

(2000) 03 BOM CK 0073

In the Bombay High Court

Case No : Criminal Writ Petition No. 272 of 1999 and Criminal Writ Petition No. 282 of 1999

Sunil Ghate

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

Date of Decision : 23-03-2000

Acts Referred:

Bombay General Clauses Act, 1904 — Section 21
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 11, 3
Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 14, 8(1)
Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 — Section 12, 3

Citation : (2000) 5 BomCR 827 : (2000) BomCR(Cri) 827 : (2000) CriLJ 3709 : (2000) 4 MhLj 386

Hon'ble Judges : S.K. Shah, J;S.G. Mahajan, J;J.N. Patel, J

Bench : Full Bench

Advocate : M.R. Daga, Rajendra Daga, N.A. Badar, Karmali, Habibuddin Ahmed, Masood Khan and Junaid Ahmed, for the Appellant; Sharad Bobde, S.C., Bhushan Gawai, Govt. Pleader and Mrs. Vijaya Tahilramani, A.G. Mujumdar, S.Y. Deopujari, D.B. Yengal, P.G. Pathak and mrs. Indira Bodade Advs., for the Respondent

Judgement

J.N. Patel, J.—Heard learned Counsel for the parties.

These two writ petitions came up for hearing before the Division Bench of this Court at Nagpur. As there was divergence of opinions between different Benches of the Court on the point in issue, an order of reference dated 21st December, 1999, came to be passed and this is how the matter has been placed before us for consideration.

2. The order of reference dated 21st December, 1999, is as under :

1. We have heard the two petitions at length.

2. A common ground challenging the impugned orders of detention is taken by

the petitioner in these two petitions, which according to the petitioners, is sufficient to vitiate the orders, the ground being that Detaining Authority having failed to communicate to the detenu at the time of the service of the impugned order of detention that until the approval of the impugned order of detention by the State Government u/s 3(3) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (hereinafter referred to as the M.P.D. Act, 1981) i.e., for a period of 12 days from the making of the impugned order of detention the detenu had a right to make representation to the Detaining Authority himself and, therefore, it is submitted that the non-communication of the aforesaid right to the detenu by the Detaining Authority at the time of service of the impugned orders of detention has deprived the detenu of an earliest opportunity of making representation to the Detaining Authority himself and, therefore, the right of the detenu under Article 22(5) of the Constitution of India has been violated and the continued detention is rendered unconstitutional, null and void and, therefore, detention orders deserve to be quashed and set aside.

3. Our attention was drawn by the learned Counsel for the petitioners to the case of Kamlesh Kumar Ishwardas Patel v. Union of India and other, similar petitions dealt with by five Judges Bench of the Apex Court reported in 1995 (3) B.C.R. 69: 1995 S.C.C. (Cri.) 643, and it is submitted that the judgment in Kamleshkumar"s case squarely covers the issue.

4. The learned A.P.P. on the other hand, has placed before us the decision of Division Bench of this Court in the case of Smt, Dagadibai Anand Jadhav v. S.C. Malhotra and others 1998 B.C.R. (Cri.) 702 : 1998 All.M.R. 362 : 1998 CLJ 1376, in which the Division Bench of this Court was dealing with the case of detention under the M.P.D. Act, 1981 and was of the view that the Act never contemplated that the Detaining Authority has specific powers to revoke and it cannot be inferred that a representation can be made to it within the meaning of Article 22(5). Therefore, the representation to be made by the detenu, after the earliest opportunity was afforded to him can be only to the Government which has the power to approve or to revoke. Therefore, the question of any delay in deciding the representation does not arise (See Veeramani Vs. State of T.N., and Amin Mohammed Qureshi Vs. Commissioner of Police, Greater Bombay,), .

5. Contrary view has been taken by the Division Bench of this Court at Aurangabad, in the case of Subhash son of Bhaginath Patil @ Aute v. State of Maharashtra and another 1998 (1) BCC 267, wherein the Court was seized with a detention matter under the National Security Act, 1980 and having considered the cases of Kamleshkumar and Veermani (cited supra), held that---

"Even if we do not consider the question whether Detaining Authority could revoke detention order in first twelve days when the order is already approved by appropriate Government, detenu had a right, at least till it was approved by the State Government to make a representation to the Detaining Authority which he could not because of non-intimation of the order. This affects the validity of

the order."

6. If these two decisions are examined in the light of the Constitution Bench's (judgment of five Judges) in Kamleshkumar's case, in our humble opinion, the conflicting judgments of this Court as cited above, requires consideration of the issue by the larger bench and, therefore, we direct the Additional Registrar to place these two petitions before the Hon'ble the Chief Justice for constitution of a larger bench to consider the issue involved in these two petitions.

7. We are aware of the urgency in the matter as it is relating to a preventive detention and concerned with the liberty of a citizen and, therefore, the two cases deserve to be considered at the earliest,"

2A. Preventive detention is a mode of imprisonment resorted to where there appears good grounds for believing that the individual must be kept in custody to prevent him continuing or repeating his offences, or occasionally, to ensure that an individual does not interfere with evidence before his trial, and it is with such object in mind, the State exercises its power to impose an extended term of imprisonment if it is expedient to protect the public from the offenders for a substantial time.

3. Article 22 of the Constitution of India lays down as under :

"22(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 twenty-four 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), (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.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless---

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court, has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament

under sub-clause (b) of Clause (7); or

(b) such person is detained in accordance with the provision of any law made by Parliament under sub-clause (a) and (b) of Clause (7).

(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-

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of Clause 4;

(b) 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

(c) the procedure to be followed by an advisory board in an inquiry under, sub-clause (a) of Clause (4)."

