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answered in the judgment of the Supreme Court in the case of *Pradhan Sangh Kshetra Samiti* (supra).

2. With regard to clause (b) of Article 243-O and clause (b) of Article 243-ZG of the Constitution, we hold that the words “notwithstanding anything in this Constitution” appearing in the aforesaid two Articles will be read down as “notwithstanding anything in this Constitution” subject however to Article 226/227 of the Constitution. Accordingly, clause (b) of Article 243-O and clause (b) of Article 243-ZG would be read to mean as follows :

“No election to any Panchayat/Municipality shall be called in question except an election petition presented to such an authority and in such manner as is provided for by or in any law made by the legislature of a State, but this will not oust the jurisdiction of the High Court under Article 226/227 of the Constitution”.

3. The second question pertaining to grounds on which an election of a returned candidate to Gram Panchayat/Zila Parishad can be challenged under the Haryana Act and Haryana Rules, already stands answered in the Full Bench judgment of this Court in the case of *Smt. Anju vs. Addl. Civil Judge (Sr. Division, Pehowa, CWP No. 15310 of 1996* decided on 12th March, 1998.)

(29) The Registry is now directed to list these cases before the Motion Bench.

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**RNR.**

*Before K.S. Kumaran, J*

MANJIT SINGH DHILLON,—*Petitioner*

*versus*

UNION OF INDIA & OTHERS,—*Respondents*

*CrI. W.P. No. 1106 of 1997*

23rd January, 1998

*Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—Order of detention passed earlier—*

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*Detenu in judicial custody—Detention order served on detenu in judicial custody—Validity of detention order.*

(Abdul Sathar Ibrahim Manik v. Union of India 1992 S.C.C. (Criminal-I)T and Sarabjit Singh v. Union of India, 1996(3) RCR 291, distinguished)

*Held*, that the order of detention was passed when the petitioners were on bail, but, they were in judicial custody on 14th March, 1997, when the detention order was served on them. The fact that they surrendered to judicial custody just two days prior to the service of the order will not help the respondents. The order of detention which was passed on 11th March, 1996 remained unexecuted for nearly one year. Before serving the detention order on the detainees the detaining authority should have satisfied that there was still necessity to detain them in custody under COFEPOSA Act, since they were already in judicial custody. If the detaining authority fails to take note of the fact that the petitioners were already in custody and had not come to the conclusion that their detention under the COFEPOSA act was still necessary, then the order of detention cannot be sustained. (Para 26)

*Constitution of India, 1950—Art. 22—Representation filed by detenu—Without considering representation, order of detention confirmed—Rejection of representation on a later date—Validity of detention order.*

*Held*, that it was duty of the competent authority to have considered the second representation dated 9th May, 1997 and passed appropriate orders on the same before the order of detention was confirmed by the Central Government on 5th June, 1997. But this representation dated 9th May, 1997 has been rejected on 11th June, 1997 whereas the order of detention had already been confirmed on 5th June, 1997 itself. Therefore, on this ground also the order of detention is liable to be quashed.

(Para 30)

H.S. Mattewal, Sr. Advocate with Sukhbir Singh, Advocate, for the Petitioner.

D.D. Sharma, Advocate ARS Sidhu DAG, Punjab, for the Respondents.

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JUDGMENT

*K.S. Kumaran, J.*

(1) In view of the common questions of fact and law arising in these two petitions I am disposing of these petitions by means of this common order. Manjit Singh Dhillon is petitioner in CrI. W.P. 1106 of 1997 while his wife Gurmit Kaur Dhillon is the petitioner in CrI. W.P. No. 1201 of 1997, for setting aside the detention orders passed against these petitioners.

(2) The necessary allegations as taken from these petitions are as follows:—

(3) On 17th October, 1995 the residential premises as well as the business premises of the petitioner-Manjit Singh Dhillon were searched by the officers of the Enforcement Directorate, Jalandhar, under Section 37 of FERA, 1973, and Indian Currency amounting to Rs. 70,500 and certain documents were allegedly seized from the residential premises. It is further alleged that the personal search of Saudagar Singh also resulted in the recovery of certain documents. Gurmit Kaur was taken to the office of the Enforcement Directorate and she moved an application for bail and the same was granted by the Learned Additional Sessions Judge, Jalandhar,—*vide* his order dated 17th December, 1995. Manjit Singh Dhillon moved an application for anticipatory bail and was granted *ad interim* bail by order dated 5th January, 1996, which was later on confirmed on 22nd February, 1996 by this Court.

(4) The Joint Secretary to Government of India, Ministry of Finance passed the detention order dated 11th March, 1996 against these petitioners under Section 3(1) of the COFEPOSA Act on 12th March, 1997 the petitioners appeared before the Chief Judicial Magistrate, Jalandhar, moved an application for cancellation of the bail bonds and for taking them into custody in the case under Section 9(i)(b) and 9(i)(d) of the FERA, 1973 and they were remanded to judicial custody, cancelling the bail bonds.

(5) The order of detention was served upon the petitioners on 14th March, 1997. The petitioners made representation on 17th March, 1997 through the Superintendent Central Jail, Patiala, to the Secretary, Government of India and also to the Advisory Board for the revocation of the detention order. The petitioners received a memo dated 11th April, 1997 informing them that the

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representation was considered by the Joint Secretary and the same was rejected. Petitioner—Manjit Singh Dhillon has also alleged that the representation was not addressed to the Joint Secretary COFEPOSA, the second-respondent, but was addressed to the Secretary of Government of India under Section 11 of the COFEPOSA Act. No communication regarding consideration of the representation dated 17th March, 1997 by the Central Government was received.

