Sarabjeet Singh Mokha vs The District Magistrate, Jabalpur on 29 October, 2021

Author: D.Y. Chandrachud

Bench: B V Nagarathna, Vikram Nath, Dhananjaya Y Chandrachud

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1301 of 2021

Sarabjeet Singh Mokha ....Appellant

Versus

The District Magistrate, Jabalpur & Ors. .... Respondents

 PART A 1 By a judgment dated 24 August 2021, a Division Bench at the Indore Bench of the High Court of Madhya Pradesh rejected a petition under Article 226 of the Constitution of India challenging a detention order passed against the appellant under Section 3(2) of National Security Act 1980 1. The detenu is in appeal.

A Facts

2 The appellant is a Director of City Hospital, Jabalpur. On 10 May 2021, FIR

No. 252/2021 was registered at Police Station Omti, Jabalpur under Sections 274, 275, 308, 420 and 120B of the India Penal Code 1860 2; Section 53 of the Disaster Management Act 2005; and Section 3 of the Epidemic Diseases Act 1897. The appellant was arrested in connection with the FIR on 26 May 2021. After the investigation, a final report under Section 173 of the Code of Criminal Procedure 1973 3 was submitted on 6 August 2021. The allegation against the appellant is that in connivance with certain others, he procured fake Remdesivir injections which were administered to patients during the Covid-19 pandemic in order to make illegal profits thereby endangering the life of the general public. 3 On 12 May 2021, the appellant was detained in pursuance of an order of detention dated 11 May 2021 under Section 3(2) of the NSA, for a period of three months.

"NSA" "IPC" "CrPC" PART A 4 It is alleged that the Police Station of 'B' Division in District Morbi of Gujarat seized fake Remdesivir injections from a factory where they were manufactured and an FIR was registered in that regard. On 10 May 2021, the statement under Section 161 of the CrPC of a co-accused by the name of Devesh Chaurasia, who was running a pharmacy in the hospital owned by the appellant, was recorded to the effect that the appellant had procured fake Remdesivir injections without a bill. The appellant is said to have collected the injections through a person named Prakhar Kohli from Indore, who sent the cartons through a transporter called Amba Travels. The fake Remdesivir injections were stated to have been administered to 50 patients at the City Hospital on 30 April 2021. In his statement under Section 161 of the CrPC recorded on 10 May 2021, Prakhar Kohli stated that the appellant's son had on 21 April 2021 asked him to send the fake Remdesivir injections from Indore to Jabalpur. Prakhar Kohli was made to speak to the appellant in that connection. Prakhar Kohli is stated to have sent the fake injections through Amba Travels, and these injections were received at Jabalpur by the co-accused, Devesh Chaurasia, on behalf of the appellant.

5 On 11 May 2021, the Superintendent of Police, Jabalpur 4 made a request to the District Magistrate to take action against the appellant under the NSA. The SP reiterated the allegations against the appellant of having procured and administered fake Remdesivir injections to Covid-19 patients. The appellant is alleged to have procured 500 injections worth Rs.15 lakhs. The SP stated that the newspapers had "SP" PART A widely reported that there was a public outcry following the appellant's actions, which were likely to disturb the public order. Following the recommendation of the SP, the District Magistrate passed an order on 11 May 2021 under Section 3(2) of the NSA, detaining the appellant for a period of three months. The grounds of detention which were supplied to the appellant were to the following effect:

> (i) Spurious Remdesivir injections had been administered to patients which resulted in several untimely deaths;
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> (ii) The spurious injections had caused casualties which had been reported in the newspapers;
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> (iii) There was anger and resentment in the public in Jabalpur and its adjoining districts which may explode at any time;

(iv) The appellant had criminal antecedents but had been acquitted in certain cases due to his 'money power'. The criminal cases against the appellant were:

(a) FIR No. 252 of 2021 dated 10 May 2021, relating to the sale of spurious Remdesivir injections in the midst of the Covid-19 pandemic;

(b) Crime No. 400 of 2004 dated 23 May 2004 under Sections 395, 397, and 120B of the IPC, and Sections 25 and 27 of the Arms Act 1959 registered at Police Station Gorakhpur, in which the appellant was accused of attacking a person with deadly weapons. The appellant was acquitted in this case;

PART A

(v) City Hospital and Research Centre owned by the appellant had ordered 500 fake Remdesivir injections worth Rs.15 lakhs at the rate of Rs.3,000/- per piece by an invoice no. 0063 dated 20 April 2021, which were procured by means of fake bills from a manufacturing company situated in Gujarat against whom an FIR had been registered by the Gujarat Police;

(vi) A public agitation and outcry had spread across the city of Jabalpur with news items being published leading to an apprehension of a law-and-order situation in the area;

(vii) Fake injections had been procured from Indore and arrived in Jabalpur through Amba Travels in collusion with Devesh Chaurasia and the payment for these injections was made by one Sapan Jain;

(viii) In the wake of the Covid-19 pandemic, several cases were reported where the patients needed Remdesivir injections; and

(ix) Cheating patients for administering fake essential drugs is a punishable offence.

6 The order of detention was communicated to the appellant on 11 May 2021. The appellant was detained on 12 May 2021. The Government of Madhya Pradesh5 approved the order of detention on 13 May 2021 in terms of the provisions of Section 3(4) of the NSA. The State Government submitted a report in regard to the order of detention to the Government of India 6 on 13 May 2021. On 18 May 2021, "State Government" "Central Government" PART A the appellant submitted a representation 7 against the order of detention both to the Home Department of the State Government and the Ministry of Home Affairs of the Central Government. In terms of the provisions of Section 10 of the NSA, the State Government submitted the grounds for detention and the representation of the appellant to the Advisory Board constituted under Section 10. The Advisory Board submitted its report to the State Government under Section 11 on 15 June 2021 opining that there was sufficient cause for the detention of the appellant. 7 In its affidavit submitted before the High Court, the Central Government stated that it rejected the representation of the appellant on 24 June 2021, which was communicated to the Superintendent of the Jail and the State Government by a wireless message on 28 June 2021. Pursuant to the report of the Advisory Board,

the State Government approved the order of detention, under Section 12(1), on 29 June 2021.

