

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JUNE, 2021

PRESENT

THE HON'BLE Mrs. JUSTICE B.V. NAGARATHNA

AND

THE HON'BLE Mr. JUSTICE HANCHATE SANJEEVKUMAR

WRIT PETITION HABEAS CORPUS No.29 OF 2021

BETWEEN:

RIZWAN PASHA @ KULLA RIZWAN
SON OF LATE ABDUL LATHIF
AGED ABOUT 36 YEARS
RESIDING AT #14,
2ND CROSS, K.G.NAGAR
NAGESHWARAHALLI, HEGDENAGAR,
BANGALORE

CURRENTLY LODGED AT:
CENTRAL PRISON, BANGALORE
BENGALURU-560 100
UTP 8896 OF 2019

... PETITIONER

(BY SRI. TIGADI VEERANNA GADIGEPPA, ADVOCATE)

AND:

1. COMMISSIONER OF POLICE,
BENGALURU
NO.1, INFANTRY ROAD
BENGALURU-560 001.
2. STATE OF KARNATAKA
VIDHANA SOUDHA
AMBEDKAR VEEDHI
SAMPANGI NAGARA
BENGALURU, KARNATAKA-560 001.
(REPRESENTED BY SECRETARY,
HOME DEPARTMENT-LAW AND ORDER)

3. SENIOR SUPERINTENDENT
CENTRAL PRISON
BENGALURU-560 100.

...RESPONDENTS

(BY SRI.V.S.HEGDE, SPP-II ALONG WITH
SRI.THEJAS.P, HCGP FOR R1 TO R3)

THIS WPHC IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO A) ISSUE A WRIT OF HABEAS CORPUS DECLARING THE DETENTION OF THE PETITIONER ILLEGAL AND SET HIM AT LIBERTY FORTHWITH AFTER QUASHING THE ORDER BEARING REFERENCE NO.CRM4/DTN/08/2020 DATED 25.09.2020 (ANNEXURE-A) PASSED BY THE 1ST RESPONDENT; ORDER BEARING REFERENCE NO.HD 90 SST 2020, DATED 03.10.2020 (ANNEXURE-B) AND ORDER BEARING REFERENCE NO.HD 90 SST 2020 DATED 12.11.2020 (ANNEXURE-D) PASSED BY THE 2ND RESPONDENT AND ETC.,

THIS WPHC COMING ON FOR *ORDERS* THIS DAY, **NAGARATHNA J.**, DELIVERED THE FOLLOWING:

ORDER

This writ petition assails the order of preventive detention bearing reference No.CRM4/DTN/08/2020, dated 25.09.2020 (Annexure-A) passed by the first respondent and order dated 03.10.2020, reference No. HD 90 SST 2020, dated 03.10.2020 (Annexure-B) and order bearing reference No.HD 90 SST 2020, dated 12.11.2020 (Annexure-D) passed by the second respondent.

2. The petitioner has in substance assailed the order of preventive detention passed under Section 3(1) of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video and Audio Pirates Act, 1985 (hereinafter referred to as 'the Act' for brevity).

(a) According to the petitioner, he is a resident of Bengaluru. Owing to financial difficulties, he was constrained to discontinue his studies in 9th standard and was forced to take up hard menial jobs for supporting his family. Recently, he married Shabana Banu. But she passed away last year. Petitioner is the sole caretaker of his two sons, Rayan who is eight years old and Rihan, who is three years old.

(b) That on 25.09.2020, respondent No.1 passed an order (at Annexure 'A') under Section 3(1) of the Act directing petitioner's detention in Central Prison, Bengaluru. Respondent No.1, *inter alia*, has stated that the petitioner has been engaged in criminal activities since the year 2004 creating an atmosphere of fear among the

general public. That the petitioner has time and again violated bail conditions imposed on him by several Courts and three rowdy sheets have been opened by three different Police Stations to monitor his activities. Three volumes of documents were handed over to the petitioner, which according to him, are incomprehensible and being a school drop out, he is unable to correlate and understand the relevancy of the documents to the false charges levelled against him, by order dated 25.09.2020.

(c) The order dated 25.09.2020 passed by respondent No.1 was placed before respondent No.2 for approval in terms of Section 3(3) of the Act on 29.09.2020. Respondent No.2 confirmed the order dated 25.09.2020 passed by respondent No.1 on 03.10.2020 observing that: (i) the petitioner was arraigned as an accused in 14 criminal cases; (ii) there were three rowdy sheets opened against the petitioner in three different Police stations; (iii) the petitioner admittedly committed offences under Chapters XVI, XVII, and XXII of the Indian Penal Code, 1860 and therefore fell within the definition of Goonda under the Act; (iv) the petitioner posed a threat to public peace and tranquility; (v) owing to the petitioner's

alleged criminal antecedents, the members of the public were afraid to lodge a complaint or tender evidence against him; (vi) the petitioner allegedly violated bail conditions imposed upon him in several criminal proceedings pending against him;

(d) On confirmation of the order of detention, notice dated 28.10.2020 was issued by respondent No.2 to respondent No.1 directing him to keep the petitioner present before the Advisory Board for hearing on 02.11.2020. Thereafter, respondent No.2 passed an order on 12.11.2020 under Section 12 read with Section 13 of the Act directing detention of the petitioner for a period of one year from 25.09.2020.