(6) The petitioners were informed in Jail on 6th May, 1997 about the hearing by the Board on 9th May, 1997 at Delhi High Court. On 9th May, 1997 the petitioners were produced before the Advisory Board, and they made a representation dated 9th May, 1997 to the Advisory Board.

(7) Petitioner—Manjit Singh Dhillon has alleged that he was informed that the representation dated 9th May, 1997 was considered by the Central Government and was rejected, *vide* memo dated 11th June, 1997. Petitioner—Gurmit Kaur has alleged that she was informed that her representation dated 9th May, 1997 was considered by the detaining authority and the same was rejected. Another communication dated 5th May, 1997 was received by the petitioners on 10th June, 1997 signed by the Under-Secretary to Government of India, informing that the Central Government has confirmed the detention order for a period of one year from the date of detention i.e., 14th March, 1997.

(8) The order of detention dated 11th March, 1996 and the grounds of detention are illegal, unconstitutional and are liable to be set aside on the following grounds:—

- (i) The alleged prejudicial activity is dated 17th October, 1995 while the order of detention was passed on 11th March, 1996. There is no nexus between them;
- (ii) There is un-explained delay in the execution of the detention order. The detention order was executed on 14th March, 1997 after a delay of about 11 months though the petitioners were available;
- (iii) The petitioners were remanded to judicial custody by the Chief Judicial Magistrate, Jalandhar on 12th March, 1997 cancelling their bail bonds. On the date of execution of detention order the petitioners were in jail, which fact was not considered by the detaining authority on the

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date of the execution of the detention order. Thus, there is total non-application of mind of the detaining authority at the time of the execution of the order.

- (iv) The representation of Manjit Singh Dhillon dated 17th March, 1997 addressed to the Secretary, Ministry of Finance was not considered by the Central Government;
- (v) There is unexplained delay in considering the representation dated 17th March, 1997 by the Joint Secretary i.e. detaining authority;
- (vi) Further, the petitioners made a representation to the Central Government under Section 11 of the COFEPOSA Act addressed to Secretary, Government of India, Ministry of Finance, which has been considered by the Joint Secretary (COFEPOSA). The representation was not addressed to the Joint Secretary, COFEPOSA and that is independent right to make representation. The representation which was not addressed to Joint Secretary, COFEPOSA has been considered by him and thereby the right of the petitioners guaranteed under Article 22(5) read with Section 21 of the General Clauses Act has been violated;
- (vii) Petitioners made another representation dated 9th May, 1997 to the Advisory Board by which certain additional facts were brought to the notice of the Advisory Board, which was not considered by the Central Government and the detaining authority expeditiously. The same was rejected on 11th April, 1997 after an unexplained delay;
- (viii) The representations of the petitioners dated 9th May, 1997 were considered and rejected on 11th June, 1997 and 14th June, 1997, whereas, the Central Government has already confirmed the detention order dated 5th June, 1997. By the representation dated 9th May, 1997 the petitioners had requested to furnish the search operation warrants and the report made thereon, but, the same were not supplied which has caused prejudice to the petitioners in making an affective and purposeful representation.
- (ix) There is only one incident on which the detention order was passed, and there is no material from which the detaining authority could be satisfied that the

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petitioners will continue to engage in prejudicial activities in future.

(9) The respondents 1 to 3 filed the following reply in Criminal Petition No. 1106 of 1997:—

(10) Gurmit Kaur has in her own hand made a statement and confessed that Manjit Singh Dhillon is doing the business of Hawala payments. He received message from England for making payments in India to various persons whose relatives are settled abroad. Saudagar Singh has also made a statement that Manjit Singh Dhillon distributes payments to the persons in different villages whose relatives are residing abroad. Since the petitioner was absconding, the department made repeated efforts to serve the detention order upon the petitioner but could not succeed. The department got the Red Alert issued on 17th April, 1996 and initiated proceedings under Section 7 of the COFEPOSA Act, on 22nd June, 1996.

(11) The representation dated 17th March, 1997 was considered by Joint Secretary (COFEPOSA) (the detaining authority) and also Secretary (Revenue) on behalf of Central Government on 10th April, 1997, and memo rejecting representations was issued on 11th April, 1997 separately in respect of the representations considered by the Joint Secretary and Secretary, Revenue. Therefore, the allegation that the representation was not considered by Secretary, Department of Revenue is not correct.

(12) The detention order dated 11th March, 1996 is legal, constitutional and has been passed by the competent authority after the due application of mind. It is not liable to be quashed.

(13) The statement of Manjit Singh Dhillon could not be recorded immediately as he was absconding and his statement could only be recorded on 18th January, 1996 and 22nd January, 1996. There is nexus between the date of prejudicial activity and passing of the detention order. The detention order could not be executed as the petitioner was continuously absconding and it is wrong to say that the petitioner was available. The detention order could be executed only on 14th March, 1997 when the whereabouts became known. There was no undue or unexplained delay in execution of the detention order. Though, on the date of service of the order of detention the detainee was in jail, this fact was not brought to the notice of the detaining authority. The order of detention was with the police, which was served on 14-3-1997. It was the pressure built up by the department which

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persuaded the detainee to surrender. The detaining authority was aware that the detainee was on bail and, therefore, the detention order was passed with full application of mind.