8 On 29 June 2021, the SP recommended to the District Magistrate to extend the order of detention which had initially been passed for a period of three months. By an order dated 5 July 2021, the District Magistrate Jabalpur 8 extended the detention of the appellant by a further period of three months, to end on 12 November 2021 and forwarded the order of extension to the State Government. 9 Meanwhile, on 3 July 2021, the appellant instituted a petition under Article 226 of the Constitution to challenge the order of detention. The writ petition before "first representation" "District Magistrate" PART A the High Court was amended to challenge both- the original order of detention dated 11 May 2021 as well as the extension dated 5 July 2021. 10 On 15 July 2021, the State Government allegedly rejected the first representation of the appellant and extended the order of detention till 12 November 2021. The District Magistrate, by a letter dated 22 July 2021, informed the appellant, who was in custody, of the extension of the order of detention by the State Government. Another representation 9 of the appellant against the extension of his detention was rejected by the State Government on 5 August 2021 and was communicated to the appellant by the District Magistrate on the same day. 11 The writ petition of the appellant was dismissed by the High Court by the impugned judgment on 24 August 2021. The Division Bench of the High Court, in upholding the detention order, inter alia, observed that:

> (i) There was no undue delay in sending the order of detention to the State Government, as the order was passed on 11 May 2021 and was sent to the State Government on 13 May 2021;
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> (ii) A singular solitary act, of administering fake Remdesivir injections in the present case, is sufficient to attract Section 3 of the NSA;
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> (iii) The detention order as well as the affidavit before the High Court reflect the subjective satisfaction of the authorities in invoking Section 3 of the NSA; and "second representation" PART B
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> (iv) The District Magistrate had applied their mind to the SP's recommendation regarding the detention of the appellant, and the detention order was not passed mechanically, without reason.

12 Following the dismissal of the writ petition by the High Court, the appellant moved this Court in proceedings under Article 136 of the Constitution. Notice was issued by this Court on 20 September 2021.

13 During the pendency of the proceedings, by an order dated 30 September 2021, the order of detention has been extended for a further period of three months, ending on 12 February 2022.

B Submissions of counsel

14 Mr Sidharth Luthra, senior counsel appearing on behalf of the appellant, has

urged the following arguments:

(i) On 18 May 2021, the appellant's son had made a representation to the

District Magistrate, the State Government and the Central Government, against the detention order dated 11 May 2021:

> (a) The Central Government incorrectly averred before the High Court that the rejection of representation dated 24 June 2021 was communicated to the appellant by wireless message on 28 June 2021. The Central Government furnished a copy of their rejection of representation dated 24 June 2021, only in the form of an annexure in their counter affidavit PART B dated 26 July 2021 to the appellant's writ petition before the High Court; and
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> (b) The appellant's representation dated 18 May 2021 was forwarded by the District Magistrate on 20 May 2021 and received by the Central Government on 24 May 2021. Thereafter, the Central Government sought para-wise comments from the District Magistrate and the State Government on 2 June 2021. The Central Government's wireless message dated 28 June 2021 rejecting the representation by order dated 24 June 2021, directed the Jail Superintendent to forward the appellant's acknowledgement. The respondents do not have a copy of this acknowledgement since the appellant has never received the rejection of his representation;

(ii) The State Government also did not furnish a reply to the appellant's representation, allegedly rejected by it on 15 July 2021, except in its additional reply that was filed before the High Court on 12 August 2021;

(iii) This Court has held that a delay in considering a detenu's representation could be fatal to the detention order in Ankit Ashok Jalan v. Union of India10, Harish Pahwa v. State of Uttar Pradesh 11, Raj Kishore Prasad v. State of Bihar12 and Wasiuddin Ahmed v. District Magistrate, Aligarh 13. 2020 (16) SCC 127 1981 (2) SCC 710 1982 (3) SCC 10 1981 (4) SCC 521 PART B

(iv) The appellant was not served with a copy of the State Government's approval of the detention order dated 13 May 2021;

(v) Approval of the detention order and communication of the rejection of representation should be made forthwith, according to this Court's decisions in Biren Dutta v. Chief Commissioner of Tripura 14 and Khaja Bilal Ahmed v. State of Telangana; 15

(vi) The High Court of Madhya Pradesh in Anshul Jain v. The State of Madhya Pradesh 16 interpreted Section 3(5) of the NSA Act to hold that original record produced from the office of the District Magistrate should contain the exact date of dispatch and receipt by the Central Government

of the order of approval of the State Government along with grounds. In this case, the Central Government had to seek the aforementioned report from the District Magistrate;

(vii) The extension of the appellant's detention under the NSA on 15 July 2021 for alleged black-marketing of Remdesivir is illegal, since the Explanation to Section 3(2) of the NSA states that no order of detention can be made under it if the order can be made under Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act 1980;

(viii) The appellant has relied on this Court's decisions in Ghanshyam Upadhyay v. State of Uttar Pradesh17 and the Madhya Pradesh High Court's decision in AIR 1965 SC 596 2020 (13) SCC 632 2020 (16) SCC 811 PART B Tanveer Patel v. State of Madhya Pradesh 18 to argue that mere allegations of media outrage or purported public agitation cannot be the basis of detention. Furthermore, since an order under Section 144 of the CrPC was in force at the time, the ground of public order could not be justified for detention;

(ix) The appellant was acquitted by the trial court in Case Crime No. 400/2004 and Case Challan No. 547/2004 under Sections 395, 397, 120 of the IPC and Sections 25, 27 Arms Act at PS Gorakhpur. Yet, the detention order dated 11 May 2021 has relied upon this past antecedent without it having any live or proximate link with the present allegations. This stale reliance on past antecedents to justify detention is in breach of this Court's decisions in Khaja Bilal Ahmed v. State of Telangana,19 Sama Aruna v. State of Telangana,20 Ramesh Yadav v. District Magistrate Etah, 21 Lakshman Khatik v. State of West Bengal,22 Yumman Ongbi Lembi Liema v. State of Manipur 23 and Rameshwar Shaw v. District Magistrate Burdwan 24;

(x) The detention is based on a solitary action and ought to be set aside, as held by this Court in Ramveer Jatav v. State of Uttar Pradesh 25 and Vijay Narain Singh v. State of Bihar 26;

2020 SCC Online MP 2021 2020 (13) SCC 632 (2018) 12 SCC 150 (1985) 4 SCC 232 (1974) 4 SCC 1 (2012) 2 SCC 176 AIR 1964 SC 334 (1986) 4 SCC 726 (1984) 3 SCC 14 PART B

(xi) A mere apprehension of the grant of bail in the FIR cannot be the cause for detention, as held by this Court in PP Rukhiya v. Joint Secretary27. In any event, this apprehension is unfounded since the appellant has not applied for bail;

(xii) There is no substantial evidence of death/harm due to the allegedly fake Remdesivir injections procured by the appellant. As held by this Court in Pebam Ningol Mikoi Devi v. State of Manipur 28 and Rajendra Singh v. State of Uttar Pradesh 29 , statements recorded under Section 161 of the CrPC cannot be relied on to pass a detention order;

(xiii) In view of this Court's decision in Mohinder Singh Gill v. Chief Election Commissioner, New Delhi 30, the validity of the detention has to be seen on the grounds in the original detention order and cannot be supplemented by additional grounds;

(xiv) The extension of the order of detention on 15 July 2021 and 30 September 2021 is on vague and unjustifiable grounds. This violates the appellant's right to life and personal liberty under Article 21; and

(xv) The appellant had tested positive for Covid-19 and suffered a heart attack on 6 May 2021. Despite the appellant's critical health condition and medical advice, he was detained on 12 May 2021.

(2019) 20 SCC 740 2010 (9) SCC 618 2007 (7) SCC 378 (1978) 1 SCC 405 PART B 15 Mr Saurabh Mishra, Additional Advocate General 31 for the State of Madhya Pradesh, appearing on behalf of the respondents, has urged the following submissions in support of the validity of the detention order:

> (i) NSA being a complete code, provides several safeguards for the detenu that have been duly observed:
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> (a) The District Magistrate's detention order of 11 May 2021 was communicated on the same day to the appellant, in compliance with the outer-limit of five days under Section 8(2) of the NSA. The detention order was duly approved by the State Government on 13 May 2021, in compliance with Section 3(4);
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> (b) The State Government duly reported the appellant's detention to the Central Government on 13 May 2021, within the seven-day time limit under Section 3(5) of the NSA. In compliance with Section 10, the State Government also forwarded the detention order to the Advisory Board. On 15 June 2021, the Advisory Board examined the record, under Section 11, and noted that there was sufficient cause for detention. The State Government accordingly approved the detention order on 29 June 2021 under Section 12(1); and
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> (c) The appellant's representation was considered and decided by the Central Government and State Government in a timely fashion. The State Government forwarded the appellant's representation to the "AAG" PART B Central Government on 20 May 2021 and the service was complete on 1 June 2021. The Central Government sought para-wise comments from the District Magistrate on 2 June 2021. The District Magistrate forwarded comments on 10 June 2021 and they were received by the Central Government on 11 June 2021. After due consideration, the Central Government rejected the appellant's representation on 24 June 2021 and communicated it to him by a wireless message dated 28 June 2021. The State Government rejected the appellant's representation on 15 July 2021. In any event, the appellant has not urged the delay in consideration of its representation before the High Court;

(ii) It is well settled that the subjective satisfaction of the detaining authority is not justiciable, as held by this Court in Rameshwar Shah v. District Magistrate. Neither can the reasonableness of its satisfaction be questioned in a court of law, nor can the adequacy of the material be scrutinized. The

respondents relied on this Court's decisions in State of Punjab v. Sukhpal Singh 33 and Pebam Ningol Mikoi Devi v. State of Manipur34;

(iii) When an order of preventive detention is challenged, the detaining authority does not have to prove an offence or formulate a charge. The justification for an order of detention at best can be established on the basis of suspicion and (1964) 4 SCR 921 (1990) 1 SCC 35 (2010) 9 SCC 618 PART B reasonability, there being no criminal conviction on the basis of evidence, as held by this Court in State of Tamil Nadu v. Nabila 35;

(iv) The Covid-19 pandemic has resulted in devastating effects worldwide. The conduct of the appellant, as the owner of a specialty hospital selling spurious essential drugs, had caused a public outcry and a media outrage. Hence, in the subjective satisfaction of the detaining authority, the detention was required to prevent further sale of fake Remdesivir that would be prejudicial to public order;

(v) A valid order of detention can be based even on a solitary act of commission and omission, as held by this Court in Subhash Bhandari v. District Magistrate36 and David Patrick Ward v. Union of India37;

(vi) Even if the appellant's argument of stale reliance on the past antecedents or any other ground were to succeed, Section 5A of the NSA provides for severability of the grounds of detention and the rest of the order will sustain. This position in law has been accepted by this Court in Shafiq Ahmed v. District Magistrate38;

(vii) The present case is not a simple act of black marketing, but involves the purchase and administration of fake Remdesivir vials for Covid-19 patients. Hence, the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980 does not apply;

(2015) 12 SCC 127 (1987) 4 SCC 685 (1992) 4 SCC 154 (1989) 4 SCC 556 PART C

(viii) There was no violation of the provisions of Section 3(5) of the NSA since the State Government approved the order of detention on 13 May 2021 and immediately reported it to the Central Government; and

(ix) In the counter affidavit filed before the High Court, the Central Government has clearly stated that its order rejecting the representation dated 24 June 2021 was duly communicated.

16 The rival submissions need to be analyzed.

C Right to make a representation: Constitutional safeguards and legislative scheme of the NSA 17 Article 22 of the Constitution provides specific protections to undertrials and detainees in India. The framers of the Constitution, who were also our freedom fighters, were conscious of founding a polity that secured civil and political freedoms to its citizens. Dr B R Ambedkar, while proposing the article, noted the necessity of retaining the concept of preventive detention "in the present

circumstances of the country". 39 However, the discontinuity from the colonial regime lay in the introduction of strict countervailing measures that ensured that "exigency of liberty of the individual [is not] placed above the interests of the State" in all cases.40 18 The specific provisions relating to preventive detention under Article 22 were framed in the following terms:

> Speech of Dr. B.R. Ambedkar, Constituent Assembly Debates, Vol. IX, 9.141.38 (15/09/1949) Id.
>
> PART C "(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:
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> 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
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> (b) of clause (7); or
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> (b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).
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> (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.
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> (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.
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> (7) Parliament may by law prescribe—
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> (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).” (emphasis supplied) PART C

19 The text of Article 22 enshrines certain procedural safeguards, many of which are otherwise available in the CrPC. In elevating these safeguards to a constitutional status, the framers imposed a specific “limitation upon the authority both of Parliament as well as [State] Legislature [to] not abrogate” 41 rights that are fundamental to India’s constitution. Dr Bakshi Tek Chand, a conscientious dissenter to preventive detention in peaceful times, proposed a further safeguard in the provision of a right to make representation to the detenu,42 which was eventually accepted by the Constituent Assembly as a reasonable compromise 43 Therefore, preventive detention in independent India is to be exercised with utmost regard to constitutional safeguards.

20 This history of the framing of Article 22 is critical for the judiciary’s evaluation of a detenu’s writ petition alleging, inter alia, a denial of the timely consideration of his representation. While several arguments have been preferred by the appellant to argue for his release from preventive detention, we are confining our analysis to the most clinching aspect of this case - the failure of the Central Government and the State Government to consider his representation dated 18 May 2021 in a timely manner.

21 Article 22(5) of the Constitution mandates that (i) the authority making the order shall “as soon as may be” communicate the grounds on which the order has Speech of Dr. B R Ambedkar, supra note 37, 9.141.35; Speech of Alladi Krishnaswami Ayyar, Constituent Assembly Debates, Vol. IX, 9.141.229 (15/09/1949) Speech of Dr. Bakshi Tek Chand, Constituent Assembly Debates, Vol. IX, 9.141.181 (15/09/1949) Constituent Assembly Debates, Vol. IX (16/09/1949) PART C been made to the person detained; and (ii) the detaining authority shall afford to the person detained “the earliest opportunity of making a representation against the order” 44. Clause 5 of Article 22 incorporates a dual requirement: first, of requiring the detaining authority to communicate the grounds of detention as soon as may be; and second, of affording to the detenu “an earliest opportunity” of making a representation. Both these procedural requirements are mutually reinforcing. The communication, as soon as may be, of the grounds of detention is intended to inform the detenu of the basis on which the order of detention has been made. The expression “as soon as may be” imports a requirement of immediacy. 22 The communication of the grounds is in aid of facilitating the right of the detenu to submit a representation against the order of detention. In the absence of the grounds being communicated, the detenu would be left in the dark in regard to the reasons which have led to the order of detention. The importance which the constitutional provision ascribes to the communication of the grounds as well as the affording of an opportunity to make a representation is evident from the use of the expression “as soon as may be” in the first part in relation to communicating the grounds and allowing the detenu “the earliest opportunity” of availing of the right to submit a representation. Article 22(5) reflects a keen awareness of the framers of the Constitution that preventive detention leads to the detention of a person without Article 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.

PART C trial and hence, it incorporates procedural safeguards which mandate an immediacy in terms of time. The significance of Article 22 is that the representation which has been submitted by the detenu must be disposed of at an early date. The communication of the grounds of detention, as soon as may be, and the affording of the earliest opportunity to submit a representation against the order of detention will have no constitutional significance unless the detaining authority deals with the representation and communicates its decision with expedition. 23 The provisions of the NSA subscribe to the mandate of Article 22(5). Section 3(4) contains a requirement that once an order of detention has been made, the officer making the order must forthwith report the fact to the State Government, together with the grounds on which the order has been made and other particulars which have a bearing on the matter. No such order should remain in force for more than twelve days, unless it has been approved by the State Government. In the meantime, this period is subject to the proviso which stipulates that where the grounds of detention are communicated by the officer after five days (under Section

8) but not later than ten days from the date of the detention, sub-section (4) will apply as if the words fifteen days stands substituted for twelve days. Upon the State Government either making or approving the order under Section 3, it is under a mandate under Section 3(5) to report the fact to the Central Government within seven days, together with the grounds on which the order has been made and other necessary particulars.

PART C 24 Section 8 of the NSA contains statutory provisions governing the disclosure of the grounds of detention. Section 8 is in the following terms:

> "8. Grounds of order of detention to be disclosed to persons affected by the order.—(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than [ten days] from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government. (2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose." As noticed earlier, Article 22(5) of the Constitution provides for the communication of the grounds on which the order of detention has been made by the detaining authority "as soon as may be". Section 8(1) uses the expression "as soon as may be", qualifying it with the requirement that the communication of grounds should ordinarily not be later than five days and, in exceptional circumstances, for reasons to be recorded in writing not later than ten days from the date of detention. Section 8(1) also embodies the second requirement of Article 22(5) of affording to the detenu the earliest opportunity of making a representation against the order to the appropriate government.
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> PART C

25 Section 10 mandates a reference to the Advisory Board constituted under the provisions of Section 9:

> "10. Reference to Advisory Boards.—Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 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 case where the order has been made by an officer mentioned in sub-section (3) of section 3, also the report by such officer under sub-section (4) of that section." Under Section 10, the appropriate government has to place the grounds on which the order of detention has been made within three days from the date of detention of the person together with a representation, if any, made by the person affected by the order. The Advisory Board, under the provisions of Section 11, has to submit its report to the appropriate government within seven weeks from the date of detention order after considering the relevant materials. It may call for further information from the appropriate government, or any person, or even the person concerned if they desire an opportunity to be heard in person.

26 Action on the report of the Advisory Board falls within the ambit of Section 12:

> "12. Action upon the report of the Advisory Board.— (1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

PART C (2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of a person, the appropriate Government shall revoke the detention order and cause the person concerned to be released forthwith." 27 When the Advisory Board has reported that in its opinion there is a sufficient cause for the detention of a person, the appropriate government may approve an order of detention and continue the detention of the person for such period as it thinks fit. On the other hand, where the Advisory Board reports that in its opinion there is insufficient cause for detention, the appropriate government shall revoke the detention order and cause the person to be released forthwith. 28 Section14 provides for the revocation of detention orders in the following terms:

> "14. Revocation of detention orders.— (1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified,—
>
> (a) notwithstanding that the order has been made by an officer mentioned in sub-section (3) of section 3, by the State Government to which that officer is subordinate or by the Central Government;

> (b) notwithstanding that the order has been made by a State Government, by the Central Government.
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> (2) The expiry or revocation of a detention order (hereafter in this sub-section referred to as the earlier detention order) shall not [whether such earlier detention order has been made before or after the commencement of the National Security (Second Amendment) Act, 1984 (60 of 1984) bar the making of another detention order (hereafter in this sub-

PART C section referred to as the subsequent detention order) under section 3 against the same person:

> Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order."

29 In terms of clause (a) and (b) of sub-section (1) of Section 14, both the State Government and the Central Government have the power to revoke an order of detention.

30 We shall now proceed to analyse the facts of the present case. At the outset, we would like to note that our analysis is limited to the order of detention, the extension orders passed and the rejection of the first representation dated 18 May 2021 made by the appellant.

D Analysis

D.1 Delay in considering the representation

31 Mr Saurab Mishra, AAG has submitted that there was no unreasonable delay

in considering the representation of the appellant dated 18 May 2021, which was communicated by the District Magistrate to the State and Central Government on 20 May 2021. Thereafter, the State Government awaited the report from the Advisory Board, to which it had submitted the detention order and other information, and considered the comments of the District Magistrate, before formulating its opinion. PART D Following the report of the Advisory Board, the State Government rejected the representation of the appellant on 15 July 2021. Thus, the representation made by the appellant on 18 May 2021, was allegedly rejected after almost two months on 15 July 2021 by the State Government. The State Government's order rejecting the representation has not been filed before this Court. 32 The issue that arises for our consideration is whether the procedural rights of the detenu emanating from Article 22 of the Constitution and Section 8 of the NSA were sufficiently protected in the present case.

33 The requirement under Section 8 of the disclosure and communication of the grounds of detention and the affording of an opportunity to the detenu of making a representation against such an order to the appropriate government, is distinct from the reference to the Advisory Board. In Jayanarayan Sukul v. State of West Bengal 45 , a Constitution Bench of this Court laid emphasis on the expeditious consideration of the representation by the appropriate government. In that case, a representation was made by the petitioner against an order of detention passed under Section 3(2) of the Preventive Detention Act 1950. The petitioner made a representation to the State Government on 23 June 1969, which was rejected on 19 August 1969, as a reference regarding the detention order was pending before the Advisory Board. The Court held that there was an inordinate delay in considering the representation of the petitioner. Justice AN Ray (as the learned Chief Justice then was), speaking for the Bench, observed:

> (1970) 1 SCC 219 PART D "18. It is established beyond any measure of doubt that the appropriate authority is bound to consider the representation of the detenu as early as possible. The appropriate Government itself is bound to consider the representation as expeditiously as possible. The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities.

[...]

20. Broadly stated, four principles are to be followed in regard to representation of detenus. First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the Government will not send the matter to the Advisory Board. If however the Government will not release the detenu the Government will send the case along with the detenu's representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of release of the detenu the Government will release the detenu. If the Advisory Board will express any opinion against the release of the detenu the Government may still exercise the power to release the detenu." (emphasis supplied) PART D 34 A Constitution Bench in Haradhan Saha v. State of West Bengal 46 made a clear distinction between the right of the detenu to have their representation considered by the appropriate government and the power which is

entrusted to the Advisory Board. The Court observed:

> "24. The representation of a detenu is to be considered. There is an obligation on the State to consider the representation. The Advisory Board has adequate power to examine the entire material. The Board can also call for more materials. The Board may call the detenu at his request. The constitution of the Board shows that it is to consist of Judges or persons qualified to be Judges of the High Court. The constitution of the Board observes the fundamental of fair play and principles of natural justice. It is not the requirement of principles of natural justice that there must be an oral hearing. Section 8 of the Act which casts an obligation on the State to consider the representation affords the detenu all the rights which are guaranteed by Article 22(5). The Government considers the representation to ascertain essentially whether the order is in conformity with the power under the law. The Board, on the other hand, considers whether in the light of the representation there is sufficient cause for detention."

35 In Frances Coralie Mullin v. W.C. Khambra 47 a Bench of two judges of this Court reiterated the principles enunciated in the precedents of this Court by observing:

> "5. [...] We agree : (1) the detaining authority must provide the detenu a very early opportunity to make a representation, (2) the detaining authority must consider the representation as soon as possible, and this, preferably, must be before the representation is forwarded to the Advisory Board, (3) the representation must be forwarded to the Advisory Board before the Board makes its report, and (4) the consideration (1975) 3 SCC 198 ["Haradhan Saha"] (1980) 2 SCC 275 PART D by the detaining authority of the representation must be entirely independent of the hearing by the Board or its report, expedition being essential at every stage." At the same time the Court observed that "the time – imperative [for consideration of representation] can never be absolute or obsessive." This view was approved by a Constitution Bench of this Court in K.M. Abdulla Kunhi v. Union of India 48.

36 The distinction between the consideration of a representation by the appropriate government and by the Advisory Board is well settled. In Haradhan Saha (supra) the Court noted that the State Government, while the considering the representation, has to ascertain whether the order is in conformity with the power under the law, while the Board on the other hand, considers whether there is sufficient cause for detention in the light of the representation. 37 A two-judge Bench of this Court, in Harish Pahwa v. State of Uttar Pradesh 49, held that a representation by a detenu must be considered expeditiously and can be kept pending, only when seeking assistance is absolutely necessary. This Court was considering a detention order dated 16 May 1980, a representation by the detenu dated 3 June 1980 and the rejection of such representation on 24 June 1980, which was communicated to the detenu within two days. Justice AD Koshal held the unexplained delay as fatal to the detention by holding the following:

> "5. In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry (1991) 1 SCC 476 (1981) 2 SCC 710 PART D state of affairs in the matter of consideration of representations made by persons detained without trial.

There is no explanation at all as to why no action was taken in reference to the representation on June 4, 5 and 25, 1980. It is also not clear what consideration was given by the government to the representation from June 13, 1980 to June 16, 1980 when we find that it culminated only in a reference to the Law Department, nor it is apparent why the Law Department had to be consulted at all. Again, we fail to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith." 38 In another decision in the case of Mohinuddin v. District Magistrate, Beed and Others 50, the petitioner made two representations, one to the Advisory Board and the other to the Chief Minister. While the representation to the Advisory Board was considered, the representation dated 22 September 1986 was disposed of on (1987) 4 SCC 58 PART D 17 November 1986. Rejecting the submission of the State Government, Justice AP Sen, speaking for the two judge Bench, held:

> "6. [...] When the life and liberty of a citizen is involved, it is expected that the Government will ensure that the constitutional safeguards embodied in Article 22(5) are strictly observed. We say and we think it necessary to repeat that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of the procedural safeguards.
>
> [...]
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> 8. [...] The counter-affidavit filed by Shri S.V. Joshi, District Magistrate contains a bare denial in para that there was any unreasonable delay in the disposal of the representation. [...] It is accepted that the representation made by the appellant to the Chief Minister on September 22, 1986, forwarded by the Superintendent, Aurangabad Central Prison on the 24th, was received in the Home Department on

the 26th which in its turn forwarded the same to the detaining authority i.e. the District Magistrate on the same day i.e. 26th for his comments. The District Magistrate returned the representation along with his comments dated October 3, 1986 which was received by the government on the 6th. It is said that thereafter the representation was processed together with the report of the Advisory Board and was forwarded to the Chief Minister's Secretariat where the same was received on October 23, 1986. It is enough to say that the explanation that the Chief Minister was "preoccupied with very important matters of the State which involved tours as well as two Cabinet meetings at Pune on October 28 and 29, 1986 and at Aurangabad on November 11 and 12, 1986" was no explanation at all why the Chief Minister did not attend to the representation made by the appellant till November 17, 1986 i.e. for a period of 25 days. There was no reason why the representation submitted by the appellant could not be dealt with by the Chief Minister with all reasonable promptitude and diligence and the PART D explanation that he remained away from Bombay is certainly not a reasonable explanation. In view of the wholly unexplained and unduly long delay in the disposal of the representation by the State Government, the further detention of the appellant must be held illegal and he must be set at liberty forthwith." 39 In a recent decision of a three judge Bench of this Court in Ankit Ashok Jalan v. Union of India 51, Justice UU Lalit revisited the body of precedent on the subject and noticed the qualitative difference between the consideration of a representation by the appropriate government on the one hand and by the Advisory Board on the other. Justice UU Lalit, speaking for himself and Justice Indu Malhotra (with Justice Hemant Gupta dissenting 52) observed:

"16. These decisions clearly laid down that the consideration of representations by the appropriate Government and by the Board would always be qualitatively different and the power of consideration by the appropriate Government must be completely independent of any action by the Advisory Board. In para 12 of the decision in Pankaj Kumar Chakrabarty [Pankaj Kumar Chakrabarty v. State of W.B., (1969) 3 SCC 400 : (1970) 1 SCR 543] it was stated that the obligation on the part of the Government to consider representation would be irrespective of whether the representation was made before or after the case was referred to the Advisory Board. As stated in para 18, this was stated so, as any delay in consideration of the representation would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional. The contingency whether the representations were received before or after was again considered in para 29 of the (2020) 16 SCC 127 ["Ankit Ashok Jalan"] Justice Hemant Gupta's dissent is on the ground that once the representation has been referred to the Advisory Board by the appropriate government, it is a matter of prudence for the detaining authority to consider the view of the Advisory Board and any delay owing to this process is not prejudicial to the detenu.

PART D decision in Haradhan Saha [Haradhan Saha v. State of W.B., (1975) 3 SCC 198 : 1974 SCC (Cri) 816] ." Justice UU Lalit categorized the different stages for when a representation is received and disposed, with the underlying principle that the representation must be expeditiously disposed

of, at every stage:

> "17. In terms of these principles, the matter of consideration of representation in the context of reference to the Advisory Board, can be put in the following four categories:
>
> 17.1. If the representation is received well before the reference is made to the Advisory Board and can be considered by the appropriate Government, the representation must be considered with expedition.

Thereafter the representation along with the decision taken on the representation shall be forwarded to and must form part of the documents to be placed before the Advisory Board.

17.2. If the representation is received just before the reference is made to the Advisory Board and there is not sufficient time to decide the representation, in terms of law laid down in Jayanarayan Sukul [Jayanarayan Sukul v. State of W.B., (1970) 1 SCC 219 : 1970 SCC (Cri) 92] and Haradhan Saha [Haradhan Saha v. State of W.B., (1975) 3 SCC 198 : 1974 SCC (Cri) 816] the representation must be decided first and thereafter the representation and the decision must be sent to the Advisory Board. This is premised on the principle that the consideration by the appropriate Government is completely independent and also that there ought not to be any delay in consideration of the representation.

17.3. If the representation is received after the reference is made but before the matter is decided by the Advisory Board, according to the principles laid down in Haradhan Saha [Haradhan Saha v. State of W.B., (1975) 3 SCC 198 :

> 1974 SCC (Cri) 816] , the representation must be decided. The decision as well as the representation must thereafter be immediately sent to the Advisory Board.
>
> 17.4. If the representation is received after the decision of the Advisory Board, the decisions are clear that in such cases there is no requirement to send the representation to the PART D Advisory Board. The representation in such cases must be considered with expedition.
>
> 18. [...] it is well accepted that the representation must be considered with utmost expedition; and the power of the Government is completely independent of the power of the Advisory Board; and the scope of consideration is also qualitatively different, there is no reason why the consideration by the Government must await the decision by the Advisory Board. None of the aforesaid cases even remotely suggested that the consideration must await till the report was received from the Advisory Board." 40 At this stage, it would be also important to note the principle of making simultaneous representations by the detenu to the State and Central Governments, as enunciated by a two-judge Bench of this Court in Haji Mohd. Akhlaq v. District Magistrate 53 . In that case, the petitioner challenged the validity of his detention under the NSA on the

ground that there was undue delay on part of the State Government to forward his representation to the Central Government. The Court noted that the power which is conferred upon the Central Government to revoke an order of detention under Section 14(1), even if it is made by the State Government, would only have real meaning and content, if the detenu is entitled to make a representation to the Central Government. The failure of the State Government to comply with the request of the detenu for onward transmission of the representation of the Central Government deprives the detenu of a valuable right to have the detention revoked by the Central Government.

41 In the present appeal, the order of detention was passed on 11 May 2021 and the appellant was detained on 12 May 2021. The order of detention was approved 1988 Supp. SCC 538, 540, para 3 PART D by the State Government on 13 May 2021, upon which the State Government submitted the order of detention to the Central Government on the same day. On 18 May 2021, the detenu submitted a simultaneous representation before the District Magistrate, State Government and the Central Government. The representation was communicated by the District Magistrate to the State Government and the Central Government on 20 May 2021. According to the appellant, the records of the Department of Post and Telegraph indicate that service was effected on the Central Government on 24 May 2021. However, the Central Government, in its counter affidavit before the High Court, has submitted that it was received in the concerned section on 1 June 2021.

42 On 2 June 2021, the Central Government sought para-wise comments from the detaining authority. The District Magistrate forwarded comments on 10 June 2021 which were received on 11 June 2021. The representation made by the appellant dated 18 May 2021, along with the comments of the District Magistrate, were processed for consideration by the Union Home Secretary on 14 June 2021.

On 24 June 2021, the Union Home Secretary rejected the representation of the appellant, which is alleged to have been communicated by a wireless message to the detenu on 28 June 2021. There was a one-and-a-half-month delay on the part of the Central Government in considering the representation dated 18 May 2021 and rejecting the same only on 24 June 2021.

43 The appellant had also submitted a representation against the order of detention to the State Government on 18 May 2021. An additional reply was filed by PART D the District Magistrate on 12 August 2021 before the High Court. Paragraph 2 of the reply is extracted below:

> "2 That it is submitted that against the impugned order dated 11.05.2021, the petitioner Sarabjeet Singh Mokha submitted a representation on 18.05.201 (Annexnre RI .IP..) through Amarjit Mokha before the District Magistrate, State Government and the Central Government. The learned District Magistrate received the representation and communicated the same to the Secretary, Home Department, Govt. of M.P and to the Secretary, Ministry of Home Affairs, Govt. of India on

> 20.05.2021. It is humbly submitted that after consideration of the comments of the District Magistrate as also the decision dated 29.06.2021 taken by the Advisory Board, and thereafter the State Government also rejected the representation of the Petitioner /Detenue and communicated the same to the petitioner. Copy of the decision of the State Government is annexed herewith as ANNEXURE R-11." (emphasis supplied)

44 The above extract makes it abundantly clear that the District Magistrate having received the representation on 18 May 2021, communicated it to the State Government and the Central Government on 20 May 2021. The State Government rejected the representation, after the decision of the Advisory Board. The above extract from the affidavit, which was filed before the High Court, does not specify the date on which the representation was rejected by the State Government, but leaves no manner of doubt that until the representation was rejected by the Advisory Board on15 June 2021, no steps had been taken by the State Government to deal with the appellant's representation dated 18 May 2021. In the counter-affidavit of the District Magistrate before this Court as well as in the written submissions supplied by the AAG, it appears that the representation was rejected by the State Government on 15 July 2021. However, this Court has neither been provided with a copy of such PART D rejection or proof of communication of this rejection to the detenu, nor an explanation for the almost 60 day delay in considering the appellant's representation.

45 There is absolutely no reasonable basis for explaining the circumstances in which the representation dated 18 May 2021 was not considered by the State Government until after the Advisory Board had submitted its report on 15 June 2021. As we have indicated on the basis of the precedents of this Court, the consideration of the representation by the State Government is qualitatively different from the reference to the Advisory Board. This Court, Ankit Ashok Jalan (supra) had held that in State Government is not bound to wait on the Advisory Board's report before deciding the representation and must do so, as expeditiously as possible. In spite of awaiting the receipt of the report of the Advisory Board which was eventually issued on 15 June 2021, the State Government took another one month in arriving at a decision on the appellant's representation dated 18 May 2021. The State Government did not furnish any valid reasons for either of the two courses of action. 46 By delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of Section 8(1) of having the representation being considered expeditiously. As we have noted earlier, the communication of the grounds of detention to the detenu "as soon as may be" and the affording to the detenu of the earliest opportunity of making a representation against the order of detention to the appropriate government are intended to ensure that the representation of the detenu is considered by the PART D appropriate government with a sense of immediacy. The State Government failed to do so. The making of a reference to the Advisory Board could not have furnished any justification for the State Government to not deal with the representation independently at the earliest. The delay by the State Government in disposing of the representation and by the Central and State Government in communicating such rejection, strikes at the heart of the procedural rights and guarantees granted to the detenu. It is necessary to understand that the law provides for such procedural safeguards to balance the wide powers granted to the executive

under the NSA. The State Government cannot expect this Court to uphold its powers of subjective satisfaction to detain a person, while violating the procedural guarantees of the detenu that are fundamental to the laws of preventive detention enshrined in the Constitution.

D.2 Failure to communicate decision on the representation 47 Apart from the above position, there is a more fundamental reason for interreference with the order of detention- the failure to communicate the rejection to the appellant. The respondent could not furnish proof of the appellant's receipt of the Central Government's rejection of representation dated 24 June 2021. The wireless message dated 28 June 2021, issued from the Ministry of Home Affairs of the Central Government to the Home Department of the State Government, communicated the rejection of the representation submitted by the detenu. The SP of the Central Jail, Jabalpur was directed to serve a copy meant for the detenu. The State Government was also directed to inform the detenu. Though in the writ petition PART D as it was originally filed, there was no specific ground that the rejection of the representation was not communicated to the detenu, a specific ground to that effect was raised in the rejoinder filed before the High Court. Be that is it may, there is absolutely no material coming forthwith to indicate that the rejection of the representation by the Central Government was communicated to the detenu. The appellant has submitted that it was notified of the rejection of its representation by the Central Government, only when such rejection was furnished as an annexure to the Central Government's counter-affidavit before the High Court. The Central Government's wireless message dated 28 June 2021 directed the SP to collect the appellant's acknowledgement of receipt. However, the respondents were unable to furnish any proof of such acknowledgement. This lends credibility to the appellant's contention that he was never served with a copy of Central Government's rejection of his representation.