(e) According to the petitioner, he submitted a detailed representation to second respondent and the Chairman of the Advisory Board through respondent No.3 on 12.01.2021 setting out several grounds for revocation of the detention order. No acknowledgement of the said representation has been provided to the petitioner or his brother. Also, on the date of filing of the writ petition, no intimation, let alone any decision on the representation

has been taken or communicated to the petitioner or his brother. In the circumstances, the petitioner has challenged the order of preventive detention on the following grounds:

- (i) unable to comprehend the materials on the basis of which the orders of detention seem to have been passed by respondent No.1;
- (ii) the detention orders do not indicate the material on the basis of which they have been passed and therefore they defeat the rights of the petitioner to make an effective representation;
- (iii) The detention orders have failed to inform the petitioner regarding the timeline for submitting the representation to the State Government and Advisory Board, thereby violating the constitutional rights under Article 22 of the Constitution of India;
- (iv) The detention orders have been passed on stale claims or on false cases foisted by the police against the petitioner;
- (v) The detention orders are *ultra vires* the provisions of the Goonda Act and therefore liable to be quashed;

(vi) The respondents have failed to consider the representations of the petitioner dated 12.01.2021 and therefore the detention is illegal;

(vii) The detention of the petitioner is contrary to Section 10 of the Act;

3. The order of preventive detention dated 25.09.2020 is at Annexure-A. The original of the order dated 03.10.2020 handed over to the petitioner is at Annexure-B to the writ petition and the confirmatory order dated 28.10.2020, passed subsequent to the receipt of the report from the Advisory Board is at Annexure-C. Thereafter, the second respondent passed an order under Section 12 read with Section 13 of the Act, on 12.11.2020, directing that the detention of the petitioner is for a period of twelve months from 25.09.2020, vide Annexure-D. Thus, petitioner has assailed Annexures-A, B and D in this writ petition.

4. Statement of objections has been filed on behalf of the State and other respondents.

(a) While denying the averments made by the petitioner in the writ petition, it has been contended that

copy of the order dated 03.10.2020 confirming the detention order was served on the detenu on 05.10.2020 in the presence of the jail authorities, vide Annexure 'R1'. That the Advisory Board heard the petitioner on 02.11.2020 and copy of the notice of the hearing was served on the detenu on 29.10.2020 in the presence of the jail authorities as per Annexure 'R2'. On a detailed hearing of the petitioner on 02.11.2020, the Advisory Board gave its report and on the basis of which, on 12.11.2020, the period of detention was confirmed for a period of twelve (12) months from 25.09.2020 as per Annexure 'R3', which order was also served on the petitioner in the presence of the jail authorities.

(b) It has also been averred by the respondents that the detenu has stated in the writ petition that on 12.01.2021, he had submitted a representation, but as evidenced from Annexure 'E', the representation was submitted on 03.01.2021 and not on 12.01.2021.

(c) Denying all other contentions raised against the respondents, it has been stated that Annexure 'R4', which is the copy of the detention order, gives the details of

cases registered against the detenu, which are listed as under:

Sl. No.	Year	Police Station	Case/Crime No.	Offence under Sections
1.	2004	Jayanagar	450/2004	394 I.P.C.
2.	2005	Subramanyapura	281/2005	302 I.P.C.
3.	2009	Hebbagodi	64/2009	399-402 I.P.C.
4.	2010	Banashankari	323/2010	307 R/w 34 I.P.C.
5.	2011	Parappana Agrahara	351/2011	399, 402 I.P.C.
6.	2014	Talaghattapura (Now Kaggalipura)	73/2014	143, 147, 148, 324, 307, 435, 427, 114 R/w 149 I.P.C.
7.	2016	Kodigehalli	186/2016	364, 307 R/w 34 I.P.C.
8.	2016	Kaggalipura	344/2016	504, 506 R/w 34 I.P.C.
9.	2018	Talaghattapura	65/2018	399, 402 I.P.C.
10.	2019	Kumaraswamy Layout	130/2019	363, 323, 324, 504, 506 R/w 34 I.P.C.
11.	2019	Kottanuru	131/2019	353 R/w 34 I.P.C. & 25 Arms Act
12.	2019	Talaghattapura	219/2019	229 (A) I.P.C.
13.	2019	Talaghattapura	70/2019	341, 327, 504, 506, R/w 34 I.P.C.

14.	2020	Subramanyapura	54/2020	120(B), 143, 149, 148, 147, 144, 307, 302 R/w 34 I.P.C.
-----	------	----------------	---------	--

(d) Under the circumstances, the respondents have contended that the order of preventive detention under Section 3(1) of the Act has been rightly passed against the petitioner as he is a 'Goonda' within the meaning of Section 2(g) of the Act. Hence, on receipt of the report from the Advisory Board, the State has confirmed the detention under Section 12 read with Section 13 of the Act for a period of one year from 25.09.2020. The respondents have further stated that the order of preventive detention has been rightly made against the petitioner herein on deriving a correct subjective satisfaction regarding the activities of the detenu and hence, the said order is in accordance with law. It is neither irrational nor unreasonable so as to call for interference by this Court. Hence, the respondents have sought for dismissal of the writ petition.

5. We have heard the learned counsel for the petitioner and learned Special Public Prosecutor - II for the State and other authorities.

6. On the last date of hearing i.e., on 10.06.2021, learned counsel for the petitioner had urged that the petitioner has made a representation as per Annexure-E, dated 03.01.2021. The said representation has not yet been considered at all and therefore the petitioner was constrained to file this writ petition on 17.03.2021. It was contended that the representation at Annexure-E was made for the first time, subsequent to the order passed at Annexure-D, confirming the order of detention, vide order dated 12.10.2020.

7. Learned counsel for the petitioner placed reliance on a judgment of a Coordinate Bench of this Court in ***Smt.Leelavathi vs. Commissioner of Police, Bengaluru and Others, (ILR 2019 KAR 4105)*** (*Smt.Leelavathi*) to contend that any delay in considering the representation of the detenu is fatal to the detention order and the detention itself becomes illegal. In view of the said categorical submission made by learned counsel

for the petitioner, this Court passed an order dated 10.06.2021 in the following terms:

“Learned counsel for the petitioner submitted that subsequent to the confirmation order, a representation was made on 03.01.2021. The State has not yet been considered (as per Annexure-‘E’).

The said submission is contradicted by learned Special Public Prosecutor-II by stating that no such representation was made to respondent No.3 and therefore the State is not responsible for non-consideration of any such representation.

