

(1995) 07 CAL CK 0043
In the Calcutta High Court
Case No : Criminal Misc. No. 715 of 1995

Pratic Kumar Sen

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-07-1995

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1), 8B
Constitution of India, 1950 — Article 22, 22(4), 22(5)

Citation : (1995) 2 CALLT 376 : 99 CWN 953

Hon'ble Judges : Mukul Gopal Mukherji, J;Arun Kumar Dutta, J

Bench : Division Bench

Advocate : Pradip Kumar Ghosh, Sekhar Bose, J. Bagchi and D. Roy, for the Appellant;Promodranjan Roy, Prantosh Mukherjee, P.K. Bose, Abhra Mukherjee and P. Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Dutta, J.—By this Application under Article 226 of the Constitution of India the Petitioner-Detenu-Pratic Kumar Sen in Jail (hereinafter referred to as detenu) has challenged the order of his detention u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as COFEPOSA ACT) made on 4th October 1994 by Sri K. L. Verma, Joint Secretary to the Govt. of India, specially empowered thereunder, with a view to preventing him from abetting smuggling of goods. He was detained on 21st October, 1994 in pursuance of the aforesaid detention order.

2. Stated briefly, the detenu is alleged to be involved in the import of three consignments of integrated circuits of foreign origin in the names of fictitious Firms, but actually meant for Sri V.N. Lakhi, another COFEPOSA Detenu. There was clearance of consignments of mis-declared goods and evasion of duty. The detenu had allegedly admitted his offence in his statement. His case was referred to the Central Advisory Board (COFEPOSA) for giving the opinion as to whether

or not there is sufficient cause for his detention.

3. As held by the Supreme Court, preventive detention is an area where the Court been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of law is breached in the slightest measure, the Court has not hesitated to strike down the order of detention or to direct the release of the detenu even though the detention may have been valid till the breach occurred and regardless of the social cost involved in the release of a possible renegade. The Court was not unmindful of the fact that the COFEPOSA Act has been enacted for the purpose of eradicating the evil of smuggling which is eating into the vitals of the nation like a cancerous growth and eroding the economic stability of the country ; and when an order is made by the Court releasing a person detained under the Act it is quite possible that the effect of the order may be to let loose on the Society a Smuggler who might in all probability resume his nefarious activities causing incalculable mischief and harm to the economy of the nation. But, at the same time, the Court cannot forget that the power of preventive detention is a draconian power which is tolerated in a free society only as a necessary evil. The power to detain without trial is an extraordinary power constituting encroachment on personal liberty, and it is the solemn duty of the courts to ensure that this power is exercised strictly in accordance with the requirements of the Constitution and the law. The courts should always lean in favour of upholding personal liberty, for it is one of the most cherished values of mankind. Without it life would not be worth living. It is one of the pillars of free democratic society. It was thus observed that the courts must interpret the provisions of the Constitution and the law in regard to preventive detention without being in any manner tramelled by the fact that this is a case where a possible smuggler is seeking his release from detention. The courts have accordingly consistently shown great anxiety for personal liberty and refused to throw out a petition merely on the ground that it does not disclose a prima-facie case invalidating the order of detention. The Supreme Court had held in the decision in *Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others*, that when a Rule is issued, it is incumbent on the Detaining Authority to satisfy the court that the detention of the petitioner is legal and in conformity with mandatory provision of the law authorising such detention. In answer to this Rule, the Detaining Authority must place all the relevant facts before the court which would show that the detention is in accordance with the provisions of the Act. It would be no argument on the part of the Detaining Authority to say that a particular ground is not taken in the petition. Once the Rule is issued it is the bounden duty of the court to satisfy itself that all the safeguards provided by the law have been scrupulously observed, and the citizen is not deprived of his personal liberty otherwise than in accordance with law. The Supreme Court in *Kamleshkumar Ishwardas Patel v. Union of India and Ors.*, Judgment today 1995(3) SC 69 has reiterated that it is not unmindful of the harmful consequences of the activities in which the detenues are alleged to be involved. But while discharging the Court's Constitutional obligation to enforce the