(14) The representation dated 17th March, 1997 addressed to Secretary, Department of Revenue was received in the COFEPOSA Unity on 7th April, 1997 by their letter dated 1st April, 1997. The case was processed and submitted to A.D.G.(M) on 9th April, 1997 who considered the same and submitted it to the Secretary (Revenue) on the same day. Secretary (Revenue) considered and rejected the representation on 10th April, 1997. The memo intimating the detainee about the rejection of the representation was issued on 11th April, 1997. The allegation that there was no reply to the representation is wrong. It is denied that the representation was considered by Joint Secretary (COFEPOSA) the detaining authority, and not by the Secretary (Revenue). The representation of the detainee was independently considered and rejected by the Secretary (Revenue) as well as the detaining authority.

(15) The representation dated 9th May, 1997 addressed to the Advisory Board was received in the COFEPOSA Unit on 25th May, 1997. Comments were called for on the same day which the sponsoring authority sent,—*vide* their letter dated 3rd June, 1997, received in the COFEPOSA Unit on 5th June, 1997. The case was submitted to the Under Secretary on 6th June, 1997, who returned the same for want of some documents. The file was re-submitted on 10th June, 1997 (7 and 8th June, 1997 were closed Holidays being Saturday and Sunday) to the Under Secretary, who processed the file and submitted the case before Joint Secretary (COFEPOSA) on the same day. Joint Secretary (COFEPOSA) returned the file on the same day seeking some clarification, which was clarified on the same day. Joint Secretary (COFEPOSA) considered and rejected the representation of the detainee on 11th June, 1997 and the memo intimating the detainee about the rejection was also issued on the same date.

(16) After the receipt of comments of sponsoring authority on 5th June, 1997 the representation dated 9th May, 1997 was submitted to A.D.G. (M) on 11th May, 1997 who considered and submitted it to Secretary (Revenue) on the same date. Secretary (Revenue) considered the representation independently and rejected it on 12th June, 1997. File was received back on 13th June, 1997 late in the evening, and the memo intimating the detainee

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rejected it on 12th June, 1997. File was received back on 13th June, 1997 late in the evening, and the memo intimating the detainee about the rejection of his representation was issued on 16th June, 1997 (14th, 15th June, 1997 were closed holidays being Saturday and Sunday). Thus, there is no delay in consideration of the detainee's representation by the Central Government or the detaining authority. The detaining authority has acted promptly and diligently in issuing the detention order.

(17) The search warrant was shown to the wife of the petitioner at the time of search and the signature was obtained. Search warrant is not relied upon and, therefore, copy of the same was not supplied. The petitioner has also to show the prejudice caused by non supply. No prejudice has been caused since details of the search warrant were mentioned in the *Panchnama* which was supplied. There is no legal bar that the subjective satisfaction of the detaining authority cannot be derived from a solitary incident. The detention order has been passed after examining the material placed.

(18) To the Criminal Writ Petition No. 1201, the respondents 1 and 2 filed a reply containing similar allegations as found in the reply to Criminal Writ Petition No. 1106 of 1997, apart from the following allegations:—

(19) Since petitioner—Gurmit Kaur Dhillon was absconding, the department made efforts to serve detention order upon her but could not succeed. The allegation that Gurmit Kaur Dhillon was available is wrong. The representation dated 17th March, 1997 addressed to the Secretary, Department of Revenue was received in the COFEPOSA Unit on 26th March, 1997. The comments of the sponsoring authority were called on 27th March, 1997, received in the COFEPOSA Unit on 4th April, 1997 and (forwarded by the sponsoring authority,—*vide* letter dated 31st March, 1997) case was processed and submitted to the A.D.G. on 8th April, 1997 by the Under Secretary who inturn forward the same to Secretary (Revenue) on 8th April, 1997. Secretary (Revenue considered and rejected the representation on 10th April, 1997 and the memo of rejection was issued on 11th April, 1997. It is denied that the representation was considered only by Joint Secretary (COFEPOSA), the detaining authority. The representation of the petitioner was independently considered and rejected by Secretary (Revenue).

(20) There is no undue and unexplained delay in consideration of the representation dated 17th March, 1997 by Joint



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Secretary (C). The said representation, after receipt of comments from the sponsoring authority on 4th April, 1997 was processed and put up to Joint Secretary (COFEPOSA) on 7th April, 1997 who considered and rejected it on 7th April, 1997 itself. The memo of rejection was issued on 8th April, 1997.

(21) The representation dated 9th May, 1997 addressed to the Advisory Board was received in the COFEPOSA Unit on 29th May, 1997. Comments of the sponsoring authority were called for on the same day and were received on 5th June, 1997 (forwarded by their letter dated 3rd June, 1997). Case was submitted to the concerned Under Secretary on 6th June, 1997 who returned the same for want of some documents. The file was re-submitted on 10th June, 1997 (7th and 8th June, 1997 being holidays) who processed the same and submitted it to Joint Secretary (COFEPOSA) on 10th June, 1997 itself. Joint Secretary (COFEPOSA) rejected the representation on 11th June, 1997 and memo of rejection was issued on that date itself.

