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

+ **W.P. (Crl) 643/2017**

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Judgment Reserved on: 30th May, 2017

Judgment Pronounced on: 28th June, 2017

SHABNAM ARORA

.... Petitioner

Through : Mr.Mohd. Nasir, Mr.Juned Alam,
Mr.Mohd. Tabreq and Mr.Umesh
Kumar, Advs. along with petitioner.

versus

UNION OF INDIA & ORS

.... Respondent

Through : Mr.Sanjay Jain, ASG with Mr.Ajay
Digpaul, Ms.Mohita and Ms.Adrija,
Advs. for respondents

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE VINOD GOEL

G.S.SISTANI, J.

1. Present petition has been instituted under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') for issuance of a writ of *habeas corpus* to and for any other writ, order or direction for quashing the order of detention bearing F.No.673/06/2016-Cus.VIII dated 10.10.2016 passed under Section 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short 'COFEPOSA Act') against the husband of the petitioner, namely Mr.Raju Arora ('detenue') and directing the release of the detenue.
2. In a nutshell, the facts set out in the grounds of detention on the basis of which the detention order dated 10.10.2016 has been passed are as under:

- 2.1. Based upon specific intelligence, the Delhi Zonal Unit ('DZU') of the Directorate of Revenue Intelligence ('DRI') seized 60 gold bars weighing 9,955.2 grams at CELEBI Warehouse, Domestic Terminal, Air Cargo Complex, New Delhi on 01-02.09.2016. The contraband was appraised at the market value of Rs.3.06 crores. The gold was recovered from a parcel/cargo consignment collected by one, Sartaj, from the delivery point at the Warehouse. It was booked by M/s Aameen Traders, Guwahati to M/s Aameen Traders, Delhi and Sartaj was the authorized representative of M/s Aameen Traders for collection of the consignment. The consignment was described as 'bullion'.
- 2.2. The statement of Sartaj was recorded under Section 108 of the Customs Act, 1962 on 02-03.09.2016, wherein he stated that he was working as a driver for M/s Rara Brothers for a salary of Rs.9,000/- per month and that in such capacity, he was assigned the duty to take delivery of goods from the Air cargo, New Delhi for a commission of Rs. 500/- per shipment over and above his salary. He used to undertake the task under the instructions of Sh.Narender Kumar Jain (owner of M/s Rara Brothers) and has been performing his duty for approximately two years. He knew that the shipment contained gold and used to visit the Air Cargo Complex twice or thrice a week for taking delivery of the shipment. M/s Rara Brothers had its shop at Chandni Chowk and was looked after by his brother in-law Mr.Raju Arora/detenué, being a close friend of Sh.Narender Kumar Jain. Sartaj was given authorization letters signed by Sh.Narender Kumar Jain to collect the consignments and thereafter, used to deliver the same to the detenué and receive Rs.500 each time. He further stated

that M/s Aameen Traders was opened at his residential address and Sh.Narender Kumar Jain and the detenue could explain the same. Thereafter, the same *modus* continued as Sartaj used to collect the consignments on behalf of M/s Aameen Traders being remunerated with Rs.500/- per shipment.

- 2.3. In his statement recorded Section 108 of the Customs Act on 02-03.09.2016, Sh.Narender Kumar Jain *inter alia* stated that he had started sitting with his father in his firm M/s Rara Brothers in 1991. The firm was based in Guwahati, Assam and continued to be a proprietorship firm until 1997, when it was converted into a company (M/s Rara Brothers Pvt.Ltd.). After the death of his father, he continued to look after the affairs of the company and business of M/s Rara Brothers. M/s Rara Brothers has an office in Chandni Chowk, Delhi with Mr.Anoop Mishra being in-charge of the affairs of the company in Delhi. He also has a 15% share in a property located at South Extension and two of his friends, including the detenue are partners in the said property. Sh.Narender Kumar Jain stated that from the year 2014, he started procuring foreign origin gold, which was smuggled from Burma by various carriers. The carriers used to bring 1-2 kg of gold to his shop in Guwahati; though the gold did not have any marking, but was 24 carat pure gold. The gold was then packed and parcelled to Delhi by air after being declared as bullion. The consignor was M/s Rara Brothers Pvt. Ltd., Guwahati and the consignee was M/s Rara Brothers Pvt. Ltd., Delhi. The parcels were received in Delhi by Sartaj and delivered by him to the detenue at his home or his office at Kucha Mahajani, Delhi. Thereafter, the detenue with the assistance of his staff used to sell the smuggled gold to

customers in Delhi and transfer the sale proceeds to Guwahati by transfer or through person. The detenue was paid Rs.75,000/- per month for the work and Sartaj was paid Rs.500/- per consignment by the detenue. The process was discontinued in February, 2015, when Sh.Narender Kumar Jain was implicated in a case pertaining to 12 gold bars and was later released on bail. The work resumed again in October-November, 2015, but the number of shipments was less than before. The work continued in the name of M/s Rara Brothers Pvt. Ltd. till March, 2016 and stopped in the name of the company due to financial crunch. Thereafter, the detenue opened a partnership firm, namely M/s Aameen Traders and the detenue along with Sh.Narender Kumar Jain have 50% partnership in M/s Aameen Traders. The same *modus operandi* was resorted to, i.e. smuggled gold from Burma was sent to Delhi, collected by Sartaj and delivered to the detenue. The *panchnama* drawn on 01-02.09.2016 was shown to him and he confirmed that the parcel was brought by him and the detenue and the gold was smuggled into India from Burma. He knew the detenue for the last 28-30 years and in the year 2014, the detenue had proposed to take care and manage the business/staff; the detenue and Sh.Narender Kumar Jain started bringing smuggled gold from Guwahati to Delhi.

- 2.4. Statement of one Sh.Omkant Soni was also recorded under Section 108 on 02.09.2016 wherein he, *inter alia*, stated that he has been working with M/s Rara Brothers since January, 2013 and he used to melt 24 carat gold bars at the instance of the detenue and thereafter, the detenue used to sell the same to his customers. He further stated that in the past two months, he had melted approximately 55 kgs of gold at the instance of the detenue. Sh.Ravi Prakash and Sh.Kamal

Prakash have also given their statements on similar lines of Sh.Omkant Soni; they were also employed for melting gold and converting it to 1 kg bars by Sh.Narender Kumar Jain and the detainee. Further, Pravin Patel, proprietor of M/s Bombay Gold Lab, has also stated that the detainee used to regularly send gold bullion to them for testing its purity for 2 years.

