

(2017) 01 GUJ CK 0212
In the Gujarat High Court
Case No : 289 of 2017

Jignesh Kishorbhai Bhajiawala

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

[Constitution of India](#), [Article 21](#), [Article 20\(3\)](#), [Article 22](#) - Amendment of the Schedule - Protection in respect of conviction for offences - Protection against arrest and detention in certain cases
[Central Excise Act, 1944](#), [Section 14](#) - Power to summon persons to give evidence and produce documents in inquiries under this Act
[Customs Act, 1962](#), [Section 108](#) - Power to summon persons to give evidence and produce documents
[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 120B](#), [Section 420](#), [Section 468](#), [Section 471](#), [Section 419](#) - Punishment of criminal conspiracy - Cheating and dishonestly inducing delivery of property - Forgery for purpose of cheating - Using as genuine a forged document - Punishment for cheating by personation
[Prevention Of Money-Laundering Act, 2002](#), [Section 50](#), [Section 13\(2\)](#), [Section 50\(3\)](#), [Section 13\(1\)\(d\)](#) - Powers of authorities regarding summons, production of documents and to give evidence, etc - Powers of Director to impose fine - Powers of authorities regarding summons, production of documents and to give evidence, etc - Powers of Director to impose fine

Citation : (2017) 01 GUJ CK 0212

Hon'ble Judges : J.B. Pardiwala

Bench : Single Bench

Advocate : Vikram Chaudhary, Bhavik R Samani, Chetan K Pandya, Maulik Vakhariya, Mitesh Amin, Devang Vyas

Final Decision : Allowed

Judgement

1. Rule returnable forthwith. Mr. Mitesh Amin, the learned Public Prosecutor waives service of notice of rule for and on behalf of the respondent No.1 State of Gujarat. Mr. Devang Vyas, the learned Assistant Solicitor General of India has entered appearance on behalf of the respondent No.2 Directorate of Enforcement and waives service of notice of rule. 2. By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicant, who has been served with a summons issued under Section 50 of the Prevention of Money Laundering Act, 2002 by the Assistant Director, Directorate of Enforcement in connection with the ECIR/01/STSZO/2016, has prayed for the following reliefs: "17 a) Issue appropriate directions to the respondents to allow the presence of petitioner's advocate at a visible but not audible distance during the course of interrogation and/or recording of the statement of the petitioner in case arising out of ECIR NO.01/STSZO2016, wherein, the petitioner has summoned by the respondents. b) Pending admission, final hearing and disposal of the instant writ petition, this Hon'ble Court may be pleased to stay all further proceedings arising out of summons issued to the petitioner and the respondent No.2 may further be restrained from taking any coercive action/steps against the petitioner. c) Issue any other order or direction, which this Hon'ble Court may deem fit and appropriate in the facts and circumstances of the case, may kindly be passed in favour of the petitioner. d) Costs of the petitioner be awarded in favour of the petitioner." 3. The facts giving rise to this application may be summarised as under: 3.1. On 28th December 2016, a First Information Report came to be registered with the CBI/ACB/Gandhinagar bearing No. RC0292016A0016 against the applicant herein and others for the offence punishable under Section 120B, 419, 420, 468 and 471 of the Indian Penal Code and Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988. The First Information Report was lodged by the Deputy Inspector General of Police (C.B.I.), Special Division, Gandhinagar in connection with the recovery of high volume of high denomination of new currency notes from the applicant herein. It appears that the applicant and his brothers were interrogated by the C.B.I. in this regard, however, no arrest was effected. In connection with the First Information Report referred to above, the Directorate of Enforcement is contemplating filing of a complaint against the applicant and others for the offence punishable under the provisions of the Prevention of Money Laundering Act, 2002. No complaint has been lodged till this date before the Designated Court in this regard. However, it appears that the proceedings are at the stage of ECIR referred to above. 3.2. It is the case of the applicant herein that he has been served with a summons issued by the Assistant Director, Directorate of Enforcement under Section 50 of the Act, 2002 to remain present for the purpose of interrogation. 3.3. It is his case that he is duty bound to honour the summons and would extent full cooperation to the concerned authorities, however, his prayer is that his lawyer may be allowed to be present within the visible distance, but beyond the hearing range during the course of his interrogation. The apprehension expressed by the applicant herein is that the authorities may try to forcibly extort confession which is admissible in evidence. To put it in other words, the apprehension expressed

by the applicant is that the authorities concerned may misuse the official power and in the name of interrogation, the applicant may be subjected to torture and wholly false and fictitious statement may be recorded under the duress. 4. Hence, this application. 5. Mr. Chaudhary, the learned senior advocate appearing for the applicant vehemently submitted that the reliefs prayed for in this application may be granted to protect the right of his client envisaged under Article 20(3) and Article 21 of the Constitution of India. The learned counsel urged that the secret inquisitions are dangerous things justly feared by free man everywhere. There are the breeding place for arbitrary misuse of the official power and that in the name of interrogation, his client may be subjected to torture. It was further urged that in the absence of the lawyer, the groundwork of false cases for securing conviction of innocent persons is prepared and, therefore, the benefit of presence of the lawyer should not be denied. The learned counsel supported his submissions with reference to the decision of the Apex Court in the case of Smt. Nandini Satpathy v. P.L. Dani [AIR 1978 SC 1025], in which it was observed that the lawyer's presence is a constitutional claim in some circumstances in our country also, and, in the context of Article 20(3) and Article 22(1), is an assurance of awareness and observance of the right to silence. Article 20(3) and Article 22(1) may, in a way, be telescoped by making it prudent for the authorities to permit the advocate of the accused, if there be one, to be present at the time he is interrogated. Overreaching Article 20(3) will be obviated by this requirement. If an accused person expresses the wish to have his lawyer by his side when his interrogation goes on, this facility shall not be denied, without being exposed to the serious reproof that involuntary self crimination secured in secrecy and by coercing the will, was the project. 6. Mr. Chaudhary, the learned senior counsel has placed strong reliance on few orders passed by the Supreme Court in this regard: (1) Vijay Sajani and another v. Union of India and another [CRLMP No.10117 Of 2012 In Writ Petition(CRL.) No.29 of 2012 decided on 25th April 2012]. (2) Vijay Sajani and another v. Union of India and another [CRLMP. No.10117 Of 2012 In Writ Petition (CRL.) NO.29 OF 2012 decided on 25th April 2012]. (3) Birendra Kumar Pandey and another v. Union of India and another [Writ Petition (Crl.) No.28 Of 2012 With W.P. (CRL.) NO.29 OF 2012 decided on 16th April 2012]. (4) Nayasa Exports Pvt. Ltd. v. Union of India and another [W.P.(C) No.822 OF 2010 decided on 16th February 2010 by the Delhi High Court]. (5) Sri Parkash Aggarwal v. Union of India and another [Writ Petition (CRL.) NOS.85 OF 2010 decided on 4th August 2010] (6) Anandprakash Choudhari v. Union of India and another [CRLMP No.23956 Of 2010 In Writ Petition (Crl.) No.122 Of 2010 decided on 24th November 2010] (7) Rajinder Arora and others v. Union of India and others [Writ Petition (Civil) No.389 Of 2010]. (8) The order passed by the Division Bench of the Bombay High Court dated 23rd July 2013 in the case of Kirit Shrimankar v. Union of India and others [Criminal Writ Petition No.2559 Of 2013] 7. In such circumstances referred to above, the learned senior counsel prays that this application may be allowed and the reliefs as prayed for be granted. 8. On the other hand, this application has been vehemently opposed by Mr. Devang

Vyas, the learned Assistant Solicitor General of India appearing for the respondent No.2 - the Directorate of Enforcement and Mr. Mitesh Amin, the learned Public Prosecutor appearing for the respondent No.1 - State of Gujarat.