fundamental rights of the people, more specially the right to personal liberty, it cannot allow itself to be influenced by these considerations. It has been said that the history of liberty is the history procedural safeguards. The framers of the Constitution being aware that preventive detention involves a serious encroachment on the right to personal liberty took care to incorporate in Clauses (4) and (5) of Article 22 certain minimum safeguards for the protection of persons sought to be preventively detained. These safeguards are required to be "jealously watched and enforced by the Court". Their rigour cannot be modulated on the basis of the nature of the activities of a particular person. The Supreme Court had observed in *Narendra Purshotam Umrao Vs. B.B. Gujral and Others*, that the constitutional safeguards embodied in Article 22(5) of the Constitution must be read into the provisions of Section 8(b) of the COFEPOSA Act to prevent any arbitrary executive action. Merely because there is no express provision in Section 8(b) of the said Act placing an obligation to forward the representation made by the detenu, along with the reference to the Advisory Board, unlike those contained in Section 9 of the Preventive Detention Act, 1950 and Section 10 of the Maintenance of Internal Security Act, 1971, it cannot be said that there is no obligation cast on the Government to consider the representation made by a detenu before forwarding it to the Advisory Board. Their Lordships had held therein that the Government has to reach its decision uninfluenced by the opinion of the Advisory Board. As observed therein, "Article 22(5) does not expressly say to whom the representation is to be made and how the Detaining Authority is to deal with the representation. But it is necessarily implicit in the language of Article 22(5) that the State Government to whom the representation is made should properly consider the representation, as expeditiously as possible. The constitution of an Advisory Board u/s 8 of the Act does not relieve the State Government from the legal obligation to consider the representation of the detenu, as soon as it is received by it."

4. In *John Martin Vs. State of West Bengal*, the Supreme Court had further held that it is indisputable that the appropriate Government has to consider the representation of a detenu. This, however, does not mean that the appropriate Government can reject the representation of the detenu in a casual or mechanical manner. The appropriate Government must bring to bear on the consideration of the representation in unbiased mind. There should be a real and proper consideration by the Government.

5. *Kubic Darusz Vs. Union of India (UOI) and Others*, it is held that under Article 22(5) of the Constitution no proforma for representation has been prescribed. Article 22(5) does not say which is the authority to whom representation shall be made or which authority shall consider it. But it is indisputable that representation may be made by the detenu to the appropriate government and it was mandatory on the part of the appropriate government to consider and act upon it at the earliest opportunity, and failure to do so would be fatal to the detention order. It is settled law that delay in disposing the representation, when inordinate and unexplained, the detention would be bad and the detenu must be

ordered to be released forthwith, as such delay would be violative of Article 22(5) of the Constitution. A representation addressed to the Central Advisory Board (as in the instant case), amounts to a representation to the appropriate government which is obliged to consider and dispose of it independently irrespective of reference to the Board. The same view had been taken by the Supreme Court in *Smt. Gracy Vs. State of Kerala* and another, holding that even if representation is addressed only to the Advisory Board, instead of to the Central Govt. or also to the Central Govt., the Central Govt. is obliged to consider it independent of the opinion of the Advisory Board. The constitutional mandate in Article 22(5) was considered recently by a Constitution Bench of the Supreme Court in *K. M. Abdulla Kunhi v. Union of India*, in view of some conflict in earlier decisions regarding the Detaining Authority's obligation to consider the detenu's representation independently of the Advisory Board's report in this behalf. It was held :

"It is now beyond the pale of controversy that the constitutional right to make representation under clause (5) of Article 22 by necessary implication guarantees the constitutional right to a proper consideration of the representation. Secondly, the obligation of the government to afford to the detenu an opportunity to make representation and to consider such representation is distinct from the government's obligation to refer the case of detenu along with the representation to the Advisory Board to enable it to form its opinion and send a report to the government. It is implicit in clauses "(4) and (5) of Article 22 that the government while discharging its duty to consider the representation, cannot depend upon the views of the Board on such representation. It has to consider the representation on its own without being influenced by any such view of the Board. The obligation of the government to consider the representation is different from the obligation of the Board to consider the representation at the time of hearing the reference. The government considers the representation to ascertain essentially whether the order is in conformity with the power under the law. The Board, on the other hand, considers the representation and the case of the detenu to examine whether there is sufficient cause for detention. The consideration by the Board is an additional safeguard and not a substitute for consideration of the representation by the Government. The right to have the representation considered by the Government is safeguarded by clause (5) of Article 22, and it is independent of the consideration of the detenu's case and his representation by the Advisory Board under clause (4) of Article 22, read with Section 8(c) of the Act."