4. We are more concerned about the procedural rights in the matter of preventive detention which has been expressly safeguarded by Clause (5) of Article 22 of the Constitution of India. A person detained under the laws of preventive detention has a right to be informed of the grounds of his detention and also a right to make a representation against the order of detention. Article 22(5) of the Constitution of India confers upon a detenu a right to make a representation to be considered by the appropriate Government. This by itself, contemplates that Clause (5) of Article 22 of the Constitution of India confers upon a detenu a right to make a representation against the order of his detention which, however, cannot be exercised by him, unless he is communicated the grounds upon which the order has been made. The right under Clause (5) of Article 22 is, therefore, twofold: (a) the authority making the order must, as soon as may be, communicate to the detenu the grounds on which the order of detention has been made and (b) the detenu must also be afforded "the earliest opportunity of making a representation against the order". Article 22(5) itself does not say to whom the representation will be made, or who will consider that representation. But the various laws enacted by the Central Government and the State Government in the matter specifically provide for the same.

5. In the present case, we are concerned with the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous

Person Act, 1981 (hereinafter referred to as the "MPDA Act"). Section 3 of the said Act lays down the power to make orders detaining certain persons and provides as under :---

3.(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if it is satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section :

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceed three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

6. A plain reading of section 3 of the MPDA Act would show that the power to make order detaining any person is vested with the State Government. If it is satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, it may make an order directing that such person be detained. Sub-section (2) of section 3 provides for delegation of such powers to a District Magistrate or a Commissioner of Police, and such delegation of powers to pass an order of detention has to be made by an order of the State Government in writing , directing that during such period, as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section. There has been a limitation placed on delegation of such powers in the proviso to sub-section (2) of section 3 for a period of three months, which could be extended from time to time by a period not exceeding three months at any one time.

7. Another restriction placed on the officer to whom such powers are delegated is provided in sub-section (3) of section 3 of the MPDA Act, which clearly records that if any order is made under this section by an officer mentioned in sub-

section (2), he shall forthwith report the fact to the State Government together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than 12 days after the making thereof, unless, in the meantime, it has been approved by the State Government. Therefore, what falls from these restrictions placed on the officer so empowered or delegated with the authority of detaining a person under the MPDA Act, is that the order of detention passed by such authority, if not approved by the State Government within the period of 12 days, shall not remain in force. To sum up, a detention order passed by a District Magistrate or a Commissioner of Police, who has been vested with such powers under sub-section (2) of section 3 of the MPDA Act, will have a life span of twelve days and would be subject to the approval by the State Government, and unless the State Government has, within the said period, endorsed and ratified the same, the order of detention would lapse after 12 days from the passing thereof. There is no such restriction placed on the powers of the State Government, if the order of detention is passed by it under sub-section (1) of section 3. In case, if the State Government has passed the order by virtue of section 10 of the MPDA Act, it shall, within three weeks from the date of detention of the person under the order, place before the Advisory Board constituted by it u/s 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in the case where the order has been made by an officer also the report by such officer under sub-section (3) of section 3; and then the further detention of the detenu would be subject to the opinion of the Advisory Board as contemplated u/s 12 of the said Act. In case the Advisory Board is of the opinion that there is no sufficient cause for the detention of the person concerned, the State Government shall revoke the detention order and cause the person to be released forthwith, as provided in sub-section (2) of section 12. Section 13 of the said Act provides that the maximum period for which any person may be detained, in pursuance of any detention order made under this Act, which has been confirmed u/s 12, shall be twelve months from the date of detention.

8. Therefore, what we find from the scheme of the MPDA Act is that once a person has been detained, by virtue of exercising powers u/s 3(1) by any officer mentioned in sub-section (2) thereof, i.e., a District Magistrate or a Commissioner of Police, and if the same is approved by the State Government within a period of 12 days, then it becomes an order of detention passed by the State Government, and for the said purpose, on approval of the order of detention passed by its officer under sub-section (2) of section 3, the State Government substitutes the Detaining Authority. Otherwise, in a case where a District Magistrate or a Commissioner of Police has passed an order of detention by exercising the powers conferred under sub-section (2) of section 3, it is the officer who passed the detention order, is the Detaining Authority, at least till the period of 12 days after making thereof, or until it has been approved by the State Government, whichever is earlier.

9. Section 8 of the MPDA Act complies with the mandate of Clause (5) of Article 22 of the Constitution of India and provides for grounds of order of detention to be disclosed to the person affected by the order, and reads as under :---

8. (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

Section 8, therefore, provides that the authority making the order of detention shall, as soon as may be, but not later than five days from the date of detention, communicate to the detenu the grounds on which the order has been made and shall afford him the earliest opportunity for making a representation against the order to the State Government. So, the restriction is placed on the part of the Detaining Authority to communicate the grounds of detention to the detenu within a period of five days from the date of detention. It clearly records that the obligation is casted on the authority making the order. Therefore, in case the authority making the order is a District Magistrate or a Commissioner of Police as contemplated in sub-section (2) of section 3 of the MPDA Act, then it is his obligation to comply with the requirements as provided u/s 8 thereof. Section 8 also provides that the Detaining Authority shall afford the detenu the earliest opportunity of making a representation against the order of his detention, to the State Government. It is contended before us that this clearly places a restriction on the power of the Detaining Authority, if it is not the State Government, from revoking the order of detention.

10. Insofar as revocation of detention order passed under the MPDA Act is concerned, the same has been provided in section 14 thereof, which reads as under :---

14. (1) Without prejudice to the provisions contained in section 21 of the Bombay General Clauses Act, 1904, a detention order may, at any time, be revoked or modified by the State Government, notwithstanding that the order has been made by an officer mentioned in sub-section (2) of section 3.