9. Mr. Vyas submitted that no case is made out by the applicant for the relief prayed for in this application. He would submit that the apprehension expressed by the applicant is absolutely illfounded and there is no basis for the same. He would submit that as on date, there is no complaint filed before any Designated Court as regards the offence punishable under the Act, 2002. The interrogation is in connection with the ECIR registered by the Directorate of Enforcement. According to Mr. Vyas, the applicant cannot be termed as an accused as on date, and therefore, the protection available under Section 20(3) of the Constitution of India is not available to the applicant. Mr. Vyas urged that the presence of a lawyer, during interrogation, cannot be permitted as of right. Mr. Vyas relied upon the decision of the Apex Court in the case of *Poolpandi v. Superintendent, Central Excise* [AIR 1992 SC 1795], in which it has been observed that the person called for interrogation during investigation by the authorities under the Customs Act or FERA is not an accused, and, therefore, the refusal of presence of a lawyer during the interrogation does not violate Article 20(3) and Article 21 of the Constitution. Mr. Vyas seeks to rely upon the following averments made in the affidavit-in-reply filed on behalf of the respondent No.2: "4 That, summon dated 26.12.2016 was issued to Sh. Jignesh K Bhajiawala asking him to appear on 28.12.2016. This summon were received by his father Sh. Kishore Bhajiawal. However, neither Sh. Jignesh K Bhajiawala appeared in response to summon issued to him nor he sent any communication to this office. 5. That, second summon dated 30.12.2016 was issued to Shri Jignesh K Bhajiawala asking him to appear on 02.01.2017. This summon was also received by his father Sh. Kishore Bhajiawala. 6. That, a fax message was received on 02.01.2017 from advocate Chetan K. Pandya wherein he informed that his clients Mr. Jignesh Bhajiawala and Mr. Kishore Bhajiawala require two weeks of time to tender evidence and to explain the source of seized currency. 7. That, vide this office letter No.ECIR/01/ STSZO/2016 dated 02.01.2017, Mr. Jignesh Bhajiawala was informed that his request, through his advocate, for extortion of time is not being accepted. A fresh summon was issued to Sh. Jignesh Bhajiawala asking him to appear on 04.01.2017. MTS staffs was personally sent to the Bhajiawala residence to deliver the letter and summon but the ladies present in the house informed that Kishorebhai, Jigneshbhai and Vilashbhai are not at home and she refused to acknowledge the letters and summon. 8. That, accordingly, letter No.ECIR/01/ STSZO/2016 dated 02.01.2017 and summon dated 02.01.2017 were sent by speed post to Sh. Jigneshbhai Bhajiawala. The postal authorities returned the above referred two letters with the remarks "REFUSED", as the same was not accepted/received by Sh. Jignesh Bhajiawala or his family members. 9. Thus, Sh. Jignesh K. Bhajiawala has so far not appeared in response to three summonses issued to him. 10. That, the allegations of the petitioner that he is victim of gross persecution and harassment for wholly extraneous, malafide and vexatious considerations and that the commencement

and continuation of the investigation is grossly actuated with malice is baseless and hence, denied. The petitioner has been issued 3 summonses so far but he has failed to appear despite having knowledge of the summons and instead chose to make excuses and allegations which are totally unjustified and baseless. It is amusing to note that the petitioner has chosen to allege harassment even though he has never appeared before the department. The investigation under PMLA has been initiated on the basis of FIR No.RC0292016A0016 dated 20.12.2016 registered by the CBI, ACB, Gandhinagar under section 120B, 419, 420, 468 and 471 of Indian Penal Code, 1860 and under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The offences under Sections 120B, 419, 420, 468 and 471 of Indian Penal Code, 1860 and under Section 13(2) r/2 13(1) (d) of Prevention of Corruption Act, 1988 are Scheduled Offences in terms of Section 2(1)(y) under the Prevention of Money Laundering Act, 2002. 11. That, the petitioner's claim that all documents have been seized by the Income Tax Department and hence he is unable to produce the documents before the Department is another excuse adopted by him to avoid appearance as most of the facts are within his knowledge. The seized currency of L 10216000/is in denomination of L 2000/notes which have been issued by Union Government on 09.11.2016 and source of same is very much in knowledge of petitioner. 12. That, the petitioner's allegation that an attempt somehow made to send/serve summons to the petitioner again, once in person and then by post is again without any basis or justification as the correspondences sent to the address on record through person as well as through post was not accepted and refused. The petitioner has therefore exhibited his complete indifference to the law of the land and instead chose to make wild allegations which are totally baseless and meant to derail the investigation which is at a crucial stage. 13. That, the petitioner's allegation that he apprehends some mischief by the respondents is completely baseless and unfounded. His father Sh. Kishore Bhajiawala and his brother Sh. Vilas Bhajiawala were summoned and their statements were recorded under Section 50 of the PMLA, 2002 on 26.12.2016 and 28.12./2016 respectively. Their statements were recorded under the ambit of law without any pressure, duress or coercion, which fact has been acknowledged by them in their respective statements. Hence the petitioner's apprehension of mischief's is nothing but an excuse to avoid him from appearing before the Department to tender his statement. 14. That, the petitioner's allegation that the entire action of the Department is grossly actuated with malice, and there is every apprehension of gross and blatant abuse of the process of law and he would be pressurized to make self incriminating statements and would be falsely implicated is again baseless and completely unfounded for the reasons mentioned in the preceding para. 15. That, the petitioner's request to issue directions to the respondents to allow the presence of petitioner's advocate at a visible but not a audible distance during the course of interrogation or recording of the statement does not merit any consideration as the petitioner has been issued summons under Section 50 of the PMLA, 2002. The proceedings under Section 50 are deemed to be judicial proceedings within the meaning of Sections

193 and 228 of the IPC, 1860. Hence, there is no reason as to why the petitioner should insist for the presence of his advocate during recording of the statement. The summons has been issued to the petitioner under due process of law and as a law abiding citizen, it is expected of him to appear before the Department and cooperate with the investigation. 16. That, the petitioner's request to stay all further proceedings arising out of summons issued to him and to restrain the Department from taking any coercive action/steps against the petitioner needs to be turned down as this would prevent the Department of getting into the bottom of this racket which is a threat to the economic security of the country and would thereby, erode the faith of the common man in the law of the land." 10. Relying upon the averments made in the affidavit-in-reply referred to above, Mr. Vyas also submitted that the reliefs prayed for may not be granted having regard to the conduct of the applicant. To put it in other words, according to Mr. Vyas, in the past, the applicant failed to honour two summons issued by the authority under Section 50 of the Act 2002. 11. Mr. Amin, the learned Public Prosecutor appearing for the State of Gujarat also submitted that there being no merit in this application, the same be rejected. Mr. Amin would submit that the Supreme Court in none of the judgments has laid down any mandate, but only suggested strongly that it would be prudent for the police or any other authority concerned to allow a lawyer where the accused wants to have one at the time of interrogation. According to Mr. Amin, Articles 20(3), 21 and 22 of the Constitution of India will have no application to the facts of this case since the applicant is not an accused. 12. Mr. Amin, the learned Public Prosecutor laid much emphasis on the wordings contained in Section 50(3) of the Act, 2002. According to Mr. Amin, the wording of Section 50(3) of the Act, 2002 confers a discretion on the authorities. He would submit that the emphasis in subsection (3) of Section 50 of the Act, 2002 is escapable which is to the effect that the choice whether the person summoned should attend in person or by an authorised agent vests with the officer. A literal interpretation of this section, according to Mr. Amin, admits of no doubt that it is for the officer to satisfy consistent with the object of summoning the said person whether the person summoned should attend in person or through an authorised agent. 13. Mr. Amin, in support of his submissions, has placed strong reliance on a Division Bench decision of the Bombay High Court in the case of Satyanarayan and others v. The Chief Enforcement Officer, Enforcement Directorate Bombay and others [1998 Criminal Law Journal 1535]. 14. Mr. Amin, in the last, submitted that the entire claim put forward by the applicant is on the basis of the decision of the Supreme Court in the case of D.K. Basu v. State of West Bengal [(1997) 1 SCC 416]. According to Mr. Amin, the principles explained by the Supreme Court in D.K. Basu (supra) will not apply to the case on hand because the applicant cannot be termed as an accused of an offence as on date. He has not been arrested so far by the authorities concerned. The requirement to comply with Sections 21 and 22(1) of the Constitution needs to be strongly followed only in the case of the accused persons or to put it in other words, when it comes to interrogation of the arrestee. 15. Having heard the learned counsel appearing for

the parties and having considered the materials on record, the only question that falls for my consideration is whether the applicant is entitled to the reliefs as prayed for in this application. 16. Before advertng to the rival submissions canvassed on either side, I must look into the few provisions of law. 17. Article 20(3) of the Constitution of India reads as under: "20. Protection in respect of conviction for offences (1) (2) (3) No person accused of any offence shall be compelled to be a witness against himself." 18. Article 21 of the Constitution of India reads as under: "21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law. 19. Article 22 of the Constitution of India reads as under: "22. Protection against arrest and detention in certain cases (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twentyfour hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate. (3) Nothing in clauses (1) and (2) shall apply (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention. a [(4)] No law providing for preventive detention shall authorise the detention of a person for a longer period than two months unless an Advisory Board constituted in accordance with the recommendation of the Chief Justice of the appropriate High Court has reported before the expiration of the said period of two months that there is in its opinion sufficient cause for such detention: Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman shall be a serving Judge of the appropriate High Court and the other members shall be serving or retired Judge of any High Court: Provided further that nothing in this clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (a) of clause (7). Explanation- In this clause, "appropriate High Court" means,- (i) in the case of the detention of a person in pursuance of an order of detention made by the Government of India or an officer or authority subordinate to that Government, the High Court for the Union territory of Delhi; (ii) in the case of the detention of a person in pursuance of an order of detention made by the Government of any State (other than Union Territory), the High Court for that State; and (iii) in the case of the detention of a person in pursuance of an order of detention made by the Administrator of a Union territory or an officer or authority subordinate to such Administrator, such High Court as may be specified by or under any law made by Parliament in this behalf.] (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. (6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose. (7) Parliament may by law prescribe- b[(a)] the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and b [(b)] the procedure to be followed by an Advisory Board in an inquiry under c [clause (4)]." 20. Section 50 of the Prevention of Money Laundering Act, 2002 reads as under: "50. Powers of authorities regarding summons, production of documents and to give evidence, etc (1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely: (a) discovery and inspection; (b) enforcing the attendance of any person, including any officer of a 1 ["reporting entity"] and examining him on oath; (c) compelling the production of records; (d) receiving evidence on affidavits; (e) issuing commissions for examination of witnesses and documents; and (f) any other matter which may be prescribed. (2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act. (3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required. (4) Every proceeding under subsections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860). (5) Subject to any rules made in this behalf by the Central Government, any officer referred to in subsection (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act: Provided that an Assistant Director or a Deputy Director shall not (a) impound any records without recording his reasons for so doing; or (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director." 21. The plain reading of Section 50(3) of the Act, 2002 would suggest that the choice whether the person summoned should attend in person or by an authorised agent vests with the officer. To this extent, I am at one with Mr. Amin, the learned Public Prosecutor. In *Satyanarayan* (supra), a Division Bench of the Bombay High Court had the occasion to consider Section 40(3) of the Foreign Exchange Act, 1973 which is *pari materia* to Section 50(3) of the Act 2002. I may quote the relevant observations made by the Court while interpreting Section 40(3) of the FERA: "In the context of the rival contentions, it becomes necessary to read Section 40 of the Act which reads : "40. Power to summon persons to give evidence and produce documents (1) Any gazetted officer of Enforcement shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce document during the course of any investigation or