Keeping the aforesaid principles of law laid down by the Supreme Court in mind, let us now turn to the facts of the case in hand. In the present case before us, "the representation was made by the detenu to the Central Advisory Board (for short Board) on 5th December, 1994 when he was produced before it during the hearing. No representation was made by him either to the Detaining Authority or to the Central Government. It was submitted by Mr. P. R. Roy, learned Senior Advocate for the Respondents, with reference to the records, belatedly produced

before us during the close of the hearing, that the report of the Board dated 20th December, 1994, along with the representation, were received by the Department on 21st December, 1994. Unhappily for the Respondents, it would oddly appear from the records that the said representation of the detenu was not considered independently either by the Detaining Authority or by the Central Government, uninfluenced by the report of the Board dated 20th December, 1994. It would pretty clearly appear from the records produced before us that upon receipt of the aforesaid report of the Board dated 20.12.94. along with the representation of the detenu, on 21st December, 1994 a proposal was given by the Under Secretary (COFEPOSA), Sri Jamna Dass, on 29.12.94 as follows under para (4) of his note :-

"(4) In the light of the opinion of the Advisory Board and other materials the Central Government may :

(i) Confirm, the detention order in respect of Sri Pratic Kumar Sen ;

(ii) Fix the period of detention for one year w.e.f. 21.10.94."

On the same very day (29.12.94), on the proposal made by the aforesaid Under Secretary, the Detaining Authority, Sri K. L. Verma, "J.S., COFEPOSA," appears to have rejected the representation of the detenu by recording an order to the following effect:

"The representation is devoted of merits as brought out in para 3 of the notes of U.S. (J.D.) and deserves to be rejected."

The aforesaid order would indicate that the Detaining Authority was of the view that the representation of the detenu deserves to be rejected as the same is devoid of merits on the grounds made out in para 3 of the notes of the aforesaid Under Secretary, Jamna Dass (JD). The Detaining Authority clearly, therefore, did not consider the representation independently, on due application of his mind, but had simply rejected the representation of the detenu on the ground made out by the aforesaid Under Secretary in his aforesaid note. There is nothing in the aforesaid order of the Detaining Authority to indicate that he had himself considered the representation on his own on the materials on record. Nor, could he conceivably do so on the same very day the proposal of the said Under Secretary dated 29.12.94 was put up before him, having regard to the voluminous materials on record, including the grounds, which alone run to 103 pages. There could clearly, therefore, be no mistaking that the aforesaid Detaining Authority had rejected the representation of the detenu on 29th December, 1994 most casually and mechanically, without any independent application of mind.

6. The order of the Detaining Authority dated 29.12.94 on record would further clearly indicate that he had submitted the aforesaid proposal in para 4 of the notes of the aforesaid Under Secretary, Jamna Dass, to the Government for "approval". And, the Finance Minister, Monmohon Singh, appears (from the

records) to have "approved" the aforesaid proposal of the Under Secretary (COFEPOSA), Jamna Dass, by merely putting his dated signature on the note sheet on 12th January 1995. There is nothing in the record to indicate that the Central Government had considered the representation made by the detenu on due application of its mind. As noted, the Central Government appears to have merely "approved" the proposal in Para 4 of the Notes dated 29.12.94 of the aforesaid Under Secretary (COFEPOSA), Jamna Dass, proposing that the Central Government may (i) Confirm the Detention Order in respect of the Detenu, and (ii) fix the period of his detention for one year with effect from 21.10.94. "in the light of the opinion of the Advisory Board and other materials". By putting his dated signature on the Note Sheet on 12.1.95 the Finance Minister, Monmohon Singh, had merely approved the aforesaid proposal of the Under Secretary. With the aforesaid record, as it is, the Finance Minister could not be said to have considered the representation of the detenu by approving the aforesaid proposal of the aforesaid Under Secretary, as he did. Even assuming that the Detaining Authority and the Central Government had considered and rejected the representation of the Detenu on 29.12.94 and 12.1.95 respectively, none of them could be said to have considered the same independently on their own, without being influenced by the report of the Central Advisory Board; clearly amounting to violation of the safeguards guaranteed to the Detenu under the Constitution in view of the decisions hereinabove referred to.

7. Even most charitably assuming for the sake of argument that the representation of the detenu was considered by both the Detaining Authority and the Central Government, a point, amongst others, had seriously been pressed on behalf of the detenu that there had been undue delay on their part in considering his representation. Even though the Detaining Authority, Sri K. L. Verma, in paragraph 6 of his Affidavit-in-Opposition has furnished a list of dates as to how the matter had been dealt with by them, there is not the merest and faintest whisper therein as to when the representation of the detenu was considered and rejected by him (Detaining Authority), which seems significant and Observable. The implication appears to be immediately apparent and obvious.

8. As already indicated above, it was submitted on behalf of the Respondents that the report of the Central Advisory Board, along with the representation of the detenu, was received by the department on 21st December, 1994. The representation of the detenu was considered and rejected by the Detaining Authority and by the Central Government on 29.12.94 and 12.1.95 respectively, shortly after the receipt of the same from the Board on 21.12.94. It was sought to be submitted by Mr. Roy on behalf of, the Respondents that the Detaining Authority and the Central Government were not aware of the representation of the detenu prior to 21.12.94, since no representation was made by the detenu to any of the aforesaid two Authorities. There could, therefore, be no question of delay in considering the representation of the detenu either by the Detaining Authority or by the Central Government.

9. It would, however, oddly appear from the Proceedings of the Meeting of the Central Advisory Board held on 5th December, 1994 in the Customs House at Calcutta, on record, that the Department was represented there by seven Departmental Officers, including the aforesaid Under Secretary, C.E. I.B., Sri Jamna Dass. The aforesaid Proceedings of the Board dated 5.12.94 would further make clear that the Board had perused the entire record, including the representations of the detenu, and had discussed the case with the Officers of the Department. The said Departmental Officers present at the said meeting of the Board on 5.12.94, including the aforesaid Under Secretary (COFEPOSA), Sri Jamna Dass, must clearly, therefore, be held to have been aware of the detenu's representation on 5-12-94 itself. They could very well have taken steps for getting the said representation copies for consideration by the Detaining Authority and by the Central Government, if they so wished. But none of them had bothered to take any such step, and had shown no urgency in the matter.

10. Even accepting the submission of Mr. Roy that the Detaining Authority and the Central Government could not consider the representation of the detenu till its receipt from the Central Advisory Board on 21-12-94 (though not acceptable for the reasons already indicated), let us consider whether the so-called consideration and rejection of the representation of the detenu by the Detaining Authority and the Central Government on 29-12-94 and 12-1-95 respectively amounts to such delay which would be fatal to the continued detention of the detenu. Mr. P.R. Roy had sadly submitted in this context that in the absence of any provision either in the Constitution or in the COFEPOSA Act providing for consideration of a representation by a detenu by the Detaining Authority and by the Central Government within any specified period it could not be said that there had been any delay on the part of any of them in considering and rejecting the representation of the detenu on 29-12-94 and 12-1-95, as they did. But to that we would at once note with a minute of dissent that the Supreme Court had held in *Rashid Sk. Vs. State of West Bengal*, that it is undoubtedly true that neither the Constitution nor the Act expressly provides for consideration of a detenu's representation by the State Government within any specified period of time. The constitutional requirement of expeditious consideration of detenu's representation by the State Government has however, been spelt out by the Court from clause(5) of Article 22 of the Constitution. This clause reads :

"22(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."

11. The use of the words "as soon as may be" is important. It reflects the anxiety on the part of the framers of the Constitution to enable the detenu to know the grounds on which the order of his detention has been made so that he can make an effective representation against it at the earliest. The ultimate

objective of this provision can only be the most speedy consideration of his representation by the authorities concerned, for, without its expeditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be defeated. This right to represent and to have the representation considered at the earliest flows from; the constitutional guarantee of the right to personal liberty, the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion. So also held by the Supreme Court in *Sk. Abdul Karim and Others Vs. State of West Bengal*, that it is necessarily implicit in the language of Article 22(5) of the Constitution that the Government to whom the representation is made should properly consider the representation, as expeditiously as possible. The right of representation thereunder is a valuable constitutional right and is not a mere formality. Now, whether or not the State Government has in a given case considered the representation made by the detenu as soon as possible, in other words, with reasonable dispatch, must necessarily depend on the facts and circumstances of that case, it being neither possible nor advisable to lay down any rigid period of time uniformly applicable to all cases. The Court has in each case to consider judicially on the available material if the gap between the receipt of the representation and its consideration by the State Government is so unreasonably long and the explanation for the delay offered by the State Government so unsatisfactory as to render the detention order thereafter illegal.

