writ petition. The first ground which has been urged by counsel for the petitioner is that in the absence of translations of the detention order and the documents supplied along with the detention order in Bengali, the detention order is liable to be quashed. It has also been contended before us that the petitioner belongs to a village, resides in the interior of the State of West Bengal and has studied upto *Madhyamik* (equivalent to class 10th) in vernacular Bengali language, and he cannot read and write English. This submission of counsel for the petitioner is without any force. The petitioner has filed along with the writ petition an acknowledgement written by him in English dated 30.10.2014, in his own handwriting that he has received the order and grounds of detention along with the relied upon documents. He has also made an endorsement that the order of detention was read out to him and explained in Bengali which is his native language. The endorsement reads as under:

“To,

The Joint Secretary
Government of India
Ministry of Finance,
C.E.I.B.,

Cofeposa Unit
New Delhi.

I have received the order and ground of detention vide F.No.673/17/ 2014-CUS. VIII dated 26.09.2014 along with relied upon documents from Superintendent of Custom Tentulia Custom P.U. on 30.10.2014 and every pages of documents as well as the order of detention were read out and explain in Bengali which is my native language and I put my signature thereon.

Sahidul Islam Mondal”

22. Additionally, we may notice that an endorsement was made by the petitioner as “received copy” which was signed in English, date appended in English, which has been filed at page 108 of the paper book. We have also examined the certificate of the petitioner of *Madhyamik Pariksha* (secondary examination) and the mark-sheet which show that English was one of the subjects opted by the petitioner. In a judgment rendered by this court in the case of *Sumita Dey Bhattacharya (Supra)* [WP(Crl.)No.2118/2014], we had discussed the law on the subject, which reads as under:

“14. Learned counsel for the respondent has relied upon *Kubic Darusz v. Union of India And Ors.*, reported at (1990) 1 SCC 568, more particularly paras 10 to 13, which read as under:

“10. In the instant case we find that when the detention order and the grounds of detention were served the detenu received them and acknowledged the receipt thereof, as it appears from the records, putting his signature in English. He did not complain that the grounds of detention were not understood by him. On the other hand in the very grounds of detention it was stated that in course of interrogation he answered the questions in English including the questions as to how he happened to learn English. The gist of his answers in this regard was also given in the grounds of detention. We

have perused the statements and find that those contained number of informations peculiar to the detenu himself which could not have been communicated by him to the interrogators unless he knew the English language. We also find that in several places he corrected the statements putting appropriate English words and signing the corrections. While the detention order was passed on 16-5-1989 his representation was admittedly dated only 13-6-1989. In the meantime bail petitions were moved on his behalf before the Chief Judicial Magistrate and the High Court. There is nothing to show that he did not give instructions to his counsel. After all, the detenu is not required to write an essay or pass any language test. A working knowledge of English enabling him to understand the grounds would be enough for making a representation. He could very well send his representation in the language known by him.

11. [In Parkash Chandra Mehta v. Commissioner and Secretary, Government of Kerala & Ors.,](#) [1985] 3 SCR 697, Venilal D. Mehta, his daughter Miss Pragna Mehta and son Bharat Mehta were detained under the COFEPOSA Act by an order dated 19th June, 1984 and the detention order was challenged in this Court under Article 32 of the Constitution of India. They were alleged to have been in possession of 60 gold biscuits of foreign origin. After their arrest the father and his daughter were taken to the Central Excise and Customs Department, Cochin where statements on their behalf were written in English by the daughter. The father Venilal D. Mehta put his signature in English as Balvant Shah but the daughter told the officers concerned that the correct name of her father was Venilal Mehta. In the writ petition it was the case of the father that he could not understand, read, speak or write English but could only sign his name in English. He was served with the grounds of detention in English language on 20th June, 1984. A Hindi translation of the grounds of detention was served on 30th June, 1984. On 27th May, 1984 the father made a representation in Gujarati to the detaining authority praying that he was unable to read and write either in English or Hindi or 'Malayalam and the grounds of detention may be given to him duly translated in Gujarati. In Court it was contended that the order and grounds should have been

