
(1987) 05 DEL CK 0034

In the Delhi High Court

Case No : Criminal Writ Petition No. 65 of 1986

Vijaya Kumar Gujral

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 27-05-1987

Acts Referred:

Citation : (1988) CriLJ 1198 : (1988) 14 DRJ 14 : (1988) ILR Delhi 38 : (1988) 2 RCR(Criminal) 195

Hon'ble Judges : S. Ranganathan, J;H.C. Goel, J

Bench : Division Bench

Judgement

H.C. Goel, J.—In this writ petition under Art. 226 of the Constitution of India challenge is made to the order of detention dt. December 17, 1985 passed by the Administrator, Union Territory of Delhi, respondent 2, under S. 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short the COFEPOSA) with a view to preventing Vijay Kumar Gujral, petitioner, from smuggling gold into India and also from abetting him in smuggling of gold. In the grounds of detention it is stated that on February 5, 1985, five packages lying at the A.F. Godown in C.W.C. Import Cargo Unit, Gurgaon Road, New Delhi were examined by the customs officers in the presence of one Shri Mohd. Ali Abdi, Second Secretary, Somalia Embassy. On examination 200 gold biscuits were recovered. Shri Mohd. Ali Abdi confirmed that the contents of the five packages were as per the invoice. The packages had been imported by said Shri Abdi. Shri Abdi had appointed M/s Capital Refrigeration of which the petitioner is the sole proprietor as his indenting agent. The gold biscuits are alleged to have been imported concealed in the cooking range, washing machine and two porcelain flower vessels of the consignment by the petitioner in connivance with the exporter of Hongkong. Shri Abdi on demand could not produce any proof of the lawful import of the gold biscuits. They were accordingly seized under S. 110 of the Customs Act (for short "the Act"). Shri Abdi had received the air way bill on January 24, 1985. He then obtained an exemption certificate and handed over the papers to M/s Maydee & Co. Customs

Clearing Agents, along with the invoice. Shri Abdi also handed over one invoice No. CT002/85 dt. January 15, 1985 of M/s Time Polythene & Printing Manufacturer of Hongkong issued in his name to the petitioner. On the basis of the material as stated in the grounds of detention the order of detention was passed by the detaining authority. It is alleged that the petitioner had absconded since the day of the seizure of the contraband i.e. February 5, 1985. He appeared before the customs officers for the first time on May 27, 1985 in compliance to the summons served on him. He had been released on bail by this Court on that date i.e. on May 27, 1985.

2. The petitioner was detained on December 20, 1985 in pursuance of the order of detention dt. December 17, 1985 and the grounds of detention were served on him on December 24, 1985. Thereafter Shri M. L. Wadhawan, Additional Secretary to the Government of India, passed a declaration under S. 9(1) of the COFEPOSA on January 8, 1986. The petitioner made a representation to the detaining authority on January 13, 1986. The same was, however, rejected by the Administrator, Union Territory of Delhi and the same was conveyed to the petitioner vide memorandum dt. February 3, 1986. The petitioner then made a representation to the President of India on February 7, 1986 against the declaration under S. 9(1) of the COFEPOSA and prayed that the order of detention be revoked and he be set at liberty. This was impliedly rejected and the result was conveyed to the petitioner vide memorandum dt. February 17, 1986. The petitioner filed the present writ petition on March 3, 1986. The petitioner was produced before the Advisory Board on May 7, 1986 to whom he submitted a representation in writing. The order of detention having been cleared by the Advisory Board, the Administrator passed the order confirming the detention order of the petitioner on June 3, 1986. The petitioner thereafter raised additional grounds by way of amendment of the writ petition challenging the order of detention and his continued detention.

3-4. Mr. Harjinder Singh, learned counsel for the petitioner, challenged the detention including the continued detention of the petitioner on diverse grounds. We would first of all deal with the ground on which the petition must succeed. This ground relates to the declaration dt. January 8, 1986 under S. 9(1) of the COFEPOSA as made by Shri M. L. Wadhawan, Additional Secretary, Ministry of Finance, Government of India, being duly empowered in that behalf and a copy of which was served on the petitioner. The petitioner made a representation dt. February 17, 1986 against the same addressed to the President of India. As per the return filed by respondents 1 and 2, this representation was also dealt with and disposed of by Shri M. L. Wadhawan acting as the Central Government, also being duly empowered in that behalf. A communication dt. February 17, 1986 in response to the said representation of the petitioner was sent by an Under Secretary to the Government of India, Ministry of Finance to the petitioner. In the representation the petitioner stated that no material has been disclosed to the petitioner in the declaration as made; that it was incumbent upon the "declaring authority" to have informed the petitioner of the material that had been taken

into consideration in arriving at the satisfaction. It was also stated that the declaration was otherwise vague. In the end it was requested that the order of detention passed against the petitioner be revoked and he be set at liberty forthwith.

5. Mr. Harjinder Singh, learned counsel for the petitioner, submitted that a right to make a representation against the declaration under S. 9 has to be deemed to be incorporated in the Statute, viz., COFEPOSA and that the same safeguards, namely, the safeguard under Art. 22(5) of the Constitution, as also the right to make a representation under S. 11(1) of the COFEPOSA are available to the detenu in the representation against his detention on the ground of challenge to the declaration under S. 9(1). That being so, according to the learned counsel, the said representation of the petitioner should have been dealt with and disposed of by the Central Government i.e. by the Minister, Ministry of Finance or by some officer superior to Shri M. L. Wadhawan who made the declaration under S. 9(1) or in any case, by some officer of the same rank as that of Shri M. L. Wadhawan but other than him. It was submitted that although Shri Wadhawan made the declaration under S. 9(1) in his capacity as an officer of the Central Government and he disposed of the representation of the petitioner against the declaration under S. 9(1), under the provisions of S. 11(1) in a different capacity, namely, as the Central Government, the disposal of the representation by the same officer by whose declaration under S. 9(1) the detention of the petitioner was extended, could not amount to real and due compliance of S. 11(1)(b). It was submitted that in a case in which a declaration under S. 9(1) is made by an officer of the Central Government, the representation against the detention of the detenu under S. 11(1) challenged on the ground of attack to the declaration under S. 9(1) must be disposed of by the same person or the authority which is competent to dispose of the representation under S. 11(1) as in a case in which the original order of detention is passed by such officer of the Central Government viz, the one who made the declaration under S. 9(1).

It was submitted that on the plain language of S. 11(1)(a) and (b) the person or authority which has to dispose of the representation under either of the two provisions has to be different from the person or the authority which passed the order of detention and this safeguard has to be strictly complied with to the benefit of the detenu. In a case in which an order of detention is passed by an officer of the Central Government, the disposal of the representation under S. 11(1)(b) against such an order of detention by the same officer, although acting as the Central Government, being so empowered in that behalf, cannot be considered to be a due compliance of the requirement of S. 11(1)(b) so far as the competence of the person to deal with the representation is concerned. That may at best be said to be a technical compliance of the requirement of the provision of the Act. However, in the matter of preventive detention, the procedural right of the detenu cannot be abridged and given a restricted and narrow meaning and that such impugned act viz. the disposal of the petitioner's representation by Shri Wadhawan cannot be justified in law. It was also pointed

out that in such a case the representation under S. 3(3) of the COFEPOSA read with Art. 22(5) of the Constitution itself has to be dealt with and disposed of by such officer and if the same officer is held as competent to dispose of the representation of the detenu under S. 11(1)(b) that would mean that the detenu's right of making representation to two different authorities or persons would stand curtailed and his right to make an additional representation under S. 11(1) shall in fact be taken away from him and such interpretation to S. 11(1)(b) would thus render the very provision nugatory and as such, such an interpretation is not permissible to be given to that provision.

Regarding the nature and scope of a representation against a declaration Mr. Harjinder Singh referred to a decision of a Division Bench of Bombay High Court in *Smt. Veronica Calteninho D'Souza v. Union of India*, Criminal Writ Petn. No. 14 of 1985, decided on November 27, 1985 (Reported in (1986) 2 Crimes 213, a copy of which was placed on the record of the case. It was not disputed by Mr. Bagai that a detenu has a right of representation against the declaration under S. 9(1) and that the representation u/s 11(1) is available to the detenu against his continued detention which is attacked in the ground of challenge to the declaration under S. 9(1). He, however, submitted that Shri Wadhawan had made the declaration under S. 9(1) in his capacity as an officer of the Central Government and he dealt with the declaration under S. 11(1)(b) as the Central Government, being so lawfully constituted and that this was a due compliance of the requirement of S. 11(1). It was submitted that there is nothing in S. 11(1) barring the officer of the Central Government who makes a declaration under S. 9(1) or even makes the original order of detention from disposing of the representation under S. 11(1) if that officer has been constituted as the Central Government for the purpose of dealing with and disposing of the representation under S. 11(1) and that rules of natural justice cannot be pressed into service in the matter of interpretation of a provision of the statute such as S. 11(1). In support of his contention Mr. Bagai referred us to a decision of a Division Bench of this Court in the case *Suresh Chand Chaudhari v. Union of India*, decided on February 15, 1985 (copy filed).

6. After hearing the two sides and on a careful consideration of the matter we are inclined to agree with Mr. Harjinder Singh. Mr. Bagai has in fact not been able to provide any answer to the said submission of Mr. Harjinder Singh that under the circumstances as explained above when an original order of detention is passed by an officer of the Central Government and the representation under S. 11(1) by the detenu is also disposed of by the same officer acting as the Central Government, the detenu shall be deprived of his right of making one of the two representations i.e. the right to make a representation under S. 11(1) shall be lost to him. Thus, it appears to us that in such a case the representation under S. 11(1)(b) must necessarily be dealt with and disposed of by an officer of the Central Government superior to the one who made the declaration and being duly empowered in that behalf by the Central Government or in any case by an officer of the same rank duly empowered in that behalf other than the officer

who made the declaration.

On the acceptance of the other view viz. that of technical compliance to the provision of Section 11(1) another startling result may follow, apart from the one as stated above. It may be that the Central Government empowers Additional Secretaries and Joint Secretaries of the Ministry of Finance to deal with and dispose of representations under S. 11(1) acting as the Central Government. In a case in which an order of detention is passed by the Additional Secretary of the Ministry of Finance, then, if the above contention of Mr. Bagai is accepted the Joint Secretary duly constituted as the Central Government shall be well within his right to dispose of the representation under S. 11(1) against the order of detention as passed by an Additional Secretary of the same Ministry and that will also have to be taken as due compliance of the requirement of S. 11(1). No doubt the Central Government may in its wisdom not place the representation under S. 11(1) in such a case before any Joint Secretary. However, the point which we are trying to make out is only to this extent that a technical compliance of a statutory requirement may not in every case be necessarily considered and held to be a due compliance of the provision. In the case of Smt. Veronica D'Souza 1986-2 Crimes 213) (Bom) (supra) it was held that even against a declaration under S. 9 the detenu has the Constitutional right to make an effective representation and the same principles apply to such a case, which has the effect of continuing the detention of the person detained pursuant to an order of detention under S. 3(1). It was also held that the detenu has a right to be afforded with the earliest opportunity of making an effective representation against the declaration under S. 9(1). In that case in the declaration the material as relied on for making the declaration was not disclosed as is the case before us. It was later told to the detenu that the same material as was before the detaining authority was considered by the declaring authority. The Court held that in such circumstances the non-furnishing of a fresh set of that material clearly affected the valuable right of the detenu to be afforded the earliest opportunity of making an effective representation against the declaration. The impugned declaration and the continued detention as a result thereof were quashed. This judgment thus supports one view that representation under S. 11(1) based on the challenge to the declaration under S. 9(1) has also to be disposed of on the same footing as a representation under S. 11(1) against an order of detention made under S. 3(1).

The decision of this Court in the case of Suresh Chand Chaudhary (supra) is of no help to the case of the respondents. In that case it was contended on behalf of the detenu that the declaration under S. 9(1) should have been made after giving an opportunity to the detenu to make a representation in regard to the same as the declaration was to affect his right. This contention was repelled by the Bench observing that rules of natural justice cannot be made applicable to such administrative acts as a declaration contemplated by S. 9 of the Act. The Bench went on to say that a valid law in regard to the obligation of the "appropriate government" having been made and the obligation having been

discharged by the appropriate government within the time specified by the amended law, no complaint can be made that the obligation could not be discharged except after giving due notice or prior hearing to the detenu. It was further observed that in any case post-decisional hearing was available to the detenu in the form of a representation which could always be availed of by the detenu and had been availed in that case. It is obvious that the Bench dealt with an entirely different kind of ground of attack to the declaration under S. 9(1) which ground is not available even for a challenge to an order of detention under S. 3(1). The basis for repelling that ground were also entirely different from the one as are relevant in dealing with a representation under S. 11(1) which is a post-decisional matter. It may also be pointed out here that this decision also takes note of the fact that there is a right of representation against a declaration under S. 9(1).

7. In view of what has been said above we hold that the representation of the petitioner under S. 11(1) insofar as challenge to the petitioner's continuance of detention in pursuance of the declaration under S. 9(1) on the ground that the declaration under S. 9(1) ought not to have been dealt with and disposed of by Shri Wadhawan himself ought to have been placed before an officer of the Central Government either superior to him or before an officer of equal rank viz. that of an Additional Secretary other than Shri Wadhawan and that the disposal of the said representation of the petitioner by Shri Wadhawan himself was not valid and proper disposal of the representation of the petitioner. The continuance of the petitioner in detention as a consequence of the declaration Therefore is liable to be quashed on this ground alone. The detention of the petitioner pursuant to the order under S. 3(1) but for the declaration would have ended on December 19, 1986. Continuance of his detention thereafter is thus bad in law and is liable to be quashed. In such a situation we may normally not have gone into the other grounds urged by Mr. Harjinder Singh. However we would like to deal with one of the other grounds as that was urged by him with equal vehemence as the ground already dealt with by us.

8. It was submitted that the petitioner, among others, had stated in his representation to the Advisory Board that his wife, Smt. Sheila Gujral, on whose statement recorded under S. 108 of the Act reliance was placed by the detaining authority in the grounds of detention, was present outside the room of the Advisory Board and that the Board was requested that her statement be recorded in rebuttal of the allegations made against him in the grounds of detention, but that the Advisory Board did not take any step to examine Smt. Sheila Gujral. It was submitted that in the grounds of detention it is stated that Smt. Sheila Gujral had stated in her statement under S. 108 of the Act that on the date of the alleged recovery of the contraband gold i.e. on February 5, 1985 her husband had left the house in the morning of February 5, 1985 and had not returned since then. It was pointed out that in the case presented by the sponsoring authority it was stated that the petitioner had absconded. According to Mr. Harjinder Singh had Smt. Sheila Gujral been examined by the Advisory

Board she would have explained the correct position namely, that the petitioner had gone to Nepal for medical treatment and that as such the contraband goods could not be delivered to the petitioner at his shop on February 5, 1985 which are alleged to have been delivered at his shop on that date and that that might have appealed to the Board. In any case the non-examination by the Board of Smt. Sheila Gujral despite the request of the petitioner and the fact that Smt. Sheila Gujral was present outside the room of the Advisory Board amounted to improper disposal of the petitioner's representation by the Board.

9. It is no doubt well-settled that the detenu has a right to lead evidence before the Advisory Board in rebuttal of the allegations made against him. It is, however, necessary that the detenu should keep his witnesses ready for examination at the appointed time and there is no obligation cast on the Advisory Board to summon them. We also agree with Mr. Harjinder Singh that it is wrong to say that the Court should go into the question as to whether the statements of the witness or witnesses sought to be examined by the detenu were material or relevant and that in case the Court comes to the conclusion that the witnesses were not material or relevant, the failure on the part of the Advisory Board to examine such witnesses would not amount to a violation of the said right of the detenu. It is not possible for the Court to anticipate as to what the witnesses would have deposed. This ground of the petitioner must, however, fail, as having regard to the facts and circumstances appearing on the record it is not possible to say if Smt. Sheila Gujral was brought by the petitioner before the room of the Advisory Board and that she was present there on May 7, 1986 when the Advisory Board met.

In support of his contention that Smt. Sheila Gujral was present outside the room where the Advisory Board met and further that a request for her being examined as his witness in rebuttal was made to the Board, the petitioner in his application under S. 482 Cr.P.C. seeking to raise this ground as an additional ground of the writ petition has only relied on the averment in that regard having been made by him in para 7 of his representation submitted to the Board at the hearing of the Board on May 7, 1986. This representation runs into eight typed pages and consists of 12 paras and a number of submissions were made in this representation. The petitioner was admittedly represented by two advocates before the Board on May 7, 1986 and oral submissions were made by them on behalf of the petitioner before the Board. There is nothing on the record to show and this is not even the case of the petitioner that the advocate of the petitioner who presented the case of the petitioner before the Board also made a request orally to the Board for examining Smt. Sheila Gujral as a witness of the petitioner or that it was brought to the notice of the Board that Smt. Sheila Gujral was present outside the room of the Board. Reliance has only been placed on a statement in that regard occurring in para 7 of the representation in writing as submitted to the Board on behalf of the petitioner.

Shri C. P. Tripathi, Deputy Secretary (Home), Delhi Administration, Delhi in his

affidavit dated August 7, 1986 as filed on the record of this case has stated that it was denied that Smt. Sheila Gujral was present outside the room of the Board on May 7, 1986 and that it was also denied that any request for her examination was made before the Advisory Board either on May 7, 1986 or on May 12, 1986 when the detenu's matter was heard by the Advisory Board. Apart from the said affidavit of Mr. Tripathi, affidavits of two officers of the customs department sworn on September 26, 1986 were produced on behalf of respondents 1 and 3 before us at the hearing of the writ petition. It was stated by Mr. R. M. Bagai, learned counsel for the respondents, that these affidavits had been prepared and were to be produced on the record at the stage of the preliminary hearing of the writ petition, but that the petitioner's counsel had agreed not to urge this ground in support of the writ petition and it was under these circumstances that the two affidavits were not placed on the record at that time. This position was not accepted by Mr. Harjinder Singh. We however allowed permission to Mr. Bagai to place the two affidavits on the record of the case and these two affidavits were accordingly taken on the record. These are the affidavits of Shri O. P. Chopra, Assistant Collector (Customs), I.G.I. Airport, New Delhi. and of Shri L. C. Sharma, Superintendent, Customs & Central Excise, New Delhi.

Shri O. P. Chopra in his affidavit has stated that he was present during the hearing before the Hon''ble Advisory Board on May 7, 1986 regarding the detention of the petitioner. It was a detailed hearing. Not only the detenu, but even his counsel were given full opportunity of hearing. It is further stated that in the course of hearing neither the detenu, nor his counsel asked for examination of any witness whatsoever and further that it was denied that any witness was present outside the room where the proceedings of the Board were held. Mr. L. C. Sharma has stated that he was present during the hearing before the Advisory Board on May 12, 1986. He has also made further averments identical to those as made by Mr. O. P. Chopra. We do not think any useful purpose will be served by permitting the petitioner to file an affidavit in rejoinder as prayed for at this stage. We shall Therefore, leave the affidavits out of consideration and proceed on the basis of other material on record.

We may here refer to an affidavit of Smt. Sheila Gujral dt. August 16, 1986 filed by the petitioner on the record of the case. Smt. Sheila Gujral in her affidavit, among others, stated that the representation by itself would show that the request for recording her statement was made and that the said representation was even read over before the Hon''ble Members of the Board by the counsel appearing on behalf of the petitioner on May 7, 1986. She has further stated that even on May 12, 1986 the deponent was present all through, but she was not called upon by the Members and thus the petitioner's right to lead evidence in rebuttal of the allegations against the petitioner had been violated .It is obvious that Smt. Sheila Gujral could not be present inside the room where the Advisory Board took its proceedings and as such she was not in a position to know and to depose as to what took place at the hearing of the Board. Thus her statement that the representation was read over by the counsel of the petitioner before the

Members of the Board is obviously without any basis and clearly appears to have been made by her with a view to help her husband and no value, can be attached to the same. In the circumstances of the case we referred to the record of the Advisory Board to find out if that could throw any light on the question as to whether any request was made by the petitioner or his counsel before the Board verbally on May 7, 1986 for recording of the statement of Smt. Sheila Gujral or whether the representation of the petitioner was read out by the counsel as a whole so that it was brought to the notice of the Board that there was a request of the petitioner made in the representation for recording the statement of Smt. Sheila Gujral or as to whether Smt. Sheila Gujral was in fact present outside the room where the Advisory Board conducted its proceedings.

The record of the Board shows that on May 7, 1986 the Board conducted proceedings in the case from 2.30 p.m. to 4.00 p.m. wherein the petitioner along with his two advocates was present and the case was heard. Similarly, on May 12, 1986 also the petitioner along with three advocates was present before the Board and the detenu and the representatives of the department were heard on that date. There is nothing in the record of the proceedings of the Advisory Board to indicate if any request was verbally made before the Advisory Board for the recording of the statement of Smt. Sheila Gujral either on May 7, 1986 or on May 12, 1986, or if she was actually present outside the room of the Board on either of the two days or if the representation in writing of the petitioner was read out verbatim by the detenu or any of his counsel before the Members of the Board. Thus from the material as referred to above, all that is clear and which is in fact admitted is that the petitioner had stated in one para of his representation as submitted to the Board on May 7, 1986 that Smt. Sheila Gujral was standing outside the Board room and that her statement should be recorded in rebuttal of the department's case. It is equally clear that the petitioner's case was argued by his counsel before the Board on the said two dates. The petitioner may also have been heard personally if he had anything to say in the matter. It, however, appears that no request as such was made to the Members of the Board to record the statement of Smt. Sheila Gujral, nor were they told that Smt. Gujral was present outside the Board Room for giving her statement, nor was the attention of the Members of the Board drawn to the averments in para 7 of the representation so that the Members of the Board had the occasion to consider the same and to take action thereon. It also cannot be said if Smt. Gujral was at all present outside the room of the Advisory Board on May 7, 1986 on which date alone a request for recording of her statement was made in the representation as submitted on that date.

It clearly appears to us that the petitioner only brought on the record the fact of his request regarding the recording of the statement of Smt. Gujral in para 7 of his representation and this matter was left at that only and the Members of the Board dealt with the representation of the petitioner and submitted their report on the basis of the submissions as made before them by the counsel for the petitioner and the representative of the department wherein the question of

recording of the statement of Smt. Gujral did not come up. If a detenu wants to examine any witness it is his duty to make a specific request to the Board in that regard. In a case in which a detenu appears before the Board without the assistance of a counsel and makes a request for the recording of statements of his witnesses in a written representation submitted to the Board and requests the Members of the Board to go through the same and to pass necessary orders, in such a case it will be the duty of the Advisory Board to go through the written representation of the detenu and take note of such request made therein. The Board then should find out if the witnesses can be produced by the detenu for recording of their statements and if that be so, the Board should then record their statements. However, in a case in which a detenu is represented by a counsel and the case of the detenu is argued by a counsel, then the Members of the Board would be justified in dealing with the representation of the detenu on the basis of the submissions as made by his counsel before them. In such a case the detenu would not have any legitimate grievance for the Board's non-recording of the statements of the witnesses unless the attention of the Board is drawn to such request by the detenu's counsel at the hearing of the representation, as in such a case the request shall be deemed to have been given up by the detenu. Thus in view of what has been said above we hold that the request of the petitioner as recorded in his representation for the recording of the statement of Smt. Gujral was not brought to the notice of the Board and that shall also be deemed to have been given up and the petitioner cannot be allowed to make capital out of the same.

10. Mr. Harjinder Singh submitted that it was enough for the petitioner to make a request in the above regard in his written representation and that the Members of the Board were duty bound to go through the same and to find out if Smt. Gujral was present outside the Board's room and to record her statement if she was found present, as according to the petitioner, she was actually present there. In support of this submission he referred to certain decisions. The cases referred to by Mr. Harjinder Singh are, however of no help to the case of the petitioner. In *Sunder Kumar Arora v. Union of India*, Cr.A. 55/86, decided by the Supreme Court on January 14, 1986, the detenu had presented his representation in writing to the Advisory Board wherein he had requested to be assisted by his friend who was waiting outside the room of the Board and also for examining his witnesses, who according to him were also waiting outside the Board's room. It was urged before the High Court that there was a failure on the part of the Advisory Board in not passing appropriate orders on these requests of the detenu. The High Court observed that there was nothing in the record of the Advisory Board to indicate that the detenu had orally made any request to the Board that he wanted his friend to represent his case before the Advisory Board or that the request contained in the written representation was brought to the notice of the Board. On this premise the High Court had rejected the said contention of the detenu. The Supreme Court held that the approach of the High Court that there was nothing on the record of the Board to show if the detenu

had made the above request orally to the Board and that being so, the non-allowing of the detenu's request for allowing his friend to assist him, did not amount to any failure on the part of the Board, was in the circumstances of the case a wrong approach of the High Court to the matter. We have not examined the case of the petitioner on such an approach viz. only by reference to the Board's records and the facts of the present case are materially different from the case of Sunder Kumar Arora (*supra*). As such this judgment is of no help to the case of the petitioner.

11. In the case *Shri Manik Krishan Mohta v. Union of India*, Crl. Writ Petn. No. 302/86, decided by Malik Sharief-ud-din J., on December 18, 1986 the petitioner had submitted a representation in writing to the Advisory Board wherein he requested the Advisory Board to allow his friend Shri Bhim Raj Soni who was waiting outside the Board's room to assist him and to record the statements of his two witnesses who were waiting outside the Board's room. These requests were not met with by the Board. The case of the Department before the High Court was that as regards the detenu's asking for the assistance of a friend, a similar request of his was earlier allowed and which was conveyed to him through the Superintendent, Presidency Jail, Calcutta, suggesting there from that in view of that the Board's allowing him the assistance of Bhim Raj Soni as requested by the detenu did not amount to an infringement of the right of the detenu. It was also stated that regarding the same as also regarding the non-examination of the witnesses of the detenu no such request was verbally made by the detenu before the Board, apart from making them in the representation as submitted to the Advisory Board in writing. The learned Judge observed that they were not proper defenses to justify the impugned action of the Advisory Board. It is obvious that this judgment is wholly distinguishable on facts from the present case.

12. In the end the continued detention of the petitioner is hereby quashed and we direct that he be set at liberty forthwith unless otherwise required by virtue of any other lawful order.

13. Order accordingly.