2026 INSC 371

REPORTABLE

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (