

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5682 OF 2018

Shrinivas Kishor Sanga.	]	
Age - 32 years,	]	
Residing at Vijay Nagar, New Pachha Peth,	]	
Solapur.	]	
(At present, in Yerwada Central Prison, Pune)	]	... Petitioner /
		Detenu
Versus		
1. The Commissioner of Police,	]	
Solapur.	]	
2. State of Maharashtra.	]	
(Through Addl. Chief Secretary to	]	
Government of Maharashtra,	]	
Home Department, Mantralaya, Mumbai).	]	
3. The Superintendent,	]	
Yerwada Central Prison, Pune.	]	
4. The Secretary,	]	
Advisory Board for M.P.D.A. Act	]	
C/o. Home Department, Mantralaya,	]	
Mumbai - 400 032.	]	... Respondents

Ms. Jayashree U. Tripathi i/b Mr. U. N. Tripathi for Petitioner.
 Ms. M. H. Mhatre, APP for State.

**CORAM :- INDRAJIT MAHANTY &
SARANG V. KOTWAL, JJ.**

RESERVED ON :- MARCH 05, 2019

PRONOUNCED ON :- MARCH 19, 2019

JUDGMENT (PER : SARANG V. KOTWAL, J.) :-

1. By this Petition, the Petitioner has challenged the order of detention dated 30/10/2018 bearing no.09/CB/DP/2018 passed by the Respondent No.1 - Commissioner of Police, Solapur, under Section 3 of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootletters, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing of Essential Commodities Act, 1981 (Maharashtra Act No.LV of 1981), (Amendment-1996), (Amendment-2009), (Amendment-2015) (hereinafter referred to as 'MPDA'). Along with the detention order, the Petitioner was served with the grounds of detention dated 30/10/2018 in compliance with Section 8 of the MPDA. The order and the grounds of detention were served on the Petitioner on 30/10/2018 and he was detained in Yerwada Central Prison, Pune. The Petitioner is challenging this detention order and his detention effected pursuant to that order.

2. The grounds of detention formulated by the Respondent No.1 i.e. the Commissioner of Police, Solapur, mention that the

Petitioner was a dangerous person and a weapon wielding desperado. According to the Respondent No.1, the Petitioner had unleashed a reign of terror and had become habitual danger to the lives and properties of the people residing and carrying out their daily business in the areas mentioned in the detention order in Solapur city. According to the Respondent No.1, the Petitioner was carrying out illegal business of money lending. Paragraph 4.1 mentions a list of 10 registered offences at various police stations in Solapur under different sections of the Indian Penal Code. In some of the cases, the Petitioner was acquitted.

3. In the year 2013, an externment order was passed against the Petitioner and in the year 2016, he was detained under MPDA vide order dated 21/10/2016. The Petitioner was released on 09/08/2017 pursuant to the order passed by this Court in Criminal Writ Petition No.1720 of 2016. In paragraph 4.5, there is a reference to C.R.No. 548 of 2018 registered as Chaithanyapuri Police Station, Rachakonda, Telangana State. However, ground 4.6 categorically mentions that the present detention order was not based on all these offences and preventive actions.

4. Paragraph 5 of the grounds of detention mentions the activities on which the detention order was passed. Ground 5.1 gives details of C.R.No.256 of 2018 registered at Jail Road Police Station, Solapur, under Sections 306, 384 and 386 read with 34 of the Indian Penal Code and under Sections 39, 41 and 45 of The Maharashtra Money-Lending (Regulation) Act, 2014. The said offence was registered on 21/05/2018. Paragraph 5.3, 5.4 and 5.5 refer to the statements of witnesses 'A', 'B' and 'C' recorded in-camera in respect of the incidents which had allegedly taken place in the second week of May 2018, second week of June 2018 and last week of June 2018 respectively.

5. Paragraph 6 of the grounds of detention categorically mentions that the Respondent No.1 had gone through the C.R.No.256 of 2018 registered at Jail Road Police Station, Solapur, as well as the 3 in-camera statements and was subjectively satisfied that the Petitioner was acting in a manner prejudicial to the maintenance of public order. The Respondent No.1 had shown awareness that the Petitioner was in custody in respect of this registered offence and also showed awareness that there was imminent possibility that if the

Petitioner would be granted bail, he would revert to the similar activities prejudicial to the maintenance of public order and peace. Based on this subjective satisfaction, the impugned order was passed. The Respondent No.1 had specifically mentioned that he was subjectively satisfied that the Petitioner was a 'dangerous person' within the meaning of Section 2(b-1) of the MPDA.