(22) Simultaneously, after receipt of the comments from the sponsoring authority on 5th June, 1997 the said representation was submitted to the A.D.G. on 11th June, 1997 who in turn forwarded it to Secretary (R) on the same date. Secretary (Revenue) considered the representation independently and rejected it on 12th June, 1997. Memo of rejection was issued on 16th June, 1997 (14th and 15th June, 1997 being closed holidays).

(23) I have heard the counsel for both the sides and perused the records.

(24) One of the objections taken by the petitioners is that while the detention order against these two petitioners was passed on 11th March, 1996, the said orders were served on the petitioners only on 14th March, 1997, while they were already in Jail, which shows that there was no application of mind as to the need for keeping the petitioners in detention while they were already in Jail. According to the petitioners, Gurmit Kaur Dhillon had been granted bail in the case under Sections 9(i)(b) and 9(i)(d) of FERA 1973 by the learned Chief Judicial Magistrate, Jalandhar, while the other petitioner—Manjit Singh Dhillon was granted *ad interim* bail by this Court which was later on confirmed on 22nd February 1996. But the petitioners contend that on 12th March, 1997 both of them appeared before the Chief Judicial Magistrate, Jalandhar, moved an application for cancellation of their bail bond and that

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they be taken into custody in the case under Section 9(i)(b) and the 9(i)(d) of FERA 1973, and that they were remanded to judicial custody at Central Jail, Jalandhar, after cancellation of their bail bonds. The petitioners, therefore, contend that on the date of the execution of detention order they were in jail and that this aspect was not considered by the detaining authority. According to the petitioners unless the detaining authority was satisfied that there were still grounds for executing the detention order, the detention order should not have been executed while the petitioners were in Jail. They contend that the execution of this order while they were in jail discloses total non-application of mind. Obviously, when the detaining authority passed the detention order on 11th March, 1996, he could not have taken this fact into consideration, because the petitioners surrendered only on 12th March, 1997, though they were on bail on 11th March, 1996. That was why in paragraph 14 of the detention order it has been stated that the detaining authority was aware that they are on bail. The fact that the detention order was served on the petitioners on 14th March, 1997 while they were in jail is admitted by the respondents. The explanation given by the respondents is that the fact that the petitioners were in custody was not brought to the notice of the detaining authority. The question is whether the failure to take into consideration the fact that the petitioners were in custody on the date when the detention orders were served upon them will invalidate the detention orders. The learned counsel for the petitioners relied upon the decision of the Hon'ble Supreme Court in *Binod Singh v. District Magistrate, Dhanbad* (1). That was a case where the order of detention was served on the detainee when he was already in Jail in respect of another criminal case. There was no indication that before the service of the order of detention the fact that the detainee might be released or that there was a possibility of his released was taken into consideration. In these circumstances, the Hon'ble Supreme Court held as follows :—

“It is well settled in our Constitutional framework that the power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in

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(1) AIR 1986 S.C. 2090

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custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. In the instant case when the actual order of detention was served upon the detenu, the detenu was in jail. There is no indication that this factor or the question that the said detenu might be released or that there was such a possibility of his release, was taken into consideration, by the detaining authority properly and seriously before the service of the order.”

(25) The petitioners also relied the decision of the Delhi High Court in *Kuldeep Singh v. Union of India* (2). That was also a case where a detainee was served with the detention order while he was in judicial custody. The Delhi High Court held that in such a case it was necessary for the detaining authority to re-consider the fact that the detainee was in detention in a criminal case and whether his detention under COFEPOSA would still be necessary, and if that was not done, the detention order could not be enforced against the detainee. As in the case on our hand, in the case before the Delhi High Court also though the detention order was passed on 12th January, 1993 the detainee who was on bail chose to get the bail cancelled and for being taken into custody. He had even stated that he had learnt that an order of detention is pending against him for execution. The bail bond was cancelled and the detainee was taken into custody on 26th August, 1994. The detention order was served on him on 30th August, 1994 when he was in judicial custody. Although, the Delhi High Court observed that it is not an abstract proposition of law that a person in judicial custody cannot be detained under the COFEPOSA, it also held that in such cases the detaining authority must be satisfied that there are circumstances present on the record to show that the said person presently in judicial custody would act prejudicially if he is not detained. It was also held that the detaining authority ordering his detention should be aware of the fact that he is actually in custody and has reason to believe, on the basis of reliable material, that there is possibility of his being released and that on being so released the detenu would in all probabilities indulge in prejudicial activities. The Delhi High Court although took note of the fact that the detaining authority in that case did not have the occasion to consider the fact that when the detention order was served on the petitioner he was not on bail but in judicial custody, but still held that the decision of the Hon'ble Supreme Court in *Binod Singh's*

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case squarely applied to the facts of the case before it, and on that ground the detention of the petitioner was liable to be set aside. To the similar effect are the decisions of the Delhi High Court in *Kimti Lal Sethi v. Lt. Governor Delhi* (3) and *Darshan Singh v. Union of India* (4).

(26) In the present case also though, the detention order was passed against the petitioners on 11th March, 1996 it was served upon them on 14th March, 1997. It may be that they were on bail when the detention order was passed, but, they were in judicial custody on 14th March, 1997 when the detention order was served on them. The fact that they surrendered to judicial custody just two days prior to the service of the order will not help the respondents. The order which was passed on 11th March, 1996 remained unexecuted for nearly one year. Before serving the detention order on the detainees the detaining authority should have satisfied that there was still necessity to detain them in custody under COFEPOSA Act, since they were already in judicial custody. If the detaining authority fails to take note of the fact that the petitioners were already in custody and had not come to the conclusion that their detention under the COFEPOSA Act was still necessary, then the order of detention cannot be sustained. Therefore, the detention order against the petitioners cannot be sustained in the circumstances of this case.