communicated to the detenu in the language or languages they understood and Venilal Mehta understood nothing except Gujarati. He did not understand English or Hindi or Malayalam. The Hindi translation was admittedly furnished beyond a period of 5 days and no exceptional circumstances were stated to exist. Following *Harikisan v. State of Maharashtra* AIR 1962 SC 911 and considering the definite case of Venilal Mehta, this Court observed that the facts revealed that the detenu Venilal Mehta was constantly in the company of his daughter as well as son and both of them knew English very well. The father signed a document in Gujarati which was written in English and which was his mercy petition in which he completely accepted the guilt of the involvement in smuggling. That document contained a statement--"I myself am surprised to understand what prompted me to involve in such activity as dealing in Imported Gold." On those facts and circumstances this Court observed: (SCC p.162, para 63)

"There is no rule of law that common sense should be put in cold storage while considering Constitutional provisions safeguards against misuse of powers by authorities though these Constitutional provisions should be strictly construed. Bearing in mind this salutary principle and having regard to the conduct of the detenu Venilal Mehta especially in the mercy petition and other communications, the version of the detenu Venilal in feigning lack of any knowledge of English must be judged in the proper perspective. He was, however, in any event given by 30th June, 1984 the Hindi translation of the grounds of which he claimed ignorance. The gist of the annexures which were given in Malayalam language had been stated in the grounds. That he does not know anything except Gujarati is merely the ipse dixit of Venilal Mehta and is not the last word and the Court is not denuded of its powers to examine the truth. He goes to the extent that he signed the mercy petition not knowing the contents, not understanding the same merely because his wife sent it though he was sixty years old and he was in business and he was writing at a time when he was under arrest, his room had been searched, gold biscuits had been recovered from him. Court is not

the place where one can sell all tales. The detaining authority came to the conclusion that he knew both Hindi and English. It had been stated so in the affidavit filed on behalf of the respondent. We are of the opinion that the detenu Venilal Mehta was merely reigning ignorance of English."

12. After referring to the decisions in *Hadibandhu Das v. District Magistrate, Cuttack & Anr.*, *Nainmal Partap Mal Shah v. Union of India & Ors.*, and *Ibrahim v. State of Gujarat & Ors.* this Court in *Prakash Chandra Mehta* rejected the contention that the grounds of detention were not communicated to Venilal Mehta in a language understood by him.

13. Considering the facts and circumstances of the instant case and in view of the fact that no objection regarding non-communication of the grounds in a language understood by the detenu was made within the statutory period for furnishing the grounds and the fact that the representation was beyond the statutory period, almost a month after the grounds were served, along with the detenu's statements as to how he learnt English, we have no hesitation in holding that the detenu understood the English language, had working knowledge of it and was reigning ignorance of it, and there was no violation of Article 22(5) of the Constitution on the ground of non-communication of the grounds of detention in a language understood by him. The first submission of the detenu has, therefore, to be rejected."

23. The Supreme Court has observed that what is required is the workable knowledge of English and not that a detenu is required to write an essay or pass an English test. Having regard to the fact that the endorsement was made and signed by the petitioner in English while receiving the copies, as reproduced in para 22 foregoing; and the fact that the representation was also made in English; as also the school marksheet shows that petitioner had opted English as one of the subjects; we find that the submission made by counsel for the petitioner is without any merit.

