

(1995) 08 P&H CK 0018

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Writ Petition No. 880 of 1994

Amrik Singh

APPELLANT

Vs

The Secretary to Government of
Punjab and Others

RESPONDENT

Date of Decision: Aug. 7, 1995

Acts Referred:

- Constitution of India, 1950 - Article 22, 22(5)
- Customs Act, 1962 - Section 108

Citation: (1996) CriLJ 429 : (1995) 3 RCR(Criminal) 451

Hon'ble Judges: V.K. Bali, J

Bench: Single Bench

Advocate: A.S. Sandhu, for the Appellant; Arun Walia, AAG for (Nos. 1 and 2) and D.D. Sharma, Addl. Sr. Standing Counsel for U.C.I. (For No. 3), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V.K. Bali, J.

By this order two Criminal Petitions No. 880 of 1994, Amrik Singh v. Secretary to Govt. Punjab and Criminal Petition No. 872 of 1994, Suba Singh v. Secretary to Govt. Punjab are being disposed of as Mr. Sandhu learned counsel appearing for the petitioners in both the cases has raised same points for the petitioners prayer to set aside detention order (Annexure P-1) dated 17-2-1994 and grounds of detention of the same date (Annexure P- 1/A) in Amrik Singh v. Secretary to Govt. Punjab and order of detention dated 15-2-1994 (Annexure P-1) and grounds of detention of the same date in Criminal Petition No. 872 of 1994, Suba Singh v. Secretary to Govt. Punjab and others.

2. The facts, however, as culled out from Criminal Petition No. 880 of 1994, Amrik Singh v. Secretary to Govt. Punjab as per the version of the petitioner given in the writ, reveal that the petition was working as Constable/Head Constable and was

awarded many commendation certificates and was given cash rewards by the Police Department. He is stated to have helped Punjab Police in intercepting the trucks and persons involved in narcotics smuggling. He was promoted as Sub-Inspector of Police due to his keen interest and devotion to duty. However, he became an eye sore to the smugglers and is stated to have been implicated in false cases. On 10th April, 1993, Customs Department, Amritsar called the petitioner by issuing summons u/s 108 of the Customs Act, 1962 and asked him to make statement about the allegations levelled against him by Satbir Singh and Balwinder Singh in which they had alleged that on 2nd January, 1993, Satbir Singh, Suba Singh, Balwinder Singh and the petitioner went to Pathankot Jalandhar Road Bhogpur and Tanda and they all snatched gold biscuits from one Paramjit Singh who was coming on a scooter by over-powering him and they fled away with the gold biscuits. It is pleaded that the petitioner denied all the allegations and did not make any confession before the Customs Authority. He was sent on official duty to Kapurthala along with Suba Singh Constable where he was interrogated and was taken into custody on 7-2-1993 and later on he was told that a case of smuggling has been registered against him vide F.I.R. No. 21 dated 9-2-1993 pertaining to Police Station, Kapurthala. Major Singh, S.H.O. Police Station "A" Division, Ram Bagh, Amritsar, in his letter dated 20-4-1993 addressed to the Superintendent of Customs (Preventive) Amritsar, stated that the petitioner was sent to Kapurthala alongwith Suba Singh Constable for official work. On further enquiries, the Customs Department was informed that petitioner remained on duty during the period in which the alleged smuggling activity was reported. Order of detention dated 17-2-1994 (Annexure P-1) was passed by the Secretary to Government Punjab, Department of Home Affairs and Justice on the basis of grounds of detention of the even date. These grounds of detention are detailed in Annexure P-1/A. It is pleaded that when the petitioner came to know about the detention order, he after obtaining the copies from some source challenged the detention order vide Criminal Writ Petition No. 116 of 1994 before this Court on 24-8-1994 when the following order was passed :-

"Admittedly, in the present case, petitioner is evading service of the Detention Order. The grounds taken and contentions urged by the Counsel for the petitioner do not make out a case, which would impel this Court to interfere with the Order of Detention at the pre-execution stage. The case of the petitioner does not fall under any of the above-mentioned five categories. The grounds on which the Detention Order is being sought to be quashed in the present case, can be urged only after the petitioner surrenders to the detaining authority or the Order is executed against him."

Against the aforesaid order, SLP was filed before the Supreme Court which came up for hearing on 17-10-1994 which was dismissed by observing as follows:

"In the facts and circumstances of the case, we do not consider it a fit case to examine the questions raised in this petition at this stage prior to detention order

being served on the petitioner. We make it clear that the grounds raised herein would be available to the petitioners for challenging their detention at the subsequent stage. For this reason, we express no opinion on the merits of the points, which have been raised. The SLP is dismissed at this stage."

3. While challenging the grounds of detention vide present writ petition, the petitioner pleads that after going through the grounds of detention, he came to know that F.I.R. No. 21 dated 9-2-1993 was lodged at the Police Station, Kapurthala against him and some other persons. Trial Court discharged him in the said F.I.R. and he was reinstated immediately by the police department. Even though the detaining authority had mentioned the number of F.I.R. but the sponsoring authority did not place before the detaining authority the copy of the discharge order of the petitioner and others against whom the F.I.R. was lodged. Another case bearing No. 229 of 1993 dated 8-6-1993, based on F.I.R. No. 13 of 1993, Police Station "A" Division, Amritsar dated 8-2-1993 was tried by the Judicial Magistrate 1st Class, Amritsar against Paramjit Singh, Balwinder Singh, Suba Singh and the petitioner under Sections 411/414 of the N.D.P.S. Act and Gold Control Act, on the basis of the allegations mentioned against the petitioner in paras 5 and 6 of the grounds of detention but the trial Judge discharged him and others on the ground that there was no evidence in the matter. This order was passed on 3-7-1993. It is pleaded that sponsoring authority had not placed vital documents of discharge of petitioner by the trial Court in both the cases and non-placing of the material facts leading to the discharge of petitioner before the detaining authority vitiates the subjective satisfaction of the detaining authority. If material or vital facts which have a bearing on the issue and would certainly weigh with the satisfaction of the detaining authority one way or the other and influence the mind of the said authority are either withheld or suppressed by the sponsoring authority or ignored, the same would itself be enough to set aside the order of detention. It is, thus, pleaded that non-placing of material fact of acquittal/discharge of the petitioner in criminal cases before the detaining authority resulted in non-application of mind of the detaining authority. It is also pleaded that the order of detention came into being after 13½ months after the alleged incident mentioned in the grounds of detention and is, therefore, illegal because there is no proximity between the alleged activity and the passing of the detention order and that the order of detention is void inasmuch as the satisfaction expressed therein is not real and genuine but mechanical. It is further pleaded that non-placing of show-cause notice and reply thereto before the detaining authority or suppressing this fact from the detaining authority would vitiate the passing of the detention order as also the non-supply of the report/proposal prepared by the sponsoring authority violates the provisions of Article 22 of the Constitution of India. It is also the case of the petitioner that the detaining authority had not applied its mind while framing the grounds of detention but had copied them from the grounds of detention prepared by the custom authorities and the non-supply of search authorisation warrants of

the premises mentioned in the grounds of detention makes the detention illegal. It is also the case of the petitioner that the delay in deciding the representation of the petitioner by respondents Nos. 1 and 3 and the delay in executing the detention order, when there was no stay order granted by any Court would render the order of detention bad in law.

4. The cause of the petitioner has been seriously opposed by the respondents, in the written statement filed by way of an affidavit on behalf of respondent No. 2 through Shri Tarsem Lal, PPS, Superintendent, Central Jail, Amritsar and by way of affidavit of Amrita Atwal, Deputy Secretary Home, Punjab, Department of Home Affairs & Justice on behalf of respondents Nos. 1 and 2 and the counter affidavit filed on behalf of Union of India through Roop Chand, Under Secretary to the Government of India, Ministry of Finance, Department of Revenue. It has been pleaded that earlier good conduct of the petitioner can be no good ground for challenging the detention order on the basis of subsequent conduct warranting his detention. The petitioner is involved in smuggling case and therefore, award of commendation certificates or cash rewards to him does not mean that he is at liberty to indulge in any kind of prejudicial activity and that the anti-social element like the petitioner cannot be given a license to indulge in smuggling of gold and play havoc with the society and as such his personal liberty cannot be allowed to the detriment of public at large. It is clear that the petitioner has taken, to smuggling in greed of money and the other sources of the petitioner are meagre. It cannot be ruled out that the petitioner will not repeat such act again. The detaining authority it is pleaded was subjectively satisfied that the petitioner if not detained was likely even in future to indulge in prejudicial activities in view of his prima facie propensities towards his such like activities. The main smuggler Satbir Singh from whom 119 contraband gold biscuits were recovered has disclosed by way of confession that on 8-2-1993, 17-2-1993, 23-2-1993 and 24-2-1993 the petitioner had actively participated and associated with them in snatching of gold from Paramjit Singh alias Pamma near Bhogpur on Jalandhar Pakhowal road. Apart from said Satbir Singh, Balwinder Singh alias Bill in his statement dated 6-3-1993 has also confirmed some facts regarding snatching of gold biscuits from Paramjit Singh by the petitioner with the help of other co-associates. The confessional statements of Satbir Singh and Balwinder Singh could not be over-sighted due to the reasons that the same were voluntary in nature and very much legal in the eyes of law and the same had not been challenged before the Court at any stage. The case put up by the petitioner that he had gone to Kapurthala on official duty along with Satbir Singh Constable has been denied. It is pleaded that the petitioner was taken into custody on 7-2-1993 and in fact, he and his co-associates Balwinder Singh and Paramjit Singh were apprehended on 9-2-1993 by Inspector Surjit Singh C.I.A. Staff, Kapurthala when he held special naka near the bus stop of village Khiranwali and on personal search recovery of 15 gold biscuits were made from Balwinder Singh and 10 gold biscuits each from Paramjit Singh and the petitioner which was part of the consignment of 200 gold biscuits

