
(2003) 06 GAU CK 0010

In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 16 of 2003

Ahanthem Mema alias Nirmala Devi

APPELLANT

Vs

District Magistrate, Imphal East and Others

RESPONDENT

Date of Decision : 19-06-2003

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 11
Constitution of India, 1950 — Article 21(5), 22(5)
General Clauses Act, 1897 — Section 21
National Security Act, 1980 — Section 14, 3(2), 3(3)
Penal Code, 1860 (IPC) — Section 121, 121A

Citation : (2004) 1 GLT 633

Hon'ble Judges : D. Biswas, J;A.H. Saikia, J

Bench : Division Bench

**Advocate : T. Nanda Kumar Singh and A. Bimal Singh, for the Appellant;
Jalaluddin, for the Respondent**

Final Decision : Allowed

Judgement

A.H. Saikia, J.—The Petitioner herein assails her detention order dated 24.03.03 (Annexure-A/1 to the writ petition) passed by the District Magistrate, Imphal East District, Manipur, Respondent No. 1, in exercise of power conferred upon him by Sub-Section 3 of Section 3, read with Section 3(2) of the National Security Act, 1980 (for short "the Act"). The grounds of detention have been enclosed to the writ petition as Annexure A/3.

2. The Petitioner was arrested by the Manipur police in the evening of 19.3.2003 at New Checkon at Imphal Town on suspicion of her having committed non bailable offences several years ago. While the Petitioner was detained in police custody, on 25.3.2003, at about noon, the impugned detention order dated 24.3.2003 was served upon the Petitioner alleging that according to police report, the Petitioner was acting in a manner prejudicial to the security of the State and maintenance of public order, and it was considered necessary to detain

her with a view to preventing her from acting in the alleged manner and also as she was likely to be released on bail in near future. The grounds of detention dated 28.3.03 issued by the Respondent No. 1 were delivered to her in the late afternoon of the same day alongwith 21 copies of documents mentioned in paragraph 10 of the said set of grounds while the Petitioner was in custody. Indicating the grounds of detention u/s 3(2) of the Act vide vide 28.3.03, the Respondent No. 1, informed the Petitioner that she had right to make representation to the detaining authority within 12 (twelve) days from the date of detention or till the order was approved by the State Govt., whichever was earlier. The representation was to be sent to the District Magistrate, Imphal East Dist., Manipur, through the Addl. Supdt. Manipur Central Jail, Sajiwa. The representation, if any, would be placed before the Advisory Board within 3 (three) weeks from the date of detention and such other documents/paper connected with her detention as the Govt, was bound under the law to produce before the Board for its consideration. Having carefully perused the said set of grounds of detention and considerable number of alleged documents accompanying other grounds of detention, the Petitioner submitted her representation on 31.3.03 (Annexure A/4 to the writ petition) to the District Magistrate, Imphal East District, Imphal, Manipur, Respondent No. 1, through the Addl. Superintendent, Manipur Central Jail, Sajiwa, Imphal East District to rescind the impugned order of detention. But without disposal of the said representation, the Govt, of Manipur by order dated 3.4.03 (Annexure A/5 to the writ petition) approved the order of detention passed by the Respondent No. 1. The Petitioner again submitted her representation to the Central Govt, addressing to the Secretary to the Govt, of India, Ministry of Home Affairs (Dept. of Internal Security), North Block, New Delhi - 110001 on 7.4.03 (Annexure A/6 to the petition) for revocation of her detention u/s 14 of the Act and the same was routed through the Additional Superintendent, Central Jail, Sajiwa and the Chief Secretary to the Government of Manipur. She also preferred another representation on the same day i.e., 7.4.03 (Annexure A/7 to the writ petition) to the Chairman, Advisory Board (NSA), Manipur, constituted under the Act to expedite her release with a prayer to convey the just and proper opinion of the Advisory Board to the State Govt, and the said representation was also duly routed through the Addl. Superintendent, Manipur Central Jail, Sajiwa and the Chief Secretary to the Govt, of Manipur, but those representations had not been considered by the competent authority at that relevant time and as such no decision had been taken as regards the revocation of the detention order of the Petitioner prior to placement of the entire matter before the Advisory Board. The case of the Petitioner was taken up by the Advisory Board on 19.3.03 and the Petitioner was produced and heard in person. After conclusion of the hearing of her case on the same day, the Advisory Board submitted its report dated 22.4.2002 to the Govt, within few days thereafter. The Govt, by its order dated 5.5.03 (Annexure A/11 to the writ petition) confirmed the detention of the Petitioner for a period of 12 months. After receipt of the opinion of the Advisory Board only, the representation dated 31.3.2003 presented by the Petitioner