48 Similarly, the AAG has submitted that the State Government rejected the appellant's representation on 15 July 2021. However, with the exception of the rejection order forming a part of the annexures to the respondents' additional reply before the High Court, there is no proof of the appellant having knowledge of the rejection of its representation by the State or Central Government before he filed his writ petition before the High Court.

49 Article 22(4), in guaranteeing a right to make a representation to the detenu, understandably creates a corresponding duty on the State machinery to render this right meaningingful. In Section D.1 of the judgement, we have detailed this Court's PART D settled precedent on the detenu's right to make a representation and for it to be considered expeditiously- failing which the detention order would be invalidated. However, this right would ring hollow without a corollary right of the detenu to receive a timely communication from the appropriate government on the status of its representation- be it an acceptance or a rejection. 50 This Court, in considering claims of delay in the appropriate government's dealing with the representation of a detenu, has included delays in communication of such rejection. A two judge Bench of this Court in State of Punjab v. Sukhpal Singh 54 had noted that such a delay formed a part of the infraction on the detenu's constitutional right under Article 22(4). Justice K N Saikia, speaking on behalf of this Court, had held:

> "19. In the instant case we are satisfied that after receipt of the zerox copy from the Central Government, the State Government took only 13 days including 4 holidays is

> disposing of the representation. Considering the situation prevailing and the consultation needed in the matter, the State Government could to have been unmindful of urgency in the matter. But the facts remain that it took more than two months from the date of submission of the representation to the date of informing the detenu of the result of his representation. Eight days were taken after disposal of the representation by the State Government. The result is that the detenu's constitutional right to prompt disposal of his representation was denied and the legal consequences must follow." (emphasis supplied) (1990) 1 SCC 35 PART D

51 Similarly, a two judge Bench of this Court in Madan Lal Anand v. Union of India 55 considered an explanation for a two day delay in communicating a rejection of representation to the detenu in determining laches or negligence on the part of the detaining authority. It noted:

> "37. At the hearing of this appeal, the learned counsel for the respondents handed over to us a list of dates showing that a number of holidays intervened between one date and another and hence the apparent delay. It appears that the Collector of Central Excise & Customs received the representation for his comments on January 23, 1989 and handed over the same to the dealing officer for comments on January 24, 1989 and the Collector's comment was made on February 9, 1989. Between January 25, 1989 and February 8, 1989 a number of holidays intervened, namely January 26, 1989 (Republic day), January 28, 1989 and January 29, 1989 (Saturday and Sunday), and February 4, 1989 and February 5, 1989 (Saturday and Sunday). On February 9, 1989, it was sent to the Ministry of Finance (COFEPOSA Cell), New Delhi, and was received by that Ministry on February 10, 1989. February 11, 1989 and February 12, 1989 being Saturday and Sunday were holidays. On February 13, 1989, it was put up before the Joint Secretary, COFEPOSA, and was sent to the Minister of State (Revenue). The file was received back after the rejection of the representation and such rejection was communicated to the detenu on February 20, 1989. The two intervening dates, namely, February 18, 1989 and February 19, 1989 being Saturday and Sunday were holidays.
>
> 38. It is clear from the above statement that there was no laches or negligence on the part of the detaining authority or the other authorities concerned in dealing with the representation of the detenu. In L.M.S. Ummu Saleema v. B.B. Gujaral[(1981) 3 SCC 317 : 1981 SCC (Cri) 720] it has been observed that the time imperative can never be absolute or obsessive, and that the occasional (1990) 1 SCC 81 PART D observations made by this Court that each day's delay in dealing with the representation must be adequately explained are meant to emphasise the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release of the detenu. In the instant case, the detaining authority has explained the delay in the disposal of the representation made by the detenu and, accordingly, the order of detention cannot be rendered invalid on that ground." (emphasis supplied)

52 At this point, it would also be relevant to mention that this Court in Union of India v. Saleena 56, considered the issue of whether non-communication of the order rejecting the representation by the competent authority would invalidate or vitiate the order of detention. In the facts of that case, though the order of the competent authority rejecting the detenu's representation was not communicated to him, the Under Secretary had informed the detenu of the outcome of the decision. The Court observed that the procedural safeguards under Article 22(5) of the Constitution do not require a communication of the order rejecting the representation by the competent authority or incorporation of the order passed by the competent authority in the order of communication to the detenu. Without commenting on the merits of Saleena (supra), we note that the decision was limited to the issue framed which relates to whether an order rejecting the representation must be mandatorily communicated to the detenu by the competent authority. 53 In the present case, let alone the order rejecting the representation, even the outcome of the representation, that is whether it has been rejected or not, was not (2016) 3 SCC 437 PART D communicated to the appellant. Thus, the decision in Saleena (supra) does not find application in the facts of the present case.

54 The AAG has furnished no reasons for the failure to communicate the State Government or Central's government rejection of the appellant's representation. This failure in timely communication of the rejection of representation is a relevant factor for determining the delay that the detenu is protected against under Article 22(5). Based on the precedents of this Court, we hold that the failure of the Central and the State Government to communicate the rejection of the appellant's representation in a time-bound manner is sufficient to vitiate the order of detention.

E Conclusion

55 Accordingly, the order of detention is invalidated on two grounds: first, the

unexplained delay on part of the State Government in deciding the representation of the appellant and second, the failure of the Central and State Governments to communicate the rejection of the representation to the appellant in a timely manner. The basis of the extensions which have been issued on 15 July 2021 and 30 September 2021, finds its genesis in the original order of detention dated 11 May 2021. Once the order of detention stands invalidated, the consequential extensions would follow the same course. During the course of the proceedings, both parties have advanced submissions on the merits of the order of detention. In the view which we have taken, it is not necessary to consider these other grounds of PART E challenge since the appellant is entitled to succeed on the violation of his procedural rights under the Constitution and the statute.

56 For the reasons we have indicated above, the appeal is accordingly allowed. The impugned judgment of the High Court dated 24 August 2021 shall stand set aside. The order of detention dated 11 May 2021 and the extensions dated 15 July 2021 and 30 September 2021 shall accordingly stand quashed and set aside. 57 Pending application(s), if any, shall stand disposed of.

……J. [Dr Dhananjaya Y Chandrachud]
……J. [Vikram Nath]

.....J. [B V Nagarathna] New Delhi;

October 29, 2021