12. Let us now, therefore, examine the proposition of law relating to delayed consideration and disposal of representation of a detenu with reference to some of the judicial pronouncements. The Supreme Court in *Sk. Abdul Karim and Others Vs. State of West Bengal*, has held that the Government must consider the representation of a detenu immediately even if reference to the Advisory Board is made. In *Prof. Khaidem Ibocha Singh, etc. Vs. The State of Manipur*, it is held that unexplained delay of 17 days in passing orders on representation made by a detenu is by itself a sufficient ground for holding that the order of detention is illegal.

13. In *Sri Baidya Nath Chunakar Vs. State of West Bengal*, the Supreme Court has reiterated that the Government must show diligence in matters where citizen's freedom is involved. The appropriate Authority is bound to give an opportunity to the detenu to make a representation, but there should not be any delay in the matter of consideration, otherwise the result would be the violation of Article 22(5) of the Constitution. In *Debendra Nath Goswami Vs. The State of West Bengal*, the Supreme Court has observed that the representation of a detenu has to be considered by the Government with reasonable dispatch and promptitude realising the importance our Constitution attaches to an individual's right to personal liberty. This obligation can be meaningful only if such representation is also considered with the same sense of urgency with which the Authority is required to communicate the grounds and afford the earliest opportunity to the detenu. In *Atiar Rahman Vs. State of West Bengal*, it has been held that inordinate delay in the disposal of the detenu's representation

introduces an infirmity in his detention. According to clause(5) of Article 22 of the Constitution, 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. The fact that earliest opportunity has to be afforded to the detenu for making a representation against the detention order necessarily postulates that as and when the representation is made it should be dealt with promptly and without delay. In *Abdus Sukkur Vs. State of West Bengal*, it was held that undue delay on the part of the detaining authority in disposing of the representation would run counter to the underlying object of clause(5) of Article 22. The requirement about the giving of earliest opportunity to a detenu to make a representation against the detention order would plainly be reduced to a farce and empty formality if the authority concerned after giving such an opportunity pays no prompt attention to the representation which is submitted by the detenu as a result of that opportunity. It is therefore, essential that there should be no undue or unexplained delay on the part of the Detaining Authority in disposing of the representation made by the detenu against the detention order. In case the Authority concerned is guilty of such delay, the detention would be liable to be assailed on the ground of infraction of Article 22(5) of the Constitution. This is as it should be, because the matter relates to the liberty of a subject who has been ordered to be detained without recourse to a regular trial in a court of law. The Authority concerned has, therefore, to proceed strictly in accordance with law and any deviation from compliance with legal requirement cannot be countenanced. It has, accordingly, been laid down in a string of authorities that undue or unexplained delay in the disposal of the representation of a detenu against the detention order would introduce a serious infirmity in the detention. In a number of other decisions the Supreme Court has held that the appropriate Government is bound to consider the representation of a detenu expeditiously and independently of the decision of the Advisory Board, and the Detaining Authority has to take its decision without the least possible delay. It is now well settled that any unexplained delay in deciding the representation filed by the detenu amounts to a clear violation of Article 22 of the Constitution and is sufficient to vitiate the detention order. Such a representation is to be dealt with continuously until a final decision is taken and communicated to the detenu, as held in *Harish Pahwa Vs. State of U. P. and Others*, . The Supreme Court has held in a number of cases that the delay of 17, 19, 21, 24, 28, 29 and 33 days in considering the Detenu's representation by the Government was inordinate and vitiated the detention orders. It is established beyond any measure of doubt that the appropriate Authority is bound to consider the representation of a detenu as early as possible and is bound to consider the same as expeditiously as possible. The reason for immediate consideration of the representation is too obvious to be stressed as the personal liberty of a person is at stake, as held by the Supreme Court in the case of *Joy Narayan Sukul v. State of West Bengal*. Once a representation is made the detenu is entitled to the

representation being dealt with expeditiously. If there is some ex-facie delay, the obligation is on the State to explain that delay. There is no question of a specific allegation to be made in the petition except pointing out by placing facts that there has been a delay which ex-facie calls for an explanation and that obligation has to be discharged by filing a proper counter and explaining the delay. The courts have not been unduly strict in insisting that each day's delay must be explained but it is obligatory on the part of the Government to show by filing a counter-affidavit that it had acted promptly in dealing with the representation. What is essential is that the court must be satisfied that the Officers dealing with the representation were not indifferent to the urgency of the situation of the detenu being in jail.