before the Respondent No. 1 was rejected by the State Govt, on 28.4.03 and the same was communicated to her on 2.5.03. As regards the representation to the Central Govt, the same was also rejected on 2.5.03 by the Central Govt. (Annexure-A/12 to the writ petition) which was communicated to her on 10.5.03. But her representation dated 7.4.03 (Annexure A/7 to the writ petition) has not yet been attended to.

3. In the backdrop of this factual situation, even though the Petitioner-detenu raises several grounds to impugn the order of detention, yet however, Mr. T. Nandakumar Singh, the learned Sr. Counsel appearing on behalf of the Petitioner, restricted his submissions only to the grounds (i) non- consideration of the representations dated 31.3.2003 and 7.4.03 addressed to the detaining authority and the Advisory Board respectively, by the Respondent No. 1 himself prior to the approval of the detention by the State Govt, and by the State Govt, being the appropriate Govt, despite the representation addressed to the Advisory Board being duly routed through the competent authorities respectively and (ii) the inordinate delay in considering the representations of the Petitioner by the appropriate Govt, resulting in flagrant violation of the constitutional mandate enshrined in Article 22(5) of the Constitution of India.

4. We heard Mr. T. Nandakumar Singh, the learned Sr. Counsel assisted by Mr. A. Bimal, the learned Counsel for the Petitioner. Also heard Mr. Jalaluddin, the learned State Counsel appearing on behalf of the State Respondents and Mr. Ibotombi Singh, the learned CGSC for the Union of India.

5. Concededly, the Petitioner has preferred two sets of representation to the appropriate Govt.: firstly, on 31.3.03 to the detaining authority, the Respondent No. 1, the District Magistrate and secondly, on 7.4.03 to the Central Govt, as well as the Chairman of the Advisory Board. While the representation dated 31.3.2003 was rejected on 28.3.03 by the Govt, of Manipur, the Central Govt, rejected the representation dated 7.4.2003 on 2.5.03. So far as the representation dated 7.4.03 addressed to the Chairman, Advisory Board is concerned, the same has not yet been disposed of.

6. The argument of the learned Sr. Counsel was two fold: firstly, the District Magistrate, being the detaining authority, was duty bound under the law to dispose of the representation addressed to him by the Petitioner. In the instant case, the District Magistrate, instead of discharging his obligation, sent the same to the State Govt. To clinch this issue, the learned Sr. Counsel took us to the decision of the Apex Court reported in Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, In that case, while deciding the question of law as to whether the officer who passed an order of preventive detention on being specially empowered to do so by the Central Govt, or the State Govt, was required to consider the representation submitted to him by the detenu, the Apex Court held that the Article 22(5) of the Constitution conferred a right on the detenu to make representation against the order of detention to the detaining authority i.e., the authority which passed the order of detention apart from the

other authorities, to revoke the order of detention and it was incumbent on the said detaining authority to take an independent decision on the said representation, and failure to take such independent decision for revocation of the said detention order by the detaining authority resulted in non-compliance of Article 22(5) of the Constitution and rendered the said detention order illegal. In paragraph 46, the Apex Court observed as under:

...