proceeding under this Act. (2) A summons to produce documents may be for the production of certain specified documents or for the production of all documents of a certain description in the possession or under the control of the person summoned. (3) All persons so summoned shall be bound to attend either in person or by authorised agents, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents as may be required : Provided that the exemption under Section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section. (4) Every such investigation or proceeding as aforesaid shall be deemed to be a judicial proceeding within the meaning of Section 193 and 228 of the Indian Penal Code (45 of 1860)." (Emphasis supplied) The emphasis in sub section (3) of Section 40 of the Act is inescapable which is to the effect that the choice whether the person summoned should attend in person or by an authorised agent vests with the officer. A literal interpretation of this section thus admits of no doubt that it is for the officer to satisfy consistent with the object of summoning the said person whether the person summoned should attend in person or through authorised agent. In this context, it is worthy to note the provisions in Order 5, Rule 1, sub rule (2) of Civil Procedure Code which reads : "A defendant to whom a summons has been issued under sub-rule (1) may appear in person, or by a pleader duly instructed and able to answer all material questions relating to the suit, or by a pleader accompanied by some person able to answer all such questions." This gives an indication that wherever the statute wants to confer an authority on the person summoned to appear through an authorised agent or lawyer the statute specifically provides for the same. But the arguments of the learned counsel, Shri Bobde, is that whenever statute vests discretion with an authority, the discretion has to be exercised consistent with the principles of natural justice. According to the learned counsel, inasmuch as the said subsection vests a discretion with the authority, that automatically creates a right in the person so summoned to have a request made by him in that behalf considered by the said authority. When such is the position the said consideration in exercise of the discretion, according to the learned counsel, has to be adhering to the principles of natural justice, particularly the principles of audi alteram partem. But on the other hand, learned counsel, Shri Bhangde, for the respondents, maintained that this aspect is concluded by the decision of Supreme Court in the case of Poolpandi v. Superintendent, Central Excise, AIR 1992 SC 1795 : (1992 Cri LJ 2761). Shri Bobde, learned counsel, maintained that Annexure II order since does not assign any acceptable reason for rejecting the prayer for presence of a lawyer at the time of interrogation, the said order is infirm and the reasons in support of the said order cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. The learned counsel made reliance on the decision in the case of Mohinder Singh Gill v. The Chief Election Commissioner, AIR 1978 SC 851 and urged that the order Annexure II only states that the prayer for assistance of the lawyer cannot be entertained on account of the decision in AIR 1992 SC 1795, referred early. The point urged by

the learned counsel is, what was considered in the said decision was only the right of such person under Articles 20(3) and 21 of the Constitution. It was urged by the learned counsel that only the ratio and the principles underlying is binding and the same cannot be extended. Reliance was placed by the learned counsel on the decision in the case of *Prakash Amichand Shah v. State of Gujarat*, AIR 1986 SC 468. The thrust of the argument of the learned counsel, Shri Bobde, was that in *Poolpandi's* case, AIR 1992 SC 1795 : (1992 Cri LJ 2761) referred early, the aspect as is now urged by the petitioners as per Section 40 of the Act was not considered. Learned counsel, maintained that rules of natural justice apply even to administrative actions which entails civil consequences. 5. Before going into the question whether *Poolpandi's* case is complete answer to the present prayer by the petitioners, it will be worthy to see, with due regard to the scheme and object of the Act, whether the principles of natural justice has to be observed when the authority acts under Section 40(3) of the Act. 6. There are two requirements of natural justice (a) no man shall be judge in his own cause, and (b) no man shall be condemned unheard. But the said requirement may be dispensed with either by express words of statute or by necessary implication. True, such exclusion of natural justice by implication must be clear and it should spring from the provisions of the Act., In the decision in *Maneka Gandhi's* case (1978) 1 SCC 248 : (AIR 1978 SC 597), referred early, at page 291 (of SCC) : (at p. 629 of AIR), it is observed : "Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands..... True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded..... The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications." Shri Bobde pointed out that, in the said decision the Court expressed to the effect that fair opportunity of being heard immediately on impounding the passport, in the circumstance, could satisfy the mandate of natural justice. The learned counsel then relied on the decision in *Swadeshi Cotton Mills v. Union of India*, AIR 1981 SC 818 to maintain that even where statute expected immediate action the Court held that hearing at pre decisional stage must be given. Therefore, according to the learned counsel, natural justice cannot be excluded merely because immediate action is necessary. Alternatively it was maintained by him, even if at the stage of issuing summons the person so summoned is not entitled to be heard; when he makes a request for the presence of his lawyer at interrogation and/or to be represented by an authorised agent on his appearance in response to the summons, the authority has to consider the same consistent with the principles of natural justice. 7. As noted, the main thrust of the argument of learned counsel, Shri Bhangde, is on

the basis of the decision in Poolpandi's case AIR 1992 SC 1795 : (1992 Cri LJ 2761). It will be seen that the said decision was rendered in an appeal against the decision in K.T. Advani v. State 1987 (30) ELT 390 : (1985 Cri LJ 1325) (Delhi) also. In Advani's case, the High Court on interpretation of Section 30 of Advocate's Act and Section 40 of this Act and Articles 20(3) and 22(1) of the Constitution, among other things, held that a person so summoned is entitled to have the presence of a lawyer when he is questioned during investigation under the provisions of the Act. Before the Supreme Court various arguments were advanced in support of the said claim which included a contention to the effect that since there is possibility of the person under interrogation being prosecuted he is entitled to have assistance of a lawyer by virtue of Article 20(3) of the Constitution. Arguments were also advanced under Article 21 of the Constitution in support of the said claim. Reliance is seen to have been made on the decision in Nandini Satpathy v. Dani (P. L.) (1978) 3 SCR 608 : (1978 Cri LJ 968). But the Supreme Court repelled the said arguments. What is important in this connection is, the Supreme Court in the said decision held that protection against self-incrimination belong to a person who is accused of an offence and that a person called for questioning during investigation by authorities under the provisions of Customs Act or FER Act being not an accused, refusal to allow the presence of a lawyer is not violative of Article 20(3) of the Constitution. In this context the observation by the apex Court while dealing with the argument in support of the claim for the presence of lawyer at interrogation relying on the minority judgment in (1957) 352 US 330 is relevant and instructive. In para 10 at page 1799 (of AIR) it is observed : "The learned Judge, accordingly expressed his dissent observing that to compel a person to answer questions at a secret interrogation where he is denied legal assistance and where he is subject to the uncontrolled and invisible exercise of power by Govt. officials, would be unconstitutional. We do not share the apprehension as expressed above in the minority judgment in connection with enquiry and investigation under the Customs Act and other similar statutes of our country. There is no question of whisking away the persons concerned in the cases before us for secret interrogation, and there is no reason for us to impute the motive of preparing the ground work of false cases for securing conviction of innocent persons, to the officers of the State duly engaged in performing their duty of prevention and detection of economics crimes and recovering misappropriated money justly belonging to the public." In para 11, Their Lordships clearly held that a person who is summoned does not have such right as is now claimed by the petitioners. Their Lordships held : "Mr. Salve was fair enough not to pursue his argument with reference to the comfort part, but continued to maintain that the appellant is entitled to the company of his choice during the questioning. The purpose of the enquiry under the Customs Act and the other similar statutes will be completely frustrated if the whims of the person in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who