(2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order u/s 3 against the same person, in any case, where fresh facts have arisen after the date of revocation or expiry, on which the State Government or an officer, as the case may be, is satisfied that such an order should be made.

Therefore, if we examine the scheme of the MPDA Act in reference to the aforesaid provision as regards the authority who can pass an order of detention and revoke it, in the first instance, it is the State Government who, by virtue of

sub-section (1) of section 3 thereof can pass an order of detention and can also revoke or modify it by virtue of section 14 of the said Act. In case the order has been made by a District Magistrate or a Commissioner of Police, who has been vested with such powers under sub-section (2) of section 3, the said District Magistrate or Commissioner of Police, being a Detaining Authority and competent to pass an order of detention, may, if satisfied with respect to any person that with a view to prevent him from acting, in any manner, prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained. In this case, as the order has been made by the Detaining Authority other than the State Government, it is also the authority which can revoke or modify the detention order as provided u/s 14 of the MPDA Act, as sub-section (1) of section 14 clearly records that, without prejudice to the provisions of section 21 of the Bombay General Clauses Act, 1904, a detention order may, at any time, be revoked or modified by the State Government, notwithstanding that the order has been made by an officer mentioned in sub-section (2) of section 3. We, therefore, have no hesitation to hold that this provision clearly vests with the Detaining Authority powers to revoke or modify the detention order which has been made by an officer mentioned in sub-section (2) of section 3 of the MPDA Act. In addition to this, it also authorises the State Government to do so as soon as such detention order has been made by an officer mentioned in sub-section (2) of section 3 of the said Act.

11. While examining this issue, a Full Bench of the Apex Court in *Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others*, , also examined the said proposition and observed in paras 4 to 7 of the reported judgement, as under :---

"4. The question posed has to be considered in the light of the provisions relating to preventive detention contained in Article 22 of the Constitution as well as the provisions contained in the relevant statutes.

5. The Constitution, while permitting Parliament and the State Legislatures to enact a law providing for preventive detention, prescribes certain safeguards in Article 22 for the protection of the persons so detained. One such protection is contained in sub-clause (a) of Clause (4) of Article 22 which requires that no law providing for preventive detention shall authorise the detention of a person for a period longer than three months unless an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for the detention. The other safeguard is contained in Clause (5) of Article 22 which provides as under :

"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."

6. This provision has the same force and sanctity as any other provision relating to fundamental rights. See *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, . Article 22(5) imposes a dual obligation on the authority making the order of preventive detention : (i) to communicate to the person detained as soon as may be the grounds on which the order of detention has been made : and (ii) to afford the person detained the earliest opportunity of making a representation against the order of detention. Article 22(5) thus proceeds on the basis that the person detained has a right .to make a representation against the order of detention and the afore mentioned two obligations are imposed on the authority making the order of detention with a view to ensure that right of the person detained to make a representation is a real right and he is able to take steps for redress of a wrong which he thinks has been committed. Article 22(5) does not, however, indicate the authority to whom the representation is to be made. Since the object and purpose of the representation that is to be made by the person detained is to enable him to obtain relief at the earliest opportunity, the said representation has to be made to the authority which can grant such relief, i.e.. the authority which can revoke the order of detention and set him at liberty. The authority that has made the order of detention can also revoke it. This right is inherent in the power to make the order. It is recognized by section 21 of the General Clauses Act, 1897 though it does not flow from it. It can, therefore, be said that Article 22(5) postulates that the person detained has a right to make a representation against the order of detention to the authority making the order. In addition, such a representation can be made to any other authority which is empowered by law to revoke the order of detention. .

7. The learned Additional Solicitor General has urged that the representation envisaged by Article 22(5) has to be made to the Advisory Board referred to in Article 22(4) since the only right that has been conferred on the person detained is to have the matter of his detention considered by the Advisory Board. The learned Additional Solicitor General drew support from the words "making a representation against the or der" in Article 22(5) for this submission and contended that the use of the word "a1 in singular indicates that only one representation is to be made and that representation has to be made to the Advisory Board because that is the only authority contemplated under the Constitution which is required to consider such representation. We arc unable to give such a restricted meaning to the words "making a representation against the order" in Article 22(5) which is in the nature of a funda mental right affording protection to the person detained. As stated earlier, the object underlying the right to make a representation that is envisaged by Article 22(5) is to enable the person detained to obtain immediate relief. If the construction placed by the learned Additional Solicitor General is accepted relief may not be available to the detenu till the matter is considered by the Advisory Board and that would depend upon the time taken by the appropriate Government in refer ring the matter to the Advisory Board, Moreover reference is required to be made to the Advisory Board only in cases where the period of detention is going to be longer than

three months and it is not obligatory to make a reference to the Advisory Board if the period of detention is less than three months. In such a case the right to make a representation under Clause (5) of Article 22 would be rendered nugatory. A construction which leads to such a result must be eschewed,"

12. Therefore, in our opinion, merely because sub-section (1) of section 8 of the MPDA Act provides : ".....,..... and shall afford him the earliest opportunity of making a representation against the order to the State Government" , it does not exclude the Detaining Authority as contemplated under sub-section (2) of section 3 thereof, as section 3 clearly vests the power to make orders detaining certain persons with the State Government, which the State Government can very well delegate to a District Magistrate or a Commissioner of Police, if, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of such officer, and though such power delegated to the District Magistrate or the Commissioner of Police, if exercised, has a life span of 12 days from the making of the order of detention, unless in the meantime it has been approved by the State Government, at least for a period of 12 days, the said Detaining Authority as a delegate of the State Government has exercised powers vested with the State Government under sub-section (1) of section 3 of the MPDA Act. Therefore, we do not find any hesitation in arriving at a conclusion that mere use of the words "to the State Government" in subsection (1) of section 8 of the MPDA Act would not exclude the Detaining Authority from exercising its powers of revocation or modification of detention orders, which are expressly vested in it under sub-section (1) of section 14 of the said Act; more so, considering the observations of the Constitution Bench of the Apex Court in Kamlesh Kumar Ishwardas Pate's case (supra), wherein Their Lordships, while considering the safeguards contained in Clause (5) of Article 22 of the Constitution of India observed as follows:

"Article 22(5) does not, however, indicate the authority to whom the representation is to be made. Since the object and purpose of the representation that is to be made by the person detained is to enable him to obtain relief at the earliest opportunity, the said representation has to be made to the authority which can grant such relief, i.e., the authority which can revoke the order of detention and set him at liberty. The authority that has made the order of detention can also revoke it. This right is inherent in the power to make the order. It is recognized by section 21 of the General Clauses Act. 1897 though it does not flow from it. It can, therefore, be said that Article 22(5) postulates that the person detained has a right to make a representation against the order of detention to the authority making the order. In addition, such a representation can be made to any other authority which is empowered by law to revoke the order of detention .

13. The Apex Court then went on to consider some of its decisions relating to consideration of representation of the person detained, under Article 22(5) of the Constitution of India. In para-9 of the reported judgment Kamleshkumar's case,

the Apex Court referred to the case of *Sk. Abdul Karim and Others Vs. State of West Bengal*, wherein it was urged on behalf of the State Government that since the Advisory Board had been constituted to consider the case of the detenu and to report to the State Government whether there was sufficient cases for the detention, there was no obligation on the part of the State Government to consider the representation. Rejecting the said contention, what was said in that case is as follows:---

" The right of representation under Article 22(5) is a valuable constitutional right and is not a mere formality. It is, therefore, not possible to accept the argument of the respondent that the State Government is not under a legal obligation to consider the representation of the detenu or that the representation must be kept in cold storage in the archives of the Secretariat till the time or occasion for sending it to the Advisory Board is reached. If the viewpoint contended for by the respondent is correct, the constitutional right under Article 22(5) would be rendered illusory. Take for instance a case of detention of a person on account of mistaken identity. If the order of detention has been made against A and a different person B is arrested and detained by the police authorities because of similarity of names or some such cause, it cannot be reasonably said that the State Government should wait for the report of the Advisory Board before releasing the wrong person from detention."

The decision in *Abdul Karim's* case (supra) was reaffirmed by the Constitution Bench of the Apex Court in *Pankaj Kumar Chakrabarty and Others Vs. The State of West Bengal*, wherein it was observed as under:

"It is true that Clause (5) does not in positive language provide as to whom the representation is to be made and by whom, when made, it is to be considered. But the expressions "as soon as may be" and "the earliest opportunity" in that clause clearly indicate that the grounds are to be served and the opportunity to make a representation are provided for to enable the detenu to show that his detention is unwarranted and since no other authority who should consider such representation is mentioned it can only be the Detaining Authority to whom it is to be made which has to consider it. Though Clause 5 does not in express terms say so it follows from its provisions that it is the Detaining Authority which has to give to the detenu the earliest opportunity to make a representation and to consider it when so made whether its order is wrongful or contrary to the law enabling it to detain him."

The Apex Court has also considered its decision in *Amir Shad Khan and another Vs. L. Hminglana and others*, of the reported judgment *Kamleshkumar's* case, wherein it has been observed as under :---

"The right to make a representation against the detention order thus flows from the constitutional guarantee enshrined in Article 22(5) which casts an obligation on the authority to ensure that the detenu is afforded an earliest opportunity to exercise that right, if he so desires. The necessity of casting a dual obligation on

the authority making the detention order is obviously to acquaint the detenu of what had weighed with the Detaining Authority for exercising the extraordinary powers of detention without trial conferred by section 3(1) of the Act and to give the detenu an opportunity to point out any error in the exercise of that power so that the said authority gets an opportunity to undo the harm done by it, if at all, by correcting the error at the earliest point of time. Once it is realised that Article 22(5) confers a right of representation, the next question is to whom must the representation be made. The grounds of detention clearly inform the detenu that he can make a representation to the State Government, the Central Government as well as the Advisory Board. There can be no doubt that the representation must be made to the authority which has the power to rescind or revoke the decision, if need be."

Thus, concluding the discussion, the Apex Court went on to make the following observations as reported in para 14 of its judgment in Kamleshkumar's case:

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

14. In Kamlesh Kumar Ishwardas Patel's case (cited supra), the Supreme Court was considering the contentions of the detenus under the COFEPOSA Act and PIT NDPS Act, and while comparing the provisions of the COFEPOSA Act and PIT NDPS Act with those of the National Security Act, 1980 as well as earlier preventive detention laws, namely, the Preventive Detention Act, 1950 and the Maintenance of Internal Security Act, 1971, observed in paras 18 to 22 as under:---

" 18. Section 3 of the PIT NDPS Act is on the same lines as section 3 of the COFEPOSA Act. There is slight difference in sub-section (1) but subsections (2) and (3) are identical- Section 12 of the PIT NDPS Act makes provision for revocation of detention orders and is in the same terms as section 11 of the COFEPOSA Act.

19. The provisions in the COFEPOSA Act and PIT NDPS Act differ from those contained in the National Security Act, 1980 as well as earlier preventive detention laws, namely, the Preventive Detention Act, 1950 and the Maintenance of Internal Security Act, 1971 in some respects. Under sub-section (3) of section 3 of the National Security Act, power has been conferred on the District

Magistrate as well as the Commissioner of Police to make an order of detention, and sub-section (4) of section 3 prescribes that the officer shall forthwith report the fact of making the order to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and that no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government. In section 8(1) of the National Security Act it is prescribed that the authority making the order shall afford the person detained the earliest opportunity of making a representation against the order to the appropriate Government. Similar provisions were contained in the Preventive Detention Act, 1950 and the Maintenance of Internal Security Act, 1971. The COFEPOSA Act and the PIT NDPS Act do not provide for approval by the appropriate Government of the orders passed by the officer specially empowered to pass such an order u/s 3. The said Acts also do not lay down that the authority making the order shall afford an opportunity to make a representation to the appropriate Government.