In the circumstances, we direct respondent No.3 to make available the record of 03.01.2021, 04.01.2021 and also 12.01.2021 (as stated in paragraph No.8 of the Writ Petition) vis-à-vis inward and outward register maintained by him or any other concerned authority. This is to ascertain whether the petitioner had indeed made a representation, a copy of which is at Annexure-‘E’ to the writ petition.

Learned Special Public Prosecutor-II to produce the records on 15.06.2021.

A copy of this order is furnished to the learned Special Public Prosecutor-II.”

8. Pursuant to the directions issued by this Court, learned Special Public Prosecutor - II has produced the original records and has contended that the representation made by the detenu, as contended by the learned counsel for the petitioner, was not on 03.01.2021 or on 04.01.2021 but on 12.01.2021.

9. Learned Special Public Prosecutor - II, candidly submitted that the said representation dated 12.01.2021 was sent by the third respondent to the second respondent on 13.01.2021 (received by Tappal Section, Vidhana Soudha, Secretariat) but the said representation has not yet been considered.

10. Further, learned Special Public Prosecutor - II emphasized that this is not the first representation made by the petitioner. That, as early as on 27.10.2020 itself, the petitioner had made a representation, which was submitted on the very next date by the third respondent-Superintendent of Central Prison, Bengaluru to the Chairman of the Advisory Board by communication dated 28.10.2020. Learned Special Public Prosecutor - II drew our attention to the said communication enclosing the

representation of the petitioner. He submitted that this is not a case where there was no representation made at all prior to the confirmation of the detention order and for the first time, the representation was being made. Therefore, the judgment of the Coordinate Bench of this Court in the case of *Smt. Leelavathi* would not apply to this case.

11. Learned Special Public Prosecutor - II submitted that successive representations cannot be made by the detenu and in that regard, he placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Smt. Aruna Kumari vs. Andhra Pradesh (1988) 1 SCC 296 (Smt. Aruna Kumari)***.

12. Learned Special Public Prosecutor - II also contended that despite this fact, having regard to Section-14 of the Act, power is envisaged with the State to either revoke or modify the order of detention. That since representation dated 12.11.2021 has not yet been considered, the same would be considered in accordance with law, if some time is granted and a direction is issued in that regard.

13. Learned Special Public Prosecutor - II also emphasized that in view of suppression of the fact that earlier representation was made on 27.10.2020 by the petitioner, he cannot seek shelter under the judgment of the Coordinate Bench of this Court in the case of *Smt.Leelavathi*. The facts in the present case are distinct as compared to the facts in the case of *Smt.Leelavathi*. In the case of *Smt.Leelavathi*, there was no representation made prior to the confirmation order and the representation was made for the first time only after the confirmation of the order of preventive detention. In the above context, this Court held that even if the representation is made for the first time after the confirmation order is passed, the right to file a representation being a constitutional right must be considered in right earnest. He contended that the judgment in the case of *Smt.Leelavathi* is not applicable to the present case.

14. Learned Special Public Prosecutor - II also sought to contend that the principles that govern consideration of a representation made pre-confirmation of the order of detention may not be applicable to a

representation made post-confirmation of such an order. That in this case, it cannot be alleged that there was no such representation made prior to the confirmatory order being passed by the State, rather, this is a case of second representation being made on 12.01.2021 and if directions are issued by this Court to the State to consider the said representation in accordance with law and within a time frame to be fixed by this Court or within a reasonable time, as the case may be, it would be considered.

15. By way of response to the said submissions, learned counsel for the petitioner took up two other contentions: firstly, by contending, in the instant case, the order of the detention was passed on 25.09.2020, whereas, approval of the detention order was on 03.10.2020 and it was after more than five days and hence the detention is bad in law.

16. Learned counsel for the petitioner, next contended, the order of detention is bad for the reason, the petitioner has been granted bail in several cases and no other case is pending as against the petitioner. Hence, the order of detention could not have been issued on the

ground of threat being there to public peace and tranquility, on baseless allegations. Hence, on that ground also the detention may be quashed.

17. To the first submission made on behalf of the petitioner, learned Special Public Prosecutor - II urged that the period stipulated under the proviso is twelve days and in the instant case the detention order was passed on 25.09.2020 and the order was approved on 03.10.2020 and the said order of approval was communicated to the detenu on 05.10.2020. Therefore, there is no substance in the said contention.

18. In response to the next submission of the petitioner, learned SPP-II urged that this Court may not go into the aspect of subjective satisfaction of the State in passing the order of preventive detention as there is a confirmation order passed on 12.11.2020 which was not challenged till the filing of this writ petition. All that is required to be noted is whether the detention order is in violation of the provisions of the Act or the Constitution of India. That in the instant case there is no infraction of any provision of the Act nor Article 21 or 22 of Constitution and

hence there is no merit in the submissions of the learned counsel for the petitioner.

19. The detailed narration of facts and contentions would not call for reiteration except to highlight that, the order of detention was passed by the detaining authority on 25.09.2020 under Section 3 of the Act. It was communicated to the detenu on the same date and the detention order was received from the detaining authority (respondent No.1 herein) by the State Government on 29.09.2020. The State Government approved the detention order on 03.10.2020 and the approval order was communicated to the detenu on 05.10.2020. Thereafter, the recommendation was placed before the Advisory Board on 12.10.2020 and the representation of the detenu dated 27.10.2020 was submitted to the Advisory Board on 28.10.2020. The Advisory Board held its meeting on 02.11.2020, on which date the detenu appeared before the Advisory board. On 06.11.2020 the Advisory Board gave its opinion. On receipt of the opinion from the Advisory Board on 10.11.2020, the State passed the order on 12.11.2020, confirming the order of detention for a period

of twelve months and communicated the same to the detenu.