provide encouragement to them in adopting a noncooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be "expanded" to favour exploiters engaged in tax evasion as the cost of public exchequer. Applying the "just, fair and reasonable test" we hold that there is no merit in the stand of appellant before us." A reading of this judgment does not admit of any scope for a claim that the Supreme Court since did not specifically refer to Section 40 in the body of the discussion, it is still open to maintain that Section 40, subsection (3) particularly has to be interpreted to mean that the authority is obliged to exercise the discretion under Section 40(3) consistent with the principles of natural justice. As indicated, the endeavour of the learned counsel, Shri Bobde, is to read into Section 40(3) the principles of natural justice. The question to be posed in this connection is, whether on account of necessity the principles of natural justice themselves stand excluded. What the learned counsel strived to maintain was, the principle of audi alteram partem has to be observed while exercising the power of authority under Section 40(3) of the Act. The discretion under Section 40(3) carries with it an obligation to exercise the discretion adhering to the principles of natural justice. If the principles of natural justice stand excluded at least by implication, then one cannot insist that the said discretion has to be exercised consistent with the principles of natural justice. Therefore, it becomes necessary to consider whether in the context of Section 40(3) of the Act, the principles of natural justice stand excluded. 8. As to the ratio laid down in Poolpandi's case (1992 Cri LJ 2761) (SC), referred early, the main thrust of the argument of Shri Bobde, as indicated, is that Section 40(3) of the Act in the aforesaid perspective was not considered and discussed in the said decision. In appreciating the said argument, it is worthy to note that the principles laid down in the decision in *M/s Kesho Ram and Co. v. Union of India*, 1989(2) R.C.R.(Rent) 425 : (1989) 3 SCC 151 wherein the Supreme Court held while interpreting Article 141 of the Constitution that once a point is finally decided by the Court it becomes binding and cannot be reopened on the ground that some points have not been raised or considered by the Court. And as to interpretation of statutes, the Supreme Court held that an interpretation which would advance the object and purpose of the Act should be adopted. In AIR 1970 SC 1002, *Ballabhdas Mathuradas Lakhani v. Municipal Council, Malkapur*, while interpreting Article 141 of the Constitution, it is held by Supreme Court that the decision of Supreme Court is binding on the High Courts and the same cannot be ignored on the ground that relevant provision was not brought to the notice of the Supreme Court. Not only that, the decision in Poolpandi's case AIR 1992 SC 1795 : (1992 Cri LJ 2761) was rendered against an appeal from Advani's case (1987) 30 ELT 390 : (1985 Cri LJ 1325) (Delhi) the question arose under FER Act was noticed by the Supreme Court, and the appeal against the aforesaid decision of the High Court was allowed against that part of the judgment of the High Court which dealt with the right of the respondents to have their lawyer during interrogation. Then it is idle, in such circumstance, to

contend that still it is open under Section 40(3) of the Act for a summoned person to claim the presence of a lawyer at the time of his questioning. 9. Of course, interpretation of statute is to discover the intention of the legislature. When the concerned provision admits of no doubt or ambiguity, the literal meaning of the provision giving effect to words employed therein has to prevail, for the intention of the legislature is what it states in the statute. But the meaning to be given to a provision should be with due regard to the context in which the provision appear, for the words would capture depth and content of their meaning from the context in which they are used. And when one speaks of context the same takes into its fold the object of the legislation revealed through the preamble and scheme of the said statute. The very object and scope of the statute is such that such claim for the presence of lawyer at the time of questioning or to have a person of his choice to represent him, cannot be entertained and the principles of natural justice has to be held to be excluded by necessity. In the decision in *Union of India v. W.N. Chadha*, 1993 Cri LJ 859 : (AIR 1993 SC 1082) the aspect as to the applicability and exclusion of audi alteram partem rule was considered. The Court held that the rule of audi alteram partem is a rule of justice and its application will exclude where the rule itself would lead to injustice and that, the said rule cannot be applied to defeat the ends of justice or to make the law "lifeless, absurd, stultifying and self defeating or plainly contrary to the common sense of the situation". This decision notes that there are exceptional circumstances and situations where the application of the rule of audi alteram partem is not attracted. The same view is expressed in the decision in *State Bank of Patiala v. S.K. Sharma*, AIR 1996 SC 1669. In para 32 of the judgment, among other things, it is held : "There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/ State interest with the requirement of natural justice and arrive at an appropriate decision." Therefore, when a question is posed as to whether the principles of natural justice has to be applied in a given situation, the Court has to balance the interest of the public State with that of a person who is summoned. In *Poolpandi's case* (1992 Cri LJ 2761) (SC), this aspect was considered by the Supreme Court and the Supreme Court put the object of the statute at higher pedestal than the principles of natural justice, for the scheme, the purpose and object of the Act are for unearthing misappropriated money which ultimately should belong to the people of this country. When the object of the Act is so understood, it is inescapable that a person cannot insist that the authority acting under Section 40 of the Act is obliged to observe audi alteram partem. It is exclusively for the investigating authorities to decide in a given situation whether the particular person himself must answer the questions. 10. The learned counsel, Shri Bobde, attempted to maintain that there are situations where another has to represent the person summoned like a person suffering from legal disability. Such person must be able to be represented by an authorised agent of his choice. This need not be always correct. Illustratively one can envisage a situation where a minor witnessing a particular occurrence which attracts the

provisions of FERA; merely because such a witness suffers from legal disability, in an investigation, such witness cannot be allowed to be represented by an authorised agent. Merely because of minority one cannot become an incompetent witness. It is not open to a person summoned for interrogation to insist that he must be represented by another. If he is conferred with such a right that would amount to his directing as to how the investigation should proceed. This certainly does not belong to the person summoned. It should be noted that the person so summoned is not one "accused of an offence." The very purpose of summoning and questioning is to decide upon as to who is the real person to be proceeded against. 11...When the object and purpose of the Act is understood, as already noticed, the issue of summons to persons who admittedly had received amounts which they claimed to be gifts, so as to discern whether any offence under FERA was committed or there is any violation of the provisions of law in the said transaction, it would be necessary for a genuine and effective investigation that the concerned authority is clothed with the necessary power to summon and question persons whom they consider to be either suspects or persons who are in possession of valuable information as regards the subject. In such a process, the object of the Act, as indicated, is to expose and contain the exploitation and subversion of the economy of the country. There, the principles of audi alteram partem cannot come to the assistance of such persons who are so summoned."

"13. Shri Bhangde, learned counsel, maintained that the claim of the petitioner for presence of a lawyer or company of a person of their choice is not sustainable under Section 40 of the Act unless there is a right in them for the said facility. Such a claim even on the plea of discrimination cannot be sustained unless they show they have a right to enforce. In support of his contention, the learned counsel made reliance on the decision in *State of Haryana v. Ram Kumar Mann*, 1997(3) S.C.T. 135 : (1997) 3 SCC 321 : (1997 AIR SCW 1574). Yet endeavour was made to maintain that even if the person summoned as of right cannot insist presence of a lawyer, he still can make a request for the same, and when made the same has to be considered. Reference was made to the decision in *Johneey D'Couto v. State of Tamil Nadu*, 1988(1) R.C.R.(Criminal) 22 : AIR 1988 SC 109 : (1988 Cri LJ 178) in support of the claim for presence of a lawyer drawing parallel to the observation in para 5 of the judgment to the effect that though the provision of the Act disentitles a detenu from claiming as of right to be represented by a lawyer, it does not disentitle him from making a request for the service of a lawyer. The first and foremost thing to be noted in appreciating the same is, that was a case of a detenu who was detained under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The right of a detenu under the relevant provisions of the statute as well as constitution cannot be equated with a claim of a person who is simply summoned for questioning. The said decision cannot come to the assistance of persons like the petitioners, particularly in the context of the declaration of law by Supreme Court in *Poolpandi's case*, AIR 1992 SC 1795 : (1992 Cri LJ 2761). The effect of the said decision certainly would not enable one to maintain, a lawyer is an authorised agent." 22. Thus, I am of the view that where the