20. u/s 3 of the COFEPOSA Act and the PIT NDPS Act an order of detention can be made by ---

- (i) the Central Government; or
- (ii) an officer specially empowered by the Central Government; or
- (iii) the State Government; or
- (iv) an officer specially empowered by the State Government.

21. In view of section 21 of the General Clauses Act the authority which has made the order of detention would be competent to revoke the said order. Section 11 of the COFKPOSA Act and section 12 of the PIT NDPS Act provide for revocation of such an order by authorities other than the authority which has made the order. Under Clause (a) of sub-section (1) of both these sections an order made by an officer specially empowered by the State Government can be revoked by the State Government as well as by the Central Government and under Clause (b) of sub-section (1) an order made by an officer specially empowered by the Central Government or an order made by the State Government can be revoked by the Central Government. This means that the Central Government has the power to revoke orders made by---

- (i) the State Government;
- (ii) an officer specially empowered by the State Government; and
- (iii) an officer specially empowered by the Central Government.

22. Similarly, the State Government has the power to revoke an order made by an officer specially empowered by the State Government. In other words, an order made by the officer specially empowered by the State Government can be revoked by the State Government as well as by the Central Government, an

order made by the State Government can be revoked by the Central Government and an order made by the officer specially empowered by the Central Government can be revoked by the Central Government. The conferment of this power on the Central Government and the State Government does not, however, detract from the power that is available to the authority that has made the order of detention to revoke it. The power of revocation that is conferred on the Central Government and the State Government under Clauses (a) and (b) of sub-section (1) of section 11 of the COFEPOSA Act and section 12 of the PIT NDPS Act is in addition to the power of revocation that is available to the authority that has made the order of detention. This is ensured by the words "without prejudice to the provisions of section 21 of the General Clauses Act, 1897 (10 of 1897)" in sub-section (1) of both the provisions."

15. The Supreme Court turned down the submissions that the officers specially empowered under the COFEPOSA Act and PIT NDPS Act cannot be regarded as the Detaining Authority and went on to observe in para 24 of the reported judgment as under :

"24.This contention fails to give effect to the words "without prejudice to the provisions of section 21 of the General Clauses Act, 1897(10 of 1897)" in sub-section (1) of section 11 of the COFEPOSA Act and section 12 of the PIT NDPS Act. As pointed out earlier, the use of these words preserves the power of the officer making the order u/s 21 of the General Clauses Act to revoke the order made by him. It cannot, therefore, be said that the conferment of the power of revocation on the Central Government and the State Government u/s 11 has the effect of depriving the officer making the order of detention of the power to revoke the order made by him. If that is so the officer who has made the order of detention is competent to consider the representation made by the person detained against the order of detention made by such officer."

16. Then after considering the cases of Ibrahim Bachu Bafan Vs. State of Gujarat and Ors, ; Amir Shad Khan's case (cited supra) and State of Maharashtra and Another Vs. Sushila Mafatlal Shah and Others, ; the Apex Court went on to observe in para 31 of the reported judgment Kamleshkumar's case as under :---

"31. With due respect, we find it difficult to agree with both the premises. Construing the provisions of Article 22(5) we have explained that the right of the person detained to make a representation against the order of detention comprehends the right to make such a representation to the authority which grant such relief i.e. the authority which can revoke the order of detention and set him at liberty and since the officer who has made the order of detention is competent to revoke it, the person detained has the right to make a representation to the officer who made the order of detention. The first premise that such right does not flow from Article 22(5) cannot, therefore, be accepted."

17. In the said decision of Kamleshkumar Ishwardas Patel's case, the Apex Court, while considering the provisions of the National Security Act, 1980,

observed in para-34 as under :---

"34.That appears to be the reason why section 8(1) envisages that the representation against the order of detention is to be made to the State Government."

18. We have carved out this discussion of the Apex Court in reference to the National Security Act, 1980 in order to emphasise that the delegation of power to a District Magistrate or a Commissioner of Police under the MPDA Act, and the schemes of the National Security Act and the MPDA Act appear to be pan materia. The emphasis is on the following observation:

"This would show that it is the approval of the State Government which gives further life to the order which would otherwise die its natural death on the expiry of twelve days after its making. It is also the requirement of section 3(4) that the report should be accompanied by the grounds on which the order has been made and such other particulars as, in the opinion of the said officer, have a bearing on the matter which means that the State Government has to take into consideration the grounds and the said material while giving its approval to the order of detention. The effect of the approval by the State Government is that from the date of such approval the detention is authorised by the order of the State Government approving the order of detention and the State Government is the Detaining Authority from the date of the order of approval. That appears to be the reason why section 8(1) envisages that the representation against the order of detention is to be made to the State Government,"

19. We, therefore, have no hesitation to hold that undisputedly the period between passing of the detention order by a District Magistrate or a Commissioner of Police under sub-section (2) of section 3 of the MPDA Act, till it has been approved by the State Government, which has to be within a period of 12 days, it is the District Magistrate or the Commissioner of Police, whosoever has passed the detention order, is the Detaining Authority and would be competent to revoke or modify the said order as the said right is preserved in its favour by virtue of section 14 of the said Act.