6. In paragraph 8 of the grounds of detention, the Respondent No.1 had informed the Petitioner that pending approval of the detention order under Section 3(3) of the MPDA by the State Government, the Petitioner had a right to make a representation to the Respondent No.1. In paragraph 9, the Petitioner was specifically informed that he had a right to make a representation to the State Government against the detention order and that the Petitioner would be afforded earliest opportunity to make such a representation and that it could be submitted through the Superintendent of jail where he was detained. Paragraphs 10 and 11 of the grounds of detention mention that his case would be referred to the Advisory Board and that he could make a representation to the Advisory Board as well. Paragraph 12 mentions the rights of the Petitioner to appear before

the Advisory Board.

7. We have heard Mr. U. N. Tripathi and Ms. Jayashree U. Tripathi, learned Counsel for the Petitioner and Ms. M. H. Mhatre, learned APP for State - Respondent No.2. Learned APP also represented the Respondent No.1 - The Commissioner of Police, Respondent No.3 - The Superintendent, Yerwada Central Prison, Pune and the Respondent No.4 - The Secretary, Advisory Board for M.P.D.A. In response to the Petition, the Respondent No.1 has filed his Affidavit dated 28/01/2019 supporting his action of passing the detention order. Mr. Aniruddha V. Jewlikar, Deputy Secretary (In-charge), Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai, has filed his Affidavit dated 28/01/2019 explaining the stand of the Government i.e. Respondent No.2.

8. Though there are other grounds raised in the Petition, Ms.Tripathi mainly relied on the ground that the Petitioner's representation was not considered by the State Government expeditiously thereby infringing his fundamental right guaranteed under Article 22(5) of the Constitution of India. Therefore, according

to Ms. Tripathi, the detention order was vitiated and was liable to be set aside. Since we find sufficient force in this argument for setting aside the detention order, we are dealing only with this ground for arriving at a decision in this Petition.

9. In connection with the afore-mentioned ground, a few dates are relevant. These dates are mentioned in the Petition and the Affidavit-in-Reply, which is filed on behalf of the Respondent No.2 – State of Maharashtra. The detention order was passed on 30/10/2018. The Petitioner was detained on 30/10/2018. The order was approved by the Government on 02/11/2018. Reference was made to the Advisory Board on 02/11/2018. The Advisory Board held its meeting on 29/11/2018. The report of the Advisory Board was received on 04/12/2018. The order of detention was confirmed by the Government on 04/12/2018. In the meantime, the Petitioner made a representation to the Government. The representation was dated 15/11/2018. Though the memo of the Petition mentions that the representation was submitted to the Government on 23/10/2018, Ms.Tripathi conceded that it is a typographical error and the date of representation was 15/11/2018. The Affidavit filed on behalf of the

Respondent No.2 mentions that the said representation made to the Government of Maharashtra was dated 15/11/2018 and was received in the Special Branch-3B desk on 17/11/2018. Thereafter, the remarks were called from the detaining authority on the same day which were received on 22/11/2018. It is mentioned in the Affidavit that, since the proposal of detention was referred to the Advisory Board on 02/11/2018, the representation of the Petitioner dated 15/11/2018 was kept pending till the receipt of the report of the Advisory Board. It is further mentioned in the Affidavit that the Advisory Board considered the said representation during its hearing held on 29/11/2018. The report of the Advisory Board was received on 04/12/2018. On the same day, the Assistant Section Officer submitted the file containing remarks of the detaining authority (Respondent No.1) along with the representation of the Petitioner to the Section Officer who, in turn, submitted it to the Deputy Secretary (In-charge). It was forwarded to the Additional Chief Secretary (Home) and this authority rejected the representation on 04/12/2018 itself.

10. Thus, from these dates, it is clear that the Petitioner's representation dated 15/11/2018 was received by the Respondent No.2 on 17/11/2018 and was kept pending till 04/12/2018 till the report of the Advisory Board was received.