Investigating Agency seeks to interrogate a suspect during the preliminary investigation prior to filing of the complaint and the suspect applies for permission to be represented by a lawyer, or seeks permission to allow the lawyer to remain present, if not within hearing range, but within visible distance, the Investigating Agency should adopt the following modus operandi: (1) He is not bound to grant the request for the presence of a lawyer during the questioning; (2) But, at the same time, he must bear in mind that the presence of the lawyer will avoid any adverse criticism of any confession that may be made by the petitioner during interrogation. [See: Jagir Singh and another v. The State, 1986 Cr.L.J. 841] 23. In the aforesaid context, I may quote an interesting observations made by a learned Single Judge of the Madras High Court in the case of Jagir Singh (supra) as regards the provisions of Advocates Act, 1961 and the right of the advocate of audience before an authority. The observations as contained in para 4 reads as under: "The second aspect to be borne in mind is the provision of the Advocates Act, 1961, which enables the Advocates the right of audience. Section 30 of the Act deals with the rights of Advocates to practise and the same is as follows - "Subject to the provisions of this Act, every Advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which the Act extends - (i) in all Courts including the Supreme Court; (ii) before any tribunal or person legally authorised to take evidence; and (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise." As per the above section, an investigating officer, being a person not authorised to take evidence, is not a forum before which an advocate has got a right of audience. Learned counsel for the petitioners submits that it is customary on the part of advocates to present bail applications, etc., on behalf of the accused and the right of advocate to appear before the police officers had become recognised. Whatever may be the practise, under the Advocates Act, an advocate is not entitled to any right of audience before any forum other than those set out in Section 30. The Supreme Court in Nandini Satpathi's case, AIR 1978 SC 1025 : (1978 Cri LJ 968), cautions that police station lawyer" system is an abuse which breeds other vices." 24. I shall now proceed to consider whether the discretionary relief should be granted to the applicant or not. 25. In Nandini Satpathy (supra), Krishna Iyer, J. after referring to Articles 22(1) and 20(3) of the Constitution, observed as under: "The right to consult an advocate of his choice shall not be denied to any person who is arrested. This does not mean that persons who are not under arrest or custody can be denied that right. The spirit and sense of Article 22(1) is that it is fundamental to the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of near custodial interrogation. Moreover, the observance of the right against self incrimination is best promoted by conceding to the accused the right to consult a legal practitioner of his choice." Lawyers presence is a constitutional claim in some circumstances in our country, also, and, in the context of Article 20(3), is an assurance of awareness and observance of the right to silence. The Miranda (1966 384 US 436) decision has insisted that if an

accused person asks for lawyer's assistance, at the stage of interrogation, it shall be granted before commencing or continuing with the questioning. We think that Article 20(3) and Article 22(1) may, in a way, be telescoped by making it prudent for the Police to permit the advocate of the accused, if there be one, to be present at the time he is examined. Overreaching Article 20(3) and Section 161(2) will be obviated by this requirement. We do not lay down that the Police must secure the services of a lawyer. That will lead to "police station lawyer" system, an abuse which breeds other vices. But all that we mean is that if an accused person expresses the wish to have his lawyer by his side when his examination goes on, this facility shall not be denied, without being exposed to the serious reproof that involuntary self-criminations secured in secrecy and by coercing the will was the project. Not that a lawyer's presence is panacea for all problems of involuntary self-crimination, for he cannot supply answers or whisper hints or otherwise interfere with the course of questioning except to intercept where intimidatory tactics are tried, caution his client where incrimination is attempted and insist on questions and answers being noted where objections are not otherwise fully appreciated. He cannot harangue the police, but may help his client and complain on his behalf, although his very presence will ordinarily remove the implicit menace of a police station. We realise the presence of a lawyer is seeking for the moon in many cases until a public defender system becomes ubiquitous. The police need not wait more than a reasonable while for an advocate's arrival. But they must invariably warn and record that fact about the right to silence against self-incrimination; and where the accused is literate take his written acknowledgment." Later, in the course of the judgment, the Supreme Court observed as follows : "Our purpose is not to sterilise the police but to clothe the accused with his proper right of silence. Article 20(3) is not a paper tiger but a provision to police the police and to silence coerced crimination. The dissenting words of Mr. Justice White bear quotation in this context - The Court's duty to assess the consequences of its action is not satisfied by the utterance of the truth that a value of our system of criminal justice is "to respect the inviolability of the human personality" and to require government to produce the evidence against the accused by its own independent labours. More than the human dignity of the accused are involved; the human personality of others in the society also be preserved. Thus the values reflected by the privilege are not the sole desideratum; society's interest in the general security is of equal weight." The obvious underpinning of the Court's decision is a deep seated distrust of all confessions. As the Court declares that the accused not be interrogated without counsel present, absent a waiver of the right to counsel, and as the Court all but admonishes the lawyer to advise the accused to remain silent, the result adds up to a judicial judgment that evidence from the accused should not be used against him in any way, whether compelled or not. This is the not so subtle overtone of the opinion that it is inherently wrong for the police to gather evidence from the accused himself. And this is precisely the nub if this dissent. I see nothing wrong or immoral and certainly nothing unconstitutional in the police's asking a suspect whom they have reasonable cause to arrest

whether or not he killed his wife or in" confronting him with the evidence on which the arrest was based, at least where he has been plainly advised that he may remain completely silent. (See *Escobedo v. Illinois*, (1964) Law Ed 2d 977). Until today "the admissions or confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of incriminating evidence". *Brown v. Walker* (1895) 40 Law Ed 819, see also *Hopt v. Utah* (1884) 28 Law Ed 262. Particularly, when corroborated, as where the police have confirmed the accused's disclosure of the hiding place of implements or fruits of the crime, such confessions have the highest reliability and significantly contribute to the certitude with which we may believe the accused is guilty. However, it is by no means certain that the process of confessing is injurious to the accused. To the contrary it may provide psychological relief and enhance the prospects for rehabilitation. This is not to say that the value of respect for the inviolability of the accused's individual personality should be accorded no weight or that all confessions should be indiscriminately admitted. This Court has long read the Constitution to prescribe compelled confessions, a salutary rule from which there should be no retreat". The Supreme Court concluded as follows : "A final note on the actual case on hand. While some aspects of Article 20(3) have been authoritatively expounded, other aspects have remained obscure and unexplored. A flesh flood of demands against self-incriminatory interrogation has risen now when very important persons of yesterday have got caught in the criminal investigation coils of today. And when the big fight forensic battles the small gain by the victory, if any. The fact that the scope of the protection against self-accusation has not been clarified before in this area makes it necessary for us to take a gentler view in this case, in the interest of justice. Moreover, on our interpretation, the Magistrate, trying the case under Section 179 I.P.C. and in a setting where the accused allegedly has a number of other offence to answer for, will be thrown into a larger enquiry than the simplistic and ordinarily needed. We have declared the law on the thorny constitutional question where the amber light from American rulings and beacon beams from Indian precedents have aided us in our decision. It is quite probable that the very act of directing a woman to come to the police station in violation of Section 160(1) Cr. P.C. may make for tension and negate voluntariness. It is likely that some of the questions are self criminatory. More importantly, the admitted circumstances are such that the trying magistrate may have to hold an elaborate enquiry about other investigations, potential and actual, to decide about the self-accusatory character of the answers. And, finally, the process of proving proneness for self-incrimination will itself strike a blow on the very protection under Article 20(3)..." *Nandini Satpathy* (supra) has been referred to in a subsequent Supreme Court decision reported in *Ashadevi v. K. Shivraj*, AIR 1979 SC 447 : (1979 Cri LJ 203). In the said case, the question whether the refusal to permit an advocate to be present when the accused was interrogated is one that ought to have been brought to the notice of the detaining authority for the purpose of subjective satisfaction, was considered and the Court came to the conclusion that it is one of the material facts in ascertaining the value of the alleged confession on which

the order of detention is passed and the failure to bring to the notice of the detaining authority the retraction on the part of the accused is an irregularity. Mohan J. in W.M.P. 6671 of 1983 (K. Srinivasan v. Collector of Customs, Madras) has occasion to refer to Nandini Satpathi's case, AIR 1978 SC 1025 : (1978 Cri LJ 968), while discussing the question of permitting an advocate to be present while the accused was being interrogated. The learned Judge observed as follows - "On a consideration of the above, I am of the view that the petitioner cannot be granted injunction. What is sought to be done is mere investigation and nothing prevents the petitioner from appearing before the concerned officer and making a statement. As and when he becomes an accused, he could ask for the assistance of a counsel, which is the purport of the ruling reported in Nandini Satpathi v. P.D. Dani, AIR 1978 SC 1025 : (1978 Cri LJ 968), and Ashadevi v. K. Shivraj, AIR 1979 SC 447 : (1979 Cri LJ 203), which dealt with the case of an accused person as well as detenu. On the contrary, by a reading of Ramesh Chandra v. State of West Bengal, AIR 1970 SC 940: (1970 Cri LJ 863), head notes C and E, it is very clear that the principle of representation by a counsel cannot be extended at this stage when an investigation is being done by the Customs department. The same principle has come to be adopted in B. Bhikha v. State of Gujarat, AIR 1971 SC 1064 at p. 1067 : (1971 Cri LJ 927 at p. 930)." 26. I may also refer to and rely upon a decision of the Calcutta High Court rendered by a learned Single Judge in the case of Mahendra Jain (Patni) v. Union of India [2003 Criminal Law Journal 1464]. While considering almost an identical issue and also considering the decision of the Supreme Court in the case of Poolpandi (supra), observed in paras 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 as under: "11. In my view, the aforesaid Supreme Court judgment is not similarly placed with the factual aspects of the matters. Certain distinguishing features are given hereunder: (a) In such judgment, it find the authorities have already made out prima facie cases and Criminal appeals are pending in connection thereto. Put in the present case no prima facie case has yet born. Only on the basis of suspicion or conjecture people were brought or likely to be brought in the office to extract evidence. (b) In such judgment, comfort or luxuries and company of choice were the sum and substance of due consideration. But in the present case the treatment towards the petitioners were far from comfort of luxuries or company of choice during the office hours. It is a case of torture in the name of enquiry and investigation during odd hours to extract evidence to convert alleged suspicion into belief. (c) I fully associate with the observation of the Supreme Court that if the person who is used to certain comforts and convenience is asked to come by himself to the Department for answering questions itself ipso facto cannot be said to be mental torture. But in this case the factual difference is that it is related to the incident/s took place after going to the department thereafter by the name of enquiry or investigation. (d) In the Supreme Court judgment, although discussions were made in respect of presence of lawyer or friend of his or her choice but the advancement of arguments and ultimate order was made in respect of presence of lawyer to distinguish the position of the accused from non accused as per

