IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

****

W.P.No.19256 of 2025

Between:

1. C. Ammuda, W/o. B. Chandra Shekar,
   aged about 46 years, House Wife,
   Resident of Rasana Palle, Gudipala Mandal,
   Chittoor District.

...Petitioner

And

$1. The State of Andhra Pradesh, represented by its Chief Secretary, General Administration (Law and Order) Dept., Secretariat, Velagapudi Village, Amaravathi, Andhra Pradesh.

2. The Collector and District Magistrate, Chittoor, Chittoor District.
3. The Superintendent of Police, Chitoor, Chitoor District, Kadapa, YSR Kadapa District.
4. The Superintendent, Central Prison, Kadapa YSR Kadapa District.

… **Respondents**

Date of Judgment pronounced on : 26-09-2025

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

HON'BLE SRI JUSTICE T.C.D. SEKHAR

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether the Lordship wishes to see the fair copy Of the Judgment? : Yes/No

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

*** HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

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… **Respondents**

! Counsel for Petitioner : Sri S. Dushyanth Reddy

^Counsel for Respondents : Sri Kirthi Teja Kondaveeti, the learned Government Pleader appearing in the office of the learned Advocate General

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>HEAD NOTE:

? Cases referred:

[1] 2008 3 ALT 563:2008 2 ALD (Crl) 233:2008 Crl.J.3123

[2] (2020) 16 SCC 127:2020 SCC Online SC 288

[3] (2021) 20 SCC 98:2021 SCC Online SC 109

[4](2023) SCC Online SC 374

[5] (1969) 1 SCC 433

[6] (1969) 3 SCC 400

[7] (1988) 4 SCC 490

[8](1991) 4 SCC 39

[9](1995) 4 SCC 51

[10](1970) 1 SCC 219

[11](1991) 1 SCC 476

[12] (2020) 16 SCC 127

[13] (1975) 3 SCC 198

APHC010381342025

IN THE HIGH COURT OF ANDHRA PRADESH

AT AMARAVATI **[3529]**

(Special Original Jurisdiction)

FRIDAY,THE TWENTY SIXTH DAY OF SEPTEMBER

TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 19256/2025

Between:

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   aged about 46 years, House Wife,
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And

1. The State of Andhra Pradesh, represented by its Chief Secretary, General Administration (Law and Order) Dept., Secretariat, Velagapudi Village, Amaravathi, Andhra Pradesh.
2. The Collector and District Magistrate, Chittoor, Chittoor District.
3. The Superintendent of Police, Chitoor, Chitoor District, Kadapa, YSR Kadapa District.
4. The Superintendent, Central Prison, Kadapa YSR Kadapa District.

… **Respondents**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of Habeas corpus under Article 226 of the Constitution of India directing the respondents to produce Detenue B. Chandra Shekar,

S/o. Late Bhoopalan, aged about 51 years presently detained in Central Prison, Kadapa before this Honourable court and he may be ordered to be released forthwith/set at liberty after declaring his detention vide REV-CSEC0PDL(PRC)/1/2025-MAGL4, dated 05.06.2025 passed by the 2nd Respondent as confirmed in G.O.Rt.No.1326, General Administration (Law and Order) Department, dated 14.07.2025 passed by the 1st respondent after receiving the report of the advisory board dated 27.06.2025 as illegal, arbitrary, unconstitutional and void and pass

Counsel for the Petitioner:

1. S DUSHYANTH REDDY

Counsel for the Respondent(S):

1. THE ADVOCATE GENERAL

The Court made the following Order:
(per Hon'ble Sri Justice R. Raghunandan Rao)

Heard Sri S. Dushyanth Reddy, learned counsel appearing for the petitioner and Sri Kirthi Teja Kondaveeti, the learned Government Pleader appearing in the office of the learned Advocate General.

2. The 2nd respondent-District Collector, Chittoor had passed an order of detention, under the provisions of the A.P. Prevention of Bootleggers, Dacoits, Drugs offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter referred to as 'the Act'), against the husband of the petitioner, on the ground that he was a Bootlegger, as defined under the Act, and that there was a need to place him under preventive detention in view of his activities and involvement in five criminal cases under the A.P. Prohibition Act, 1995, as amended in 2023 and under the provisions of the A.P Excise Act. This order of detention passed by the 2nd respondent-Collector was approved by the 1st respondent-Government, by way of G.O.Rt.No.1152, dated 11.06.2025.

3. After the said order of approval, the government sent the case file and all the other material, connected to the above proceedings, to the Advisory Board. At that stage, the petitioner herein had filed a representation before the 1st respondent-Government, on 18.06.2025, which is said to have been received on 19.06.2025. This representation was also forwarded to the Advisory Board, without any decision taken by the 1st respondent-Government, on the said representation. The Advisory Board after hearing the

detenue and considering the material before it, had, by proceedings, dated 27.06.2025, held that there was sufficient cause for detention of the detenue. After receipt of this opinion and recommendation from the Advisory Board, the 1st respondent-Government issued G.O.Rt.No.1326, dated 14.07.2025, placing the husband of the petitioner, under preventive detention, for a period of 12 months from 06.06.2025, in Central Prison, Kadapa.

4. Aggrieved by these proceedings, the petitioner has approached this Court, by way of the present Writ Petition. The 2nd respondent filed a counter affidavit disputing of the said grounds.

5. The petitioner has raised various grounds in the Writ Petition. However, Sri S. Dushyanth Reddy, learned counsel for the petitioner pressed only one ground before us and the same is being considered.