11. In support of her contention, Ms. Tripathi rightly relied on the Judgment of a Constitution Bench of the Hon'ble Supreme Court in the case of *Jaynarayan Sukul Vs. State of West Bengal reported in AIR 1970 SC 675*. In this case, the detenu was detained under the Preventive Detention Act, 1950. In this case, the Hon'ble Supreme Court was considering the detenu's right to make representation against the detention order and consideration thereof by the appropriate authority. After referring to a few earlier Judgments, in paragraphs 10, 11 and 12, the Hon'ble Supreme Court observed that Article 22 of the Constitution of India guaranteed the right of the detenu to have a proper consideration of the representation by the appropriate authority. The obligation of the appropriate authority to consider the representation was entirely independent of any action of the Advisory Board or any consideration of the representation by the Advisory Board. It was also observed that since the representation

was addressed to the Government and not directly to the Advisory Board, the appropriate authority was required to exercise its judgment in an independent and honest manner. After considering all these principles, the Constitution Bench, in paragraph 20 of the said Judgment, summarized its views as follows :

“20. Broadly stated, four principles are to be followed in regard to representation of detenus. First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the Government will not send the matter to the Advisory Board. If however the Government will not release the detenu the Government will send the case along with detenu's representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of release of the detenu the Government will release the detenu. If the Advisory Board will express any opinion against the release of the detenu the Government may still exercise the power to release the detenu.”

12. Ms. Tripathi then relied on the Judgment of the Hon'ble Supreme Court in the case of *Mrs. Nafisa Khalifa Ghanem Vs. Union of India and Others reported in (1982) 1 Supreme Court Cases*

422. Paragraph 7 of this Judgment reads thus :-

“7. Lastly, it was pointed out that although the representation was received by the detaining authority on February 25, 1980, the representation was rejected on March 13, 1980, a day after the Advisory Board had given its opinion. The Collector's remarks which were sent for were available to the detaining authority as far back as on March 6, 1980 and there could be no reason for the detaining authority to have deferred its decision on the representation till the receipt of the opinion of the Advisory Board. This Court has held that the detenu has an independent constitutional right to have the representation considered by the detaining authority irrespective of whatever the Advisory Board may do. In the instant case, though the respondents do not admit that they awaited the decision of the Advisory Board, the facts put together lead to the irresistible inference that the detaining authority waited for the opinion of the Advisory Board.”

In the instant case, the Petitioner's stand is on a strong footing as the Respondents have clearly admitted that they awaited the decision of the Advisory Board. In this Judgment also, the Hon'ble Supreme Court has held that there was no reason for the detaining authority to have deferred its decision on the representation till the receipt of the opinion of the Advisory Board.

13. Nafisa's case (*supra*) was followed by a Division Bench of this Court in the case of *Chanda Birju Garunge Vs. State of Maharashtra and Ors. reported in 2015 (4) Bom. C. R. (Cri.) 219.* It was observed by this Court that the constitutional rights of the detenu were violated as the representation made by him was kept pending till confirmation of the order of the preventive detention by the State Government.

14. Mrs. Mhatre, learned APP, on the other hand, submitted that once the detenu's case was referred to the Advisory Board, the State Government could not have considered any representation made by the detenu, which was received by the State Government after such reference to the Advisory Board. She submitted that such representation could only be considered after the receipt of the opinion of the Advisory Board. In support of her contention, she relied on the Judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of *K. M. Abdulla Kunhi and B. L. Abdul Khader Vs. Union of India & Others, State of Karnataka and Others, as reported in 1991(1) Supreme Court Cases 476.* She invited our attention, in particular, to the paragraph 16 of the said