20. The case of Smt. Dagadibai Anand Jadhav Vs. Shri S.C. Malhotra, Commissioner of Police and others, , the Division Bench of this Court at Bombay did not subscribe to the argument, that there was a delay in deciding the representation made to the Detaining Authority which was the Commissioner of Police, urged by the Counsel for the detenu. The Bench was of the opinion that the argument is required to be stated only to be rejected. The Bench went on to observe as follows :

"The right to make the representation against a detention order flows from Article 22(5) of the Constitution of India. But that Article does not say to whom such a representation has to be made. Such a representation must be made to the authority who has power to approve, revoke or rescind the order. Under the present Act, any detention order made by the empowered officer shall cease to

be in force, if not approved within 12 days. Therefore, the Act never contemplated that the Detaining Authority has specific power to revoke and it cannot be inferred that the representation can be made to it within the meaning of Article 22(5) and, therefore, the representation to be made by the detenu, after the earliest opportunity was afforded to him, can be only to the Government which has the power to approve or to revoke. Therefore, the question of any delay in deciding the representation does not arise See: Veeramani Vs. State of T.N., ; and Amin Mohammed Qureshi Vs. Commissioner of Police, Greater Bombay, ."

21. At the time the aforesaid case of Smt. Dagdibai Anand Jadhav came to be decided by the Division Bench of this Court at Bombay, the Constitution Bench decision of the Apex Court in Kamleshkumar Ishwardas Patel's case was not considered and, therefore, in a subsequent decision of the Division Bench of this Court at Aurangabad in the case of Subhash Bhaginath Patil @ Aute v. State of Maharashtra and another 1998(1) Bom Cri. Cas 267, this Court, while dealing with the detention matter under the National Security Act, 1980, after taking into consideration the law laid down by the Apex Court in Kamleshkumar Ishwardas Patel's case, took up the issue for decision, considering Veeramman's case so also Sushila Mafatlal Shah's case (both cited supra), and observed in paras 6 to 11 of the reported judgment as under :-

"6. Section 14 of the National Security Act, 1980 contains provisions similar on the lines as contained in section 11 of the COFEPOSA Act. However, there is some difference in both these Acts. So far as the future of the order passed by the officer specially empowered by the State Government in this behalf is concerned, sub-section (4) of section 3 of the National Security Act lays down that no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government. Therefore, the total life of the order of detention passed by the officer empowered by the State Government could be twelve days, unless it has been approved by the State Government, whereas there is no provision for automatic lapse of the detention order in the other statute (COFEPOSA Act). It was contended by Shri S.B. Talekar, learned Counsel appearing on behalf of the petitioner that the impugned detention order does not contain an intimation to the detenu that he has a right to make a representation to the Detaining Authority, i.e., the Commissioner of Police, Aurangabad and this lapse vitiates the detention order. The point contended was considered by the Supreme Court in various cases.

7. In answer to this, Shri A.M. Kanade, learned Public Prosecutor, placed reliance on the judgment of the Supreme Court reported in the case of Veeramani Vs. State of T.N., , to contend that right of representation under Article 22(5) is to make a representation to the appropriate Government and not to the Detaining Authority and, since the order passed by the officer specially empowered is only of temporary nature, it would be the State Government alone which would be

competent to consider this representation.

8. It is true that in Veeramani's case, cited supra, two Judges Bench of the Supreme Court held that Article 22(5) casts an obligation on the Detaining Authority to communicate to the detenu the grounds in order to afford to the detenu earliest opportunity of making a representation. The said Article does not say as to whom such a representation against detention order is to be made.

Question as to whom such a representation should be made depends on the provisions of the concerned detention statute and naturally such a representation must be made to the authority who has power to approve, revoke or rescind the decision,

9. Interpreting the provisions of the Tamil Nadu Act (the provisions of which are *pari materia* with the National Security Act so far as the point at issue is concerned), Supreme Court held that the Act never contemplated that the Detaining Authority has power to revoke and it cannot be inferred that the representation can be made to it within the provisions of Article 22(5). Supreme Court had also taken the same view which it took in Veermani's case. In *State of Maharashtra and Another Vs. Sushila Mafatlal Shah and Others*, . That case was also decided by two Judges Bench of the Supreme Court. However, the three Judges' Bench in *Amir Shad Khan and another Vs. L. Hmingliana and others*, had taken a contrary view and held that where an Officer of the State Government or Central Government had passed any detention order, on receipt of a representation if he is convinced that the detention needs to be revoked, he can do so. To resolve this difference of opinion, a group of matters was considered by the Constitution Bench consisting of five Judges in *Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others*, . Surveying the judicial pronouncements of different Benches of the Supreme Court and of Full Bench of the Bombay High Court, reported in the case of *Kamleshkumar Ishwardas Patel v. Union of India and others* 1995 (3) B.C.R. 69 ; 1994 M.L.J. 1669, the Constitution Bench ruled that section 11 of the COFEPOSA Act and section 12 of the PIT NDPS Act preserve power of the specially empowered officer to revoke the order that was made by him. This means that the officer does not go out of the picture after he has passed the order of detention. It must, therefore, be held that the officer specially empowered for the purpose continues to be the Detaining Authority and is not displaced by the Government concerned after he has made the order of detention. Therefore, by virtue of his being the Detaining Authority, he is required to consider the representation of the person detained against the order of detention. Supreme Court held that the decision in *Sushila Mafatlal Shah* (cited supra) holding that the representation against the order of detention is not required to be considered by such officer and it is only to be considered by the appropriate Government empowering such officer does not lay down the correct law. In paragraph 38 of the judgment. Supreme Court observed :

"Having regard to the provisions of Article 22(5) of the Constitution and the

provisions of the COFEPOSA Act and the PIT NDPS Act, the question posed is thus answered : Where the detention order has been made u/s 3 of the COFEPOSA Act and the PIT NDPS Act by an officer specially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation to the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so results in denial of the right conferred on the person detained to make a representation against the order of detention. This right of the detenu is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorised by a State Government and to the Central Government where the detention order has been made by an officer specially empowered by the Central Government, and to have the same duly considered. This right to make a representation necessarily implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with grounds of detention so as to enable him to make such a representation and the failure to do so results in denial of the right of the person detained to make a representation."