20. In light of the aforesaid facts, we have closely perused the pleadings of the petitioner in the writ petition. It is noted, the petitioner has averred at paragraph No.8 of the writ petition as follows:

"8. After receiving copies of the order dated 25.09.2020 (Annexure "A"), the Petitioner submitted a detailed representation dated to the 2nd Respondent and Chairman of the Advisory Board through the 3rd Respondent on 12.01.2021 setting out several grounds for revocation of the detention order. No acknowledgment has been provided to the Petitioner or his brother regarding submission of the representation. Moreover, as on the date of filing of the present writ petition, no intimation, let alone any decision on the representation has even been communicated to the Petitioner or his brother. A true copy of the representation dated 03.01.2021 given to the Respondents is produced as Annexure "E" to the writ petition."

On a reading of the same, it is evident that the petitioner submitted a detailed representation to the second respondent as well as the Chairman of the Advisory Board (though, by then, the report had already been

submitted by the Advisory Board) through the third respondent on 12.01.2021, setting out several grounds for revocation of the detention order. Therefore, the petitioner has categorically averred that for the first time a detailed representation (Annexure-E) which was made on 12.01.2021. We have perused Annexure-E dated 03.01.2021, at the end of which it is dated 04.01.2021. Having regard to the specific averments and contention of the petitioner that the representation (Annexure - E) which was made on 12.01.2021 and bearing in mind the fact that Annexure-E was dated both 03.01.2021 as well as 04.01.2021, on 10.06.2021, we had directed the learned SPP-II to ascertain as to whether really the said representation was made to the third respondent on the said date by the petitioner. This was because Learned SPP-II had categorically stated on that date that there was no such representation in the file maintained by the state.

21. Learned SPP-II has now stated that there was, indeed, a representation made on 12.01.2021 by the petitioner, it was submitted by the third respondent to the Tappal Section, Vidhana Soudha, Secretariat on 13.01.2021 and thereafter, representation has now been

traced but no order has been passed on the same. This is on the basis of the inward and outward Register maintained by the third respondent which was produced before us for our perusal. It may be so. But, more significantly, it was pointed out from the original records that it was not the first representation made by the petitioner as earlier on 27.10.2020 a representation was made and the same was also placed before the Advisory Board and in that regard he drew our attention to the communication dated 28.10.2020 from the original record.

22. Therefore, at this stage itself we opine that the entire premise of the argument of petitioner is non-consideration of the representation dated 12.01.2021, which, according to petitioner's counsel makes the detention illegal. This plea has to be considered in light of the fact that there was an earlier representation made by the petitioner but the same has been suppressed before this Court. Therefore, this is not a case where there was no representation made by the petitioner prior to the report of the Advisory Board or confirmation of the order of detention by the State on receiving of the said report. There was already a representation made on 27.10.2021.

Thereafter, the petitioner was produced before the Advisory Board on 02.11.2020. The Advisory Board, on hearing him submitted its report on 06.11.2020 and thereafter the confirmatory order was passed on 12.11.2020.

23. Therefore, the facts of the present case have to be placed in its proper perspective in as much as it cannot be said, that for the first time the detenu made his representation subsequent to the confirmation order and the same has not been considered.

24. Be that as it may. It is necessary to appreciate the object and purpose of what is provided under Section 14(1) of the Act. The said provision enables and empowers the State to consider the representation made even after the confirmatory order of preventive detention passed under Section 12 read with Section 13 of the Act. Section 14 of the Act can be extracted for immediate reference as under:

“14. Revocation of detention orders:-

(1) Without prejudice to the provisions of section 21 of the Karnataka General Clauses Act, 1899, a detention order may, at any time, be

revoked or modified by the State Government, notwithstanding that the order has been made by an officer mentioned in sub-section (2) of section 3.

(2) The revocation or expiry of a detention order (hereinafter 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 Karnataka Prevention of Dangerous Activities of Boot-leggers, Drug-offenders, Goondas, Immoral traffic Offenders and Slum-Grabbers (Amendment) Act, 1987, bar the making of another detention order (hereinafter in this sub-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 revocation or expiry 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, extended beyond the expiry of a period of twelve months, from the date of detention under the earlier detention order."

On a reading of the same, it is noted that the State can revoke or modify an order of preventive detention either *suo moto* or it can be on a representation made by

the detenu, even after confirmation of the preventive detention order. But, such a representation has to be considered in right earnest. But, the fact remains, in the instant case, when the representation was made on 12.01.2021, the same has not yet been considered since then; even till today the said representation has not been considered. In fact, learned SPP-II had initially contended that there was no such representation but pursuant to our order dated 10.06.2021, he has produced the original inward/outward register maintained by third respondent and has submitted that in fact, a representation was made on 12.01.2021.

25. Therefore, the point that arises for consideration in this case is, whether, in the absence of consideration of the representation of the petitioner which was made on 12.01.2021 the continuation of the detention of the petitioner is valid or vitiated.

26. Learned SPP-II has submitted that the representation dated 12.01.2021 made by the petitioner to the third respondent was sent to the 'Tappal Section', Vidhana Soudha (State Secretariat) on 13.01.2021. What

has happened to the said representation from the said date is not known. Initially it was contended by the respondents that there was no such representation but pursuant to this Court's order dated 10.06.2021, it is now submitted that there was a representation submitted to the third respondent on 12.01.2021 and the same was transmitted to the Secretariat on 13.01.2021. The question is, whether, the duty cast on second respondent has been discharged in the instant case or not. We have found that the representation made on 12.01.2021 reached the State Secretariat on 13.01.2021 and the writ petition was filed on 17.03.2021. Today is 15.06.2021. The fact of the matter is, till date, the said representation has not been considered and the reason for its non-consideration as explained by learned SPP-II is, it remained unattended to as the case worker never placed the same before the concerned authority of the State Government for consideration namely, the second respondent herein.