Judgment, which reads thus :-

“16. We agree with the observations in Frances Coralie Mull in case. The time imperative for consideration of representation can never be absolute or obsessive. It depends upon the necessities and the time at which the representation is made. The representation may be received before the case is referred to the Advisory Board, but there may not be time to dispose of the representation before referring the case to the Advisory Board. In that situation the representation must also be forwarded to the Advisory Board along with the case of the detenu. The representation may be received after the case of the detenu is referred to the Board. Even in this situation the representation should be forwarded to the Advisory Board provided the Board has not concluded the proceedings. In both the situations there is no question of consideration of the representation before the receipt of report of the Advisory Board. Nor it could be said that the Government has delayed consideration of the representation, unnecessarily awaiting the report of the Board. It is proper for the Government in such situations to await the report of the Board. If the Board finds no material for detention on the merits and reports accordingly, the Government is bound to revoke the order of detention. Secondly, even if the Board expresses the view that there is sufficient cause for detention, the Government after considering the representation could revoke the detention. The Board has to submit its report within eleven weeks from the date of detention. The Advisory Board may hear the detenu at his request. The Constitution of the Board shows that it consists of eminent persons who are Judges or persons qualified to be Judges of the High Court. It is therefore, proper that the Government considers the representation in the aforesaid two situations only after the receipt of the report of the Board. If the representation is received by the Government after the Advisory Board has made its report, there could then of course be no question of sending the representation to the Advisory Board. It will have to be dealt

with and disposed of by the Government as early as possible.”

Mrs. Mhatre particularly invited our attention to the observation that the representation could be received after the case of the detenu was referred to the Board. In this situation, the representation should be forwarded to the Advisory Board provided the Board had not concluded the proceedings. In this situation, there was no question of consideration of the representation before the receipt of the report of the Advisory Board. It was further observed that it could not be said that the Government had delayed consideration of the representation unnecessarily, awaiting report of the board and that it was proper for the Government in such situation to await the report of the board.

15. To counter this argument Ms. Tripathi relied on the Judgment of another Constitution Bench of the Hon'ble Supreme Court in the case of ***Hardhan Saha Vs. The State of West Bengal and Others as reported in (1975) 3 Supreme Court Cases 198*** as well as on other judgments of the Hon'ble Supreme Court in the cases of (i) ***Smt. Gracy Vs. State of Karnataka and Another, as reported in (1991) 2 Supreme Court Cases 1*** and (ii) ***Moosa Husein Sanghar***

Vs. State of Gujarat and others, as reported in (1993) 1 Supreme Court Cases 511.

16. To appreciate the submissions made by both the sides, in the light of the observations of the Hon'ble Supreme Court in these cases, it is necessary to discuss the observations in K.M. Abdulla's case (*supra*). In this case, the principal question that was considered by the Hon'ble Supreme Court was as to whether the confirmation of detention order upon accepting the report of the advisory board rendered itself invalid solely on the ground that the representation of the detenu was not considered and whether the subsequent consideration of the representation would not cure that invalidity. The Constitution Bench, made it clear that there was no argument addressed before the Bench that there was unexplained delay in considering the representation of the detenu.

17. The Constitution Bench in K. M. Abdulla Kunhi's case (*supra*) considered earlier Judgments in paragraphs 11 and 12 as :

"11. It is now beyond the pale of controversy that the constitutional right to make representation under Clause (5) of Article 22 by necessary implication guarantees the

constitutional right to a proper consideration of the representation. Secondly, the obligation of the Government to afford to the detenu an opportunity to make representation and to consider such representation is distinct from the Government's obligation to refer the case of detenu along with the representation to the Advisory Board to enable it to form its opinion and send a report to the Government. It is implicit in Clauses (4) and (5) of Article 22 that the Government while discharging its duty to consider the representation, cannot depend upon the views of the Board on such representation. It has to consider the representation on its own without being influenced by any such view of the Board. The obligation of the Government to consider the representation is different from the obligation of the Board to consider the representation at the time of hearing the references. The Government considers the representation to ascertain essentially whether the order is in conformity with the power under the law. The Board, on the other hand, considers the representation and the case of the detenu to examine whether there is sufficient case for detention. The consideration by the Board is an additional safeguard and not a substitute for consideration of the representation by the Government. The right to have the representation considered by the Government, is safeguarded by Clause (5) of Article 22 and it is independent of the consideration of the detenu's case and his representation by the Advisory Board under Clause (4) of Article 22 read with Section 8(c) of the Act. (See: **Sk. Abdul Karim Vs. State of W.B.**¹, **Pankaj Kumar Chakrabarty Vs. State of W.B.**², **Shayamal Chakraborty Vs. Commissioner of Police, Calcutta**³, **B. Sundar Rao v. State of Orissa**⁴, **John Matrin v. State of W.B.**⁵, **S. K. Sekawat v. State of W.B.**⁶ and **Haradhan Saha Vs. State of W.B.**⁷)”