10 It was contended before us that at least for the first twelve days despite approval of the State Government, Detaining Authority would continue to have power to revoke the order passed by him and the order of detention by an officer appointed by the State Government will not merge in the approval order passed by the State Government, and, in the alternative, it was contended that at least for the first twelve days, the Detaining Authority would be competent to revoke the order if it is brought to his notice by a representation that the order needs to be revoked.

11 Even if we do not consider the question whether Detaining Authority could revoke detention order in first twelve days when the order is already approved by appropriate Government, detenu had a right, at least till it was approved by the State Government to make a representation to the Detaining Authority which he could not because, of non-intimation of the order. This affects the validity of the order."

22. The matter would have rested there if the attention of this Court was not drawn to the decision of another Bench of this Court at Bombay in Chandrakant Vithal Dalvi v. Shri R.D. Tyagi and others 1997 B.C.R.(Cri.) 353 : 1997 All.M.R. (Cri) 41, following the view taken by Division Bench of this Court at Bombay in the case of Sunil Kishore Patil v. Satish Sahney & others 1996(3) AH.M.R. 426, wherein taking into consideration the decision of the Supreme Court in Kamleshkumar Ishwardas Patel's case, it is observed in paras 8 to 13 as under :-

"8. In Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, the controversy before the Apex Court was whether a representation could be made to the officer specially empowered to issue a detention order under the COFEPOSA Act and PIT NDPS Act. In paragraph 34, the Apex Court held that

under the said Act, the very moment an order was made by an officer specially empowered to make it, it became operative and it did not require the approval of the State Government or the Central Government. It also held that it was implicit that such an officer had the power to revoke the detention order by virtue of the provisions contained in section 21 of the General Clauses Act, and since it had the power to revoke the detention order, it was also implicit that it had the power to consider a representation against the said detention order.

In the said decision, their Lordships expressly distinguished the provisions contained in PIT NDPS Act and the COFEPOSA Act with those contained in the National Security Act, 1980. Their Lordships observed that under the National Security Act by virtue of the provisions contained in section 3(4) of the Act unless the detention order made by an authority subordinate to the State Government was approved by the State Government within twelve days the order would die a natural death. They further held that this was the reason as to why section 8(1) of the said Act envisaged that a representation should be made against the detention order to the State Government.

9. Mr. Rajiv Patil cited before us the decision of the Apex Court reported in 1994 CLJ 2095 *Amin Mohammed Qureshi v. Commissioner of Police*, wherein in paragraph 3, the Apex Court considered the submission, viz., that the Detaining Authority did not specifically mention in the grounds that the detenu had also a right to make a representation to it besides making such representation to the Central Government and the State Government. In connection with the said submission, it also considered the decision of the Apex Court in *Amir Shad Khan and another Vs. L. Hmingliana and others*, . Repudiating the said submissions, Their Lordships observed that the said authority pertained to a case under COFEPOSA Act wherein unlike the National Security Act, there was no provision regarding the approval of the State Government within 12 days in respect of the detention order.

10 In our view, the decision reported in *Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others*, and *Amin Mohammed Qureshi Vs. Commissioner of Police, Greater Bombay*, squarely make it explicit that under the National Security Act, the power to revoke the detention order is vested with the State Government and not with the Detaining Authority sub-ordinate to it i.e. the Commissioner of Police or the District Magistrate.

11 Mr. Tripathi vehemently contended that Apex Court has considered the question as to whether within a period of 12 days, of the issuing of a detention order, the Commissioner of Police or the District Magistrate would have the power to revoke the detention order. He urged that the point agitated by him is not covered by them. In his contention, within twelve days, representation can be made to the Commissioner of Police or the District Magistrate. It would be presumptuous on our part to hold that when the Apex Court decided cases reported in *Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others*, and *Amin Mohammed Qureshi Vs. Commissioner of Police, Greater Bombay*, it

was oblivious to the question whether the Commissioner of Police or the District Magistrate could have revoked the detention within 12 days of its being issued. Accordingly, we are not impressed with this submission of Mr. Tripathi.

12 It may be that on a parity of reasoning the decision of the Apex Court in Navalshankar Ishwarlal Dave and another Vs. State of Gujarat and others, supports the contention of Mr. Tripathi but, we are not inclined to accept it, because it was not rendered in a case under the National Security Act and the ones rendered by the Apex Court and reported in J.T. 1995 3 639 (supra) and 1994 Cri.L.J. page 2095 (supra) have directly laid, down that the representation u/s 8(1) of the National Security Act would lie to the State Government.

13 Pursuant to the above discussion, in our judgment, the Commissioner of Police, respondent No. 1 had no authority to revoke the detention order and consequently no representation could be made to him in law. And that being so, respondent No. 1 was under no obligation to consider the representation dated 5th December, 1995 made by the detenu to him."

23. After giving our anxious consideration to the plethora of authorities cited before us, and considering the decision of the Constitution Bench of the Apex Court in Kamleshkumar Ishwardas Patel's case (supra), we are of the opinion that the view taken by the Division Bench of this Court at Bombay in the cases of Smt. Dagadibai Anand Jadhav Vs. Shri S.C. Malhotra, Commissioner of Police and others, ; Chandrakant Vithal Dalvi v. Shri R.D. Tyagi and others 1997 All.M.R. (Cri.) 41 and Sunil Kishore Patil v. Satish Sahney & others 1996(3) All.M.R. 426 is not correct. On the other hand, the view taken by the Division Bench of this Court at Aurangabad in the case of Subash Bhaginath Patil @Aute 1998 (1) Bom Cri Cas 267 and the one taken by the Division Bench of this Court at Nagpur in P. Ganesan Vs. A. Marimuthu, appears to be correct.