27. We find that much time has been lost in the instant case *vis-a-vis*, the consideration of the representation. The non-consideration of the representation in the instant case has adversely affected

the right of the petitioner inasmuch as the failure of the State Government to consider the representation till date is an instance of infraction of Article 21 of the Constitution of India. We say so, for the reason that, had the representation been considered at the earliest point of time from the date of its receipt, by the second respondent there may have been a possibility of the State Government either revoking the order of detention or modifying it. It could also have been a case of rejection of the representation. But, today, when more than five months have lapsed from the date of making representation the detenu is unaware of whether his representation has been considered and rejected or not considered at all. All this while the detenu continues to be in detention. We are not, for a moment, suggesting that in the instant case, the detenu would have been released had the representation been considered within a reasonable time. That is not the import of our reasoning. But there was a possibility of the detenu being released if his representation had been considered at the earliest point of time. In such a case, the petitioner may have been released and not continued in detention or incarceration. In the alternative, the order

of detention may have also been modified and the petitioner may have been released prior to the completion of the period of detention, which is twelve months in the instant case. In both the above possibilities, the liberty of the petitioner, being crucial, would have been safeguarded. But, non-consideration of the representation implies lack of opportunity to have release from detention, if the representation had made out such a case or a release prior to the completion of the order of detention. In both cases, the right of the petitioner under Article 21 would have been safeguarded. Further, consideration of the representation by the second respondent and its rejection would have allowed the petitioner to seek remedy in accordance with law, by a judicial review of the same. But in the instant case non-consideration of the representation dated 12.01.2021 till date is in our view is a glaring instance of violation of Article 21 of the Constitution.

28. We emphasise that consideration of the representation at an earliest point of time is of utmost importance even in a case where it is made post confirmation of the detention, as the reasons assigned for

modification or revocation of the order of detention may be acceded to by the State Government. But, for making such an order it is just and necessary that the representation is considered expeditiously. There could be a variety of reasons for making a representation by a detenu which needs to be considered within an earliest point of time by the State Government. Let us assume that in a case the detenu may have made out a case for either revocation or modification of the order of preventive detention; the non-consideration of the said representation for five months, as in the instant case, would imply that the right to be released on account of the revocation of the order of detention or its modification, is lost. If for nearly six months such a representation is not considered and if the order of preventive detention had to be revoked or modified as a case as such was made out, the same would not enure to the benefit of the detenu as precious time would have been lost due to non-consideration of the representation. If ultimately the detenu is to have benefit of revocation or modification of the order of preventive detention, on the basis of his representation the same must be considered at the earliest point of time and not at

the fag end of his detention. If such a representation is not considered at the earliest point of time, it would be easy to say that the representation has lost its efficacy and has been rendered infructuous on account of the period of detention being completed. Such a *fait accompli* cannot be permitted to happen under our Constitution.

29. It would be a different matter if the representation is considered at an earliest point of time and rejected. This would give a further right to the detenu to take recourse in accordance with law but, for that also, the detenu's representation must be considered in the right earnest. Thus, the most significant right that a detenu has is to have his representation considered, under Section 14 of the Act as early as possible i.e., at the earliest point of time from its submission to the jail authority. The right of consideration of a representation made by the detenu under Section 14 of the Act is a critical and important right. If such a representation is considered and rejected, faced with the order of rejection, a detenu may take remedies available to him in law. But the representation of the detenu cannot be in suspended animation inasmuch as it cannot be mixed up with a

bundle of other postal record or with other record, files or papers of the State Government or simply to lie on the desk or shelf of the case worker. It is incumbent upon the State Government to have a separate channel for the receipt of communication of such representations made by detenus, not only prior to the confirmation order, but even after the confirmation order is passed. This is having regard to the duty/obligation cast on the State Government under Section 14 of the Act to pass an order of revocation or modification of an order of preventive detention or to pass an order of rejection of the representation, as the case may be.

30. Thus, based on the reasons that could be made out by the detenu by way of a representation, the consideration of the same at the earliest possible time is so essential and a core right of the detenu or otherwise, it would be an infraction of the right to liberty under Article 21 of the Constitution. We may illustrate the same by an example. If a detenu is afflicted by a serious cardiac disease and makes a representation seeking modification or revocation of his order of detention, on a consideration of which it could result in either revocation or modification

of the order of detention by the State Government. But if the same is not considered in time, it may inevitably result in the death of the detenu while in detention on account of lack of effective medical assistance. Also, if for instance, the order of detention has been mistakenly made against a detenu and he makes a representation to bring to the notice of the State Government the said fact and it is not at all considered for months together, that would be a serious infraction of his right to liberty envisaged under Article 21 of the Constitution. Thus, the reason for making a representation could be manifold which one cannot envisage at present. What is of seminal importance is consideration of the representation at the earliest point of time, which would brook no delay. Moreover, such a representation could be made for the first time after the detention order albeit subsequent to the passing of the order of confirmation of the same.

31. In the context of non-consideration of the representation made by the petitioner herein on 12/1/2021, the doctrine of natural justice could be pressed into service. According to the Hon'ble Supreme Court, the rules of natural justice "are not rigid norms of unchanging

context". The ambit of those rules would vary according to the context and "they have to be tailored to suit the nature of the proceedings in relation to which the particular right is claimed as a component of natural justice vide, **A.K.Roy vs. Union of India [AIR 1992 SC 710]**. It has been further elaborated in **K.L.Tripathi vs. State Bank of India [AIR 1984 SC 273]** that, whether, any particular principle of natural justice would be applicable to a particular situation, or the question whether there has been any infraction of the application of that principle, has to be judged, in the facts and circumstances of each case.

32. In the context of processual rights of a detenu under preventive detention, although the Hon'ble Supreme Court has emphasized that the compliance of the principles of natural justice before the Advisory Board, nevertheless, the said observations may be extended even to a period subsequent to the consideration of the matter by the Advisory Board. In this context, what is important is to realize that non-consideration of a representation made by the detenu to the State Government under Section 14 of the Act would amount to failure of the principles of natural justice and therefore, an illegality. Section 14 of the Act

envisages a duty on the State Government regarding consideration of the representation at the earliest point of time and to communicate the order disposing of the representation to the detenu, which is a facet of the principles of natural justice. We think that in the face of non-consideration of a representation by the detaining authority at the earliest point of time is a violation of the principles of natural justice in its expanded form.