1 (1969) 1 SCC 433

2 (1969) 3 SCC 400 : (1970) 1 SCR 543

3 (1969) 2 SCC 426

4 (1972) 3 SCC 11

5 (1975) 3 SCC 836 : 1975 SCC (Cri) 255 : (1975) 3 SCR 211

6 (1975) 3 SCC 249 : 1974 SCC (Cri) 867 : (1975) 2 SCR 161

7 (1975) 3 SCC 198 : 1974 SCC (Cri) 816 : (1975) 1 SCR 778

12. *The representation relates to the liberty of the individual, the highly cherished right enshrined in Article 21 of our Constitution. Clause (5) of Article 22 therefore, casts a legal obligation on the Government to consider the representation as early as possible. It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in Clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. This has been emphasised and re-emphasised by a series of decisions of this Court. (See: **Jayanarayan Sukul Vs. State of W.B.**⁸, **Frances Coralie Mullin Vs. W. C. Khambra**⁹, **Rama Dhondu Borade v. V.K. Saraf, Commissioner of Police**¹⁰ and **Aslam Ahmed Zahire Ahmed Shaik v. Union of India and Ors.**¹¹)”*

It is quite significant that in both these paragraphs the Constitution Bench has clearly mentioned that the right to have the

8 (1970) 1 SCC 219

9 (1980) 2 SCC 275 : 1980 SCC (Cri) 419

10 (1989) 3 SCC 173 : 1989 SCC (Cri) 520

11 (1989) 3 SCC 277 : 1989 SCC (Cri) 554

representation considered by the Government is safeguarded by Clause 5 of Article 22. It is independent of the consideration of the detenu's case and his representation by the Advisory Board under Clause (4) of Article 22. Jaynarayan Sukul's case (*supra*) is specifically referred. Paragraph 13 of K. M. Abdulla's case reads as follows :

“13. It, therefore, follows that the appropriate authority is to consider the representation of the detenu uninfluenced by any opinion or consideration of the Advisory Board. In the case of Khairul Haque v. State of West Bengal, W. P. No.246 of 1969, D/- 10-9-1969 (reported in 1969-2 SCWR 529) this Court observed that “it is implicit in the language of Article 22 that the appropriate Government, while discharging its duty to consider the representation cannot depend upon the view of the Board on such representation”. The logic behind this propositions that the Government should immediately consider the representation of the detenu before sending the matter to the Advisory Board and further that such action will then have the real flavour of independent judgment.”

Hence, paragraph 16 of K.M. Abdulla's case (*supra*) cannot be read in isolation without making reference to the paragraphs 11, 12 and 13 of the said Judgment.

18. In Hardhan Saha's case (*supra*), an earlier Constitution Bench of the Hon'ble Supreme Court considered the provisions of Maintenance of Internal Security Act, 1971 and its constitutional validity. While considering other aspects, the Constitution Bench made observations in respect of different nature of consideration of the detenu's representation by the Government and the Advisory Board. In paragraph 24 of the said Judgment, it was observed that the Government considers the representation to ascertain essentially whether the order is in conformity with the power under the law and the Board, on the other hand, considers whether in the light of the representation there is sufficient cause for detention.

Paragraph 29 of Hardhan Saha's (*supra*) judgment reads thus -:

“29. Principles of natural justice are an element in considering the reasonableness of a restriction where Article 19 is applicable. At the stage of consideration of representation by the State Government, the obligation of the State Government is such as Article 22(5) implies. Section 8 of the Act is in complete conformity with Article 22(5) because this section follows the provisions of the Constitution. If the representation of the detenu is received before the matter is referred to the Advisory Board, the detaining authority considers the representation. If a representation is made after the matter has been referred to the Advisory Board, the detaining authority will consider it before it will send representation to the Advisory Board.”

Thus, it is clearly observed that if the representation was made after the matter was referred to the Advisory Board the detaining authority had to consider it before sending it to the Advisory Board.

19. In Gracy's case (*supra*), K. M. Abdulla Kunhi's case (*supra*) is referred to. In paragraph 5 of the said judgment, paragraph 11 of K. M. Abdulla Kunhi's Judgment (*supra*) was quoted.