- 2.5. In paragraph 22 of the grounds of detention, the involvement of Sh.Narender Kumar Jain and M/s Rara Brothers Pvt. Ltd. in the past on numerous occasions has also been detailed.
3. The petitioner has assailed the order of detention of her husband on numerous ground. The submissions of Mr.Nasir, learned counsel for the petitioner, can be summed up *in seriatim* as under:
 - (i) The grounds of detention and the documents were not supplied within the stipulated time under Section 3 (3) of the COFEPOSA Act and in a language known to the detainee in violation of Article 22 (5) of the Constitution;
 - (ii) The subjective satisfaction of the detaining authority has been wrongly arrived at and without independent application of mind;
 - (iii) The detention order cannot be based upon the statement of Sh.Narender Kumar Jain as he had later retracted his statements before the Chief Metropolitan Magistrate, New Delhi on 05.09.2016;
 - (iv) No information was given to the family members of the detainee after his detention in violation of Article 21 of the Constitution;
 - (v) The ordinary law of the land was sufficient in the case and the resort to preventive detention was not necessary; and

- (vi) Failure of the respondents to decide the representation dated 09.12.2016 of the detainee.
4. Mr.Jain, learned ASG for the respondents, has submitted that all the constitutional and statutory safeguards have been adhered to and thus, the detention order cannot be faulted with.
5. Prior to dealing with the contentions urged at the bar, we may also mention that, after the present judgment was reserved, the detention order of a co-detinue, namely Mr.Narender Kumar Jain, has been quashed by a coordinate bench of this Court in *Sandhya Jain v. Union of India & Anr.*, W.P. (Crl) 245/2017 dated 31.05.2017. The learned bench found that no satisfaction was arrived at in respect to there being an imminent possibility of grant of bail to the detainee and securing his release vitiating the subjective satisfaction of the detaining authority and the detention order. Since neither a similar ground has been urged by the petitioner herein nor was the detainee in custody at the time of passing of the detention order, the judgment does not have any bearing on the present proceedings.
6. As the contentions urged by the petitioner are multiple and diverse, we deem it appropriate to deal with them under separate heads.

FAILURE TO PROVIDE GROUNDS AND DOCUMENTS IN VERNACULAR

7. The first contention raised by Mr.Nasir is that the documents and grounds of detention were not supplied to the detainee within stipulated time prescribed by Section 3(3) of COFEPOSA Act and in the language known to him, which is a clear violation of Article 22(5) of Constitution. Learned counsel submitted that the grounds of

detention and the documents were not supplied to the detainee in a language known to him, i.e. Hindi. He further submits that is submitted that though a letter dated 21.11.2016 was received by the detainee and through this letter DRI requested for extension of time limit for serving grounds of detention and relied upon documents on the detainee in Hindi language; however, no document or information was served to detainee in Hindi. Reliance is placed on ***Ibrahim Ahmad Batti v. State of Gujarat and others*, AIR 1982 SC 1500: (1982) 3 SCC 440** (paragraphs 11 and 13).

8. In response thereto, Mr.Jain, learned ASG for the respondents, has submitted that there was no violation of either Article 22(5) of the Constitution or Section 3(3) of the COFEPOSA Act. He submits that the Grounds of Detention and the Relied upon Documents, including their translations, were served upon the detainee on 01.12.2016 and thus, within the time frame provided under Section 3(3) of the COFEPOSA Act. He submitted that the detainee was absconding since the day the case was booked, i.e. 01-02.09.2016 and therefore, his educational qualifications and lingual abilities were unknown. It was only after the detainee was examined that it come to fore that he could read, write and understand Hindi and also read and understand English to some extent. Hence, the Grounds of Detention and the Relied upon Documents were to be served in Hindi. As the same were voluminous, it was not possible to get them translated without professional help and an extension of time of ten days was sought. Thereafter, the Grounds of Detention and the Relied upon Documents were served upon the detainee in Hindi on 01.12.2016.

9. After giving our thoughtful consideration to the contention, we are of the opinion that the grievance of the petitioner is without any basis as being factually incorrect. It is settled that the expression 'communicate' couched in Article 22(5) of the Constitution mandates effective communication and the same is done in a language known by the detainee; only then the grounds can be said to have been imparted effectively and fully to the detainee [See ***Lallubhai Jogibhai Patel v. Union of India*, (1981) 2 SCC 427** (paragraph 20)]. Time frame in which the grounds are to be communicated is provided in Section 3(3) of the COFEPOSA Act. The sub-section provides that the grounds of the detention order are to be given as soon as possible and ordinarily not later than five days. Only in exceptional circumstances and for reasons to be recorded in writing, the detention order may be served within 15 days from the date of detention. As to what amounts to exceptional circumstances is always a question of fact to be gone into by the courts [***State of Rajasthan v. Talib Khan*, (1996) 11 SCC 393** (paragraphs 6 and 7)].
10. In the present case, the detainee was detained on 18.11.2016 and accordingly, the grounds were to be served not later than 23.11.2016. It was only after his detention that the respondents learnt that the detainee was not well versed in English and hence, an extension was sought for 10 more days. This was granted by the letter dated 21.11.2016 and the time limit was extended upto 03.12.2016. As the grounds and the documents were served on 01.12.2016 along with their Hindi translations and thus, it cannot be said that there was any violation of Section 3(3) COFEPOSA Act or the constitutional mandate.

11. Even the decision of the Apex Court in *Ibrahim Ahmad Batti* (**Supra**), does not come to the aid of the petitioner. The Supreme Court was satisfied that the government had failed to justify extension of time and quashed the detention order. The reason therein for the extension of time for serving grounds in Urdu was that due to Ramzan month, sufficient translators for Urdu were unavailable. This was not found to be an 'exceptional circumstance' justifying the extension of period beyond five days as (1) the detainee therein had been detained previously and the order was revoked for the very reason of failure to supply grounds in Urdu; (2) there was no urgency in passing the order as the detainee was already detained; and (3) other translators not observing Ramzan were not resorted to. In the present case, the respondents have shown exceptional circumstances justifying the extension of period beyond 5 days.

**SUBJECTIVE SATISFACTION HAVING BEEN WRONGLY
ARRIVED AT**

12. Learned counsel for the petitioner had next contended that the detaining authority had not acted independently in evaluating the material before it. He submits that the court can quash the order of detention if the same is not based on the subjective satisfaction of the detaining authority, but acted under the influence of another. In the instant case, the recommendation of the Screening Committee were communicated to the sponsoring authority on 07.10.2016 and the detention order was passed on 10.10.2016; as 08-09.10.2016 being Saturday and Sunday were not working days and relied upon documents are voluminous as running into 1281 pages requiring

consideration and application of mind of the detaining authority; but it appears that without application of mind the detaining authority acted under the dictation and influence of another body. He submits that the detaining authority practically did not even have one day for perusal of all the relied upon documents and thus, it appears that the detaining authority only put his signature on the already prepared detention order without independent application of mind.

13. Mr.Nasir submitted that there is no link of the detainee with the carriers and there is no evidence to support the rationale behind the detention order. It clearly shows that the detaining authority without going through any evidence, without considering the fact that the detainee never used to purchase gold from any carrier, has passed the detention order without application of mind in mechanical manner and on the basis of presumptions and assumptions. That even there is no evidence regarding transportation of consignment/receipt of consignment from the Air Cargo or abetment of smuggling. Hence, learned counsel concludes that the grounds of detention are self-contradictory and vague.
14. Learned counsel for the petitioner submits that going through the grounds as set out in paragraph 26 (a), (b), (c) and (d) reveals that the detainee has no concern with the activities. It is submitted that the role which is ascribed to the detainee is only to the extent of sale of the gold at Delhi to the customers after testing and converting in one kg bar and therefore, the detention order is not based on any material warranting interference by this Court.
15. Learned ASG for the respondents submitted that the meeting of the screening committee was held on 06.10.2016 and its recommendation

was communicated to the Sponsoring Authority on 07.10.2016. The proposal alongwith the documents was submitted by the sponsoring authority to the detaining authority on 07.10.2016 itself. Given the fact that the smuggling activities were planned and carried on for a long time since 2014 and that the detainee had managed to smuggle/transport about 7,000 kg of smuggled gold from Guwahati to Delhi and that there was every possibility that unless prevented, he would continue to indulge in such activities, the detaining authority was convinced of the urgency of the matter and accorded top priority and issued the Detention Order on 10.10.2016. The same was done after examining all the documents/information submitted before it. Mr.Jain submits that there is no bar on the detaining authority applying his mind or studying papers on Saturday, Sunday or on holidays or after office hours.

16. In response to the contention that there was no link between the detainee and the alleged smuggling activities, Mr.Jain submits that the same is without any force. Learned ASG submits that the detainee was knowingly involved in dealing with smuggled gold brought from Guwahati to Delhi in the name of M/s Rara Brothers Pvt. Ltd. from January, 2014 to June, 2016. Further, Sh.Narendra Kumar Jain stated that the detainee was 50% partner in the firm M/s Aameen Traders, in which the smuggled gold was brought from Guwahati to Delhi during July, 2016 onwards in place of M/s Rara Brothers Pvt. Ltd. The gold seized on 01-02.09.2016 had been sent in the name of M/s Aameen Traders. M/s Aameen Traders had been opened by the detainee and the residential address of Sartaj was given as the address. Sartaj is the brother-in-law of the detainee and also the person from whom the

recovery and seizure of 60 gold bars had been made on 01-02.09.2016. Sh.Narendra Kumar Jain in his statement has stated that Sartaj used to deliver the consignments of smuggled gold to the detenue. Further, the Order of Detention and the Grounds of Detention have been issued strictly as prescribed under Section 3 of the COFEPOSA Act after due application of mind based on the material facts available on record and after careful consideration of the facts and circumstances of the case, nature of activities, material collected, and the propensity and potentiality of the detenue to indulge in such activities. Learned counsel submitted that the subjective satisfaction of the Detaining authority is elaborated in the grounds of detention and his active role in the syndicate involved in smuggling was revealed by his co-accused in their statements.

17. We have analysed the submissions of the counsel for the parties. The submissions of Mr.Nasir in this regard are twofold: first, the detaining authority has passed the detention order in a mechanical manner which is evident from the fact that the same was passed within less than one day of the proposal and the documents being placed before it; and second, that there is no link of the detenue with the alleged smuggling activities. In respect of the former, we are of the view that the same is without any force in view of the stand of the respondents that owing to the sheer scale of smuggling and its continuation since 2014, the case was processed as top priority and the detaining authority worked overtime on the weekend. In this regard, we are fortified by the judgment of the coordinate bench in ***Sandhya Jain (Supra)*** wherein a similar argument pertaining to *ante* dating of the detention order was urged and rejected by the bench. The bench had

gone on to observe that “*there is no presumption that official duty is not performed on Saturdays and Sunday*” (paragraph 14).

18. We are also unable to accept the other submission of the learned counsel for the petitioner. The contention that there was no link between the detainee and the smuggling activities is misplaced. A perusal of the detention order reveals that the detaining authority had come to the subjective satisfaction that the curtailment of the liberty of the detainee was necessary to prevent further smuggling activities. We deem it appropriate to reproduce the relevant portion of the detention order dated 10.10.2016 hereunder:

“24. Based on the statements and other evidences mentioned above, it is clear that a syndicate with Shri Narendra Kumar Jain as the kingpin and Shri Raju Arora, i.e. you, as a close associate has been involved in large scale smuggling of gold since the beginning of 2014 through M/s Rara Brothers Pvt. Ltd and more recently (for past 3-4 months) in the name of M/s Aameen Traders. It is seen that the syndicate headed by Shri Narendra Kumar Jain has been procuring gold smuggled from Myanmar (Burma) and transporting it to Delhi through Domestic Cargo of Jet Airways declaring it as bullion and booking it as valuable cargo in the name of M/s Rara Brothers Pvt. Ltd. and M/s Aameen Traders. Shri Vijay Tiwari the employee of Shri Narendra Kumar Jain has been booking the gold consignments from Guwahati in the name of M/s Rara Brothers Pvt. Ltd. and M/s Aameen Traders and Shri Sartaj employed by Shri Narendra Kumar Jain and Shri Raju Arora, i.e. you, has been taking delivery of gold consignments from Air Cargo Complex, New Delhi. After taking delivery, Sartaj used to hand over the gold to Raju Arora, i.e. you. This was intum handed over to Shri Ravi Prakash and Shri Kamal Prakash having their shops at Amar Market, DaribanKalan, Delhi, for conversion into 1 kg bullion with a purity of 995 by mixing proportionate silver wherever required. These activities started around

January / February, 2014 and continued till June, 2016 during which 5 kg to 15 kg of gold was being brought in the interval of 2-3 days for melting and conversion into 1 kg bars. Before bringing the smuggled gold to Shri Ravi Prakash and Shri Kamal Prakashat Amar Market, DaribaKalan, Delhi, for being converted into 1 kg gold, Shri Narendra Kumar Jain and Raju Arora, i.e. you, also used to test its purity as evident from the statement recorded by Shri PravinPatel, Prop. of M/s Bombay Gold Lab on 22.09.2016 and 23.09.2016 as well the entries of test of bullion done for M/s Rara Brothers made in a day book maintained by him. The smuggled gold was thus brought in from Guwahati and converted into 1 kg bars was sold by you, to the customers in Delhi for which he was being paid a sum of Rs 75,000/- per month.. The sale proceeds of the sold gold were transferred to Guwahati by transfer or through person.

25. It is also seen from the details of the Airway Bills and Delivery Orders/ receipts furnished by M/s Jet Airways, Air Cargo Complex, New Delhi and CELEBI Warehouse, New Delhi respectively that the smuggled was being transported from Guwahati to Delhi in the name of M/s Rara Brothers Pvt. Ltd. and M/s Aameen Traders by Shri Narendra Kumar Jain and Shri Raju Arora, i.e. you, since January, 2014 onwards and has been continuing till June, 2016 which fact has been corroborated by the persons involved in their voluntary statements recorded under Section 108 of the Customs Act as narrated above. The total gross weight of the bullion consignments comes to 7,263.4 kg and thus it is concluded that the actual weight of the smuggled gold in these consignments should be around 7,000 kg. (Approx.) having estimated market value of around 2,000/- crores.

26. From the above it is clear that:

a) You, along with Shri Narendra Kumar Jain, knowingly smuggled gold into India through carriers since 2014 as per statement recorded by Shri Narendra Kumar Jain on 02/09/2016 and 03/09/2016 u/s 108 of the Customs Act, 1962.