6. Sri S. Dushyanth Reddy would contend that the representation of the petitioner, dated 18.06.2025, had to be considered by the 1st respondent-Government and could not have been sent to the Advisory Board for consideration. At best, the 1st respondent-Government should have taken a decision on the representation and thereafter sent the representation also to the Advisory Board. Failure of the 1st respondent-Government, to consider this representation is fatal to the entire proceedings as it is violative of Article 22 of the Constitution of India as well as the provisions of the Act. The learned counsel relies upon the following Judgments:

1. Amritha vs. Collector and District Magistrate, Hyderabad.[1]
2. Ankit Ashok Jalan vs. Union of India and Ors.[2]
3. Sarabjeet Singh Mokha vs. District Magistrate, Jabalpur and Ors.[3]
4. Pramod Singla vs. Union of India and Ors.[4]

7. The learned Government Pleader, fairly concedes that the the 2nd respondent has implicitly admitted, in his counter affidavit, that the representation of the petitioner, dated 18.06.2025, had not been considered by the 1st respondent and had been sent to the Advisory Board for its consideration. However, the learned Government Pleader would rely upon Section 10 of the Act to contend that the provisions of Section 10 require the government to forward any representation received on behalf of any detenue, to the Advisory Board and it is the Advisory Board which would be the authority to consider all such representations. He would contend that in such circumstances, the non consideration of the representation of the petitioner, dated 18.06.2025, is not fatal to the proceedings which are impugned in the present Writ Petition.

Consideration of the Court:

8. Article 22 of the Constitution of India, which permits preventive detention has also mandated certain non-negotiable conditions, for placing any person under preventive detention. Article 22 reads as follows:

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[1] **2008 3 ALT 563:2008 2 ALD (Crl) 233:2008 Crl.J.3123**
[2] **(2020) 16 SCC 127:2020 SCC Online SC 288**
[3] **(2021) 20 SCC 98:2021 SCC Online SC 109**
[4] **2023 SCC Online SC 374**

Article 22, Constitution of India 1950

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(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.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which

> such authority considers to be against the public interest to disclose.
>
> (7) Parliament may by law prescribe—
>
> (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);
>
> (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
>
> (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

9. Article 22(4) requires the Constitution of an Advisory Board, in any law providing for preventive detention, and all orders of preventive detention would have to be placed before such a Board, when the detention of a person is for a period longer, than three months. Similarly, Article 22(5) mandates that the detaining authority shall, not only communicate the grounds on which the person is detained, but shall also afford him an opportunity, at the earliest, of making a representation against the order. Though the language of Article 22(5) only stipulates, that an opportunity of making a representation has to be afforded to the detenue, the Hon'ble Supreme Court has held that this provision not only requires the detaining authority to given an opportunity of making a representation, against the detention order, but also to consider that representation, at the earliest, and pass necessary orders.

10. A full Bench, of the Hon'ble Supreme Court in **Abdul Karim vs. State of West Bengal**, [5] had set out the contours of Article 22, in this regard, as follows:

> **8.** Though the Constitution has recognised the necessity of laws as to preventive detention, it has also provided certain safeguards to mitigate their harshness by placing fetters on the legislative power conferred on this topic. Article 22 lays down the permissible limits of legislation empowering preventive detention. Article 22 prescribes the minimum procedure that must be included in any law permitting preventive detention and if such requirements are not observed the detention infringes the fundamental right of the detenu guaranteed under Articles 21 and 22 of the Constitution. The said requirements are : (*1*) that no law can provide for detention for a period of more than three months unless the sufficiency for the cause of the detention is investigated by an Advisory Board within the said period of three months; (*2*) that the State law cannot authorise detention beyond the maximum period prescribed by Parliament under the powers given to it in Article 22, clause (7); (*3*) that Parliament also cannot make a law authorising detention for a period beyond three months without the intervention of an Advisory Board unless the law conforms to the conditions laid down in clause (7) of Article 22; (*4*) provision has also been made to enable Parliament to prescribe the procedure to be followed by Advisory Boards. Apart from those enabling and disabling provisions certain procedural rights have been expressly safeguarded by clause (5) of Article 22. A person detained under a law of preventive detention has a right to obtain information as to the grounds of detention and has also the right to make a representation protesting against an order of preventive detention. Article 22(5) does not expressly say to whom the representation is to be made and how the detaining authority is to deal with the representation. But it is necessarily implicit in the language of Article 22(5) that the State Government to whom the representation is made should properly consider the representation as expeditiously as possible. The constitution of an Advisory Board under Section 8 of the Act does not relieve the State Government from the legal obligation to consider the representation of the detenu as soon as it is received by it. On behalf of the respondent, it was said that there was no express language in Article 22(5) requiring the State Government to consider the representation of the detenu. But it is a necessary implication of the language of Article 22(5) that the State Government should consider the representation made by the detenu as soon as it is made, apply its mind to it and, if necessary, take appropriate action. In our opinion, the constitutional right to make a representation guaranteed by Article 22(5) must be taken to include by necessary implication the constitutional right to a proper consideration of the representation by the authority to whom it is made. The right of