After considering K. M. Abdulla Kunhi's case, paragraph 6 of the Gracy's Judgment (*supra*) reads thus:-

"6. It is thus clear that the obligation of the government to consider the representation is different and in addition to the obligation of the Board to consider it at the time of hearing the reference before giving its opinion to the government. Consideration of the representation by the governance has to be uninfluenced by the view of the Advisory Board. In short, the detenu's right to have the representation considered by the governance under Article 22(5) is independent of the consideration of the detenu's case and his representation by the Advisory Board. This position in law is also not disputed before us."

20. Hence, the Hon'ble Supreme Court has referred to Kunhi's case (*supra*) and has categorically observed that detenu's right to have the representation considered by the Government under Article 22 was independent of consideration of the detenu's case and his

representation by the Advisory Board. Therefore, the State Government could not have awaited the report of the Advisory Board and could not have kept the representation of the detenu pending till such time, as was done in the instant case before us.

21. In Moosa' case (*supra*), reference was made to the Judgments in the cases of Gracy (*supra*), Jaynarayan Sukul (*supra*), K. M. Abdulla Kunhi's case (*supra*) as well as Hardhan Saha's case (*supra*).

In paragraph No.8 of Moosa's (*supra*) case Hon'ble Supreme Court observed thus -:

"8. Having regard to the importance of the safeguard of a representation under Article 22(5) for protection of the right to personal liberty guaranteed under Article 21 of the Constitution, this Court has repeatedly emphasised the need for expeditious consideration of the representation submitted by a detenu and has insisted that the representation must be disposed of with a sense or urgency without avoidable delay. The appropriate Government would not be justified in postponing the consideration of the representation while the matter is pending consideration before the Advisory Board because the obligation of the Government to consider the representation is different from that of the Advisory Board."

This Judgment, in our view, settles the issue and answers the questions raised by Mrs. Mhatre on the basis of K. M. Abdulla's case. The Hon'ble Supreme Court, in Moosa' case, has taken Kunhi's case as well as other cases cited by Ms. Tripathi into consideration and has clearly laid down that the appropriate Government would not be justified in postponing the consideration of the representation while the matter was pending before the Advisory Board because the obligation of the Government to consider the representation was different from that of the Advisory Board.

22. In the instant case before us, admittedly, the representation of the detenu was received by the State Government after the matter was referred to the Advisory Board. The representation was kept pending and it was considered only after the receipt of the report of the Advisory Board. In the light of the discussion in the Judgments referred to hereinabove this course was impermissible and it violated the mandate of section 22(5) of the Constitution of India and thereby infringed the detenu's right to make his representation at the earliest for its expeditious consideration.

23. In our considered view, applying the ratio of these Judgments to the facts of the present case before us, the Petition deserves to be allowed. The representation made to the State Government dated 15/11/2018 was received by the State Government on 17/11/2018 and it was kept pending till the receipt of the report of the Advisory Board which was received only on 04/12/2018. The representation, thereafter, was rejected on 04/12/2018 as on the same day, the order of detention was also confirmed. Sub-Article (5) of Article 22 of the Constitution of India reads thus :

“22. Protection against arrest and detention in certain cases.

(1)

(2)

(3)

(4)

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.”

One of the major requirements of Article 22(5) is that the detenu must be afforded the earliest opportunity of making a representation against the order. This requirement will not be effective if such a representation is not decided at the earliest. Affording the detenu the

earliest opportunity of making a representation is meaningless unless such representation is considered and decided at the earliest. In the instant case, admittedly, the representation was received by the State Government on 17/11/2018 and was decided only on 04/12/2018. It was kept pending for receipt of report of the Advisory Board. This course of inaction was directly contrary to the letter and spirit of Article 22(5) of the Constitution of India. In the instant case, there is clear violation of the constitutional rights of the Petitioner. On this ground alone, the detention order is liable to be set aside. Hence, we pass the following order.

ORDER

- (i) The detention order dated 30/10/2018 bearing no.09/CB/DP/2018 passed by the Respondent No.1 and confirmed by the Respondent No.2, is set aside.
- (ii) The Petitioner be released from his detention forthwith, if he is not required in any other case.
- (iii) The Rule is made absolute in these terms.

(SARANG V. KOTWAL, J.)

(INDRAJIT MAHANTY, J.)