- b) *You, along with Shri Narendra Kumar Jain, have been buying smuggled gold from the carriers who handed over the smuggled gold in the shop of Shri Narendra Kumar Jain at Guwahati and were paid by cash/cheque as per the statement recorded by Shri Narendra Kumar Jain u/s 108 of the Customs Act, 1962 on 02/09/2016 and 03/09/2016 which amounts to abetting smuggling activities.*
- c) *You, along with Shri Narendra Kumar Jain had transported about 7000 kg of smuggled gold from Guwahati to Delhi in the name of M/s Rara Brothers Pvt. Ltd. and M/s Aameen traders over a period of two years through Jet Airways by declaring it as “Bullion” which is evidence from the Airway Bills/ Delivery Orders/ receipts and also from the voluntary statements recorded from Shri Manjeet Singh, Sr.Admin Assistant, M/s Jet Airways, Air Cargo Complex, Domestic Terminal, New Delhi and Shri Anindya Ghosh, Asst. Manager, M/s Jet Airways, Cargo Division, Guwahati*
- d) *You, along with Shri Narendra Kumar Jain had brought the smuggled gold from Guwahati to Delhi through Jet Airways, had it tested for purity, converted it into 1 kg bars of [sic] 995 purity after melting and mixing silver wherever required and sold to your customers in Delhi. The sale proceeds of the gold thus sold was transferred to Guwahati by transfer or in person. Thus you have been dealing with smuggled gold with the sole intention of making huge profits. This is evident from the statements of Shri Narendra Kumar Jain, Shri Pravin Patil, Shri Omkant Sonu, Shri Ravi Prakash and Shri Kamal Prakash recorded under Section 108 of the Customs Act, 1962 and Airways Bills and Delivery Orders detailed above and documents resumed from the search operations.”*

(Emphasis Supplied)

19. From the foregoing, it is clear that the detaining authority had come to the subjective satisfaction that the detinue was working as a ‘close

associate' of Sh.Narendra Kumar Jain and was involved in the syndicate since 2014.

20. The contention of the Mr.Nasir that the detainee was neither involved in smuggling of the goods nor the transportation thereof is also misplaced. As evidenced from the Grounds of Detention, the detainee was playing a vital role in the whole smuggling operations. No doubt the actual smuggling from Myanmar (Burma) was undertaken by Sh.Narendra Kumar Jain and not the detainee and so was the transportation; however, the detainee was a vital cog in the smuggling operation handling the business of M/s Rara Brothers in Delhi including ensuring the delivery of goods, their conversion into marketable form and their ultimate sale as well as ensuring the distribution of the bounty. There was material before the detaining authority to come to the conclusion and hence, it cannot be said that the subjective satisfaction of the detaining authority was wrongly arrived at or the grounds of detention are self-contradictory or vague. The role of the detainee has been specifically described.
21. Even otherwise it is settled law that this Court in proceedings under Article 226 of the Constitution is limited to scrutinizing whether the detention order has been passed on the material placed before it, it cannot go further and examine the sufficiency of the material. This Court does not sit in appeal over the decision of the detaining authority. This Court cannot substitute its own opinion over that of the detaining authority when the grounds of detention are precise, pertinent, proximate and relevant. The court can only examine the grounds disclosed by the Government in order to see whether they are

relevant to the object which the legislation has in view, that is, to prevent the detenu from engaging in smuggling activity.

[See *State of Gujarat v. Adam Kasam Bhaya*, (1981) 4 SCC 216 (paragraph 6); *State of Punjab v. Sukhpal Singh*, (1990) 1 SCC 35 (paragraph 9); *Union of India v. Arvind Shergill*, (2000) 7 SCC 601 (paragraph 4); *Pebam Ningol Mikoi Devi v. State of Manipur*, (2010) 9 SCC 618 (paragraph 21); and *Subramanian v. State of T.N.*, (2012) 4 SCC 699 (paragraph 14)]

22. Accordingly, the submission of the learned counsel for the petitioner must be rejected.

MISPLACED RELIANCE ON THE STATEMENT OF SH.NARENDRA KUMAR JAIN

23. Mr.Nasir submitted that the detaining authority has extensively relied upon the extorted statement of the co-detenu Sh.Narendra Kumar Jain, which was retracted before the CMM, New Delhi on 05.09.2016 at the first opportunity available to the co-detenu and hence, the detention order is bad in law. Alternatively, learned counsel submitted that the alleged statement was never made by the co-detenu as is evident from the fact that the same contains numerous details which cannot be memorized by any person. The statement contains log numbers, bank account numbers and passport numbers which could not have been possible deposited by Sh.Narendra Kumar Jain. It is also submitted that the statement is self-contradictory on vital points such as the booking of consignment, salary of the detenu, purchase of gold items, etc.

24. Mr.Jain has submitted that the submission is misplaced and it is wrong to state that the detenue has been falsely dragged in the case. He clarified that the details were available in the mobile phone of Sh.Narendra Kumar Jain, which were referred to while tendering his evidence. In response to the contradictions alleged, he submitted that the same only strengthens the independent nature of the investigation as if the statements were forged, there would not be any contradictions.
25. We are unable to accept this contention of the learned counsel for the petitioner. It cannot be said that the detaining authority could not have relied upon the statement of Sh.Narendra Kumar Jain recorded under Section 108 on 02-03.09.2016. Again, it is a well settled proposition of law that the confessional statement can be relied upon by the detaining authority provided the retraction of the same is also placed before it. Both the confessional statement and retracted statement constitute a composite relevant fact and it is incumbent upon the sponsoring authority to place both before the detaining authority. Placement of one to the exclusion of the other may be found to constitute non-placement of relevant material vitiating the subjective satisfaction of the detaining authority.
- [See *K. Satyanarayan Subudhi v. Union of India*, 1991 Supp (2) SCC 153 (paragraph 3); *A. Sowkath Ali v. Union of India*, (2000) 7 SCC 148 (paragraph 19 and 20); *P. Saravanan v. State of T.N.*, (2001) 10 SCC 212 (paragraph 7); and *Baby Devassy Chully v. Union of India*, (2013) 4 SCC 531 (paragraph 19)]
26. In the present case, both the statement and its retraction were placed before the detaining authority as is evidenced from paragraph 7 of the

Grounds of Detention. Further we find no merit in the submission that the detention order is *per se* illegal as being based on the retracted statement of Sh.Narendra Kumar Jain. Accordingly, no infirmity can be found on this count as well.

27. Mr.Nasir had also strenuously tried to impress upon us that the statement was extorted and no reliance could be placed upon the same by the detaining authority and thus, the subjective satisfaction arrived at is vitiated.
28. We are of the opinion that the same is an untraversable territory for this Court under Article 226. What is in effect being called upon us is to appreciate the statement of Sh.Narendra Kumar Jain and rule upon its credibility which is beyond the scope of the present proceedings. It is settled law that this Court does not sit in appeal and the subjective satisfaction to be arrived at is of the detaining authority and not this Court. The scope of interference is limited and we may only see whether there was material before the detaining authority.
29. Having observed so, we have also carefully examined the detention order to satisfy our conscience. The detention order of the detainee is not solely based upon the retracted statement of Sh.Narendra Kumar Jain as the same stood corroborated by the statements of Sh.Omkant Soni, Ravi Prakash, Kamal Prakash and Pravin Patel as well as the records seized during the investigation.
30. Accordingly, the contention is rejected.

FAILURE TO INFORM FAMILY MEMBERS OF DETENUE

31. Learned counsel for the petitioner submitted that detention of the detainee is in clear violation of Article 21. Relying upon paragraph 74

of the judgment of the Supreme Court in *A.K. Roy v. Union of India*, (1982) 1 SCC 271, Mr.Nasir submits that the authorities failed to intimate the family members of the detainee about the passing of the order of detention and of the fact that the detainee has been taken in custody.