(27) The learned counsel for the respondents of course relied upon the decision of the Hon'ble Supreme Court in *Abdul Sathar Ibrahim Manik v. Union of India* (5) in support of his contention that an order for detention of the detainee already in Jail can be passed. But this decision will have no application to the facts of the present case, because, the detaining authority in that case was not only aware of the fact that the detainee was in judicial custody but he also recorded the reason that the possibility of his release on bail in the near future cannot be ruled out and that nothing prevented him from moving for bail and getting released on bail. The Hon'ble Supreme Court, therefore, held that the detaining authority was not only aware that the detenu was in jail but also noted the circumstances on the basis of which he was satisfied that the detenu was likely to come out on bail and continue to indulge himself in the smuggling activities. In these circumstances, the Hon'ble Supreme Court declined to interfere.

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(3) 1995(2) RCR 309.

(4) 1995(2) RCR 306

(5) 1992 S.C.C. (Criminal) 1

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(28) For the same reasons the decision in *Sarabjit Singh v. Union of India* (6) relied upon by the learned counsel for the respondents will be of no help to the respondents. In such circumstances the Hon'ble Single Judge of this Court held that the Court will not go into validity of subjective satisfaction of Detaining Authority. But the facts of the present case are entirely different since the detention order was not served on the detainee after taking note of the fact that the detainees were in Jail and that detention under the COFEPOSA Act was necessary in view of the materials placed before him. Therefore, this contention of the learned counsel for the respondents is not acceptable.

(29) The next contention put forward by the petitioners is that the petitioners were produced before the Advisory Board on 9th May, 1997, that the petitioners submitted a representation to the Board on 9th May, 1997 which was considered and rejected on 11th June, 1997, whereas, even on 5th June, 1997 the detention order had been confirmed by the Central Government and therefore the confirmation of the detention order is violative of Article 22(5) of the Constitution of India and, therefore, also the detention order is liable to be quashed. In this regard, the learned counsel for the petitioner relied upon the decision of the Delhi High Court in *K.K. Mundhra v. U.O.I. (Delhi)* (7) in support of his contention. That was the case where the representation was received in the COFEPOSA Unit of the Central Government on 7th November, 1988. Still it was not decided before the detention order was confirmed on 21st November, 1988. Therefore, it was held that the continued detention of the detainee had become invalid. Learned counsel for the petitioner relied upon the Division Bench decision on Madras High Court in *S. Gandhi v. State* (8) which also supports his contention. But the learned counsel for the respondents contended that the petitioners had already made a representation on 17th March, 1997 which was considered and rejected on 10th April, 1997 and a memo of rejection was issued on 11th April, 1997 and that there was no provision for submitting a second representation. The learned counsel for the respondents, therefore, contended that the petitioners cannot take advantage of the fact that their representation dated 9th May, 1997 was rejected on 11th June, 1997 after the confirmation of the detention order on 5th June, 1997. But this contention of the learned counsel for the respondents

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(6) 1996 (3) RCR 291.

(7) 1989 (2) All India Criminal Reporter 911.

(8) 1995 (1) All India Criminal Law Reporter 368.

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cannot be sustained. A similar contention was put forward in *Kishore Kumar Mundhra's case* (9) cited above but the same was rejected. It was held that once the detainee has made the second-representation on additional facts, even the said representation has to be considered before the detention order is confirmed. The Delhi High Court held in the circumstances that since the representation was not considered before confirmation of the order of the detention the continued detention of the petitioner has become invalid. The learned counsel for the petitioner also relied upon a decision of this Court in *Jasbir Singh v. Central Government and others* (10) where this Court held that the representations addressed to the detaining authority as well as to the Central Government have to be considered and disposed of independently by both the authorities. In the representation dated 9th May, 1997 made by the petitioners they have stated that they surrendered before the Court on 12th March, 1997, were remanded to judicial custody, that the detention order was served upon them on 17th March, 1997 at the Jail, that the fact that they were confined in Jail was not brought to the notice of the detaining authority and, therefore, there was no fresh application of mind. They have also taken the plea that they were lodged in the Central Jail, Jalandhar, but petitioner Manjit Singh Dhillon was suddenly transferred to Patiala Jail while, Gurmit Kaur Dhillon was transferred to Ludhiana Jail, so that they may not be able to give instructions to their family members regarding the detention. Manjit Singh Dhillon has also taken the plea that at the time of the search on 17th October, 1995 no search authorisation was shown to Gurmit Kaur Dhillon (Manjit Singh Dhillon was absent to that time) and the copies of search authorisation and the report thereon were not supplied to them and, therefore, they were deprived of making an effective and purposeful representation. We need not to go to the question as to whether all these objections are tenable or not. Suffice it to say that the petitioners have taken these additional objections in their representation dated 9th May, 1997.