Having found that the representation of the person detained was not considered by the officer making the order of detention the High Court was in error in holding that the said failure on the part of the detaining authority to consider and decide the representation is not fatal to the order of detention. We are, therefore, unable to uphold the answer given by the Full Bench to Question No. 3 and, in our view, the said question should be answered in the affirmative. On that basis it has to be held that since there was a denial of the constitutional safeguard provided to the detenu under Article 22(5) of the Constitution on account of the failure on the part of the officer who had made the order of detention to independently consider the representation submitted by the detenu against his detention and to take a decision on the said representation the further detention of the detenu Ishwardas Bechardas Patel is rendered illegal. The appeals, therefore, deserve to be allowed.

7. The learned Sr. Counsel submitted that the ratio of the Kamleshkumar's case (supra) is squarely applicable in the present case though in the Kamleshkumar's case, the Supreme Court dealt with the order of detention issued under the provisions of COFEPOSA Act. In support of this submission, Mr. Nandakumar, learned Sr. Counsel relied on the decision of the Apex Court in State of Maharashtra and Others Vs. Santosh Shankar Acharya, We have meticulously gone through the said cited case and found that the Apex Court had the occasion to deal therein with the detention order passed under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drugs Offenders and Dangerous Persons Act, 1981, (for short "Maharashtra Act"). Delving upon the Sections 8(1) and 14(1) of the Maharashtra Act read with Section 21 of Bombay General Clauses Act, 1904 (for short, "Bombay Act") which are *pari materia* with Sections 8(1) and Section 14 of the Act as well as Section 21 of the General Clauses Act, 1907 (for short, "Clauses Act") the Apex Court held that when a representation was made to an Officer who had issued the order of detention, the said officer was empowered as detaining authority to deal with the representation u/s 21 of the Bombay Act. This power could not be said to be taken away merely because Section 8(1) of the Maharashtra Act specifically provided for representation to the State Govt. The said detaining authority was to continue to be the detaining authority until the order of detention passed by him was approved by the State Govt, within a period of 12 days from the date of issuance of detention order. It was, therefore, categorically ruled that until the said detention order was approved by the State Govt., the detaining authority could entertain a

representation from the detenu and in exercise of his power under the provision of Section 21 of the Bombay Act could amend, vary and/or rescind the order as was provided u/s 14 of the Maharashtra Act and any inaction on the part of the detaining authority would constitute an infraction of the valuable right of the detenu under Article 22(5) of the Constitution. The Apex Court, in that decision, *Wm. appo.*; *rr* the decision of Kamleshkumar's case (Supra) made it clear that the ratio of the Constitutional Bench in Kamelsh Kumar's case (supra) would apply notwithstanding the fact that in Kamleshkumar's case, the Court was dealing with the order of detention issued under COFEPOSA Act. Be it mentioned herein that the Section 11 of the COFEPOSA Act is *pari materia* with Section 14 of the Act. In Santosh Sankar Acharya's case (Supra), the Supreme Court in para 5 at Pages 469 and 470 observed as under:

...

It is undoubtedly true that Section 8(1) in terms, provides for a representation being made to the State Government but, in a case where an officer other than the State Government issues an order of detention under Sub-section (2) of Section 3 his powers as the detaining authority to deal with the representation under the provisions of Section 21 of the Bombay General Clauses Act, 1904, cannot be said to be taken away merely because Section 8(1) specifically provides for making a representation to the State Government.

....

....