32. Mr.Jain informed that the petitioner herein, being the wife of the detainee, was informed about the detention of the detainee on 18.11.2016 itself and hence, all the procedural safeguards had been strictly adhered to. He had also drawn the attention of this Court to a report submitted by the Delhi Police bearing No.3136-37/Summons Desk/Legal Cell/PHQ dated 30.11.2016.
33. We may note that a copy of a the certificate signed by the concerned officer of the Delhi Police and also signed by the detainee himself has been placed on record. The same is extracted in extenso below:

“It is certified that detainee Raju Arora s/o Tilak Raj Arora family has been initimated [sic: intimated] about the detention of Raju Arora. Today at about 5:30 pm Smt Sabnam w/o Raju Arora informed Telephonic about his detention.”

34. Accordingly, in view of the stand taken by the respondents, the contention of the petitioner must be rejected as being factually incorrect.

RESORT TO PREVENTIVE DETENTION WHEN ORDINARY LAW IS SUFFICIENT TO DEAL WITH THE SITUATION

35. During the course of arguments, it was also faintly urged by Mr.Nasir that since the ordinary law of the land was sufficient to curtail the alleged activities of the detainee and the resort to preventive detention

is bad in law. Criminal prosecution under Customs Act was sufficient in the present case and not preventive detention and hence, the detention order is bad in the eyes of law. Reliance was placed on ***Rekha v. State of Tamil Nadu*, (2011) 5 SCC 244.**

36. Prior to dealing with the contention of the petitioner, we may note that this very bench in ***Atikur Rahaman v. Union of India & Anr.*, 2017 SCC OnLine 7563: MANU/DE/0741/2017** had extensively dealt with the law in this regard including ***Rekha* (Supra)**, the relevant paragraphs read as under:

“82. Law enabling the State to deprive a person’s liberty without trial is clearly draconian in nature and should not be taken lightly by any civilized society. It is a necessary evil to be resorted to in the rarest of circumstances. At the same time, the violation of foreign exchange regulations and smuggling activities may tear apart the very economic fabric of the Nation’s economy, which has necessitated statutes such as the COFEPOSA Act. [See Dropti Devi (Supra)].

83. Prior to dealing with the contentions of the parties, we may trace the development of the law upon the subject. In Biram Chand v. State of U.P., (1974) 4 SCC 573, it was held that recourse to both criminal proceedings and passing of a preventive detention order cannot be allowed. This judgment was later overruled by a Constitutional Bench of the Supreme Court in Haradhan Saha (Supra) with the following observations:

“32. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been

launched. An order of preventive detention may be, made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.
33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.”

(Emphasis Supplied)

84. At the same time, the law of preventive detention cannot be abused to fail the paramount right recognised by the Constitution of India in Article 21. Being an aberration to the principles governing civilized societies, preventive detention orders cannot be passed in a cavalier or causal manner in order to avoid the hassles of trial and punish the detenu.

85. A Full Bench of the Supreme Court in *Rekha v. State of Tamil Nadu*, (2011) 5 SCC 244, was dealing with a case wherein a detention order was passed against a detenu, who was already in custody, under the “alleged imminent possibility of the accused coming out on bail.” Since the only allegation against the detenu was that he was selling expired drugs after changing their labels, the Apex Court came to the conclusion that the ordinary law was sufficient to deal with the situation. Consequently, the detention order was quashed. Justice Markandey Katju, giving the opinion for the bench, observed as under:

“13. In our opinion, Article 22(3)(b) of the Constitution of India which permits preventive detention is only an exception to Article 21 of the

Constitution. An exception is an exception, and cannot ordinarily nullify the full force of the main rule, which is the right to liberty in Article 21 of the Constitution. Fundamental rights are meant for protecting the civil liberties of the people, and not to put them in jail for a long period without recourse to a lawyer and without a trial. As observed in R. v. Secy. of State for the Home Deptt., ex p Stafford [(1998) 1 WLR 503 (CA)] : (WLR p. 518 F-G)

“ ... The imposition of what is in effect a substantial term of imprisonment by the exercise of executive discretion, without trial, lies uneasily with ordinary concepts of the rule of law.”

...

21. It is all very well to say that preventive detention is preventive not punitive. The truth of the matter, though, is that in substance a detention order of one year (or any other period) is a punishment of one year's imprisonment. What difference is it to the detenu whether his imprisonment is called preventive or punitive?

22. Mr Altaf Ahmed, learned Senior Counsel for the respondents, submitted that there are very serious allegations against the detenu of selling expired drugs after removing the original labels and printing fresh labels to make them appear as though they are not expired drugs.

23. In this connection, criminal cases are already going on against the detenu under various provisions of the Penal Code, 1860 as well as under the Drugs and Cosmetics Act, 1940 and if he is found guilty, he will be convicted and given appropriate sentence. In our opinion, the ordinary law of the land was sufficient to deal with this situation, and hence, recourse to the preventive detention law was illegal.

...

29. Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of

the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.

30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal.

...

33. No doubt it has been held in the Constitution Bench decision in *Haradhan Saha* case [(1975) 3 SCC 198: 1974 SCC (Cri) 816] that even if a person is liable to be tried in a criminal court for commission of a criminal offence, or is actually being so tried, that does not debar the authorities from passing a detention order under a preventive detention law. This observation, to be understood correctly, must, however, be construed in the background of the constitutional scheme in Articles 21 and 22 of the Constitution (which we have already explained). Article 22(3)(b) is only an exception to Article 21 and it is not itself a fundamental right. It is Article 21 which is central to the whole chapter on fundamental rights in our Constitution. The right to liberty means that before sending a person to prison a trial must ordinarily be held giving him an opportunity

of placing his defence through his lawyer. It follows that if a person is liable to be tried, or is actually being tried, for a criminal offence, but the ordinary criminal law (the Penal Code or other penal statutes) will not be able to deal with the situation, then, and only then, can the preventive detention law be taken recourse to.

34. Hence, the observation in SCC para 34 in Haradhan Saha case [(1975) 3 SCC 198 : 1974 SCC (Cri) 816] cannot be regarded as an unqualified statement that in every case where a person is liable to be tried, or is actually being tried, for a crime in a criminal court a detention order can also be passed under a preventive detention law.”

(Emphasis Supplied)

86. We may also take note of the decision of the Supreme Court in the case of *Munagala Yadamma v. State of A.P. and Ors.*, (2012) 2 SCC 386 wherein the Detaining Authority had passed the order for the reason that “recourse to normal legal procedure would involve more time and would not be an effective deterrent in preventing the detenu from indulging in further prejudicial activities.” The Apex Court allowed the appeal and quashed the detention order relying upon the decision in *Rekha* (Supra) holding as under:

“9. No doubt, the offences alleged to have been committed by the appellant are such as to attract punishment under the Andhra Pradesh Prohibition Act, but that in our view has to be done under the said laws and taking recourse to preventive detention laws would not be warranted. Preventive detention involves detaining of a person without trial in order to prevent him/her from committing certain types of offences. But such detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes which the detenu may have committed. After all, preventive detention in most cases is for a year only and cannot be used as an instrument to keep a person in perpetual custody without trial. Accordingly, while following the

three-Judge Bench decision in Rekha case we allow the appeal and set aside the order passed by the High Court dated 20-7-2011 and also quash the detention order dated 15-2-2011, issued by the Collector and District Magistrate, Ranga Reddy District, Andhra Pradesh.”