33. Therefore, in order to avoid hardship or prejudice being caused to the detenu inasmuch as his right to liberty under Article 21 is affected, the representation must be considered at the earliest point of time. In addition, there should be a communication of the order passed on the representation, either, accepting the same and releasing the detenu forthwith by revocation of the order of detention or a modification of a detention order, wherein there could be a shorter period of detention, then what has been ordered in the confirmatory order under Section 12 read with Section 13 of the Act. More importantly, if the representation is rejected, then there must be reasons assigned for doing so and the order of rejection along with the reasons must be communicated to

the detenu. Any delay in supplying the order of rejection of the representation would also cause prejudice to the detenu as he would be deprived of his right to seek remedy *vis-à-vis* the order of rejection, which may prove fatal to the order of preventive detention. In other words, consideration of a representation made by a detenu, post-confirmation of the order of preventive detention is to be read into the principles of natural justice and also Article 21 of the Constitution. Non-consideration of such a representation would also be arbitrary and oppressive and therefore, an infraction of Articles 14 as well as 21 of the Constitution.

34. Further, Article 22(5) confers on the detenu, the right to make a representation against the order of detention prior to its confirmation. This right implies a corresponding duty or obligation on the part of the State Government to consider the representation of the detenu at the earliest opportunity. The substance of the said right could be applied even to a case of consideration of a detenu's representation post-confirmation of the detention. In this context, reliance could be placed on a judgment of the Hon'ble Supreme Court in ***Shalini Sony vs. Union of***

India [AIR 1980(4) SC 431]. In the said judgment it was observed that the obligation imposed on the detaining authority, by Article 22(5) of the Constitution, to afford to the detenu, the earliest opportunity of making a representation, carries with it the imperative implication that the representation shall be considered at the earliest opportunity. Any breach of the said imperative must lead to the release of the detenu. In the said case, the representation was admittedly not considered and on that ground alone the detenu was entitled to be set at liberty. The said decision could be extended for consideration of a representation post-confirmation of the detention order being passed and in the context of Section 14 of the Act also.

35. It is trite that the law of preventive detention must not only comply with Article 22 of the Constitution, but also fulfill the mandate of Articles 21 and 14. The Hon'ble Supreme Court has emphasised that an order of preventive detention affects the liberty of subject and hence, "it is the bounden duty of the Court to satisfy itself that all the safeguards provided by the law have been scrupulously observed and that the subject is not deprived

of his personal liberty otherwise than in accordance with law". Thus, the Courts have to enforce procedural safeguards meticulously. Also, statutory and constitutional provisions or the rights spelt out by the Courts from these provisions have to be scrupulously observed as these are all treated as mandatory requirements.

36. Further, the Courts have given a liberal interpretation to procedural safeguards favouring the detenu. For instance, Courts have spelt out the norm that there should not be an undue delay in the detaining authority considering the representation made by the detenu by use of the expression "earliest opportunity" for making a representation. It has been stated that a dual obligation of consideration of the detenu's representation both by the detaining authority as well as by the Advisory Board is within the ambit of Article 22(5). Thus, any deviation from a non-observance of any of these safeguards would invariably result in the preventive detention being quashed. There have been cases when failure to follow the prescribed procedures would lead to quashing of the detention orders. In fact, in the context of Article 22(5) of the Constitution, the detenu has a right to

make a representation at the earliest opportunity. If the representation is considered and accepted by the Government, it will release the detenu and then the matter need not be sent to Advisory Board at all. If the same principle is extended to a period subsequent to the passing of the confirmatory order and a representation being made by the detenu, it is incumbent upon the State Government to consider the said representation at the earliest point of time, for the reasons which we have discussed above, by means of illustrations also.

37. If consideration of the representation made by the detenu under Section 14 of the Act is a right of the detenu and a corresponding duty is cast on the State Government, then administrative delay cannot imperil the said right. Inordinate delay in considering the said representation could lead to release of the detenu. Even though Section 14 does not prescribe any time limit for consideration of the said representation, the same must be considered at the earliest point of time. What is the earliest point of time cannot be spelt-out as it would depend upon the facts of each case. But there cannot be a long passage of time or non-consideration of the

representation for an unduly long time. Delay in performance of statutory duties amounts to an abuse of process of law and has to be remedied by the Court, particularly when the liberty of a person suffers thereby.

38. In the context of preventive detention, undue administrative delay would prove fatal to the validity of the preventive detention of a person. Expressions such as "as soon as it may be" and "earliest opportunity" in Article 22(5) of the Constitution would indicate that a sense of expedition being incorporated as a constitutional safeguard. For immediate reference Article 22(5) of the Constitution is extracted as under:

"22. Protection against arrest and detention in certain cases-

x x x

(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."

Just as the right of a detenu to make a representation at the earliest opportunity prior to the order of confirmation is passed is envisaged, it would also extend to a right to make a representation even after a confirmation order is passed confirming the preventive detention on the basis of the report of the Advisory Board. When such a representation is made post-confirmation of the detention, the same has to be considered promptly, without any delay and as expeditiously as possible. It would depend upon the facts of each case as to whether there has been a delay in considering the representation so as to infer that there has been infraction of Articles 14 and 21 of the Constitution.