The only logical and harmonious construction of the provisions would be that in a case where an order of detention is issued by an officer under Sub-section (2) of Section 3 of the Act, notwithstanding the fact that he is required to forthwith report the factum of detention together with the grounds and materials to the State Government and notwithstanding the fact that the Act itself specifically provides for making a representation to the State Government u/s 8(1), the said detaining authority continues to be the detaining authority until the order of detention issued by him is approved by the State Government within a period of 12 days from the date of issuance of the detention order. Consequently, until the said detention order is approved by the State Government the detaining authority can entertain a representation from a detenu and in exercise of his power under the provisions of Section 21 of the Bombay General Clauses Act could amend, vary or rescind the order, as is provided u/s 14 of the Maharashtra Act. Such a construction of powers would give a full play to the provisions of Section 8(1) as well as Section 14 and also Section 3 of the Maharashtra Act. This being the position, non-communication of the fact to the detenu that he could make a representation to the detaining authority so long as the order of detention has not been approved by the State Government in a case where an order of detention is issued by an officer other than the State Government under Sub-section (2) of Section 3 of the Maharashtra Act would constitute an infraction

of a valuable right of the detenu under Article 22(5) of the Constitution and the ratio of the Constitution Bench decision of this Court in Kamleshkumar case would apply notwithstanding the fact that in Kamleshkumar case the Court was dealing with an order of detention issued under the provisions of the COFEPOSA Act.

8. For the sake of convenience and better appreciation of the point in issue, it would be apposite to refer the relevant provisions of the Act as well as the General Clauses Act.

9. Section 8 of the Act, provides as under:

8. Grounds of order of detention to be disclosed to persons affected by the order - (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

The relevant portion of Section 14(1) of the Act is quoted here under:

14. Revocation of detention orders- (1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified,

(a) notwithstanding that the order has been made by an officer mentioned in Sub-section(3) of Section 3, by the State Government to which that officer is subordinate or by the Central Govt;

(b) Notwithstanding that the order has been made by a State Government, by the Central Government.

.....

Section 21 of the General Clauses Act postulates as follows:

21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye laws. Where, by any (Central Act) or Regulation, a power to (issue notifications,) orders, rules or bye laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any (notifications), orders, rules or bye- laws so (issued).

10. A bare perusal of the above provisions of law manifestly goes to show that the detenu shall be afforded the earliest opportunity of making a representation against the order of detention to the appropriate Govt, by the detaining authority who has passed the order of detention at the time of communicating the grounds on which such detention has been made and the detaining authority has the power to entertain the representation so received by

him till the approval of the order of detention by the State Govt. The language of the legislature is very clear and unambiguous to the effect that by exercising power u/s 21 of the Clauses Act, the said detaining officer can amend, vary and rescind the order as has been provided u/s 14 of the Act so referred above. That being so, taking into consideration the above statutory provisions and applying the provisions of law enunciated by the Apex Court in Kamleshkumar's case (supra) and Santosh Shankar Acharya's case (supra), we are of the firm opinion that the ratio of those two decisions of the Supreme Court is fully applicable in this case. Here, the detaining authority failed to consider and dispose of the detenu's representation dated 31.3.03 so made to him. The Respondent No. 1 went wrong in not discharging the imperative duty cast on him by the statute and as such the order of detention in the case at hand appears to be illegal and invalid.

11. The second argument of Mr. Nandakumar was that the representation made to the Advisory Board on 7.4.2003 still remains unattended to. Admittedly, the said representation was addressed to the Advisory Board. The Govt, is not absolved from the constitutional obligation under Article 22(5) of the Constitution to consider and dispose of the said representation. Non-consideration of the representation by the Govt, renders the detention illegal. We have been persuaded by the learned Sr. Counsel for the Petitioner- detenu to go through the judicial pronouncements of the Apex Court in Moosa Husein Sanghar Vs. State of Gujarat and others, as well as of this Court in Thiyam NingelSalam Ongbi Ramani Devi v. District Magistrate, Imphal and Ors. reported in 2000(3) GL T489. In Moosa Husein's case (supra), the Apex Court, in paragraph 13, held as follows:

13. These decisions show that in a case where the representation has been received before the case is referred to the Advisory Board, the appropriate Government must consider the same before the matter is referred to the Advisory Board and it would be justified in not considering the same only if there is no responsible time to consider and dispose of the representation before the case is referred to the Advisory Board and in such case, the representation may be forwarded to the Advisory Board along with the case of the detenu. In the instant case, we find that the representation dated March 15, 1991, was received by the detaining authority on March 18, 1991, and the case of the Appellant was referred to the Advisory Board on March 25, 1991, and the representation was actually considered by the Advisory Board on April 30, 1991. It is not the case of the Respondents- and this is the important distinction in this case that there was no time for the State Government to consider the said representation of the Appellant before referring the matter of the Appellant's detention to the Advisory Board on March 25, 1991, or before the said matter was considered by the Advisory Board. The only explanation that has been offered by the State Government is that there was holidays on March 23, 1991, and March 24, 1991, and there was hardly five days' time the authorities between the time they received the representation of the Appellant and the time the reference was made to the Advisory Board. The State Government has not given any reason to

indicate that the said period was insufficient for a proper consideration of the representation of the Appellant by the State Government. Moreover, even after the reference had been made on March 25, 1991, the representation of the Appellant could have been considered by the State Government and it could have been forwarded to the Advisory Board along with the decision of the State Government on the said representation. Instead of adopting this course, the State Government forwarded the representation to the Advisory Board and took up the said representation for consideration after the receipt of the opinion of the Advisory Board and rejected it by order dated May 13, 1991. As a result the representation of the detenu which was submitted on March 15, 1991 was considered by the State Government only on May 13, 1991. There was, thus, inordinate delay on the part of the State Government in considering the representation of the Appellant and the said delay in the disposal of the representation of the Appellant has rendered the continued detention of the Appellant as illegal.

12. In *Thiyam Ningol's* case (*supra*), this Court ruled that non consideration of the representation addressed to the Chairman, Advisory Board, by the State Govt despite the same being routed through the State Govt., would result the detention illegal. Reliance has also been placed on the decision in *Navalshankar Ishwarlal Dave and another Vs. State of Gujarat and others*, Dealing with the matter of preventive detention u/s 15 of the Gujarat Prevention of Antisocial Activities Act, 1985, the Supreme Court in paragraph 10 held as follows:

It is seen that though the representation was received by the State Govt, on February 20, 1993, the State Govt, decided to keep it pending awaiting the opinion of the Board and on receipt of the report on March 23, 1993, considered the case and the representation was rejected on the even date, namely, March 23, 1993. In view of this consistent settled law the action of the State Govt, in keeping the representation without being considered and disposed of expeditiously, awaiting the decision of the Board till March 23, 1993 and consideration of the representation thereafter and rejection are illegal.

13. On behalf of the State Govt. Mr. Jalaluddin, learned Govt, Counsel, relying on the affidavit-in-opposition filed on behalf of the Govt., vehemently argued that the Petitioner, having been found involved in various heinous crime and acting in a manner prejudicial to the security of the State and maintenance of public order, was arrested by the police in connection with the FIR Case No. 44(3)/03 Porompat PS u/s 13 UA(P) Act and 121/121-A IPC and during her detention in police custody, she was detained under the Act by the impugned order. According to him, the Petitioner, at the time of communicating the grounds of detention, was also informed of her right to submit the representation, if any, to the State Govt, as well as Central Govt, within a period of three weeks from the date of detention. Further, she was also informed to submit her representation to the detaining authority within a period of 12 days from the date of detention or till the order is approved by the State Govt, whichever is earlier, for placing the

same before the Advisory Board. As it was categorically stated that her representation shall only be placed before the Advisory Board, the question of consideration of the said representation by the detaining authority does not arise. The Petitioner submitted three representations, one on 31.3.03 addressing to the detaining authority and other two on the same day of 7.4.2003, having been addressed to the Central Govt, as well as the Advisory Board. Her representation dated 7.4.03 addressed to the Advisory Board was placed before the Advisory Board vide communication dated 9.4.2003 by the Home Department, Govt, of Manipur and another representation on the even date namely 7.4.03 addressed to the Secretary, Ministry of Home Affairs, Govt, of India was also forwarded on 9.4.03 for kind consideration. According to Mr. Jalaluddin, the Advisory Board held its sitting from 18.4.2003 to 22.4.2003 and heard the matter of the detenu and after receipt of the opinion of the Advisory Board and on consideration of the relevant materials with proper application of mind, the detention of the Petitioner was confirmed on 5.5.03 under the Act. Before such confirmation of her detention, the representation dated 31.3.03 submitted to the Respondent No. 1 was disposed of on 28.4.03. In view of such factual situation, there was no negligence or laches on the part of the Govt, in disposal of the representation of the detenu and as such detention order cannot be held to be illegal.