24. The second ground urged before us is ground (J) i.e. the delay in deciding the representation dated 05.02.2015. Before deciding this ground, we may notice that in fact representation dated 05.02.2015 was the third representation made by the petitioner; the first representation was made by the wife of the petitioner addressed to the detaining authority which admittedly was decided by the Central Government within five (5) days and by the detaining authority within eleven (11) days. No grievance has been made that said representation was not decided expeditiously. We may also notice that the representation dated 5.2.2015 was decided within thirteen (13) days. The Supreme Court in the case of **D. Anuradha Vs. Joint Secretary & Anr.** reported at (2006) 5 SCC 142 has held as under:

“16. In the instant case, as already noticed, the detainee himself filed two representations and on his behalf, his Counsel submitted another two representations and there is no allegation that these representations were not considered in time. But the representation filed by the present appellant, the wife of the detainee was disposed of only with a delay of 119 days. The delay was caused mainly due to non-availability of the translated copy of the representation. The representation was made in "Tamil" and it is submitted by the Union Government that it took about three months to get a proper translation of the representation and as soon as the translation was received, the authorities took urgent steps and it was disposed of within a short period. In the facts and circumstances of the case, we do not think that there was inordinate delay in disposing of the representation.

17. It is true that this court in series of decisions has held that if there is any serious delay in disposal of the representation, the detention order is liable to be set aside. Nevertheless, it may be noticed that if the delay is reasonably explained and that by itself is not sufficient to hold that the detainee was bad and illegal. In *Smt. K. Aruna Kumari Vs. Government of A.P. & Ors.* (1988) 1 SCC 296 relying on *State of U.P. Vs. Zavad Zama Khan* (1984) 3 SCC 505 this Court held that there is no right in favour of the

detenue to get his successive representations based on the same grounds rejected earlier to be formally disposed of again and also pointed out that in any event no period of limitation is fixed for disposal of an application.

18. In *Union of India Vs. Paul Manickam & Anr.* 2003(8) SCC 342 this Court deprecated the practice of sending representations to various authorities which were not directly or immediately concerned with the detention, and delay, if any, in disposing of such representations shall not be taken advantage of by the detenue. In the present case also, all the representations were not addressed to the concerned authorities concerned.

19. As regards delay in disposing of the representation, this Court, as early as 1981 observed in *Ummu Saleema* case (supra) that there cannot be any fixed time and the delay, if any, in disposal of the representation is to be considered vis-a-vis any prejudice that may be caused to the detenue. In Para 7 of the said judgment the following observations were made:-

"Another submission of the learned counsel was that there was considerable delay in the disposal of the representation by the detaining authority and this was sufficient to vitiate the detention. The learned counsel submitted that the detaining authority was under an obligation to adequately explain each day's delay and our attention was invited to the decisions in [Pritam Nath Hoon v. Union of India](#) and in [Shanker Raju Shetty v. Union of India](#). We do not doubt that the representation made by the detenu has to be considered by the detaining authority with the utmost expedition but as observed by one of us in *Frances Coralie Mullin v. W.C. Khambra* "the time imperative can never be absolute or obsessive". 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."

20. Considering the entire facts, we do not think that in this case the detention is liable to be quashed on the ground that one out of the five representations was not disposed of in time. The delay has been satisfactorily explained and the failure to get the translated copy of the representation was an unavoidable delay. We do emphasise that such delays should be avoided.

21. The contention raised by the appellant's learned Counsel is that some of the relevant materials were not placed before the detaining authority and the omission to place those materials before the detaining authority had caused serious prejudice to the detenu. It was urged that the investigating authorities had collected the materials and once these materials were received by the sponsoring authority, they had no right to edit and decide which materials were relevant and they were bound to send the entire materials to the detaining authority. The learned Counsel for the appellant drew our attention to some of the relevant documents which were not placed before the detaining authority. This contention was elaborately considered by the Division bench and it was held that all relevant materials were placed before the detaining authority.”