14. Turning to the records produced before us, it appears (as submitted by Mr. Roy) that the report of the Central Advisory Board dated 20.12.94, along with the representation of the detenu, was received by the Department on 21.12.94. The Detaining Authority, Sri K. L. Verma, appears to have considered and rejected the representation on 29th December, 1994. The representation appears to have been rejected by the Central Government on 12th January, 1995. The Detaining Authority had thus taken time from 21.12.94 to 29.12.94 for considering the representation. The Central Government appears to have taken time from 21.12.94 to 12.1.95 for considering the representation of the detenu (leaving aside the period from 5.12.94 to 21.1.95 though the Departmental Officers were secure in the knowledge that a representation was made by the detenu before the Central Advisory Board on 5.12.94). Even though an Affidavit-in-Opposition has been filed by the aforesaid Detaining Authority on behalf of the Respondents, no explanation whatsoever has been offered for the aforesaid delay in considering the representation of the detenu by the aforesaid two Authorities. There is not the slightest explanation for the said delay. Even the rotating of the file from the aforesaid Under Secretary (COFEPOSA) to the Detaining Authority and from the Detaining Authority to the Finance Minister appears from the records to have taken unusually long time (from 21.12.94 to 29.12.94 and from 29.12.94 to 12.1.95 respectively) which reflects an attitude of casual indifference on the part of the concerned Authorities. The records produced do not disclose any compelling reasons for the aforesaid delay. No justification could be found from the records for the aforesaid delay ; and no explanation either is forthcoming for excusing the delay. In the circumstances, we are left with no option but to proceed on the basis that the Respondents have no explanation to offer for the delay in considering the representation of the detenu by the Detaining Authority and by the Central Govt. The Respondents in their Affidavit-in-Opposition have neither cared to set out the various steps taken to comply with the mandatory provisions of the Act. The aforesaid delay on the part of the Detaining Authority and the Central Government in considering the representation of the detenu clearly, therefore, remains wholly unexplained. That being so, the continued detention of the detenu clearly seems to us to be violative of Article 22(5) of the Constitution of India, and the detenu is,

therefore, entitled to be released.

15. In the view that we have taken on this challenge it is, therefore, unnecessary for us to consider any other point in this case. The petition is accordingly allowed. We set aside the order of detention of the detenu and direct that he be set at liberty forthwith.

M.G. Mukherji, J.

16. I agree fully with the views expressed by my learned brother, the Hon''ble Mr. Justice Arun Kumar Dutta on all the point traversed by the judgment except on the limited question as to whether or not the detaining authority-the Central Government did consider the representation of the detenu independently on a due application of mind. I am of the considered view that even though the Under Secretary gave a note pursuant to which the Central Government was to; confirm the detention order in respect of the detenu, the detaining authority seems to have on due application of mind rejected the representation of the detenu by recording an independent view of his own that the representation was devoid of merits even though he referred to certain portion of the notes as given by the Under Secretary. Just because there was a casual reference to the notes of the Under Secretary it does not speak of a non-application of mind by the detaining authority. I cannot persuade myself to agree with the view as expressed by my learned brother that the detaining authority simply rejected the representation of the detenu relying wholly on the note of the Under Secretary and by not exercising a due application of mind all by himself even though he agreed with some of the views as expressed by the Under Secretary in his note. It is not necessary that the detaining authority has himself to consider the representation of his own bereft of the notes which may already be there on the record given by the Under Secretary in the departmental file. The prevalent practice in the Ministry or in the Government departments is that while forwarding a file to the Superior Officer of the ultimate authority who takes a final decision, the subordinate officers may give own candid views which may be expressed in the shape of notes but simply because the ultimate authority may refer to some portion of the notes, it does not ipso facto follow that the ultimate authority has surrendered the exercise of his own opinion in favour of the views so expressed in the note by his subordinate officer.

17. Similarly when on the basis of notes as given by the Under Secretary, the Finance Minister Sri Monmohan Singh approved the proposal of the Under Secretary, COFEPOSA, by merely putting his dated signature on the note sheet on 12th January, 1995 we cannot come to any inference that there was no consideration whatsoever by the Hon''ble Finance Minister or for the matter of that of the Central Government. The Rules of Business permit such recording of views even by mere endorsement so exercised by signature,. We have taken into consideration in this regard the Government of India (Allocation of Business) Rules 1961 and the Government of India (Transaction of Business) Rules.