(30) Therefore, in these circumstances, it was duty of the competent authority to have considered the second-representation dated 9th May, 1997 and passed appropriate orders on the same before the order of detention was confirmed by the Central Government on 5th June, 1997. But this representation dated 9th May, 1997 has been rejected on 11th June, 1997 whereas the order

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(9) 1989 (2) All India Criminal Reporter 911

(10) 1995 (2) RCR 660

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of detention had already been confirmed on 5th June, 1997 itself. Therefore, on this ground also the order of detention is liable to be quashed.

(31) The other contention taken by the petitioners is that the representation dated 17th March, 1997 and 9th May, 1997 were considered after unnecessary and undue delay and, therefore, also the detention order is liable to be quashed.

(32) The representation dated 17th March, 1997 sent by the petitioner—Manjit Singh Dhillon was, even according to the respondents rejected on 10th April, 1997 and the rejection memo was issued on 11th April, 1997. The representation dated 17th March, 1997 sent by Gurmit Kaur Dhillon was, even according to the respondents rejected on 10th April, 1997 by Secretary (Revenue) and the rejection memo was issued on 11th April, 1997. This representation of Gurmit Kaur Dhillon was rejected by the Joint Secretary COFEPOSA also on 7th April, 1997 and the rejection memo issued on 8th April, 1997 (according to the respondents).

(33) So far as the representation dated 9th May, 1997 made by the petitioner—Manjit Singh Dhillon is concerned the same was, according to the respondents, rejected by Joint Secretary (COFEPOSA) on 11th June, 1997 and the rejection memo was issued on 11th June, 1997. This representation was rejected by the Secretary (Revenue) also on 12th June, 1997 and the rejection memo was issued on 16th June, 1997. Similarly in the case of petitioner—Gurmit Kaur Dhillon the representation dated 9th May, 1997 was rejected by the Joint Secretary COFEPOSA on 11th June, 1997 and the rejection memo was issued on 11th June, 1997. This representation was rejected by the Secretary (Revenue) also on 12th June, 1997 and the rejection memo was issued on 16th June, 1997.

(34) The contention of the petitioners is that there is unnecessary, undue and unexplained delay in the consideration and disposal of the representations made by them and, therefore, also the detention orders have become invalid.

(35) The respondents on the other hand have attempted to explain the time taken for consideration and disposal of this representation. According to the respondents, Manjit Singh Dhillon's representation dated 17th March, 1997 addressed to the Secretary, Department of Revenue was received in the COFEPOSA Unit on 25th March, 1997, comments of the sponsoring authority

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were called for on 26th March, 1997 and received in the COFEPOSA Unit on 7th April, 1997,—*vide* the letter dated 1st April, 1997 of the sponsoring authority. The respondent has also stated that the case was processed and submitted to ADG (M) on 9th April, 1997 who considered and submitted the file to Secretary (Revenue) on the same date, and that the Secretary considered and rejected the representation on 10th April, 1997.

(36) So far as the representation dated 17th March, 1997 made by Gurmit Kaur Dhillon is concerned the respondents have alleged that the same was received in the COFEPOSA Unit on 25th March, 1997, comments were called for from the sponsoring authority on 27th March, 1997, received in the COFEPOSA Unit on 4th April, 1997 (forwarded by the sponsoring authority,—*vide* their letter dated 31st March, 1997), the file was processed and submitted to A.D.G. on 8th April, 1997, who in turn forwarded the same to the Secretary (Revenue) on 8th April, 1997, the Secretary rejected it on 10th April, 1997 and the memo of rejection was issued on 11th April, 1997. The respondents have also alleged that after the receipt of the comments from the sponsoring authority on 4th April, 1997, the file was processed and put up to the Joint Secretary (COFEPOSA) on 7th April, 1997 who considered and rejected it on the same day, and the memo of rejection was sent on 8th April, 1997.

(37) Therefore, the learned counsel for the respondents contends that there is no undue delay and the time taken for the disposal of the representation has been explained.

(38) The learned counsel for the petitioners relied upon decision of the Hon'ble Supreme Court in *Ichhu Devi v. Union of India* (11). In that case the representation dated 9th June, 1980 was received by the Deputy Secretary on 14th June, 1980, while another representation dated 26th June, 1980 was received on 30th June, 1980. No decision was taken till 14th July, 1980. The explanation given by the respondents was that the representation dated 9th June, 1980 was received in the office on 14th June, 1980 but since that day and the next day being holidays, it came to the hands of the concerned officer on 16th June, 1980, the remarks of the Collector were called for on 23rd June, 1980, who forwarded his remarks on 30th June, 1980. In the meantime the other representation dated 26th June, 1980 was also received by the State



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Government which was also subjected to the same process and on 11th July, 1980 both the representations came to be considered by the Under Secretary who recommended rejection of the representation. This was approved by the Deputy Secretary as well as the Secretary on the same day and the Chief Minister endorsed the same on 14th July, 1980. The Hon'ble Supreme Court held that there was no explanation for the delay in forwarding the copy of the representation to the Assistant Collector, Customs calling for his remarks, and in the Collector of Customs forwarding his remarks after a delay of seven days. The Supreme Court held that it was difficult to resist the conclusion that the detaining authority was guilty of unreasonable delay in considering the two representations of the detenu and particularly the representation dated 9th June, 1980. Therefore, the detenu was ordered to be released.