[5] **(1969) 1 SCC 433**

> representation under Article 22(5) is a valuable constitutional right and is not a mere formality. It is, therefore, not possible to accept the argument of the respondent that the State Government is not under a legal obligation to consider the representation of the detenu or that the representation must be kept in cold storage in the archives of the Secretariat till the time or occasion for sending it to the Advisory Board is reached. If the view point contended for by the respondent is correct, the constitutional right under Article 22(5) would be rendered illusory. Take for instance a case of detention of a person on account of mistaken identity. If the order of detention has been made against A and a different person B is arrested and detained by the police authorities because of similarity of names or some such cause, it cannot be reasonably said that the State Government should wait for the report of the Advisory Board before releasing the wrong person from detention. It is obvious that apart from the procedure of reference to the Advisory Board, the State Government has ample power under Section 13 of the Act to revoke any order of detention at any time. If the right of representation in such a case is to be real and not illusory, there is a legal obligation imposed upon the State Government to consider the representation and to take appropriate action thereon. Otherwise the right of representation conferred by Article 22(5) of the Constitution would be rendered nugatory. The argument of Mr Debabrata Mukherjee as regards the construction of Article 22 (5) cannot also be correct for another reason. Under Article 22, clause (4) of the Constitution, it is open to Parliament to make a law providing for preventive detention for a period of less than three months without the cause of detention being investigated by an Advisory Board. It is clear that the right of representation conferred by clause (5) of Article 22 does not depend upon the duration of period of detention. Even if the period of detention is less than three months, the detenu has a constitutional right of representation. It is also important to notice that under Article 22(7) Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board. It cannot possibly be argued that if Parliament makes a law contemplated by Article 22(7) of the Constitution, the detaining authority is under no legal obligation to consider the representation made by the detenu under Article 22(5).

11. These principles were approved by a Constitution Bench of the Hon'ble Supreme Court in the case of **Pankaj Kumar Chakrabarty and Ors. vs. State of West Bengal**[6]:

[6] **(1969) 3 SCC 400**

7. In *Sk. Abdul Karim case*, this Court, examining Article 22 and the several provisions of the Act, held that: (*i*) a person detained under the Act has a right to be furnished with the grounds for his detention, (*ii*) that he has a right to make a representation against the order for his detention, (*iii*) that though clause 5 of Article 22 does not in express language provide as to whom such a representation is to be made and how the detaining authority is to deal with it, there is by necessary implication an obligation on the part of the appropriate Government to consider it, and (*iv*) the setting up of an Advisory Board under Section 8 of the Act does not relieve the appropriate Government from its obligation to consider the representation as soon as it is received by it. The Court held that the constitutional right to make a representation guaranteed by Article 22(5) includes by necessary implication the constitutional right to a consideration of the representation by the detaining authority to whom it is made and repelled the contention that once an Advisory Board was constituted for the consideration of the detenu's case it was enough if the State Government were to send the representation to the board for consideration without itself considering it. The learned Judges there gave several illustrations to show that such a contention was not only incorrect but would defeat the provisions of Articles 22(4) and (5) and those of the Act.

10. It is true that clause 5 does not in positive language provide as to whom the representation is to be made and by whom, when made, it is to be considered. But the expressions “as soon as may be” and “the earliest opportunity” in that clause clearly indicate that the grounds are to be served and the opportunity to make a representation are provided for to enable the detenu to show that his detention is unwarranted and since no other authority who should consider such representation is mentioned it can only be the detaining authority to whom it is to be made which has to consider it. Though clause 5 does not in express terms say so it follows from its provisions that it is the detaining authority which has to give to the detenu the earliest opportunity to make a representation and to consider it when so made whether its order is wrongful or contrary to the law enabling it to detain him. The illustrations given in *Sk.*

Abdul Karim case show that clause 5 of Article 22 not only contains the obligation of the appropriate Government to furnish the grounds and to give the earliest opportunity to make a representation but also by necessary implication the obligation to consider that representation. Such an obligation is evidently provided for to give an opportunity to the detenu to show and a corresponding opportunity to the appropriate Government to consider any objections against the order which the detenu may raise so that no person is, through error or otherwise, wrongly arrested and detained. If it was intended that such a representation need not be considered by the Government where an Advisory Board is constituted and that representation in such cases is to be considered by the Board and not by the appropriate Government, clause 5 would not have directed the detaining authority to afford the earliest opportunity to the detenu. In that case the words would more appropriately have been that the authority should obtain the opinion of the Board after giving an opportunity to the detenu to make a representation and communicate the same to the Board. But what would happen in cases where the detention is for less than 3 months and there is no necessity of having the opinion of the Board? If counsel's contention were to be right the representation in such cases would not have to be considered either by the appropriate Government or by the Board and the right of representation and the corresponding obligation of the appropriate Government to give the earliest opportunity to make such representation would be rendered nugatory. In imposing the obligation to afford the opportunity to make a representation, clause 5 does not make any distinction between orders of detention for only 3 months or less and those for a longer duration. The obligation applies to both kinds of orders. The clause does not say that the representation is to be considered by the appropriate Government in the former class of cases and by the Board in the latter class of cases. In our view it is clear from clauses 4 and 5 of Article 22 that there is a dual obligation on the appropriate Government and a dual right in favour of the detenu, namely, (*1*) to have his representation irrespective of the length of detention considered by the appropriate Government and (*2*) to have once again that representation in the

light of the circumstances of the case considered by the Board before it gives its opinion. If in the light of that representation the Board finds that there is no sufficient cause for detention the Government has to revoke the order of detention and set at liberty the detenu. Thus, whereas the Government considers the representation to ascertain whether the order is in conformity with its power under the relevant law, the Board considers such representation from the point of view of arriving at its opinion whether there is sufficient cause for detention. The obligation of the appropriate Government to afford to the detenu the opportunity to make a representation and to consider that representation is distinct from the Government's obligation to constitute a Board and to communicate the representation amongst other materials to the Board to enable it to form its opinion and to obtain such opinion.

11. This conclusion is strengthened by the other provisions of the Act. In conformity with clauses 4 and 5 of Article 22, Section 7 of the Act enjoins upon the detaining authority to furnish to the detenu grounds of detention within five days from the date of his detention and to afford to the detenu the earliest opportunity to make his representation to the appropriate Government. Sections 8 and 9 enjoin upon the appropriate Government to constitute an Advisory Board and to place within 30 days from the date of the detention the grounds for detention, the detenu's representation and also the report of the officer where the order of detention is made by an officer and not by the Government. The obligation under Section 7 is quite distinct from that under Sections 8 and 9. If the representation was for the consideration not by the Government but by the Board only as contended, there was no necessity to provide that it should be addressed to the Government and not directly to the Board. The Government could not have been intended to be only a transmitting authority nor could it have been contemplated that it should sit tight on that representation and remit it to the Board after it is constituted. The peremptory language in clause 5 of Article 22 and Section 7 of the Act would not have been necessary if the Board and not the Government had to consider the representation. Section 13 also furnishes an answer to the argument of Counsel for

> the State. Under that section the State Government and the Central Government are empowered to revoke or modify an order of detention. That power is evidently provided for to enable the Government to take appropriate action where on a representation made to it, it finds that the order in question should be modified or even revoked. Obviously, the intention of Parliament could not have been that the appropriate Government should pass an order under Section 13 without considering the representation which has under Section 7 been addressed to it.

12. The Constitution bench, in the above judgment, had also given another reason for this requirement, by distinguishing the scope of consideration of a representation, by the detaining authority, and the advisory board, in the following manner:

> "Thus, whereas the Government considers the representation to ascertain whether the order is in conformity with its power under the relevant law, the Board considers such representation from the point of view of arriving at its opinion whether there is sufficient cause for detention."

This makes it clear that the scope of consideration of a representation, by a detaining authority and by an advisory board, is totally different. This would require both the authorities to consider the representation independently.

13. When the question of application of the dicta set out in **Pankaj Kumar Chakrabarty and Ors. vs. State of West Bengal,** in relation to

preventive detention cases, came up, one of the main issues was the question of who would be the "detaining authority" who would have to consider the representation of the detenue. This issue came up because most of the preventive detention laws, provided for a specially empowered officer, who would pass a detention order after which, the said order would require the approval of the appropriate government. After such approval, the appropriate government was also required to seek the opinion and approval of the Advisory Board before the order of preventive detention could be finalized and passed.

14. This issue came to be considered, by a Division Bench, in **State of Maharashtra vs. Sushila Mafatlal Shah**[7]. However, an apparently conflicting view emerged in a Full Bench judgment in **Amir Shad Khan vs. L. Hmingliana**[8]. A Constitution Bench, of the Hon'ble Supreme Court, in **Kamleshkumar Ishwardas Patel vs. Union of India**[9], settled the issue, in the following manner:

> **30.** The decision in *Sushila Mafatlal Shah* [(1988) 4 SCC 490 : 1989 SCC (Cri) 1] proceeds on two premises: (*i*) Article 22(5) does not confer a right to make a representation to the officer specially empowered to make the order; and (*ii*) under the provisions of the COFEPOSA Act when the order of detention is made by the officer specially empowered to do so, the detaining authority is the appropriate Government, namely, the Government which has

[7] **(1988) 4 SCC 490**
[8] **(1991) 4 SCC 39**
[9] **(1995) 4 SCC 51**

empowered the officer to make the order, since such order acquires “deemed approval” by the Government from the time of its issue.

31. With due respect, we find it difficult to agree with both the premises. Construing the provisions of Article 22(5) we have explained that the right of the person detained to make a representation against the order of detention comprehends the right to make such a representation to the authority which can grant such relief i.e. the authority which can revoke the order of detention and set him at liberty and since the officer who has made the order of detention is competent to revoke it, the person detained has the right to make a representation to the officer who made the order of detention. The first premise that such right does not flow from Article 22(5) cannot, therefore, be accepted.

32. The learned Judges, while relying upon the observations in *Abdul Karim* [(1969) 1 SCC 433 : (1969) 3 SCR 479 : AIR 1969 SC 1028] and the decisions in *Jayanarayan Sukul* [(1970) 1 SCC 219 : 1970 SCC (Cri) 92 : (1970) 3 SCR 225] , *Haradhan Saha* [(1975) 3 SCC 198 : 1974 SCC (Cri) 816] and *John Martin* [(1975) 3 SCC 836 : 1975 SCC (Cri) 255] have failed to notice that in these cases the Court was considering the matter in the light of the provisions contained in Section 7(1) of the Preventive Detention Act, 1950, whereby it was prescribed that the representation was to be made to the appropriate Government. The observations regarding consideration of the representation by the State Government in the said decisions have, therefore, to be construed in the light of the said provision in the Preventive Detention Act and on that basis it cannot be said that Article 22(5) does not postulate that the person detained has no right to make a representation to the authority making the order of detention.