Article 22 of the Constitution of India. This Court never passed such order. However interpretation of friend of his choice in such judgment and in the present case are different from each other in view of the factual circumstances. The Supreme Court had proceeded on a prima facie case and upon observing nature and character of friends of such circle of people but in this case situation is different in all respect. In the odd hours of office the petitioners were forced to disassociate themselves from others. Therefore, an observer can be directed to be present in the office to help them without interfering into the true enquiry and investigations. (di) He is as good as writer law does not prevent from giving permission. (e) In the cited judgment nowhere it has been stated that an arbitrary action cannot be challenged. Therefore, when an arbitraty action is complained of, Court cannot behave like a silent spectator and proceed within the four corners of such prayers. Court's power is wide enough to mould the prayers to control the misdeed, if any. 12. According to me, a protection of a citizen must have to be better protection than an accused. One can be called as "accused" when there is a prima facie case against him. But in case of a citizen to prima facie case had then born. Unless and until there is a check and balance, possibility of misuse of power cannot be ruled out. Thus the protection under Article 21 is given by the Constitution of India to the people at large. It is now been reiterated universally and the country has given a formal shape of law to give such protection. Thus a concept of the protection of human rights have been developed on the basis of the international covenant of civil and political rights. Article 7 of the same provides no one shall be subjected to torture or to cruel, inhuman, degrading treatment or punishment. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. On 8th January, 1984 an Act was promulgated in our Country following such international convention which is known as protection of Human Rights Act. The ratio of the Supreme Court judgment was restricted during the era when the rigour of FERA (Foreign Exchange Regulation Act) was the policy of the country. Presently the Ministry of Commerce, Government of India introduces various relaxations following economical policy and trend of commercial globalisation. It is universally accepted position. Therefore, the outlook of the authorities in the year 1992 cannot fit in the year 2002. There is sea change in between the two periods. 13. Article 20 of the Constitution of India is made for protection of the person in respect of conviction for offences. Article 22 is made for protection against arrest and detention in certain cases. The real applicable Article in the present case is Article 21. As per Article 21 no person shall be deprived of his life or personal liberty except according to procedure established by law. This is not an idle formality. If such Article is read along with Article 19(1)(g) which is made for the right of the citizens in any profession, or to carry on any occupation, trade or business, the true import will come out. Therefore, the basic feature of the Constitution cannot be ignored or flung away from the river of protection. The Supreme Court judgment is categorical in respect of Article 22 about consultation with a legal practitioner. Whether legal practitioner can or cannot be present as an observer was the

prime question at the time of enquiry or investigation. However the judgment is anterior to the Act come into force. Such Act gives protection of "human rights" reiterating the right protected under Article 21 of the Constitution of India and on the basis of the international conventions. Therefore presently a test under such Act is required to be made if at all any complaints are made. 14. As against this background, I wanted to hear the submissions of the learned counsel appearing on behalf of the petitioners in a row, their general submissions are that the petitioners can be interrogated by the authorities as against the summons but not in the manner treating them inhumanly and without allowing to be accompanied by any observer. 15. According to them the Customs Officer is empowered to arrest a person if he has reason to believe that such person is guilty of an offence punishable under Section 135 of the Act. Therefore, there is every possibility that a person, who is interrogated, can be taken into custody by applying the test of criminal law. By citing 1994(2) R.C.R.(Criminal) 601 : (1994) 4 SCC 260 : (1994 Cri LJ 1981) (Joginder Kumar v. State of U.P.) thus contended that in India an arrest during the investigation of a cognisable case may be considered justified in one or other of the following circumstances: (i) The case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terrorstricken victims; (ii) The accused is likely to abscond and evade the processes of law; (iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint; (iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again. 16. There is no such test. Even thereafter when one has prevented in the office for more than office hours continuously it is as good as arrest to him at the time of interrogation. Hence, although they are not accused in strict sense but, in effect, at par with accused. In such cases Court cannot refrain from interfering with the same. In the case of criminal concept, mens rea would be the guiding factor. As and when persons are prevented from coming out from the office in the name of interrogation for a prolonged period it is clear that such persons were treated at par with accused. Therefore they are entitled to get protection under Article 21 of the Constitution of India in such circumstances. The present case is similar to custodial violence. A judgment reported in 1997(1) R.C.R.(Criminal) 372 : (1997) 1 SCC 416 : (1997 Cri LJ 743) (D. K. Basu v. State of W. B. with Ashok K. Johri v. State of U. P. has been cited to establish the same. 17. From (1985) 20 ELT 292 : (1986 Cri LJ 1273) (Madras) (Anil G. Merchant v. Director of Revenue intelligence, Madras). I find that the provision of Customs Act do not authorise the Customs Officer to extricate coerce or use any third degree methods in the matter of examination or interrogation of powers under Section 107 or 108, Customs Act, 1962. When a person is obliged to attend in pursuance to the summons issued under Section 108 to state the truth that he is expected to appear before the officer in obedience to the summons and in compliance with law and he cannot be considered to be a person taken in custody. Therefore, the examination should be conducted in such a way consistent with human dignity

and comfort and not be inhuman, unreasonable or unfair. It was, further, contended that Sections 107, 108 of the Act do not authorise the Customs Officer to detain a person in a prolonged custody and deprive him of elementary facility and privileges to which he is entitled. In such a situation taking them as captive persons and coercing them to give false statements or depriving them of elementary facilities are not authorised by the Act. As and when the officer violates any of these principles or coerces him to give false confessions it would always be open to the person concerned to complain of the same whenever the statements are sought to be used. If the allegations are established certainly nobody could rely or take note of such statements. Personal liberty cannot be cut out or cut down without fair legal procedure. The right to life enshrined in Article 21 is not limited to protection of life or facility but includes the right to live with human dignity. Any form of torture would be offensive to the human dignity and constitute an inroad into the right to live and therefore prohibited by Article 21 unless it is in accordance with procedure prescribed by law and stand on the test of reasonableness and non-arbitrariness. 18. In (1999) 2 Cal LJ 41 (Mohan Kr. More v. Union of India) and Ashwini More v. Union of India, it was held that at the time of interrogation of a person as against the summons under Section 108 of the Act if torture by third degree method is applied for extracting statement it would be hit by principle of violation of fundamental right and in appropriate case Court may issue direction. 19. According to me, there are two ways of looking into the matters. One way is the right of interrogation and another way is right of human dignity. Therefore it is expected that the authorities should keep a sense of proportion or balance in dealing with the matter. In case of any dis-balance Court has every right to justify whether the authority has crossed limit of interrogation or whether the petitioners are falsely implicated them in the garb of protection of human right. The affidavit on behalf of the authority is fully of evasive denials. Therefore, whether any torture or third degree or any inhuman method has been applied for the purpose of extracting statements in the name of interrogation cannot be tested nor it can be said that the apprehension and/or allegations are without any basis. It is true to say that the interrogating officers should have appropriate right for the purpose of interrogation but such right should not exceed the limit of the human right. Therefore, a bare denial cannot be an appropriate reply to the charges. The cases of the petitioners are not to stop the summons but to proceed with the summons in the proper manner. Such submission cannot be said to be unfair. What is the difficulty for the authorities to proceed with the enquiry or investigation during the office hours. Therefore, the next question will obviously come that when the persons are interested to have to be interrogated as against summons at the same time apply to the writ jurisdiction to get appropriate order of interrogation within reasonable time and in presence of the observer there must have been fear of terrorising themselves? It appears to me that if it had been proceeded in proper manner, the interrogation would have been completed by now. But even in spite of such interim order being passed the authority reluctantly refused to interrogate even in such manner with a plea that the Court curtailed the power. Therefore, at the

time of final hearing Court may feel that interrogation is not the basic interest of such respondents but interrogation as per their sweet will is the basic interest which is other name of terror. There is no law which say that as against the summons Customs authorities will proceed for interrogation as per their sweet will forceably keeping in their custody for indefinite period. If it is done then it has to be construed as informal custody. Therefore, the law relating to accused in a custody has to be expressly or impliedly applicable. If accused can get all benefits under Article 22 of the Constitution a person in such informal custody can say that he is also entitled to get relief under Article 21 of the Constitution of India. It cannot be said that the authority will behave in violation of Article 21 without declaring one as accused and Court will give premium to such illegality. This is not true interpretation of the ratio of the judgment reported in AIR 1992 SC 1795 : (1992 Cri LJ 2761) (supra). 20. Now a days, custodial violence is not unknown to the people and Court cannot refrain from taking any judicial notice. If such violation exceeds the personal right and liberty as given under Article 21 of the Constitution of India, the writ Court is justifiably entertain, the writ petition and pass an appropriate order. It is significant to note that custodial violence is not an ordinary violence even if one has been taken in the custody as against any criminal charges. The declaration has to be made whether the person concerned is formally accused or not. It is not to be misused for extracting statements by force. It is, further important to say, that the present policy of the Government does not permit the authorities to behave in such a manner. As has already been said, previously there was a rigour on the part of the authority in respect of interrogation under the Customs Act. But by the introduction of the policy of liberalisation, the Government thought about commercial viability intentionally. I am not for a moment say that interrogation will not be there. But its application should not be in such a manner that a wrong message should not go to the people attached to the commercial activities. If one wants to flout the law a case has to be made out on the basis of an appropriate reason to believe. Such reason to believe cannot be a weapon of fishing out the evidence by taking the person in the informal custody, torturing him for an indefinite period and extracting statements to make an evidence to fit the purpose." 27. I may also refer to a decision of the Delhi High Court in the case of K.T. Advani New Delhi v. The State, New Delhi [1985 Criminal Law Journal 1325], in which it was held that if a suspect is entitled to presence of counsel in an investigation, governed by the Code of Criminal Procedure, there is nothing in the provisions of the FERA, which purport, explicitly or impliedly, to oust such a right. I may quote para 8 of K.T. Advani (supra) as under: "In the case of Nandini Satpathy (1978 Cri LJ 968) (SC) (supra), Krishna Iyer J. who spoke for the Court, pointed out that the language employed in Article 22(1) did not mean that the persons, who were not under arrest, or custody can be denied the right to consult counsel and that the spirit and sense of the Article is that it is fundamental to the rule of law that the service of a lawyer shall be available for consultation to any accused person under circumstances of near custodial interrogation". The expression "accused" was apparently used in the judgment in the sense of a suspect because the

expression "accused" does not occur in Article 22, and there are a number of situations in which a person may be arrested, without being formally accused, and Section 35 of the Foreign Exchange Regulation Act is one of them. The corresponding provisions of the Customs Act is another. In that case, the court examined the right to the presence of counsel at the time of interrogation in the context of Article 20(3) and Article 22(1) where investigation was regulated by the provisions of the Criminal Procedure Code. The protection of Article 20(3) of the Constitution no doubt would not be available to a suspect in an enquiry or investigation under Section 40 of the Foreign Exchange Regulation Act until he has been formally accused and that is what the Supreme Court has held in a number of cases, *Ramesh Chandra v. State of W.B.* AIR 1970 SC 940 : (1970 Cri LJ 863), on a narrow construction of the expression "person accused of any offence", used in the said Article. The Court quoted with approval the observations of Dasgupta, J. in his dissenting opinion in the case of *Kathi Kalu Oghad* AIR 1961 SC 1808 : (1961 (2) Cri LJ 856), and observed that " "Third degree" is an easy temptation where the pressure to detect is heavy, the cerebration involved is hard and the resort to torture may yield high dividends." These observations were made in the context of a rule against self-in-crimination but would be equally relevant in construing Article 22(1) of the Constitution. It is no doubt true that the observations of the Supreme Court in the case of *Nandini Satpathy* (1978 Cri LJ 968) (*supra*) and the guidelines laid down by the Court in relation to the presence of counsel at the stage of investigation were made in a case governed by the Code of Criminal Procedure but I see no distinction between the provisions of the Code of Criminal Procedure and of the Foreign Exchange Regulation Act in the matter of right to presence of counsel. If a suspect is entitled to presence of counsel in an investigation, governed by the Code of Criminal Procedure there is nothing in the provisions of the Foreign Exchange Regulation Act, which purport, explicitly or impliedly, to oust such a right. If the right to the presence of counsel be fundamental to the rule of law, it makes little difference if the investigation is one under the Code of Criminal Procedure or independently of it." 28. I shall now look into the various orders of the Supreme Court relied upon by the learned senior counsel appearing for the writ applicant. 29. In *Vijay Sajani* (*supra*), the Supreme Court observed as under: "1. CRLMP. No.10117 of 2012, has been filed in Writ Petition(Crl.)No.29 of 2012, inter alia for interim directions to allow the learned counsel of the petitioners to be present at a visible distance, but beyond hearing range, at the time of interrogation of the petitioners by the custom authorities. 2. As will appear from paragraphs 2 and 3 of the petition, the writ petition itself was filed for the same reliefs. 3. Similar matters have been filed before us earlier and in those matters, we had directed that during interrogation of the petitioner(s), his/their counsel would be allowed to be present within visible distance, but beyond hearing range. Inasmuch as, the same orders are being passed in these matters, we dispose of the writ petition by directing that in similar cases, in the event the person(s) summoned under Section 108 of the Customs Act, 1962, wish(es) for similar orders, he(they) may apply to the custom authorities concerned and a

similar provision may be made for his/their interrogation in the presence of learned counsel, as indicated herein above. 4. Accordingly, we allow the criminal miscellaneous petition, as well as the writ petition and direct that the petitioners advocate should be allowed to be present during the interrogation of the petitioners. He/they should be made to sit at a distance beyond hearing range, but within visible distance and the lawyer must be prepared to be present whenever the petitioners are called upon to attend such interrogation." "UPON hearing counsel the Court made the following ORDER In terms of the signed order, the criminal miscellaneous petition, as well as the writ petition are allowed and it is directed that the petitioners" advocate should be allowed to be present during the interrogation of the petitioners. He/they should be made to sit at a distance beyond hearing range, but within visible distance and the lawyer must be prepared to be present whenever the petitioners are called upon to attend such interrogation." 30. In Birendra Kumar Pandey (supra), the Supreme Court passed the following order on 16th April 2012: "UPON hearing counsel the Court made the following: ORDER Cri. M.P. No.9177 of 2012, has been filed on behalf of the petitioners, inter alia, for an order in similar terms as was passed in the case of Rajendra Arora and others v. Union of India and others, on 7th December, 2010, or in the case of Mukund Bhai Patel, v. Union of India and others, on 4th March, 2011, so far as the recording of statement and interrogation of the petitioners" was concerned, during the pendency of the instant petition. As indicated herein above, we had occasion to pass orders on similar applications before. The petitioners have been served with notice under Section 108 of the Customs Act, 1962, to appear before the concerned customs authority for interrogation in connection with certain matters. The petitioners are apprehensive that coercive attempts may be made to extort confessions from them. Accordingly, they have prayed that the interrogation of the petitioners be conducted not in the immediate presence of their lawyer, but that the petitioners" lawyer should be allowed to be present during the interrogation, within a visible but beyond hearing distance. The prayer has been opposed by the learned additional Solicitor General, Mr. P.P. Malhotra, who has brought to our notice the decision of a Three Judges Bench in the case of Poolpandi and others v. Superintendent, Central Excise and others (1992) 3 SCC 259. Mr. Malhotra pointed out that the very first paragraph of the said judgment mentions that the common question arising in the said case before their Lordships was the stand taken by the petitioners that they were entitled to the presence of their lawyers when they were being questioned during the interrogation under the provisions of the Customs Act, 1962, or the Foreign Exchange Regulation Act, 1973. Their Lordships had noticed the difference of opinion of different High Courts in this connection and had rejected the submission made on behalf of the petitioners therein, that they were entitled to have their lawyers present at the time of interrogation. Such prayer, therefore, was disallowed. Mr. Malhotra has also drawn our attention to the decision in Senior Intelligence Officer, Directorate of Revenue Intelligence v. Jugal Kishore Samra (2011) 12 SCC 362, wherein the decision in Poolpandi"s case (supra) was also referred to and, ultimately, having