14. To bolster up his submission, Mr. Jalaluddin, learned State Counsel relied on the following decisions.

i) Thounaojam Lukhoi Singh v. District Magistrate, Imphal and Ors. reported in 1997 Cri. L. J. 1574.

ii) R. Keshava v. MB Prakash and Ors. reported in (2001) 2 SCC 145.

iii) Laishram Kamdeva Singh alias Apanba v. State of Manipur and Ors. reported in 1997 Cri. L.J. 4479.

15. In Thounaojam's case (Supra) the Division Bench of this Court held that in view of the Section 8(i) of the Act, a representation against the order of detention cannot be made to the detaining authority but must be made to the appropriate Govt. It was also held in that case that in the facts and circumstances of the case there was no negligence or callousness in action on the part of the Govt, in disposing of the detenu's representation and as such the detention order was not vitiated.

16. As regards the presentation of representation to the appropriate Govt., in R. Keshava's case (supra) the Apex Court, while dealing with a case of preventive detention under COFEPOSA Act, held that in the absence of any representation or knowledge of representation having been made by the detenu to the appropriate Govt, the authority/Govt. was justified in confirming the order of detention on the basis of the materials available on records to the exclusion of the representation made by the detenu to the Advisory Board and accordingly, the order of detention was held to be neither unconstitutional nor illegal. Therein,

though the detenu was apprised of his right to make representation to the appropriate Govt., he submitted the representation to the Advisory Board without even making any request to the Board to send the copy of the representation to the Govt./authority concerned. In Laishram Kamdeva's case (supra) also, this Court observed that on facts, there was no delay in placing the representation of detenu before the Advisory Board and hence the detention was not vitiated.

17. We have carefully gone through the proposition of law laid down in above precedents cited by the learned Govt. Counsel and we unhesitatingly disagree to the submissions made on behalf of the Govt, as regards the applicability of the ratio of those cases in the case at hand. In R. Keshab's Case (Supra), the Govt, was relieved from the liability of consideration of the representation since the same was not made to the authorities concerned despite the detenu being well apprised of his right to make representation before the appropriate Govt, rather, he made the representation before the advisory Board. But the case at hand depicts a complete separate story. Herein, the representation was submitted to the Advisory Board which was properly routed through the Jail authority as well as Chief Secretary to the Govt, of Manipur with a clear prayer to consider the representation in depth and convey a just and appropriate opinion of the Board to the Govt.

18. It is settled law that an independent constitutional right has been guaranteed to a detenu detained under the preventive detention law to make a representation to the appropriate Govt, including the detaining authority. Correspondingly, there is a constitutional obligation entrusted upon the concerned authority to whom the detenu forwards his representation questioning the legality and validity of the detention order imposed upon him and requesting for his release, to consider the said representation within reasonable dispatch and to dispose of the same as expeditiously as possible. This constitutional mandate must be satisfied with respect. Infraction of such constitutional dictate amounts to violation of the constitutional imperative rendering the continued detention of the detenu unconstitutional, impermissible and illegal and further such breach would defeat the very concept of liberty, the most valuable right enshrined under Article 21(5) of the Constitution. It is correct, no period has been prescribed either under the provision of Constitution or under the Act within which the representation should be disposed of. But the use of expression "as soon as may be" occurring in Article 22(5) of the Constitution denotes that it must be considered at the earliest opportunity and disposed of with due diligence and promptitude and also with a sense of urgency without any inordinate delay it may be reiterated that reasonable dispatch shall always depend on the facts and circumstances of each case and there is no cut and dried formula to be propounded in this respect. In the instant case, the representation dated 31.3.03 presented to the Respondent No. 1 who, being competent, ought to have disposed of the same without any delay before the approval of the detention by the Govt., was disposed of very casually by the Govt, only on 28.4.03. No explanation has been forthcoming for such

unreasonable delay Such unexplained delay in disposing the representation itself vitiates the impugned detention.