18. The Supreme Court reiterated the law On the point as far back in Bhut Nath Mete Vs. The State of West Bengal, that a speaking order need not be passed by the Government or by the Advisory Board while approving or arriving continuance of detention although a brief expression of the principal reasons is desirable, at least from the Advisory Board. The presumption u/s 114(c) of the Evidence Act leads us to a presumption that the official acts have been regularly performed.

19. The decision in Noor Salman Makani v. Union of India and Ors. reported in 1994 Criminal Law Journal 602 as cited by Mr. Promod Ranjan Roy is a case where the representation dated 15.10.92 was received by the Ministry's office on 22.10.92 and it was forwarded to the processing Unit on 23.10.92 who received it on 26.10.92. After offering the veiws the same was sent by speed post to the Ministry's Office on. 29.10.92 which was received by the Ministry's Office on 2.11.92. The representation was put up before the Joint Secretary on 3.11.92 and the same was rejected on 4.11.92. The Finance Secretary recommended the rejection of the representation on 5.11.92 and finally the Minister for Finance rejected the same on the same day and case dated 6.11.92 was issued to the detenu intimating him about the rejection. The Supreme Court quoted with approval the observation in Rama Dhonlu Borade v. V. K. Saraf, Commissioner of Police, reported in AIR 1980 SC 1861 : 1989 Cr LJ 2119 and observed that the Supreme Court in many cases reiterated that the right and obligation to make a consideration of the representation at the earliest opportunity is a constitutional imperative which could not be curtailed or abridged but in considering whether there was undue and unexplained delay, the facts in each case had to be examined. In Rama Dhonlu Borade v. V. K. Saraf, Commissioner of Police (ibid) the Supreme Court observed inter alia:

"True, there is no prescribed period either under the provisions of the Constitution or under the concerned detention has within which the representation would be dealt with. The use of the words "as soon as may be" occurring in Article 22 of the Constitution reflect that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable daley. What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention."

19a. If the court holds that the delay is unreasonable and the explanation is unsatisfactory the court can always examine the case with minute circumspection and on account of undue and unexplained delay, release the detenu.

20. Mr. Promod Ranjan Roy further cited before us a Division Bench Judgment of the Delhi High Court in Thameswar Singh v. Union of India and Ors., reported in 1979 Criminal Law Journal NOC 94-1979 Rajdhani LR 46 where it was observed

inter alia that the working of the officials is a part of the general system, of administration current in our country. The normal delays of administrative action have to be tolerated. It is only when delay is abnormal that it would be intolerable. There may be occasion when they may be dealt with in consideration of the representation. The delay by itself would not be sufficient ground for quashing the order of detention. It would certainly be one of the circumstances to be taken in consideration in assessing the validity of the detention order. However, no definite time could be laid down within which a representation should be dealt with except that it is a constitutional right of the detenu to have a representation considered as expeditiously as possible. The court would look into the facts and circumstances of each case and decide whether the detaining authority in exercise of its extraordinary power to detain a person without trial has discharged its duty with sufficient alacrity and without undue tardiness.

21. It was a case at last of a belated consideration by the Central Government and the delay not having been sufficiently explained by the respondents, we are both of the considered view that on account of the unexplained delay by the Central Government, there occasioned a clear violation of the mandatory safeguards guaranteed under the Constitution to a detenu under the Preventive Detention law which in the facts and circumstances of the present case is a detention u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act.

22. Even if I have expressed a different view on the question of the manner of consideration of the representation, it does not have any bearing whatsoever as regards our final decision to which we have both arrived at by our independent approach that the Central Government in fact made a belated consideration of the representation which was sent by the detenu rendering the continued detention invalid in accordance with law.

23. On all other points I agree with the ultimate conclusion drawn by my learned brother by way of inferences of facts analysed and conclusions on questions of law and I fully endorse the judgment of my learned Brother.

Let a plain copy of the order be made available to the learned Advocates of both the parties duly countersigned by the Asstt. Registrar (Court). Let the operative part of our order be sent to the Superintendent, Presidency Jail for immediate release of the detenu. Let it be so sent "by a Special Messenger at the cost of the detenu.

The prayer for stay of operation of this judgment is considered and rejected.