24. We find no difficulty in arriving at the conclusion that under the MPDA Act, if an order is passed under sub-section (1) of section 3 of the said Act by the officer to whom such powers of the State Government are vested by virtue of sub-section (2) of section 3 of the said Act, then from the date of passing of the order of detention till the same is approved by the State Government, he is the Detaining Authority who is vested with the power of revocation or modification of the said order, as contemplated u/s 14(1) of the said Act. We say so unhesitatingly on the basis of the authority of the Supreme Court in the case of Amanulla Khan Kudeatalla Khan Pathan v. State of Gujarat 1999 S.C.C.{Cri.) 1014, in which a similar question came for consideration before the Apex Court relating to preventive detention under the Gujarat Prevention of Anti- Social Activities Act, 1985, which is pari materia to the MPDA Act in our State. The Apex Court, after considering the case of Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, , has stated in para-6 of the reported judgment as under:-

"6. The next contention raised by the learned Counsel for the detenu is that even

though the representation was made to the Advisory Board yet the Detaining Authority was also duty-bound to consider the same as the Detaining Authority also could have revoked the order of detention and non-consideration of the representation by the Detaining Authority constitutes an infraction of Article 22(5) of the Constitution and in support of this contention reliance has been placed on the decision of this Court in *Kamleshwar Ishwardas Patel v. Union of India*. This contention to us appears to be based upon a misconception of the relevant provisions of the Act. Admittedly, the representation in question was made to the Advisory Board and not to the Detaining Authority. If a representation is made by the detenu to the authorised officer for revoking or modifying the detention order then it would be certainly his constitutional obligation to consider the same and pass appropriate orders thereon and non-consideration would tantamount to violation of constitutional rights to a detenu under Article 22(5). But if a representation is made to a specified authority and that specified authority in the given case is the State Government and Advisory Board considers the same and disposes of it, then at that stage the question of the Detaining Authority considering the said representation even though not addressed to it does not arise. If the Gujarat Prevention of Anti-Social Activities Act, 1985 is analysed it would appear that the legislature has circumscribed the powers of the Detaining Authority by providing that an order of detention would lapse after 12 days from the passing of the order unless the State Government has within the said period endorsed and ratified the same. Therefore, within the aforesaid period of 12 days, the Detaining Authority has the power of revocation which it can exercise before the State Government ratifies the same. But once the State Government approves the order of detention then on the same set of circumstances the Detaining Authority cannot revoke an order of detention. Though if subsequent circumstances change, the Detaining Authority may have the power of revocation in view of the provisions of the General Clauses Act. But when no representation is made to the Detaining Authority after the order of detention passed by it is approved by the State Government indicating new set of circumstances requiring the Detaining Authority to consider its representation, and on the other hand the representation is addressed to the Advisory Board, we see no requirement of law for that representation also be disposed of by the Detaining Authority and such non-disposal would amount to violation of the constitutional rights of the detenu under Article 22(5) of the Constitution-----."

25. In view of the clear dictum directly on the point in *Amanulla Khan's* case (*supra*) that, "within the aforesaid period of 12 days, the Detaining Authority has the power of revocation which it can exercise before the State Government ratifies the same but once the State Government approves the order of detention then on the same set of circumstances the Detaining Authority cannot revoke an order of detention. Though, if subsequent circumstances change, the Detaining Authority may have the power of revocation in view of the provisions of the General Clauses Act", there can be no hesitation to hold that the view taken by the Division Bench of this Court at Bombay in the cases of *Smt. Dagadibai Anand*

Jadhav Vs. Shri S.C. Malhotra, Commissioner of Police and others, ; Chandrakant Vithal Dalvi 1997 All.M.R.(Cri.) 41 and Sunil Kishore Patil 1996(3) All.M.R. 426 (all cited supra), cannot be accepted as correct authority on the point under reference.

26. Therefore, in our opinion, the Detaining Authority as contemplated under sub-section (2) of section 3 of the MPDA Act is competent to modify or revoke the order of detention till it remains in force, initially for a period of 12 days, unless, in the meantime, it has been approved by the State Government and thereafter in its capacity as a Detaining Authority, if subsequent circumstances change, by virtue of section 14 of the MPDA Act. The reference is answered accordingly.

27. Having answered the reference, it will not be out of place to observe that in case the Detaining Authority fails to inform the detenu of his right to make a representation against the order of detention, it would vitiate the order. In the case of State of Punjab v. Baldeosingh 1998(5) B.C.R. (S.C.)448 : 1999 S.A.R. (Cri.) 473 this right has been reiterated again by a Constitution Bench of the Apex Court, while considering the safeguards and protection provided u/s 50 of the Narcotic Drugs and Psychotropic Substances Act, 1984 (sic 1985), and went on to observe in para 25 of the reported judgement as under:-

"Requirement to inform has been read in by this Court in other circumstances also, where the statute did not explicitly provide for such requirement. While considering the scope of Article 22(5) of the Constitution of India and various other provisions of COFEPOSA Act and the NDPS Act as amended in 1988, a Constitution Bench of this Court in Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, , concluded:

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

28. In view of the above answer to the reference made to us, we would now direct the writ petitions filed by the detenues to be forthwith placed before the appropriate Bench for final disposal thereof, in accordance with law.

29. Directed petition to be placed before proper Bench.