(Emphasis Supplied)”

37. Accordingly, the present case is also to be decided on the basis of the foregoing settled principles of law. We have already discussed the role and position of the detinue in the smuggling ring in paragraphs 18 to 20 foregoing. The detinue was not a mere carrier and was in-charge of the Delhi operations of the racket as the kingpin Sh.Narendra Kumar Jain was based in Guwahati. It is clear that the activities of the detinue were of a serious nature and perpetrated with a great deal of expertise and coordination. The activities were of a massive scale and had been continuing for about two years. This had led to the detaining authority satisfying itself about the propensity and potentiality of the detinue to further indulge in such activities. Hence, it is clear that the ordinary law of the land was insufficient to curtail the activities of the detinue and the resort to the law of preventive detention was justified.

FAILURE OF THE RESPONDENTS TO DECIDE THE REPRESENTATION DATED 09.12.2016

38. The final and the primary bone of contention between the parties pertains to the effect of the failure on the part of the respondent to decide the representation dated 09.12.2016.
39. Learned counsel for the petitioner submitted that there is no reply from the detaining authority of the representation dated 09.12.2016 till

date, which is a clear violation of Article 22(5) read with Section 3(3) of the COFEPOSA Act. He submitted that the failure of the respondents to decide his representation makes the continued detention of the detainee bad in law. Mr.Nasir further submits that as in the representation dated 09.12.2016, the detainee requested that he be provided the Relied upon Documents, statements of detainee in Hindi language, etc. and thus, the failure to decide the same inhibited his capacity of putting up an effective defence. Reliance is placed on ***Saleh Mohd. v. Union of India, (1980) 4 SCC 428*** (paragraph 8).

40. In response to this submission, the respondents have dilly-dallied and filed numerous affidavits taking varied stands, only to be given up during arguments. The initial reply in the counter affidavit dated 28.03.2017 was that there was no reply at all. The relevant paragraph is reproduced in its entirety below:

“D. In reply to Ground 7(IV) it is submitted that the request letter/representation dated 09/12/2016 of the detainee was received by the COFEPOSA Wing on 14/12/2016. Since the reference to the Advisory Board had already been made on 09/12/2016, in view of the judgment of the Hon’ble Supreme Court dated 03/06/2015 passed in Criminal Appeal No. 829/2015 Golam Biswas Vs. Union of India & Ors., the representation of the detainee was forwarded to Advisory Board on 04/01/2017. The Advisory Board duly heard the detainee in its hearing held on 10/01/2017 and gave its opinion after taking into consideration all the material facts pleadings made by the detainee.”

41. The foregoing extract fails to clarify anything as to the stand of the respondents. During the course of arguments on 03.05.2017, learned counsel for the respondents informed this Court that a second representation stands decided and rejected, while the representation

dated 09.12.2016 has not been decided till date. The matter was then adjourned to enable the respondents to file an additional affidavit in this regard.

42. In the additional affidavit dated 06.05.2017, the respondents stated that representation dated 09.12.2016 was received by the respondents on 14.12.2016 and the same was examined in consultation with the sponsoring authority. However, since the reference to the Advisory Board had already been made on 09.12.2016, in view of the judgement of the Supreme Court in ***Golam Biswas v. Union of India & Anr.*, (2015) 16 SCC 177** the representation of the detainee was forwarded to Advisory Board on 04.01.2017. Thereafter, another representation dated 19.12.2016 was received from the detainee and was also duly forwarded to the Advisory Board on 04.01.2017. The Advisory Board heard the detainee in its meeting on 10.01.2017 and after taking into consideration all the material facts pleadings made by the detainee, opined in its report dated 27.01.2017 that there exists sufficient cause for detaining the detainee. After the receipt of the opinion of the Advisory Board, the representation dated 09.12.2016 “*was not processed inadvertently due to oversight and no separate reply was issued to the detainee*”; while the representation dated 19.12.2016 was processed and being found devoid of merit was rejected by the respective competent authorities and communicated to the detainee by separate memorandums dated 30.01.2017 and 06.02.2017.
43. Later on, the respondents again filed another second additional counter affidavit dated 15.05.2017. This once again stirred the cauldron and introduced a new contention, i.e. the letter dated

09.12.2016 being merely a request letter and not a representation and thus, not required to be decided. This stand belied the previous stand and other documents placed on record by the respondents and hence was given up by Mr.Jain during the course of the arguments. Further, in this affidavit, an alternative plea was taken that since the contents of the representation dated 09.12.2016 are echoed/reiterated in the subsequent representation dated 19.12.2016 and which admittedly has been dealt with by the detaining authority/competent authority, the previous representation stood automatically redressed.

44. Mr.Jain submitted that if a detainee follows up a letter with another letter which includes the issue raised in 1st letter then the doctrine of merger applies and the redressal of 2nd letter can be construed as a redressal of the 1st letter. Learned ASG submitted that it is settled law that it is not incumbent upon the Government to decide successive representations if the same are based upon the same grounds and same material.
45. The factual matrix as it emerges is that the detainee after being detained on 18.11.2016, the detainee had made two representations to the respondent. The first being the representation dated 09.12.2016 (received by the respondents on 14.12.2016) and the second representation dated 19.12.2016. Since the case stood referred to the Advisory Board on 09.12.2016, both the representations were forwarded to the Board in terms of the decision of the Apex Court in ***Golam Biswas (Supra)***. The Board heard the detainee on 10.01.2017 and opined in its report dated 27.01.2017 that there existed sufficient cause for the continued detention of this detainee. Thereafter, the

second representation dated 19.12.2016 was processed and rejected, while the representation dated 09.12.2016 was not processed.

46. In this factual background, we proceed to analyse the effect of the non-consideration of the representation dated 09.12.2016 on the detention order.
47. We deem it appropriate to revisit the law pertaining to deciding representations preferred by the detainee. It is well settled that the right to make representation against the detention order is the most cherished and valuable right conferred on a detainee under Article 22(5) of the Constitution and even the slightest infraction would entitle the detainee to be released. Every person has a right under the provisions of the COFEPOSA Act to make a representation to put a case against his detention. The failure to consider a representation of a person detained renders the further detention of the detainee illegal [See *Kamleshkumar Ishwardas Patel v. Union of India*, (1995) 4 SCC 51 (paragraph 46) and *Union of India v. Harish Kumar*, (2008) 1 SCC 195 (paragraphs 9 – 15)]. Even slightest delay in consideration of the representation has been held to vitiate the detention of the detainee [See *Raj Kumar v. UOI & Ors.*, 2013 (1) JCC 691: MANU/DE/6394/2012 (paragraphs 16 - 18) and *Smitha Dey Bhattacharya v. Union of India and Ors.*, 219 (2015) DLT (paragraph 39 - 41)].
48. At the same time, the right to make a representation cannot be abused and successive representations on the same grounds and same material need not be decided by the authorities. We may notice two judgments in this regard. The first being *Abdul Razak Dawood Dhanani v. Union of India*, (2003) 9 SCC 652, wherein the Supreme Court was

seized of a matter pertaining to the failure of the Central Government to decide the second representation of the detainee. The detainee had made a representation and before it could be decided, the matter was referred to the Advisory Board. The Advisory Board considered the case of the detainee therein and did not favour the release of the detainee. Meanwhile, the detainee made a second representation. Later, the authorities rejected the first representation of the detainee, but the second representation was not considered. The appellant urged that the detention order stood vitiated owing to the non-consideration of the second representation, which did not find favour with the Apex Court. Dismissing the appeal, the Supreme Court observed as under:

“8. It thus appears from the aforesaid judgment that even the statutory power vested in the Central Government to revoke the order of detention may be exercised in its discretion only in cases where “fresh materials” or “changed or new factors” call for the exercise of that power, and 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. This principle finds affirmation in a judgment rendered by a Constitution Bench of this Court in Makhan Lal Gokul Chand v. Administrator, Union Territory of Delhi[(1999) 9 SCC 504 : 2000 SCC (Cri) 260] in which this Court found that the petitioner challenged the order of detention and failed thrice, and yet filed another representation which did not disclose any fresh material, nor were any subsequent events pointed out which may have warranted a “fresh” consideration of the representation made by the detenu. It was only a change in the language of the representation. The Delhi Administration was, therefore, found justified in rejecting the representation since there were no “fresh grounds” nor any “fresh material” or “subsequent events” brought out in the last representation.

There was, therefore, no obligation on the part of the State to get that representation considered by a “fresh Advisory Board” and, therefore, the exercise of this discretion by the State in rejecting the representation and not constituting a “fresh” Advisory Board could not be faulted. The writ petition was accordingly dismissed.

...

11. We have, therefore, carefully perused the first representation dated 12-4-2002 as well as the second representation dated 19-4-2002. We requested counsel for the appellant to point out any new ground based on fresh material or any subsequent event which justifies a reconsideration of the matter on the basis of the second representation. Having carefully scrutinized the two representations we do not find any new ground or fresh material in the second representation made by the detenu. The same grounds and the same materials as stated in the first representation have been stated in the second representation, except for the difference in language and the manner of presentation. Having not found any new ground or fresh material or any subsequent event justifying a consideration of the second representation of the detenu, we are not persuaded to hold that in these circumstances the Central Government was bound to consider the second representation and pass a separate order disposing of the same. In fact all the grounds stated in the second representation were also stated in the first representation which was rejected by the Central Government after obtaining the opinion of the Advisory Board and after due consideration. There was, therefore, no obligation on the part of the Central Government to pass a similar order again on the basis of the second representation which did not contain any new or fresh grounds justifying a fresh consideration.”

(Emphasis Supplied)

49. A coordinate bench of this Court, of which one of us (G.S.Sistani, J.) was a member, in ***Shahidul Islam Mondal v. Union of India & Ors., 2015 (150) DRJ 491 [DB]*** has held that it was not necessary to decide a third representation of the detenu, which was devoid of any new grounds. The relevant portion of the judgment reads as under:

“25. ...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.”

(Emphasis Supplied)

50. Accordingly, the present controversy is also to be decided on the foregoing settled propositions of law. The impugned order of detention was passed on 10.10.2016 and the detenu was detained on 18.11.2016. The matter was remitted to the Advisory Board on

09.12.2016. Thereafter, the first representation dated 09.12.2016 was received by the respondents on 14.12.2016. A second representation dated 19.12.2016 was also received. As the reference was already made to the Advisory Board, both the representations were forwarded on 04.01.2017. The Board opined for the continued detention in its report dated 27.01.2017. Thereafter, the second representation dated 19.12.2016 was processed and rejected, while the first representation dated 09.12.2016 was not processed.

51. Ordinarily, it is the successive representation which need not be decided, if premised on the same grounds and same material, and not the anterior representation which can be disregarded. However, in the present case, an additional fact has crept in. Before either of the representations were received by the respondents, the matter also stood referred to the Advisory Board. As per *Golam Biswas (Supra)* (paragraph 16) and *K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476* (paragraph 16), it was incumbent upon the respondents to forward the representations to the Board. This was done on 04.01.2017. The detaining authority could only consider the representations after the advice of the Board. This made the date effective receipt for both the representations 27.01.2017, i.e. the date report of the Board. Then the second representation was processed and rejected to the exclusion of the first. We may note that an analogous situation had arose in *Abdul Razak Dawood Dhanani (Supra)*, wherein both the first and second representation were sent to the Advisory Board and on the receipt of its report, only the first was processed. In this background, the Apex Court found that no new ground or fresh material was included in the undecided representation

and hence, there was no need for the Central Government to pass a separate order.

52. Accordingly, the prime question for our consideration is whether there were any fresh or additional ground or material in the representation dated 09.12.2016? If the answer is in the affirmative, the detention would stand vitiated and if negative, there would be no need for the detaining authority to pass a separate order sustaining the order of detention. Mr.Nasir vehemently argued that the representations were different both in structure and their contents; on the other hand, Mr.Jain submitted that both the representations were identical. Both parties handed over comparative charts to show similarity/dissimilarity between the representations.
53. We have meticulously examined the two representations. The first representation dated 09.12.2016 is in the nature of a request, i.e. alleging certain defaults and seeking documents/information. The second representation merely alleges the defaults and submits that the detention order stood vitiated because of the lapses. Barring their nature, all the grounds raised in the representation dated 09.12.2016 stand covered in the second representation dated 19.12.2016. The latter being a much detailed representation having additional grounds and material over and above the ones in the representation dated 09.12.2016. Their contents may be represented in tabular form below:

<u>Representation dated 09.12.2016</u> (Sum and substance of submissions)	<u>Representation dated 19.12.2016</u> (Relevant portion quoted)
<u>Paragraph 1</u> Introductory Paragraph	NA

<u>Representation dated 09.12.2016</u> (Sum and substance of submissions)	<u>Representation dated 19.12.2016</u> (Relevant portion quoted)
<u>Paragraphs 2, 3 and 4</u> The grounds of detention were not served in the language known to the detenu, i.e. Hindi. Some relied upon documents are illegible.	<i>“On scrutiny it is revealed that most of the relied documents were in English and some documents and grounds are illegible and some information and documents considered by the detaining authority were missing and Hindi translation of grounds and documents are written in Hindi but words of English not translated and explained in Hindi to the detenu.”</i> <i>“That on 1.12.2016, the grounds of detention and documents relied upon, supplied to the detenu. It is reveals that on going through the grounds and documents supplied to the detenu, most of the documents were in English language and those supplied in Hindi were very complicated language used in translation. Most complicated words/technical words of English written in Hindi. So language use in translation of documents written in English did not permit him to understand the meaning. Till date the detenu is not in a position to understand the real cause and grounds of the detention. Most of the documents relied upon are not legible and readable and most of the material and documents are in English language, which is not the language of the detenu.”</i> <i>“That failure on behalf of detaining authority, in not supplying the documents</i>

<u>Representation dated 09.12.2016</u> (Sum and substance of submissions)	<u>Representation dated 19.12.2016</u> (Relevant portion quoted)
This amount to deprivation of the right of the detenu under Article 22(5).	<i>and grounds and information in the language of the detenu, means violation of safeguard guaranteed under article 22 (5) of the constitution. As such the detenu most respectfully prays that the Hon'ble members of the advisory board would be graciously pleased to recommend his release from his continued detention."</i> <i>"It is expected that within maximum time i.e. 15 days in exceptional circumstances, all documents and material shall be supplied to the detenu. In this case, the relied upon documents in the language of detenu have not been supplied even after the 15 days and even after the request letter sent to the detaining authority on 09.12.2016."</i> <i>"It is further submitted that the documents is in english and not a Hindi translation meaning thereby not communicated to the detenu as per the sprit of Article 22(5) of Constitution."</i>
<u>Paragraph 5 and 6</u> Statements of the detenu mentioned in the letter dated 21.11.2016 were never made by the detenu.	<i>"...and local police and obtained signature of the detenu against his will and wishes but by torture under duress, threat, harassment mentally and physically and by force on various typed and blank papers."</i>

<u>Representation dated 09.12.2016</u> (Sum and substance of submissions)	<u>Representation dated 19.12.2016</u> (Relevant portion quoted)
Signature of the detenu was forcefully taken on various written and blank papers.	<i>“In the instant case, there is a breach of article 22(5) r/w section 3(3) of COFEPOSA. As the documents and grounds of detention whatsoever be served to the detenu on 01.12.2016 while order of detention was passed on 10.12.2016. But executed the order of detention by the police of PS Bara Hindu Rao, Delhi on 18.11.2016. While the detenu was lifted from PS Vijay Nagar, Ghaziabad on 17.11.2016 at about 4:00-4:30 PM by the DRI officials as per officials of DRI notice under section 108 Customs Act,1962 was served on 17.11.2016 on detenu. Then the officials of DRI called the police of PS Bara Hindu Rao and till then, the detenu was remained in the illegal custody of the DRI and his alleged statement under section 108 of Customs Act 1962 was recorded on 17.11.2016 and 18.11.2016. Actually his signature obtained on the so called typed Hindi paper, which neither explained nor allowed the detenu to read over but compelled by force under duress, torture, physically and mentally and keeping the detenu nude obtained the signature but the detenu did not put his signature on that typed papers amongst others blank and written papers voluntarily but under duress, torture by harassment and by force.”</i> <i>“It is also submitted that as per the letter sent to detenu dated 21.11.2016. It is mentioned about the statement extorted from the detenu, on 17.11.2016 and 18.11.2016</i>

<u>Representation dated 09.12.2016</u> (Sum and substance of submissions)	<u>Representation dated 19.12.2016</u> (Relevant portion quoted)
	<i>although no statement was made by the detenu but obtained signature on the typed Hindi paper by inducement, force, duress, and other unconstitutional manners. It is worth mentioning overhere that no such statement supply to the detenu. After consideration the alleged statement under section 108 Customs Act of the detenu, the time as per section 3(3) COFEPOSA Act extended that is part and parcel of documents, which is considered by the detaining authority.”</i>
<u>Paragraph 6</u> No exceptional cause for extending time further than 5 days for serving the ground of detention.	<i>“It is expected that all the records of detenu is being kept by the detaining authority. No request was made by the detenu to supply the documents and grounds in Hindi. Then official of the DRI are not concerned with the detenu authority after making the proposal to detaining authority and no request is made by the detenu to supply the documents in Hindi, no such documents served to the detenu on the basis of which, time is extended.”</i> <i>“Even otherwise, there is no exception involved in the instant case. By virtue of section 3(3) of COFEPOSA Act. In the A.K.Roy case in para 76 Hon’ble Supreme Court observed that, “The objections of the petitioner against the provision contained in section 8(1) is that it unreasonably allows the detaining authority to furnish the grounds of detention to the detenu as late as</i>

<u>Representation dated 09.12.2016</u> (Sum and substance of submissions)	<u>Representation dated 19.12.2016</u> (Relevant portion quoted)
Whether any information was furnished to his wife or other family members?	<i>five days and in exception cases ten day after the date of detention. This argument overlooks that the primary requirement of section 8(1) is that the authority making the order of detention shall communicate the ground of detention to the detenu "as soon as may be" the normal rule therefore is that grounds of detention must be communicated to the detenu without avoidable delay. It is only in order to meet the practical exigencies of administrative affair that the detaining authority is permitted to communicate the grounds of detention not later then five days ordinarily and not later then ten days if there are exceptional circumstances".</i> <i>It is submitted that the Hindi translation of most of relied documents, on which ground the detaining authority extended the time under section 3 (3) COFEPOSA Act, not supplied to the detenu."</i> <i>"It is submitted that no information orally or in writing of passing of the said detention order has been given to the spouse or other family members of detenu. Even no information of execution of the said order on 18.11.2016 is given to spouse or other family members of the detenu and without disclosing the grounds of arrest the detenu sent to Tihar Jail, Delhi on 18.11.2016 in evening."</i>

<u>Representation dated 09.12.2016</u> (Sum and substance of submissions)	<u>Representation dated 19.12.2016</u> (Relevant portion quoted)
	<i>“The Hon’ble Supreme Court in A.K.Roy Vs. Union of India para 75 observed “that the power to regulate the place and condition of detention, there is one more observation which we would like to make and which we considered as of great importance in matter of preventive detention. In order that the procedure attendant upon detention should confirmed to the mandate of Article 21 in the matter of fairness, justness and reasonableness. We considered it imperative that immediately after a person is taken in custody in pursuance of an order of detention. The members of his household, preferably the parents, the child or the spouse must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken in custody”.</i> <i>It is submitted that no such information was given. It is a clear case of violation of article 21 of Constitution of India.”</i>
<u>Paragraph 7</u> Seeks copy of proposal of sponsoring authority and information/documents sent to the screening committee and its opinion.	<i>“The detenu, also instructed to his advocate to ask legible copies of grounds and information regarding making proposal by sponsoring authority for detention, to detaining authority and also the copy of the purposal made to detaining authority and when the proposal made by the sponsoring authority to the screening committee and when the screening committee give their opinion, opining the detention of the detenu</i>

<u>Representation dated 09.12.2016</u> (Sum and substance of submissions)	<u>Representation dated 19.12.2016</u> (Relevant portion quoted)
	<i>under COFEPOSA Act.</i> <i>According the advocate of the detenu, based on information and instruction received from the detenu, prepared a request letter and sent to the detaining authority on 09.12.2016 through Jail Superintendent after explaining the detenu, in Hindi and admitting the contents as true and correct the detenu signed the same but till date no reply received regarding requested documents/information from the side of the detaining authority. Hence the detenu is handicapped in making an effective representation for release from his continue detention in jail as the constitutional right under Article 22(5) available to the detenu.”</i>

54. From the foregoing, it is clear that all the grounds and the material urged in the representation dated 09.12.2016 were also mentioned, much more elaborately, in the representation dated 19.12.2016. Thus, in view of the dicta of the judgments in ***Abdul Razak Dawood Dhanani (Supra)*** and ***Shahidul Islam Mondal (Supra)***, it was not incumbent upon the detaining authority to pass a separate order for the representation dated 09.12.2016. Accordingly, this ground also rejected.
55. To conclude, the petitioner has failed to urge any ground warranting the quashing of the detention order or vitiating his further detention.

56. Accordingly, the writ petition is dismissed as devoid of any merit.

G. S. SISTANI, J.

VINOD GOEL, J.

JUNE 28th 2017
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