38. Having regard to the provisions of Article 22(5) of the Constitution and the provisions of the COFEPOSA Act and the PIT NDPS Act the question posed is thus answered: Where the

> detention order has been made under Section 3 of the COFEPOSA Act and the PIT NDPS Act by an officer specially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation to the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so results in denial of the right conferred on the person detained to make a representation against the order of detention. This right of the detenu is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorised by a State Government and to the Central Government where the detention order has been made by an officer specially empowered by the Central Government, and to have the same duly considered. This right to make a representation necessarily implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation and the failure to do so results in denial of the right of the person detained to make a representation.

15. The Hon'ble Supreme Court, emphasized the need for the detaining authority itself to consider the representation of the detenue on the ground that the detenue would be entitled to move any authority which is capable of the revoking detention order and the detaining authority, would always have the power to revoke such a detention order.

16. Another aspect, relating to the question of whether the appropriate authority would have to independently consider the representation, even if the representation is sent to the advisory board, came

up before a Constitution bench, in **Jayanarayan Sukul vs. State of West Bengal**[10]. The view of the Constitution Bench, was:

> **20.** Broadly stated, four principles are to be followed in regard to representation of detenus. First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the Government will not send the matter to the Advisory Board. If however, the Government will not release the detenu the Government will send the case along with the detenu's representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of release of the detenu the Government will release the detenu. If the Advisory Board will express any opinion against the release of the detenu the Government may still exercise the power to release the detenu.

17. A Constitution Bench, in **K.M. Abdulla Kunhi vs. Union of India**[11], was considering a case, where the appropriate Government had received a representation, which could not be considered before the case was referred to the Advisory Board. The government, received the confirmation of detention from the Advisory Board and passed confirmation orders after accepting the report of the Advisory board. Thereafter, the government considered the representation of the detenu and rejected the representations.

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[10] **(1970) 1 SCC 219**
[11] **(1991) 1 SCC 476**

The Constitution Bench, framed the following issue and answered this issue, in the following manner:

> **5.** The principal question for consideration is whether the confirmation of detention order upon accepting the report of the Advisory Board renders itself invalid solely on the ground that the representation of the detenu was not considered and the subsequent consideration of the representation would not cure that invalidity. At the outset it may be made clear that there is no argument addressed before us that there was unexplained delay in considering the representation of the detenu. Indeed, counsel for the petitioners very fairly submitted that they are not raising the question of delay. They also did not argue that the rejection of the representation after the confirmation of detention was not an independent consideration.
>
> **11.** It is now beyond the pale of controversy that the constitutional right to make representation under clause (5) of Article 22 by necessary implication guarantees the constitutional right to a proper consideration of the representation. Secondly, the obligation of the government to afford to the detenu an opportunity to make representation and to consider such representation is distinct from the government's obligation to refer the case of detenu along with the representation to the Advisory Board to enable it to form its opinion and send a report to the government. It is implicit in clauses (4) and (5) of Article 22 that the government while discharging its duty to consider the representation, cannot depend upon the views of the Board on such representation. It has to consider the representation on its own without being influenced by any such view of the Board. The obligation of the government to consider the representation is different from the obligation of the Board to consider the representation at the time of hearing the references. The government considers the representation to ascertain essentially whether the order is in conformity with the power under the law. The Board, on the other hand, considers the representation and the case of the detenu to examine whether there is sufficient case for detention. The consideration by the Board is an additional safeguard and not a substitute for consideration of the representation by the government. The right to have the representation considered by the government, is safeguarded by clause (5) of Article 22 and it is independent of the consideration of the detenu's case and his representation by the Advisory Board under clause (4) of Article 22 read with Section 8(*c*) of the Act. (See: *Sk. Abdul Karim* v. *State of W.B.* [(1969) 1 SCC 433] ; *Pankaj Kumar Chakrabarty* v. *State of W.B.* [(1969) 3 SCC 400 : (1970) 1 SCR 543] ; *Shayamal Chakraborty* v. *Commissioner of Police, Calcutta* [(1969) 2 SCC 426] ; *B. Sundar Rao* v. *State of*

Orissa [(1972) 3 SCC 11] ; *John Martin* v. *State of W.B.* [(1975) 3 SCC 836 : 1975 SCC (Cri) 255 : (1975) 3 SCR 211] ; *Sk. Sekawat* v. *State of W.B.* [(1975) 3 SCC 249 : 1974 SCC (Cri) 867 : (1975) 2 SCR 161] and *Haradhan Saha* v. *State of W.B.* [(1975) 3 SCC 198 : 1974 SCC (Cri) 816 : (1975) 1 SCR 778])

16. We agree with the observations in *Frances Coralie Mullin case* [(1980) 2 SCC 275 : 1980 SCC (Cri) 419] . The time imperative for consideration of representation can never be absolute or obsessive. It depends upon the necessities and the time at which the representation is made. The representation may be received before the case is referred to the Advisory Board, but there may not be time to dispose of the representation before referring the case to the Advisory Board. In that situation the representation must also be forwarded to the Advisory Board along with the case of the detenu. The representation may be received after the case of the detenu is referred to the Board. Even in this situation the representation should be forwarded to the Advisory Board provided the Board has not concluded the proceedings. In both the situations there is no question of consideration of the representation before the receipt of report of the Advisory Board. Nor it could be said that the government has delayed consideration of the representation, unnecessarily awaiting the report of the Board. It is proper for the government in such situations to await the report of the Board. If the Board finds no material for detention on the merits and reports accordingly, the government is bound to revoke the order of detention. Secondly, even if the Board expresses the view that there is sufficient cause for detention, the government after considering the representation could revoke the detention. The Board has to submit its report within eleven weeks from the date of detention. The Advisory Board may hear the detenu at his request. The constitution of the Board shows that it consists of eminent persons who are Judges or persons qualified to be Judges of the High Court. It is therefore, proper that the government considers the representation in the aforesaid two situations only after the receipt of the report of the Board. If the representation is received by the government after the Advisory Board has made its report,

there could then of course be no question of sending the representation to the Advisory Board. It will have to be dealt with and disposed of by the government as early as possible.