snatched by them. Petitioner was arrested on 9-2-1993 along with Paramjit Singh and Balwinder Singh at the time of recovery and case F.I.R. No. 21 dated 9-2-1993 was registered against him at Police Station Kotwali, Kapurthala but the petitioner managed to make false entries in the official record in connivance with some police officials. It is further pleaded by respondents that F.I.R. No. 21 dated 9-2-1993 and F.I.R. No. 229 dated 18-6-1993 was registered at Police Station Kotwali, Kapurthala and Police Station "A" Division, Amritsar respectively validly as the recovery of contraband gold was effected from the petitioner and his co-associates. It is further the case of the respondents that the petitioner has closeness with Pakistan smugglers and was indulging in nefarious smuggling activities. He was not a law abiding police official and was working against the interests of the State. Petitioner and his co-associates were discharged in F.I.R. No. 21 and in case F.I.R. No. 229 on 25-8-1993 by the Court but they had not been exonerated from the offence under the Customs Act. The power of preventive detention is qualitatively different from criminal prosecution. The power of preventive detention is a precautionary power exercised in reasonable anticipation, it may or may not relate to any offender. It is pleaded that an order of preventive detention may be made with or without prosecution or in anticipation or after discharge or even after acquittal. The detention order was passed with due application of mind, it is further stated that in response to a specific query, the sponsoring authority had intimated vide T.P.M. dated 4-11-1994 that the petitioner was discharged in the criminal cases registered against him. Thus, a report regarding the discharge of the petitioner in criminal cases was placed before the detaining authority and was considered which was sufficient compliance with the requirements of law.

5. It is further stated that it took sufficiently long time in the investigation of the case at various levels as the antecedents of the co-associates of the petitioner were to be verified and various links of the petitioner had to be proved and unearthed. After collecting and examining the entire material on record, the sponsoring authority sponsored the proposal on 30-6-1993 to the State Government for the detention of the petitioner which was received in the office on 1-7-1993 and the proposal was examined by the Legal Agency from 5-7-1993 to 7-7-1993. Some additional information was called from the sponsoring authority vide letter dated 12-7-1993. The case was further examined and original grounds of detention in Punjabi were prepared and the same were translated into English. Number of copies of supporting material were typed which was a voluminous job and consumed sufficiently long time. The case was registered on 18-7-1993 by the Legal Agency in the light of the information received from the sponsoring authority vide his letter dated 10-8-1993 which reached the office on 11-8-1993. Some clarification regarding the additional information was called from the sponsoring authority vide letter dated 19-8-1993. In the mean while copy of the show-cause notice was called for from the sponsoring authority vide letter dated 23-8-1993 and the same reached on 26-8-1993. Thereafter T.P.M. dated 19-10-1993, 20-10-1993 and