39. In *Smt. Leelavathi*, the facts were that the representation of the detenu was belated in the sense it was made after the order of confirmation was made. Therefore, the question was with regard to consideration of such representations by the State Government and if so in terms of Section 14 of the Act. In the said decision, it was held that although a representation was made subsequent to the confirmation order being passed, the same had to be considered under Section 14 of the Act. The delay in

considering the same would deprive the valuable right of the detenu. It was observed that the right of the detenu to have his representation considered at the earliest point of time would subsist throughout his detention. Even though, the detention is continued by the order of the confirmation, the same would not mean that his opportunity to make a representation would cease. When Section 14 of the Act gives a right to a detenu to make a representation, the State is under an obligation to consider the same at the earliest point of time. It was further observed that the right to file a representation to the State being a constitutional right of the detenu, when it is exercised even though subsequent to the confirmation order, it is the duty of the State to dispose of the representation at the earliest point of time, if not the constitutional right of the detenu would be affected. The State cannot be permitted to sit on the representation of the detenu, or otherwise, the constitutional right of the detenu would be negated. In the said case, since there was a delay in considering the representation of the detenu therein, which was held to be fatal, further

detention of the detenu was held to have become illegal and hence, he was ordered to be released.

40. Learned Special Public Prosecutor-II relied on the judgment of ***K.Aruna Kumari vs. Government of Andhra Pradesh, [(1988) 1 SCC 296]***, to contend that there is no right in favour of a detenu to make successive representations based on the same grounds which have been rejected earlier to be formally disposed of again. In any event, no period is prescribed for disposal of an application under Section 14 of the Act, when the earlier representation has been rejected.

41. Reliance was also placed on ***D.Anuradha vs. Joint Secretary, [(2006) 5 SCC 142]***, to contend that there is no right in favour of a detenu to get his successive representations based on the same grounds rejected earlier to be formally disposed of again. But in paragraph 17 of the said judgment, it has been observed that if there is any serious delay in disposal of the representation, the detention order is liable to be set aside. Nevertheless, if the delay is reasonably explained, that by itself is not sufficient to hold that the detention was bad and illegal.

42. In ***Frances Coralie Mullin vs. W. C. Khambra, [(1980) 2 SCC 275]***, the Hon'ble Supreme Court observed as under:

- "(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 [early] 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 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."

Although, the aforesaid observations are in the context of considering a representation of a detenu prior to the matter being considered by the Advisory Board, nevertheless, the import of the said observations would even apply to a representation made by a detenu post confirmation order *mutatis mutandi*. This would mean that the State, in exercise of its power coupled with duty, under

Section 14 of the Act, must consider the representation expeditiously and independently of the report of the Advisory Board in order to ascertain, whether, there is any changed circumstances or a reason which has emerged subsequent to the confirmatory order which would call for the detention order to be revoked or modified.

43. Any delay in disposing of the representation of the detenu would vitiate further detention despite the order of detention being confirmed as per Section 12 read with Section 13 of the Act. We say so because there is an obligation on the part of the State to consider the representation made post-confirmation of the detention, in light of Section 14 of the Act. Thus, any delay in doing so, must be adequately explained as the obligation/duty cast on the State Government under Section 14 of the Act is couched in the context of Article 21 of the Constitution. Therefore, such a representation must also receive immediate attention and the same must be considered as expeditiously as possible or otherwise the delay would cause prejudice to the detenu. Even though the Section 14 does not prescribe any time limit to consider and dispose of the representation, it must be done at the

earliest possible time so as to avoid any prejudice being caused to the detenu, which would be an infraction of Article 21 of the Constitution.

44. What is the earliest point of time within which the representation ought to be considered under Section 14 of the Act would depend on the circumstances of each case. For instance, if the detenu has made out a strong reason for revocation of his detention and the same is not considered at the earliest point of time, it may ultimately lead to the representation being rendered *infructuous* on account of death of the detenu due to his illness not being treated in time or such other reasons, which would be a deprivation of the right to life and liberty under Article 21 of the Constitution. If the delay in not considering the representation in time is satisfactorily explained, the law would take its course accordingly.

45. But, here is a case where there has been no consideration of the representation made by the petitioner under Section 14 of the Act till date, as it was made on 12.01.2021 and there has been a lapse of five months.

What should be the fate of the petitioner in the instant case?

46. It is settled law that an order of preventive detention is made on the subjective satisfaction of the detaining authority. The Act also provides for revocation or modification of the order of detention. Such a power could be exercised *suo motu* by the State. It is a power coupled with the duty when it is exercised on the basis of a representation made by the detenu subsequent to the confirmatory order made.

47. In ***Prakash Chandra Mehta vs. Commissioner & Secretary, Government of Kerala, [1985 (Supp.) SCC 144]***, it has been observed that preventive detention unlike punitive detention is not to punish for the wrong done, but it is to protect the society by preventing wrong being done. The purpose of exercise of all such powers by the Government must be to promote common well-being and must be to subserve the common good. It is necessary to protect the individual rights insofar as practicable which are not inconsistent with the security and well-being of the society. Observance of written law

about the procedural safeguards for the protection of the individual is the highest duty of public official.

48. That an order of detention is not curative or reformative or punitive action but a preventive action, the avowed object of which being to prevent the anti-social and subversive elements from imperiling the welfare of the country or the security of the nation or from disturbing the public tranquility or from indulging in smuggling activities or from engaging in illicit traffic in narcotic drugs and psychotropic substances etc., preventive detention is therefore, devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing so, vide, ***Naresh Kumar Goyal vs. Union of India, [(2005) 8 SCC 276]*** and ***P.U. Iqbal vs. Union of India (UOI), [(1992) 1 SCC 434]***.