regard to the facts of the case, a two Judge Bench of this Court directed as follows: "Taking a cue, therefore, from the direction made in D.K. Basu and having regard to the special facts and circumstances of the case, we deem it appropriate to direct that the interrogation of the respondent may be held within the sight of his advocate or any other person duly authorised by him. The advocate or the person authorised by the respondent may watch the proceedings from a distance or from beyond a glass partition but he will not be within the hearing distance and it will not be open to the respondent to have consultations with him in the course of the interrogations." In fact, the said direction is the very direction that the petitioners are seeking in this criminal miscellaneous petition. Apart from the above, this bench and other Benches of this Court have also had occasion to deal with similar matters and we had passed similar orders to the extent that the petitioners' counsel would be allowed to be present at the time of interrogation within visible distance, though beyond hearing distance. In our view, the decision which was rendered in Poolpandi's case (supra) by a Bench of Three Judges, was in the context of the direct involvement of the learned counsel during the actual interrogation where the lawyer assumed an active role during the interrogation. On the other hand, the order that has been sought, as passed in various matters, does not contemplate such an eventuality. In fact, in terms of the orders which we were earlier passed, a lawyer has no role to play whatsoever during the interrogation, except to be at a distance beyond hearing range to ensure that no coercive methods were used during the interrogation. Accordingly, we allow the criminal miscellaneous petition and direct that the petitioners' advocate should be allowed to be present during the interrogation of the petitioners' but that he should be made to sit at a distance beyond hearing range, but within visible range and the lawyer must be prepared to be present whenever the petitioners are called upon to attend such interrogation. The criminal miscellaneous petition is disposed of accordingly." 31. In Nayasa Exports Pvt Ltd (supra), the Delhi High Court passed the following order on 16th February 2010: "1. Learned counsel for the Petitioner states that the Petitioner is prepared to appear before the Additional Director General, Directorate of Revenue Intelligence at Mumbai with all relevant records at 3 pm on 19th February 2010. 2. The lawyer for the Petitioner will be allowed to be present within seeing distance but beyond hearing distance, during the interrogation of the Petitioner. 3. In view of the above directions, no further reliefs are sought for in this petition and it is disposed of accordingly. 4. Order dasti to the parties." 32 In Sri Parkash Aggarwal (supra), the Supreme Court passed the following order on 4th August 2010: "UPON hearing counsel the Court made the following ORDER We had issued notice in this matter on 30th July, 2010. Now, an application has been made, being CrI. Misc. No.16512 of 2010, praying for an order that if and when the petitioner is interrogated under Section 14 of the Central Excise Act, 1944, in connection with File No.121/INT/DGCEI/HQ/07, such interrogation should be conducted in the presence of the petitioner's learned advocate, who may be allowed to stand at a visible distance from where the interrogation is conducted. Mr. Adsure, learned advocate,

appearing on behalf of the petitioner, has drawn out attention to an order which was passed by the Delhi High Court on 16th February, 2010, in a similar matter, where such prayer had been allowed. We see no reason to take a different view and accordingly we allow the application and direct the petitioner's counsel will be allowed to be present at the time of interrogation, as indicated herein above within visible distance, though beyond hearing distance. The application is allowed and disposed of, accordingly." 33. In Anandprakash Choudhari (supra), the Supreme Court passed the following order on 24th November 2010: "UPON hearing counsel the Court made the following ORDER This application, CrI. M.P. 23956/10, has been filed on behalf of the writ petitioners, in pending Writ Petition (CrI.) NO.122/10, inter alia, praying for a direction that if the petitioner is to be interrogated under Section 108 of the Customs Act, 1962, such interrogation should be done in the presence of his learned advocate who could be placed at a visible but beyond hearing distance. After considering the submissions made on behalf of the petitioner as well as the Customs Authorities, we are inclined to allow the prayer made on behalf of the petitioner. Accordingly, we allow the application and direct that the interrogation, if any, of the petitioner under Section 108 of the Customs Act, 1962, in connection with file No.DRI/GRU/INV02/2010-11, be conducted in the presence of his advocate, who would be entitled to stay at a visible but beyond hearing distance, from the place of interrogation. The application is allowed accordingly." 34. In Rajinder Arora (supra), the Supreme Court passed the following order on 7th December 2010: UPON hearing counsel the Court made the following ORDER When the Writ Petition was taken up for consideration, certain submissions were made which can be incorporated by us by way of an interim arrangement, pending final disposal of the Writ Petition. Admittedly, certain goods have been retained by the Customs authorities in respect of which a case had already been commenced against the petitioners. The same forms the subject matter of the Writ petition in which we had issued notice on 25th November, 2010 and had also in a subsequent order dated 29th November, 2010, requested Mr. Dey to take instructions with regard to the interim reliefs, prayed for in prayers (b) and (c) of the Writ Petition. Incidentally, in the companion matter, being Writ Petition (CrI.) No.123/2010, it was ordered not to arrest the petitioner during the pendency of the Writ petition. In continuation of the aforesaid interim order, we also direct that the examination of the live consignments which are under seizure and recording of statements of all petitioners under Section 108 of the Customs Act, 1962, shall be taken up by the Customs Department and recording of statements under Section 108 would be commenced from 8th December, 2010 and will be completed on or before 15th December, 2010. Furthermore, the examination of the seized goods is to be concluded within two weeks, starting from 8th December, 2010 and ending on 22nd December, 2010. It is submitted on behalf of the Department that the recording of the statements and examination of the goods under Section 108 of the above Act shall be done between 9.00 AM and 6.00 PM each day and shall be completed within a week. As far as recording of statements of the petitioners is concerned, the same is to be conducted in the

presence of the learned advocate who will be allowed to stand within visible distance but outside the bounds of hearing. The petitioners shall cooperate with the Department and once the examination of the goods are completed, the same shall be released to the petitioners, subject to the usual formalities. It is also directed that since the goods in question, are such that it may not be appropriate for the same to be handled by labour other than those employed with the petitioners, the petitioners will be entitled to engage their own labour for the purpose of packing and unpacking of the consignment and the same shall be allowed by the Customs Department. The Department has also assured that the recording of the statement and examination of the goods will be videographed. We also make it clear that the petitioners shall not be arrested in connection with the case until further orders. Let both the Writ Petitions referred to herein above, be listed for final disposal after eight weeks. The respondents will be entitled to file their counter affidavits within six weeks and rejoinder affidavit, if any thereto, may be filed within two weeks thereafter." 35. In *Kirit Shrimankar* (supra), the Bombay High Court passed the following order on 23rd July 2013: "1. The Petitioner was apprehending that the summons that was issued by the Directorate of Revenue Intelligence to attend their office for interrogation, does not mention that the Petitioner can bring his Lawyer at such interrogation. The apprehension was that within the limits specified in the Supreme Court decisions, the Lawyer's presence is permitted, but in this case, the Department will deny even that relief. 2. However, it has now been clarified that in terms of the judgments of the Honourable Supreme Court, the Petitioner would be permitted to bring his Lawyer when he is attending in pursuance of the summons issued by the Directorate of Revenue Intelligence. However, the Lawyer should be within the hearing distance as stipulated in the judgments. 3. Since the clarification as above has been given, nothing survives in this Writ petition and it is disposed of." 36. What is discernible from the decision of the Supreme Court in the case of *Poolpandi* (supra) is that whenever a person is called upon for questioning during investigation by the authorities under the provision of the Customs Act, he is not accused. He cannot, therefore, claim that in view of the possibility of his being made an accused in future, he is entitled to the presence of a lawyer when he is questioned. Refusal to allow the presence of lawyer in such case would not be violative of Article 20(3) nor can it be said that when a person is called away from his own house and questioned in the atmosphere of the customs office without the assistance of the lawyer or his friends, his constitutional right under Article 21 would be violated. It cannot be said that if the person who is used to certain comforts and convenience is asked to come by himself to the Department for answering the questions it amounts to mental torture. Thus, even on applying the "just, fair and reasonable test" the refusal to allow presence of lawyer would not violate Article 21. 37. I find a reference of *Poolpandi* (supra) in an order of the Supreme Court dated 16th April 2012 in the case of *Birendra Kumar Pandey* (supra), wherein a Bench of three Judges distinguished the same observing that *Poolpandi* (supra) was in the context of the direct involvement of the learned counsel during the actual interrogation where the lawyer assumes an active role

during the interrogation. 38. A lot was argued on behalf of the respondents as regards the conduct of the applicant. It was pointed out that in the past, for two times, the summons issued by the authority were not honoured. This, according to the respondents, is suggestive of the fact that the applicant is not willing to cooperate in the investigation. Mr. Chaudhary, the learned senior counsel appearing for the applicant pointed out that when the first summons was served, the father of the applicant informed that the applicant was with the C.B.I. for the purpose of interrogation. When the second summons was served, it was pointed out that since the documents have been asked for, it would take some time for the applicant to collect the same and he would, thereafter, appear before the authority. I am not so much concerned as regards the conduct of the applicant. I expect the applicant to extend full cooperation in the course of his interrogation which the authority wants to undertake in connection with the ECIR referred to above. Even otherwise, the person summoned under Section 50 of the Act, 2002 is bound to state the truth upon any subject respecting which he is examined or make statement, and produce such documents, as may be required. 39. In view of the aforesaid, I hold that although the applicant cannot claim the relief, as a matter of right, yet as of abundant caution and prudence, I am inclined to permit the counsel of the choice of the applicant to remain present within visible distance, but beyond the hearing range. 40. In the result, this application is allowed. I direct the respondent No.2 to permit the advocate of the applicant to be present during the interrogation of the applicant. The advocate concerned should be made to sit at a distance beyond the hearing range, but within the visible distance and the lawyer must be prepared to be present whenever the applicant is called upon to attend such interrogation. I take notice of the fact that the applicant was directed to remain present on 2nd January 2017. It will be open for the authority to issue a fresh summons under Section 50 of the Act, 2002 to the applicant asking him to remain present on a particular date. On receipt of such summons, the applicant shall remain present before the authority for the purpose of interrogation. Rule is made absolute to the aforesaid extent. Direct service is permitted.