22-10-1993 were sent to the Senior Superintendent of police, Amritsar, to enquire as to what action has been taken against the petitioner. Letter dated 5-11-1993 was also sent to Senior Superintendent of Police, Amritsar, for the same purpose. The sponsoring authority informed the office vide T.P.M. dated 4-11-1993 that the petitioner was reinstated from the date of suspension as he was discharged in the criminal case by the Additional Chief Judicial Magistrate, Kapurthala on 25-8-1993. The case was further examined on 11-11-1993 and 6-12-1993 by the legal Agency in the light of the information received from the sponsoring authority vide his letters dated 4-11-1993 and 24-11-1993 respectively. The said letters reached the office on 5-11-1993 and 25-11-1993. Some more clarification was called for from the sponsoring authority vide T.P.M. dated 22-11-1993. The case was further examined by the legal agency on 12-1-1994 in the light of the additional information received vide his letters dated 24-12-1993 which reached the office on 31-12-1993. Letter dated 14-1-1994 was sent to the sponsoring authority for preparing the grounds of detention in chronological order. The case was further examined in the legal agency on 2-2-1994 in the light of the information received from the sponsoring authority vide his letter dated 19-1-1994 which reached the office on 20-1-1994. Ultimately, proposal for passing the detention order of the petitioner was sent to the State Law Department on 3-2-1994 where it remained under examination till 4-2-1994. In the light of the information available in the office of the answering-respondent and ultimately after consideration of material on record and with due application of mind order of detention was passed by the competent authority on 14-2-1994. Formal order was issued on 17-2-1994 during the proceedings of the detention proposal. There were about 115 holidays from 15-2-1993 to 13-2-1994. The details of these holidays have been given in paragraph 9 of the written statement. It is also pleaded that there is close nexus with prejudicial activities indulged in by the petitioner and the detention order as the case remained under active processing during this period. In so far as the matter regarding show-cause notice is concerned, it is pleaded that the same was issued on 30-7-1993 to the petitioner by the competent authority and was placed before the detaining authority. The statements made by the petitioner before the Custom authorities were also placed before the detaining authority which was sufficient for the subjective satisfaction of the detaining authority. The grounds of detention were prepared by the detaining authority with due application of mind and with subjective satisfaction. With regard to representation of the petitioner, it was pleaded that the same was without date but, in any case, the same was forwarded by the Superintendent Central Jail, Amritsar, on 23-11-1994 and was received in the office of respondent on 24-12-1994. Parawise comments were called from the sponsoring authority vide letter dated 28-11-1994 which were received on 12-12-1994 and the representation was examined by the legal agency in the light of the comments on 14-12-1994 and was sent to State Law Department on 15-12-1994 where it was examined on 16-12-1994. Ultimately, when the representation was received from the State Law Department in the Home Department, file was already in action for processing the advice of the

Advisory Board. The file was received back and representation was processed in the Home Department and after examining at various levels, the representation was rejected on 23-12-1994 on merits by the competent authority. The petitioner was intimated of through Superintendent Jail, Amritsar, vide letter dated 29-12-1994. In so far as the allegation of the petitioner that there is delay in executing the warrant is concerned, it is pleaded that the petitioner was not available during the alleged period at his known address and even delay in executing the order of detention was not as long as to vitiate the detention order. The order of detention was passed on 15-2-1994 and was received in the office of the Senior Superintendent of Police, Amritsar, on 19-2-1994 for execution. The petitioner smelled about his imminent arrest and proceeded on casual leave on 18-2-1994 and thereafter he did not join duty and remained absconding. He filed writ petition in the High Court and he was granted stay. He remained absent from Police station and was not available on his known address and the detention order could not be served upon him. He surrendered in Court which sent him in judicial custody to Central Jail, Amritsar where the detention order was served upon him.

6. In the counter-affidavit filed by the Union of India, their reply is only with regard to paras 17, 19 and 20 of the petition. It is pleaded therein that no representation whatsoever either of the detenu or on behalf of the detenu was received in the COFEPOSA Unit of the Ministry and as such the question of considering the same does not arise. There is hardly anything to detail the contents of the written statement tiled by respondent No. 2 but for with regard to the averments made in para 16 in reply whereof it has been pleaded that the petitioner submitted his representation on 23-10-1994 with a request to send the same to the concerned authorities. Four copies of the said representation were sent to the Secretary to Govt. Punjab, Department of Home Affairs and Justice, Chandigarh for further necessary action vide Superintendent Central Jail, Amritsar's letter dated 23-11-1994 through Special Messenger and the copies of the same along with copies of the representation were endorsed to Additional D.G.P. (Crimes) Punjab, Inspector General of Prisons, Punjab, District Magistrate, Amritsar and S.S.P. Amritsar. The representation of the petitioner was considered and decided by the Punjab Government and the same was rejected vide orders dated 29-12-1994 and the petitioner was informed of the rejection of his representation.