49. At the same time, while considering and interpreting the preventive detention laws, there must be a concern for upholding and safeguarding the fundamental right and liberty of the detenu without losing sight of the fact that the preventive detention has been recognised

even under the Constitution. Even though the same is based on the subjective satisfaction of the detaining authority, nevertheless, it is not immune from judicial review. Even after the confirmation order is made by the State, the obligation to act under Section 14 of the Act cannot be ignored. Hence, the following guidelines/directions:

- (i) That whenever an order of detention is followed by an order of confirmation of detention made by the State under Section 12 read with Section 13 of the Act, liberty is reserved to the detenu to make a representation;
- (ii) In such a case, the representation would have to be considered by the State under Section 14 of the Act in the context of revocation or modification of the order of detention;
- (iii) Such a representation, when made to the Jail Superintendent/Jail Authority by the detenu, must be transmitted to the concerned officer/authority who is vested with the responsibility/obligation to consider such a representation at an earliest possible time. The use of technology in this regard has to be

underscored. Such a representation can be scanned or sent in any other instantaneous mode by the Jail Authority to the concerned officer or authority;

- (iv) If a case-worker is entrusted with the file of a particular detenu, it is the duty of the case-worker to put up the representation immediately on receipt of the same before the concerned officer or authority for consideration of the same;
- (v) For the said purpose, the State has to devise a system or channel under which such representations could reach the concerned officer or authority in an expeditious manner.
- (vi) On such representation being placed before the concerned authority or officer, the same has to be considered as expeditiously as possible and in the earliest point of time. What is the said time cannot be defined in specific terms. The same would depend upon the nature of the representation made by the detenu.

- (vii) It is needless to observe that precious time cannot be lost in the transmission of the representation to the concerned department and thereafter, in placing the same by the case worker before the concerned officer or authority. Hence, the State may issue further guidelines/directions in that regard to all the jail authorities/jail superintendents wherein persons are detained under the respective laws provided for preventive detention so that the representations made post confirmation of such detention are considered in time under Section 14 of the Act.
- (viii) On consideration of the representation of the detenu, the order made thereon must be communicated to the detenu through the concerned jail authorities so that if the order is for release of the detenu, he is released forthwith or if it is modification of the detention order, in which event, it could be an earlier release and the same would also have to be intimated to the detenu. Similarly, if the representation is rejected, it must also be communicated to the detenu forthwith so as to

enable the detenu to take recourse in accordance with law.

- (ix) On such communication being sent, the jail authority, which receives the same, must inform the authority which has made the order, about the receipt of communication and about the intimation of the said communication to the detenu.
- (x) The State Government to issue guidelines to the respective jail authorities and other officers/authorities in the Department of Home Affairs with regard to the aforesaid directions.

The Registrar General, High Court of Karnataka, Bengaluru, to circulate this judgment to the following authorities:

1. The Additional Chief Secretary, Department of Home, Government of Karnataka, Vidhana Soudha, Bengaluru-560 001;
2. The Principal Secretary, Department of Law, Government of Karnataka, Vidhana Soudha, Bengaluru-560001.
3. Director General and Inspector General of Police, Director General of Police Karnataka, Karnataka, Police

Headquarters, Nrupathunga Road,
Bengaluru-560001;

4. Secretary, Department of
Parliamentary Affairs, Government of
Karnataka, Vidhana Soudha,
Bengaluru-560 001.

50. In issuing the aforesaid directions, we are placing reliance on the judgment of the Hon'ble Supreme Court in ***K.M.Abdulla Kunhi and B.L.Abdul Khader vs. Union of India, [AIR 1991 SC 574]***, wherein a Constitution Bench of the Hon'ble Supreme Court held that the confirmation of the detention does not preclude the Government from revoking the order of detention upon considering the representation. There may be cases where the Government has to consider the representation only after confirmation of detention. Article 22(5) of the Constitution suggests that the representation could be considered even after confirmation of the order of detention. The words '*shall afford him the earliest opportunity of making a representation against the order*' in Article 22(5) of the Constitution suggest that the obligation of the Government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed. But, if the detenu does not exercise his right to make representation at that stage, but presents it to the Government after the Government has

confirmed the order of detention, the Government still has to consider such representation and release the detenu if the detention is not within the power conferred under the statute. Thus, the confirmation of the order of detention is not conclusive as against the detenu. It can be revoked *suo motu* or upon a representation of the detenu. Hence, even if there is a confirmation of detention, the representation post-confirmation has to be considered independent of confirmation order.

51. Therefore, in the instant case, we do not think, we can simply direct the State to consider the representation dated 12.01.2021, in accordance with law and within a time-frame to be issued by this Court. We say so on account of the stark facts which have been brought to our notice, inasmuch as the representation dated 12.01.2021, has gone unnoticed and not considered till date. In the circumstances, we find that the petitioner cannot be detained any further under the order of the preventive detention dated 25.09.2020. By this, we clarify that we have not expressed any opinion on the correctness or otherwise of the detention order dated 25.09.2020 *per*

se nor have we considered all other grounds urged by the petitioner.

52. In the instant case, we are only concerned on the singular aspect of the non-consideration of the representation dated 12.01.2021 till date. As a result, the petitioner is denied the benefit of the consideration of his representation for five long months and he is in the dark till date and is not aware about the consideration of his representation nor its rejection or its acceptance. In the absence of detenu's representation being considered till date, it has led to violation of his rights under Article 21 of the Constitution of India. We reiterate that, had the said representation being considered at the earliest point of time, there could have been an order, either of rejection of the same or revocation or modification of the order of detention. If it was to be a case where the representation of detenu would have been rejected, even then, the petitioner would have known the fate of his representation, not knowing the fate of the representation, dilute the object and purpose of Section 14 of the Act.

53. Hence, we direct release of the petitioner forthwith, if he is not required in any other case/s. While directing that the petitioner be released from detention, we clarify that we have not opined on the correctness or otherwise of the preventive detention order dated 25.09.2020, which has now been rendered inoperative. We reserve liberty to the State and the authorities concerned to act in accordance with the Proviso 14 of the Act.

54. The writ petition is **allowed** and disposed in the aforesaid terms.

55. The Registrar (Judicial) is directed to communicate this order to the third respondent for release of the petitioner by bearing in mind all legal formalities.

56. The direction issued to the Registrar (Judicial) to be communicated to him forthwith.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

JJ/RK/-