19. Discussing on the power of the detaining authority, this Court in a recent decision in *Shamjetshabam Nando Singh v. The State of Manipur and Ors.* in W.P. (Crl.) No. 20 of 2001, disposed of on 8.5.2002, while dealing with somewhat similar case of preventive detention, relying on *Santosh Shankar's* case (supra), ruled that under the provisions of the Act, so long the detention order is not approved by the State Govt, the authority who has passed the order of detention under Sub-section (3) of Section 3 of the Act still retains the power to revoke the detention order and as such non-application of the mind by the detaining authority to the representation amounts to denial of the Constitutional right of the detenu. We fully agree with the view expressed in the above cited case. It can also be unhesitatingly held that the ratio of *Santosh Shankar's* Case (supra) though it relates to Maharashtra Act, is very much relevant in the present case in order to highlight the legal position as regards the power of revocation by the detaining authority prior to approval of such detention by the State Govt. In the instant case, admittedly, when the representation dated 31.3.03 was presented by the Petitioner through the jail authority to the detaining authority i.e., the Respondent No. 1, the same was not considered by the said detaining authority prior to approval of the detention by the State Govt, on 3.5.03. Such inaction on the part of the detaining authority has resulted in infringement of the constitutional mandate guaranteed under Article 22(5) of the Constitution.

20. Moreover, the Supreme Court, in elaborating the scope of Article 22(5) of the Constitution, in *Kamlesh Kumar's* case (supra) in para 14 at page 59 observed as follows:

14. Article 22(5) must, therefore, be construed to mean that the person detained has a right to make a representation against the order of detention which can be made not only to the Advisory Board but also to the detaining authority, i.e., the authority that has made the order of detention or the order for continuance of such detention, which is competent to give immediate relief by revoking the said order as well as to any other authority which is competent under law to revoke the order for detention and thereby give relief to the person detained. The right to make a representation carries within it a corresponding obligation on the authority making the order of detention to inform the person detained of his right to make a representation against the order of detention to the authorities who are required to consider such a representation.

21. Amazingly, the second representation which was addressed to the Advisory Board, instead of the State Govt, has not yet been attended to. The affidavit filed on behalf of the State Respondents has all throughout maintained a complete silence as regards the disposal of the said representation. From the submission made on behalf of the State Govt., it is transpired that as the representation was addressed to the Advisory Board, the Govt, is not obliged to dispose of the same. It is settled position that the Govt, cannot shake off its responsibility of the

disposal of the representation though the same was addressed to the Advisory Board, once it is brought to the knowledge of the Govt. The representation in question was routed through the Govt./ the concerned authority. More importantly, there was no whisper even in the Govt, response explaining why the representations so preferred by the detenu-Petitioner could not be considered expeditiously and communicated to her at the earliest.

22. The stand of the Govt, is that the representation dated 31.3.03 was disposed of on 28.4.03 on receipt of the opinion from the Advisory Board and therefore there was no such unreasonable delay as claimed. But it is seen that from the date of preferring the first representation on 31.3.03 to the date of disposal of the same on 28.4.03, there was a delay of 29 days. Obviously, it is an inordinate delay. On the other hand, representation dated 7.4.03 made to the Central Govt, was rejected on 5.5.03 which was communicated to the detenu of 8.5.03. Entire action of the Respondents is a glaring manifestation of infraction of fundamental rights guaranteed to the citizen by the Constitution. We consider it necessary to reproduce the averments made by the State Govt, in their affidavit in opposition, particularly, the paragraphs 7,8,9 and 10 to get a clear picture of the stand taken by the Govt.:

7. That as regards the averments made in para No. 6,7,8 and 9 of the writ petition, the answering Respondent has nothing to say, however, it is submitted that a copy of the representation was received by the Home Department as forwarded by the jail Authority. A copy of the representation was also placed before the Advisory Board 9.4.2003 for kind c onsideration. Thereafter, her representation dated 7.4.2003 addressed to the Secretary Ministry of Home Affairs, Government of India was also forwarded on 9.4.2003 for kind consideration.

8. That it may be pertinent humbly to submit that after strictly examining with the relevant documents and also due application of mind, the representation of the detenu was also rejected by the Government of 28.4.2003 and the same was also communicated to her.

It is also submitted that the representation of the detenu addressed to the Central G overn- ment was rejected after due consideration on 5.5.2003 and the same also communicated to the writ Petitioner on 8.5.2003.

9. That as regards the statement made in the para Nos. 10 and 11 of the writ petition, the answering Respondent d enies the a negation. However, it is humbly submitted that the Advisory Board held its sitting on 18.4.2003 to 22.4.2003 and heard the matter and the detenu also heard properly, and thereafter, seeing the relevant documents and materials placed before them, the Advisory Board held that the detention of the detenu under the National Security Act, 1980 was found sufficient grounds and confirmed the matter.

10. That as regards the para No. 12 of the writ petition, the answering Respondent denies the allegation, however, it is submitted that after strictly

examining the Advisory Board's opinion and relevant materials with due application of mind, the detention of the detenu has been confirmed by the Governor of Manipur on 5.5.2003 under the National Security Act, 1980. It is also submitted that the detention of the detenu was made as per provisions of law based on the materials and therefore it is quite lawful and binding to the writ Petitioner.

23. In the background of those averments made in the foregoing paragraphs of Govt.'s affidavit, we have gone through the records so produced by Shri Jalaluddin, learned State Counsel, and on close inspection of the same, it appears that the detaining authority, instead of applying his mind to the said representation dated 31.3.03, communicated the same by his communication dated 5.4.03 to the Special Secretary (Home), Govt, of Manipur with parawise comments thereon suggesting that the detenu's allegations may kindly be rejected on the grounds of her action and prejudicial activities as a member of the outlawed organization namely, PLA. In turn, the Special Secretary (Home) to the Govt. of Manipur, by his communication dated 7.4.03 sent the said representation to the Chairman, Advisory Board on N.S.A. to consider the case of the Petitioner-detenu in its sitting. This seemingly reflects the complete non application of mind of the detaining authority and the State Govt, as well to the detenu's representation and also the casual and callous approach of those authorities to the same. That being so, the impugned order of detention deserves interference.

24. For the foregoing reasons, discussions and observation, we are of the considered view that:

(i) Non consideration of the representation dated 31.3.03 by the detaining authority, Respondent No. 1, is hit by the fundamental rights guaranteed by the Constitution under Article 22(5) of the Constitution and makes the detention of the Petitioner illegal.

(ii) There was an inordinate and unexplained delay in considering and rejecting the representation dated 31.3.03 by the State Govt, which vitiates the order of detention.

(iii) Non consideration of the representation dated. 7.4.03 addressed to the Advisory Board by the Govt, though routed through the Govt, authorities is contrary to the Constitutional mandate.

(iv) Rejection of the representation dated 7.4.03 by the Central Govt, on 5.5.03 causing an unreasonable delay without recording any explanation for such delay invalidates the detenu's detention.

25. Consequently, this impugned order of detention is hereby quashed and set aside and the Petitioner-detenu is directed to be released forthwith unless wanted in any other case.

26. In the result, this writ application stands allowed. However, considering the

facts and circumstances of the case, we pass no order as to costs.