17. The crucial question that remains for consideration is whether the government should consider and dispose of the representation before confirming the detention. This Court in *V.J. Jain case* [(1979) 4 SCC 401 : 1980 SCC (Cri) 4] has observed (at SCC p. 405) that it is a constitutional obligation under clause (5) of Article 22 to consider the representation before confirming the order of detention. If it is not so considered, the confirmation becomes invalid and the subsequent consideration and rejection of the representation could not cure the invalidity of the order of confirmation. To reach this conclusion, the court has relied upon two earlier judgments of this Court: (*i*) *Khudiram Das* v. *State of W.B.* [(1975) 2 SCC 81 : 1975 SCC (Cri) 435] and (*ii*) *Khairul Haque* v. *State of W.B.* [W.P. No. 246 of 1969, decided on September 10, 1969 (Unreported)]

19. There is no constitutional mandate under clause (5) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention. As long as the government without delay considers the representation with an unbiased mind there is no basis for concluding that the absence of independent consideration is the obvious result if the representation is not considered before the confirmation of detention. Indeed, there is no justification for imposing this restriction on the power of the government. As observed earlier, the government's consideration of the representation is for a different purpose, namely, to find out whether the detention is in conformity with the power under the statute. This has been explained in *Haradhan Saha case* [(1975) 3 SCC 198 : 1974 SCC (Cri) 816 : (1975) 1 SCR 778] , where Ray, C.J., speaking for the Constitution Bench observed that the consideration of the representation by the government is only to ascertain whether the detention order is in conformity with the power under the law.

> There need not be a speaking order in disposing of such representation. There is also no failure of justice by the order not being a speaking order. All that is necessary is that there should be real and proper consideration by the government.

18. Both issues, of the identity of the "detaining authority" who has to consider the representation of the detenu, and whether the authority would have to consider the representation, before sending the same to the Advisory authority came up before a full bench of the Hon'ble Supreme Court, in **Ankit Ashok Jalan vs. Union of India and Others**[12], in a case of preventive detention, under the COFEPOSA Act. The majority view, of the full Bench, was delivered by Justice Uday U. Lalit, while the minority view was delivered by Justice Hemant Gupta. The majority view, after holding that the principles laid down In **Pankaj Kumar Chakrabarthy And Jayanarayan Sukul** were as follows:

> **17.** In terms of these principles, the matter of consideration of representation in the context of reference to the Advisory Board, can be put in the following four categories:
>
> **17.1.** If the representation is received well before the reference is made to the Advisory Board and can be considered by the appropriate Government, the representation must be considered with expedition. Thereafter the representation along with the decision taken on the representation shall be forwarded to and must form part of the documents to be placed before the Advisory Board.
>
> **17.2.** If the representation is received just before the reference is made to the Advisory Board and there is not sufficient time to decide the

[12] **(2020) 16 SCC 127**

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

17.3. If the representation is received after the reference is made but before the matter is decided by the Advisory Board, according to the principles laid down in *Haradhan Saha* [*Haradhan Saha* v. *State of W.B.*, (1975) 3 SCC 198 : 1974 SCC (Cri) 816] , the representation must be decided. The decision as well as the representation must thereafter be immediately sent to the Advisory Board.

17.4. If the representation is received after the decision of the Advisory Board, the decisions are clear that in such cases there is no requirement to send the representation to the Advisory Board. The representation in such cases must be considered with expedition.

Considered the effect of the subsequent judgment of the Hon'ble Supreme Court, in **K.M. Abdulla Kunhi's** and held as follows:

20. Since the decision of this Court in *K.M. Abdulla Kunhi* [*K.M. Abdulla Kunhi* v. *Union of India*, (1991) 1 SCC 476 : 1991 SCC (Cri) 613] was rendered by the Constitution Bench of this Court after considering all the earlier decisions on the point including those in *Pankaj Kumar Chakrabarty* [*Pankaj Kumar Chakrabarty* v. *State of W.B.*, (1969) 3 SCC 400 : (1970) 1 SCR 543] , *Jayanarayan Sukul* [*Jayanarayan Sukul* v. *State of W.B.*, (1970) 1 SCC 219 : 1970 SCC (Cri) 92] and *Haradhan Saha* [*Haradhan Saha* v. *State of W.B.*, (1975) 3 SCC 198 : 1974 SCC (Cri) 816] , we are bound by the principles laid down therein. When the learned counsel for the petitioner were so confronted, it was submitted by them that the

decision in *K.M. Abdulla Kunhi* [*K.M. Abdulla Kunhi* v. *Union of India*, (1991) 1 SCC 476 : 1991 SCC (Cri) 613] dealt with the matter relating to the consideration of representation by the appropriate Government and not in the context where power of detention was exercised by a specially empowered officer as the detaining authority. According to them, that would make a huge difference and put the matter in a qualitatively different compass.

23. It must also be borne in mind that in all cases, the appropriate Government would be acting in two capacities; one while considering the representation and the other while taking appropriate decision after a report is received from the Advisory Board that there is sufficient cause for detention. Since the decision would be required to be taken in these two capacities, it was observed in *K.M. Abdulla Kunhi* [*K.M. Abdulla Kunhi* v. *Union of India*, (1991) 1 SCC 476 : 1991 SCC (Cri) 613] that it would be proper for the appropriate Government to wait till the report is received from the Advisory Board in cases dealt with in para 16 of the decision. But such may not be the case with the detaining authority who is a specially empowered officer.

26. It must also be stated here that when *K.M. Abdulla Kunhi* [*K.M. Abdulla Kunhi* v. *Union of India*, (1991) 1 SCC 476 : 1991 SCC (Cri) 613] was decided on 23-1-1991, the decision that was holding the field as to the role of a specially empowered officer who had passed an order of detention, was one rendered in *Sushila Mafatlal Shah* [*State of Maharashtra* v. *Sushila Mafatlal Shah*, (1988) 4 SCC 490 : 1989 SCC (Cri) 1] . The law that was holding the field was the concept of deemed approval as was explained in *Sushila Mafatlal Shah* [*State of Maharashtra* v. *Sushila Mafatlal Shah*, (1988) 4 SCC 490 : 1989 SCC (Cri) 1] and any representation made to such specially empowered officer who had passed the order of detention, in terms of the decision in *Sushila Mafatlal Shah* [*State of Maharashtra* v. *Sushila Mafatlal Shah*, (1988) 4 SCC 490 : 1989 SCC (Cri) 1] could be considered by the appropriate Government itself and not separately by such specially empowered officer. The subsequent decision in *Amir Shad Khan* [*Amir Shad Khan* v. *L. Hmingliana*, (1991) 4 SCC 39 : 1991 SCC (Cri) 946]

was rendered by a Bench of three Judges on 9-8-1991 and the apparent conflict in the decisions between *Sushila Mafatlal Shah* [*State of Maharashtra* v. *Sushila Mafatlal Shah*, (1988) 4 SCC 490 : 1989 SCC (Cri) 1] and *Amir Shad Khan* [*Amir Shad Khan* v. *L. Hmingliana*, (1991) 4 SCC 39 : 1991 SCC (Cri) 946] was resolved by the Constitution Bench of this Court in *Kamleshkumar* [*Kamleshkumar Ishwardas Patel* v. *Union of India*, (1995) 4 SCC 51 : 1995 SCC (Cri) 643] rendered on 17-4-1995 i.e. well after the decision in *K.M. Abdulla Kunhi* [*K.M. Abdulla Kunhi* v. *Union of India*, (1991) 1 SCC 476 : 1991 SCC (Cri) 613] .

27. Thus, if the law is now settled that a representation can be made to the specially empowered officer who had passed the order of detention in accordance with the power vested in him and the representation has to be independently considered by such detaining authority, the principles concerned adverted to in para 16 of the decision in *K.M. Abdulla Kunhi* [*K.M. Abdulla Kunhi* v. *Union of India*, (1991) 1 SCC 476 : 1991 SCC (Cri) 613] would not be the governing principles for such specially empowered officer. It must be stated that the discussion in *K.M. Abdulla Kunhi* [*K.M. Abdulla Kunhi* v. *Union of India*, (1991) 1 SCC 476 : 1991 SCC (Cri) 613] was purely in the context where the order of detention was passed by the appropriate Government and not by the specially empowered officer. The principle laid down in said para 16 has therefore to be understood in the light of the subsequent decision rendered by another Constitution Bench of this Court in *Kamleshkumar* [*Kamleshkumar Ishwardas Patel* v. *Union of India*, (1995) 4 SCC 51 : 1995 SCC (Cri) 643] .

28. In the light of the aforesaid discussion, our answer to first two questions is that the detaining authority ought to have considered the representation independently and without waiting for the report of the Central Advisory Board.

29. We now come to the third question. The facts in the instant case indicate that the comments of the sponsoring authority in respect of the representation were already received by the detaining authority.

After receipt of letter on 27-11-2019 that the detenues were received in custody, the time for considering the representation started ticking for the detaining authority. But the representation was considered only on 14-1-2020 and the reason for such delayed consideration is that the report of the Central Advisory Board was awaited. We have already found that the detaining authority was obliged to consider the representation without waiting for the opinion of the Central Advisory Board. Thus, there was no valid explanation for non-consideration of the representation from 27-11-2019 till 14-1-2020. We must, therefore, hold that complete inaction on the part of the detaining authority in considering the representation caused prejudice to the detenues and violated their constitutional rights.

30. We are conscious that the view that we are taking, may lead to some incongruity and there could be clear dichotomy when the representations are made simultaneously to such specially empowered officer who had passed the order of detention and to the appropriate Government. If we go by the principle in para 16 in *K.M. Abdulla Kunhi* [*K.M. Abdulla Kunhi* v. *Union of India*, (1991) 1 SCC 476 : 1991 SCC (Cri) 613] it would be proper for the appropriate Government to wait till the report was received from the Advisory Board, while at the same time the specially empowered officer who had acted as the detaining authority would be obliged to consider the representation with utmost expedition. At times a single representation is prepared with copies to the detaining authority, namely, the specially empowered officer and to the appropriate Government as well as to the Advisory Board. In such situations there will be incongruity as stated above, which may be required to be corrected at some stage. However, such difficulty or inconsistency cannot be the basis for holding that a specially empowered officer while acting as a detaining authority would also be governed by the same principles as laid down in para 16 of *K.M. Abdulla Kunhi* [*K.M. Abdulla Kunhi* v. *Union of India*, (1991) 1 SCC 476 : 1991 SCC (Cri) 613] .