(39) The petitioners also relied upon another decision of the Hon'ble Supreme Court in *Aslam Ahmed Zahire Ahmed Shaik v. Union of India* (12). In that case also the representation dated 16th June, 1988 was forwarded through the Superintendent of Central Prison to the detaining authority, and the Central Government and the order of rejection dated 19th July, 1988 on 26th July, 1988 were received after a delay of 40 days. The explanation given was that the representation was received in the COFEPOSA Unit of the Ministry of Finance on 27th June, 1988, comments were called for from the sponsoring authority and received on 11th July, 1988 and the file was forwarded to the Central Government. In the meanwhile the representation forwarded to the detaining authority was rejected on 11th July, 1988 itself. The said file was received in the office of the Ministry of State (Revenue) on 12th July, 1988 but since he was on tour, on his return the representation was forwarded to the Finance Minister on 17th July, 1988 and the file was received back in the COFEPOSA Unit on 19th July, 1988. The order of rejection was communicated to the detenu who received it on 26th July, 1988. The Superintendent of Prisons attempted to explain the delay of 11 days between the date of representation and its receipt by the COFEPOSA Unit by filing an affidavit that the representation was forwarded to the Ministry on 22nd June, 1988 and that 19th June, 1988 was a Holiday being Sunday. The Hon'ble Supreme Court held that from 16th June, 1988 to 22nd June, 1988 the Superintendent of Prison has callously ignored the

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representation and left it unattended for seven days and forwarded the same to the Government at his pleasure on 22nd June, 1988. The Hon'ble Supreme Court also referred to the decision in *Vijay Kumar v. State of Jammu and Kashmir* (13) wherein it was held that the Jail authority is merely a communicating channel and that the intermediary authorities who are the communicating authorities have also to move with an amount of promptitude so that the statutory guarantee of affording earliest opportunity of making the representation and the same reaching the Government is translated into action. It was also held that the State Government must gear up its own machinery to see that in these cases the representation reaches to the Government as quickly as possible and it should be considered by the authorities with equal promptitude. The Hon'ble Supreme Court further held that any slackness in this behalf not properly explained would be denial of the protection conferred by the statute and would result in invalidation of the order.

(40) After referring to the above decision, the Hon'ble Supreme Court held that in view of the supine in difference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in the disposal of the appellant's representation by the Government which received the representation 11 days after it was handed over to the Jail Superintendent. It was also held that this avoidable and unexplained delay has resulted in rendering the continued detention of the appellant illegal and constitutionally impermissible.

(41) As against these decisions the learned counsel for the respondents relied upon the decision of the Hon'ble Supreme Court in *Birendra Kumar Rai v. Union of India* (14). In that case the representation dated 22nd November, 1990 was forwarded on the next date and received in the Ministry of Finance on 27th December, 1990. It was sent to Pt. NDPS which was received on 31st December, 1990 (December, 29th and 30th being Saturday, Sunday). On the Same day, it was sent to the Deputy Director, Narcotic Bureau, Varanasi, and was received at Varanasi on 10th January, 1991. On the very next day the document as desired was posted and was received back in Delhi on 14th January, 1991. On 17th January,

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(13) 1982 (2) S.C.C. 43

(14) 1993 S.C.C. (Cri.) 324

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1991 the Under Secretary examined it and placed it before the detaining authority who in turn placed it before the Secretary, Government of India on 18th January, 1991. The representation was rejected by the Finance Minister.

(42) The Hon'ble Supreme Court in this case considered the delay between 23rd December, 1990 to 27th December, 1990 when the Superintendent of Jail forwarded the representation and it was received in the Ministry, and from 1st January, 1991 to 10 January, 1991. The records revealed that the representation was sent through messenger who carried two letters, one to be delivered at Lucknow and the other at Delhi. He proceeded by bus on 24th December, 1990. December 25th was a holiday on account of X-mas and on December 26th he delivered the letter at Lucknow, and then reached Delhi and delivered the letter with the representation in the office of the Joint Secretary on 27th December, 1990. Regarding the second set of dates, according to the respondents, it was despatched on 1st January, 1991 by post from Delhi and was received at Varanasi on 10th January, 1991. Letter dated 11th January, 1991 showed that it was requested that in future the representation should be sent by speed post to avoid delay. In these circumstances the Hon'ble Supreme Court held that there was no reason to hold that there was any slackness and callousness in the treatment of the petitioner's representation. Therefore, the Special Leave Petition filed by the detainee was dismissed. But in the same decision it was observed that if the delay remains unexplained leading to the conclusion that the conduct of the authorities in this regard amounted to in-action, callousness or slackness then the detenu is entitled to be released, and that the question of delay depends upon facts of each case. Therefore, in view of the fact that the Hon'ble Supreme Court found that there was no material to hold that there was any delay, this decision will not be applicable to the facts of the present case.

(43) Learned counsel for the respondents also relied upon another decision of the Hon'ble Supreme Court in *Madan Lal Anand v. Union of India* (15). In that case there was delay of 30 days. There were 9 days in between the date of representation and decision on the same. In the circumstances of the case, Hon'ble Supreme Court held that there was no laches and negligence in dealing with the representation, and that the detaining authority had explained the delay in the disposal of the representation and,

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therefore, the detention order cannot be rendered invalid. Therefore, this decision also will not help the respondents in the present case.