7. Sh. Amrita Atwal, Deputy Secretary Home, Punjab, Department of Home Affairs & Justice has filed an additional affidavit in which it has been averred that one copy of the representation of the petitioner was sent to respondent No. 3 vide State Govt. letter dated 29th December 1994. Respondent No. 3 considered the representation of the petitioner and after examining the representation the same was rejected on merits which was intimated through Superintendent, Central Jail, Amritsar vide Central Government letter dated 25th January, 1995. It is thus pleaded that the representation of the petitioner was decided" promptly by respondent No. 3 and without any delay.

8. On the facts as have been given in sufficient details above, Mr. A. S. Sandhu learned Counsel appearing for the petitioner vehemently contends that non-placing of material facts by the sponsoring authority to the detaining authority in the present case has vitiated the subjective satisfaction of the detaining authority because, the requisite subjective satisfaction of the detaining authority, the formation of which is a condition precedent to passing of a detention order gets vitiated if material or vital facts, which would have bearing on the issue and weighed to the satisfaction of the detaining authority, one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order. He further contends that the representation of the petitioner was also not considered and in spite of the fact that the other grounds are available to the petitioner seeking declaration that the detention order is illegal, these two grounds are sufficient to set aside the detention order.

9. This Court after hearing the learned Counsel for the parties at great length finds substance in the two-fold contentions raised by the learned Counsel as have been noticed above. Inasmuch as the detention order deserves to be set aside on these two grounds there is no need to traverse on other grounds which have been pleaded in the petition. The petitioner was discharged in F.I.R. No. 21 dated 9-2-1993 that came to be lodged in police Station, Kapurthala. The detaining authority has mentioned the number of F.I.R. but the sponsoring authority had not placed before the detaining authority the discharge order. Not only that another case came to be registered against the petitioner vide F.I.R. No. 13 of 1993 pertaining to Police Station "A" Division, Amritsar. The petitioner was tried by the Judicial Magistrate 1st Class, Amritsar under Sections 411/ 414, N.D.P.S. Act and Gold Control Act on the basis of the story mentioned in paragraphs 5 and 6 of the grounds of detention. The petitioner was admittedly discharged in the said case as well on 3-7-1993. It is proved on the records of the case that when the impugned order of detention was passed the sponsoring authority had not placed this relevant material before the detaining authority. It has been admitted that the intimation with regard to the discharge of the petitioner was given to the detaining authority on 4-11-1994. It is by now settled proposition of law that the requisite subjective satisfaction, a pre-condition for passing a detention order will get vitiated if material or Vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order. This was so held by the Apex Court in [Dharamdas Shamlal Agarwal Vs. Police Commissioner and Another](#),). One of the arguments raised in Dharamdas Shamlal Agarwal's case (supra) by the Counsel appearing for the petitioner was that the material and vital fact i.e. acquittal of the accused in the cases registered in Crime Nos. 411 and 412 of 1982 of Sherkotda Police Station as shown at Serial Nos. 2 and 3 in the table

appended to grounds of detention Which fact would have influenced the mind of the detaining authority one way or the other on the question whether or not to make" the detention order, Has not been placed before the detaining authority and this non-placing and the consequent non-consideration of the said material was likely to influence the mind of the detaining authority vitiates the subjective satisfaction and invalidates the detention order. On facts it was found that in the grounds of detention five cases were stated to have been registered against the detenu in respect of which he had been arrested. These cases were taken into consideration by the detaining authority to draw his subjective satisfaction that the detenu was disturbing the maintenance of public order. Out of the five cases, two cases mentioned at Sr. Nos. 2 and 3 were shown as "P. T." that is, pending trial. The detention order was issued on 17-9-1988 and it is from that the detaining authority was of the opinion that the trial of both the cases was not over, though actually the detenu had been acquitted even on 26-8-1988 in case relating to Crime No. 411 of 1982 and on 5-6-1988 in case relating to Crime No. 412 of 1982. As per Section 6 of the Gujarat Prevention of Anti-Social Activities Act, 1985 the grounds of detention were severable and the order of detention could not be deemed to be invalid or inoperative if one ground or some of the grounds were invalid. The Supreme Court still framed the question as to whether the detaining authority was really aware of the acquittal of the detenu in those two cases mentioned at Sr. Nos. 2 and 3 on the date of passing the impugned order and if not what is the effect of the same. Relying upon on two earlier decisions in [Sk. Nizamuddin Vs. State of West Bengal](#), and [Suresh Mahato Vs. The District Magistrate, Burdwan and Others](#), it. was held, "that the requisite subjective satisfaction, the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order. Once again the Supreme Court in Abdul Razak Nannekhan Pathan v. The Police Commissioner Ahmedabad JT (1989) 3 231 held the detention order as illegal and had on various grounds inclusive of that the petitioner in the said case had been acquitted in two cases out of many, mention whereof was made in the detention order and the acquittal in two cases was not brought to the notice of the detaining authority. Learned Counsel for the petitioner has also placed reliance upon Navin Kumar v. Administrator, Union Territory (1989) 2 Rec Cri R 608 : 1990 Cri LJ 79, a Division Bench Judgment of Delhi High Court. The facts of, the aforesaid case reveal that reply to the show-cause notice was not placed before the detaining authority and it was held that reply to the show-cause notice was relevant material and ought to have been placed before the detaining authority.