25. While making representation is a statutory safeguard provided to the detenu under Article 22(5) of the Constitution of India, it is settled law that a representation is to be decided expeditiously, and in case it is not decided expeditiously, unexplained delay would be a ground for quashing the detention order. Although no timeframe has been fixed for deciding a representation but since the liberty of an individual is in question the representation is to be decided expeditiously. We have examined the representation which has been made on 05.02.2015, which is the 3rd representation. No fresh or additional ground has been raised on behalf of the detenu. The only ground raised in the representation is that the detenu was not conversant with English language and the translations of the detention order and supporting documents were not provided to him. This is a ground raised by the detenu himself in the representation dated 01.12.2014 and also by his wife in a representation

of the same date. We find this submission made by counsel for the petitioner also to be without any force. Firstly the counter affidavit has given the precise movement of the representation made on behalf of the petitioner, which has been detailed in the counter affidavit and extracted in the paragraph foregoing. We are also not inclined to accept this argument of counsel for the petitioner for the reason that this representation was the third representation and no new ground was urged in this representation and the only ground which was urged already stood rejected by the Central Government and the detaining authority. In the case of *Smt.K.Aruna Kumar (Supra)*, it has been held that there is no right in favour of the detenu to get his successive representation based on the same ground rejected earlier to be formally disposed of again.

26. In the case of *Smt.K.Aruna Kumar Vs. Govt. of Andhra Pradesh & Ors.* reported at (1988) 1 SCC 296, the Supreme Court has held as under:

“9. So far as the second representation filed by Madhava Rao's cousin Lakshmana Rao is concerned, it has, in fact, been disposed of by the Central Government but about 3 months later after its filing. It was argued that Section 14 of the Act clothes the authority with the power of revoking the detention order, and such a power carries with it the duty to exercise it whenever and as soon as changed or new factors call for the exercise of that power. Reliance was placed on the observations of this Court at page 786 in Haradhan Saha and another v. The State of West Bengal and others, [1975] 1 SCR 778 and those in paragraph 9 of the Judgment in *Sat Pal v. The State of Punjab*, 1982 1 SCC 12. It is true that such a power coupled with the duty exists but the duty to exercise it arises only where new and relevant facts and circumstances come to light. This was not so here, and as observed in para 13 of the Judgment in *State of Uttar Pradesh v. Zavad Zama Khan*, [1984] 3 SCC 505, there is no right in favour of the detenu to get his successive representations based on the same grounds rejected earlier to be formally disposed of again. In any event no period of limitation is fixed for disposal of an

application under Section 14 and as we have seen earlier the second representation filed by Lakshamana Rao indeed, was considered and rejected.”

27. Additionally on examination of the details provided in the counter affidavit showing that the representation dated 05.02.2015 was received on 09.02.2015, sent to the Customs (Preventive) Calcutta on 10.02.2015; comments were received on 17.02.2015 and replied on 18.02.2015, we find that there is no inordinate unexplained delay in deciding the representation and more particularly for the reasons stated in the paragraph foregoing being a third representation, wherein no additional ground was raised and thirdly, the same was made after the opinion of the Board.
28. Counsel for the petitioner has also urged ground (M) before this court and argued that representation dated 01.12.2014, although addressed to the Advisory Board, was neither decided by the detaining authority nor by the Central Government. It is contended that merely because the representation was addressed to the Advisory Board, that by itself cannot be a ground for the Central Government or the detaining authority for not deciding the representation. It is contended that a detenu is entitled to make a representation even after the opinion of the Central Advisory Board and even if the opinion has been expressed to sustain the detention, it would be open for the detaining authority to decide the representation in favour of the detenu.
29. In reply to this ground, a categorical assertion has been made by learned Additional Solicitor General at the Bar and on instructions from the officer present in court, and placed reliance on the reply to the addition grounds and stated that this representation was neither served upon the Central Government nor on the detaining authority and in the absence

thereof, the Central Government and the detaining authority cannot be faulted for not deciding the representation. It is also submitted that no additional grounds were raised in the representation which was addressed to the Advisory Board in comparison to the grounds raised in the representation of the same date made by the wife of the detenu. It is contended that principle ground raised in both the representations are related to documents not being provided in Bengali, a language known to the detenu. The gold seized and recovered did not belong to the detenu; that the detaining authority did not apply its mind nor subjective satisfaction was reached upon and a mechanical order was passed and there was animosity between the petitioner and the Commandant of BSF and the involuntary confidential statement recorded by the customs. It is thus contended that since representation of the same date on almost identical lines has already been rejected by the Central Government and the detaining authority, it cannot be said that any prejudice would be caused to the petitioner and more particularly in the absence of having received the other representation.