(44) The other decision in *M. Mohamed Sultan v. Joint Secretary* (16) will not also help the respondents. There the representation was disposed of in 34 days. The Hon'ble Supreme Court took into consideration the fact that the representation was forwarded by the Superintendent of the Tamil Nadu Prison Department on 23rd January, 1990 and received by the Central Government on 30th January, 1990 and the comments were called for and received on 12th February, 1990, and the fact that the representation and comments were sent from Madras to Delhi by post, and also the fact that delay in postal delivery is not uncommon, and held that the said period taken in communicating the representation and also the period from 30th January, 1990 to 12 February, 1990 covering the time taken in obtaining the comments of the sponsoring authority has to be excluded. The Hon'ble Supreme Court also observed that the time taken by the Central Government for considering the representation was from 13th February, 1990 to 20th February, 1990 during which there were two holidays (Saturday and Sunday) and, therefore, remaining six days taken by the Central Government cannot be stated to be unduly long.

(45) The other decision in *Sarabjit Singh v. Union of India* (17) also will not help the respondents. In that case the representation, received by the Superintendent of District Jail on 21st July, 1995, was disposed of on 14th August, 1995 by the Joint Secretary (COFEPOSA) and by the Central Government on 25th August, 1995. Taking into consideration the explanation given by the respondents, this Court held that there was no undue or inordinate delay in considering the representation at any stage, but the same was considered expeditiously and promptly. Therefore, this decision again will not help the respondents.

(46) The reasons as to why I have held that the above said decisions cited by the learned counsel for the respondents are not applicable to the facts of the present case are as follows :—

(47) As pointed out already the representation dated 17th March, 1997 made by the petitioners was received on 25th March,

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(16) S.C. 1990 (2) RCR 655

(17) 1996 (3) RCR 291

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1997 in the COFEPOSA UNIT. There is a delay of eight days. The Superintendent of Jail, Patiala, who is the fourth-respondent, in these petitions has not filed any reply explaining the reason as to why there was such a delay of eight days. In spite of the fact that sufficient opportunity was given the Superintendent of Jail (fourth-respondent) has not filed the reply and the further time prayed for on his behalf on 3rd December, 1997 was also refused in Crl. Writ Petition No. 1106 of 1997. In Criminal Writ Petition No. 1206 of 1997, the fourth-respondent had not filed any reply, and even on 11th December, 1997 an opportunity was given to the fourth-respondent to file the reply, and the case was adjourned to 16th December, 1997. Even on that day the fourth-respondent had not filed any reply. Therefore, we find that there is no explanation by the Jail Superintendent (Fourth-respondent) as to why he had delayed the forwarding of the representations. On the representation dated 17th March, 1997 the comments were called for from the sponsoring authority on 26th March, 1997, and the sponsoring authority though sent it with the letter dated 1st April, 1997, the comments were received on 7th April, 1997 only. Therefore, we find a delay of 12 days in between this period for which there is no satisfactory explanation by the respondents. Similarly, in the case of the representation dated 17th March, 1997 sent by Gurmit Kaur Dhillon, the same was received by the COFEPOSA Unit on 25th March, 1997 i.e. after a delay of eight days. The comments of the sponsoring authority were called for on 26th March, 1997 and were received only on 4th April, 1997 though it was forwarded by the letter dated 31st March, 1997. Here again, the delay have not been properly explained. That is why I have come to the conclusion that these decisions relied upon by the respondents are not applicable to the facts of this case.

(48) So far as the second-representation dated 9th May, 1997 is concerned, these representations of the petitioners were received in the COFEPOSA Unit only on 29th May, 1997 i.e. after a delay of 20 days for which there is no explanation at all. Therefore, there is obviously unexplained and undue delay in the disposal of this representation as well. In these circumstances I am of the view that the unexplained delay in the consideration and disposal of the representations made by the petitioners also invalidates order of detention.

(49) Another objection taken by the petitioners is that though, the detention order was passed on 11th March, 1996, the same was executed after undue delay on 14th March, 1997 only and, therefore,

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also the detention order is bad. But, the contention of the respondents is that the petitioners have been absconding and, therefore, the orders could not be served. According to the respondents they had to issue even a Red Alert Notice with regard to the petitioners and, therefore, it cannot be stated that there is any undue delay. The respondents have also produced the copies of the Red Alert Notice as annexures with their reply. Though, the petitioners stated that they were available for service of the detention order, there is no material to hold that the respondents did not serve the detention order though the petitioners were available.

(50) Though the petitioners have taken certain other objections also, I am of the view that it is not necessary to consider them in view of my findings rendered above against the respondents. Accordingly, the petitions have to be allowed.

(51) In the result, both these petitions are allowed setting aside the impugned detention orders. The petitioners are ordered to be set at liberty unless they are required in some other proceedings.

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S.C.K.

*Before H.S.Bedi, J*

KIRAN DIXIT,—*Petitioner*

*versus*

CHANDIGARH ADMINISTRATION &  
ANOTHER,—*Respondents*

CWP 2731 of 1998

27th March, 1998

*Constitution of India, 1950—Arts. 14, 226/227—Admission—Eligibility—Admission to M.B.B.S. course—Notification dated 22nd January, 1998—Stipulation that only those candidates are eligible for admission who have passed +1 and +2 examination from School/College in Chandigarh & recognised by Chandigarh Administration—Held that this condition amounted to 100% reservation on the basis of institutional preference—Not permissible—Clause struck down as ultra vires.*

*Held that all 50 seats available for being filled in for the M.B.B.S. course in the respondent-college, have been reserved for*