19. A Division Bench of the Hon'ble Supreme Court in the case of **Pramod Singla vs. Union of India and Ors,** after analyzing the dicta in all

these judgments had held that there was no conflict between the said judgments. Consequently, the dicta, in paragraphs No. 28 and 29 of **Ankit Ashok Jalan's case**, would be applicable to the present case, as the order of detention, passed by the District Collector had already been approved, by the state Government, and it would be the State Government, which would be the detaining authority. The constitutional scheme, of checks and balances, in preventive detention law, as elucidated by the Hon'ble Supreme Court in the above judgments, would require the State, which becomes the detaining authority, when it approves the order of detention, passed by the specially empowered officer, to consider any representation addressed to it, irrespective of the stage of the preventive detention process. Any variation from the said requirement, would nullify the preventive detention orders passed in that case.

20. In the light of the above constitutional scheme, it would be necessary to consider the provisions of Section 10 of the Act. Section 10 reads as follows:

> **10. Reference to Advisory Board** :- In every case where a detention order has been made under this Act, the Government shall within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by them under Section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in the case where the order has been made by an officer, also the report by such officer under sub-section (3) of Section 3.

Section 10 states that a representation, received by the government, has to be forwarded to the Advisory Board. If this provision is understood to mean that the detaining authority is not required to consider the representation addressed to it and would have to only act as a post office, the same would be clearly in conflict with the constitutional scheme set out by the Hon'ble Supreme Court.

21. At this stage, it would be necessary to notice the judgment of a Division Bench of the erstwhile High Court of Andhra Pradesh in the case of **Amritha vs. Collector and District Magistrate, Hyderabad.** In this case, the Hon'ble High Court after considering the judgments of **Jayanarayan Sukul vs. State of West Bengal** and **Haradhan Saha and another vs. the State of West Bengal**[13]**.,** had held that there was a duty cast on the detaining authority, under Section 3 of the Act, to consider any representation made to it. The relevant observations are :

> **20.** In view of the law laid down as aforesaid and in view of the statutory provisions of the Act as referred to above, the question posed is answered thus: Where the detention order has been made under Section 3 by the Collector and District Magistrate or a Commissioner of Police in exercise of the powers conferred by sub-Section (2) of Section 3 and when the order of detention has been approved by the State Government, the State Government becomes the detaining authority from the date of such approval. Any representation has to be made to the State Government/detaining authority and the State Government is obliged to consider such a representation independently and

[13] **(1975) 3 SCC 198**

> failure on its part to do so results in further detention illegal. Once the State Government considered the representation, the requirement of constitutional mandate under Article 22(5) of the Constitution complied with and the order of detention passed by the officer mentioned in under sub-Section (2) of Section 3, as approved by the State Government, cannot be declared as void *ab initio* and illegal nor can it be said that further detention of the detenu as illegal for non consideration of the representation by the officer on whom the powers were conferred under sub-Section (2) of Section 3. For the reasons aforementioned and the view we have taken, we are not persuaded to accept the contention of the learned senior counsel that failure to consider the presentation by the Collector and District Magistrate would invalidate the order and renders his further detention illegal.

22. The Division Bench had dismissed the Writ Petition on the ground that the detaining authority had considered the said representation independently. However, Section 10 of the Act was not brought to the notice of the Division Bench. The issue that would arise before this Court is whether the law laid down by the Division Bench of the erstwhile High Court, would have been different if Section 10 of the Act had been brought to the notice of the Division Bench. In our view, no such difference would have arisen.

23. The learned government pleader, invites us to interpret Section 10 of the Act, to mean that, any representation, received by the detaining authority, before the Advisory Board renders its opinion, should be sent to the Advisory Board and no duty would be cast on the detaining authority to independently consider the representation. Such an interpretation would be clearly violative of the constitutional scheme set out above and the provisions

of Section 10 of the Act would have to give way to the requirements of Article 22 (5) of the Constitution.

24. However, such a situation would not arise if the provisions of Section 10 are harmonized with the constitutional scheme. This would mean that, any representation received by the State Government, after it gives an order of approval, would have to be dealt with by the State Government independently. Thereafter, the State Government should send the representation to the Advisory Board also. This interpretation would be in line with the guidelines set out by the Hon'ble Supreme Court in **Ankit Ashok Jalan vs. Union of India.**

25. In the present case, the representation of the petitioner was addressed to the Chief Secretary, Government of Andhra Pradesh. Upon receipt of this representation, the 1st respondent-Government was required to consider and pass orders on the representation. As no such orders had been passed, and the representation was simply forwarded to the Advisory Board, there is a violation of the requirements of Article 22(5) of the Constitution and the entire proceedings of preventive detention, including the order of preventive detention, dated 05.06.2025, passed by the District Collector, Chittoor, G.O.Rt.No.1152, dated 11.06.2025, granting approval of the government for the detention order, and the confirmation order, issued by way of, G.O.Rt.No.1326, dated 14.07.2025, are set aside. Consequently, the detenue shall be set at liberty forthwith, if he is not required in any other case.

26. Accordingly, this Writ Petition is allowed. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

R. RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J

RJS

THE HON'BLE SRI JUSTICE R RAGHUNANDAN RAO

AND

THE HON'BLE SRI JUSTICE T.C.D. SEKHAR

WRIT PETITION No.19256 of 2025

(per Hon'ble Sri Justice R Raghunandan Rao)

26.09.2025

RJS