30. Having regard to the categorical assertions made by the learned Additional Solicitor General we are of the view that since a copy of the representation was only marked to the Advisory Board and no copy was supplied to either the Central Government or the detaining authority, it is not open for the petitioner to say that the representation was not decided by them, irrespective of the fact that the representation was addressed to the Advisory Board. Undoubtedly, in case the representation had been served upon the Central Government or the detaining authority, it would have been mandatory for them to have decided the same.
31. The additional ground raised by counsel for the petitioner i.e., in the absence of documents as admitted by the respondents in the time-chart,

the detention order is bad in law and is liable to be quashed, is also without any force, as the time-chart leaves no room for doubt that prior to the passing of the detention order all documents sought to be relied upon were received. The relevant endorsement of the time-chart reads as under:

“TIME CHART PERTAINING TO DETENTION OF SHRI SAHIDUL ISLAM MONDAL alias SAIDUL ISLAM MONDAL

06.05.2014	Shri Sahidul Islam Mondal alias Saidul Islam Mondal is a habitual offender of smuggling of gold of foreign origin and smuggled gold of foreign origin was seized twice from him within a period of 04 (four) months. A proposal for initiation of action against Sahidul Islam Mondal alias Saidul Islam Mondal under section 3(1) of the COFEPOSA Act, 1974 was prepared and forwarded to the Hon'ble Chief Commissioner of Customs, Kolkata for his kind sanction.
20.05.2014	On getting the due approval from the Hon'ble Chief Commissioner (also known as sponsoring authority) of Customs, Kolkata for the above proposal a letter addressed to the Joint Secretary to the Government of India, CEIB, COFEPOSA UNIT, New Delhi was sent for sanction of the detention order.
18.06.2014	The minutes of the Screening Committee held on 11.06.2014 were signed and the SA was advised to immediately provide the deficient documents arising out of investigations etc.
26.06.2014	Reminder sent from COFEPOSA Unit to Sponsoring Authority for documents.
27.06.2014	Part information received from Sponsoring Authority.
08.07.2014	Request for complete information / documents sent from COFEPOSA Unit to Sponsoring Authority
15.07.2014	Reminder sent to Sponsoring Authority
23.07.2014	Reminder sent to Sponsoring Authority
28.07.2014	Documents/ information received from Sponsoring Authority and examined.
11.08.2014	DO letter sent from JS (COFEPOSA) to Sponsoring Authority seeking copies of bail application / petition referred to in judicial proceedings etc.
22.08.2014	Reminder sent to Sponsoring Authority
04.09.2014	Reminder sent to Sponsoring Authority

05.09.2014	Documents / information received and examined
09.09.2014	Letter sent to Sponsoring Authority seeking further clarification / documents.
12.09.2014	Documents/ information received and examined.
23.09.2014	Request sent to Sponsoring Authority to depute an Officer well conversant with the case details for final discussion before finalization.
26.09.2014	Order for “Preventive Detention” against Shri Sahidul Islam Mondal alias Saidul Islam Mondal under COFEPOSA Act, 1974 was issued vide F. No.673/17/2014- CUS. VIII dated 26.09.2014 by the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau, COFEPOSA UNIT, New Delhi

32. Having carefully examined the time-chart, relevant portion of which has been reproduced above, would show that it is only after all the documents were received and examined the detention order was passed. Hence, the submission of counsel for the petitioner that the detention order is bad in law and is liable to be quashed, as the same is passed in the absence of the relevant documents, is also without any force. No other ground has been urged before this court. In view of the reasons aforestated, we do not find any reason to entertain the present petition and the same is accordingly dismissed, leaving the parties to bear their own costs.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MAY 21, 2015

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