10. As noted above, while giving in detail the pleadings contained in the various written statements, the case of respondents is that the petitioner and his associates

were discharged in F.I.R. No. 21 dated 9-2-1993 on 25-8-1993 and in case F.I.R. No. 229 dated 8-6-1993, police Station "A" Division Amritsar by the Court but the petitioner and his associates were not exonerated under the Customs Act. All that is being further stated in the written statement with a view to defend this case is that the passing of the detention order under the COFEPOSA Act has no concern with a criminal case as both the proceedings were entirely different in nature and scope.

11. The learned counsel appearing for the State, however, could not substantiate his contention either on the basis of the provisions contained in the statute or the case law.

12. In view of the dictum of law as enunciated by the Supreme Court and which has-been noted above, there is no choice with the Court but for to quash the detention order.

13. The second contention of the learned Counsel that the representation of the petitioner was never considered by the Central Government has also substance. It would be seen from the facts of the case that to the Superintendent Jail was forwarded to the detaining authority on 24-11-1994. The case of the Punjab Government is that the copy of the representation was forwarded to the Central Government on 29-11 -1994. The counter-affidavit filed on behalf of the union of India, however, makes it clear that no intimation whatsoever either by the detenu or on behalf of the detenu was ever received in the COFEPOSA unit of the Ministry and therefore, the question of considering the same did not arise. It is so specifically stated in paragraph 3 of the counter-affidavit filed on behalf of the Union of India. Supreme Court in [Tara Chand Vs. State of Rajasthan and Others](#), even in a case where the representation of the detenu was sent to the Central Government and even when there was no delay in sending the representation to the Central Government, but consideration of which involved inordinate delay, held order of detention to be illegal. It was held. "Section 11(1) clearly enjoins that the Central Government may revoke or modify an order of detention passed by the State Government. Hence, when once a representation is made to the Central Government it is duty bound to consider the same in order to exercise its discretion either in rejecting or accepting it. If there is inordinate delay in considering the representation that would clearly amount to violation of the provisions of Article 22(5) so as to render the detention unconstitutional and void." Further in [Smt. Raziya Umar Bakshi Vs. Union of India and Others](#), it was held by the Supreme Court that, "Section 11 confers a constitutional right on the detenu to have his representation considered by the Central Government. It is true that the Central Government has a discretion to revoke or confirm the detention but the detenu has undoubtedly a right that his representation should be considered by the Central Government for whatever worth it is. The mere fact that the detenu had sent a copy to the Central Government does not absolve the detaining authority from the statutory duty of forwarding the representation of the detenu to the Central Government. Even

unreasonable delay in considering the representation of the detenu has been held to be fatal. Reference may usefully be made for this proposition to [Shri. Saleh Mohammed Vs. Union of India \(UOI\) and Others,](#) and [Aslam Ahmed Zahir Ahmed Shaik Vs. Union of India and Others,](#) . As mentioned above, it is admitted position in this case that the petitioner had actually sent his representation, copy whereof was sent to the Central Government. This is, however, the stand of the State Government but as mentioned above, the copy of the representation of the petitioner was never received by the Central Government. Once copy was never received a finding has to be returned that the same was actually not sent. In any case it is a clear case of non-consideration of the representation by the Central Government. All that the counsel appearing for the State was contended to say was that inasmuch as the representation of the petitioner was considered by the detaining authority it was sufficient compliance of law. This contention deserves summarily rejection in view of the settled law on the point as has been noted above.

14. Before I part with this judgment I would, however, like to add that petitioner in both the cases belong to a disciplined force and allegations against them are very serious. The detention order passed in both the cases is being set aside on procedural lapses and therefore, it would be open to the State Government to reconsider the matter, obviously on the basis of relevant material and in accordance with law as also if permissible. The detention order subject, matter of challenge in this writ petition is, however, quashed and the petitioner if still in custody is ordered to be set at liberty forthwith.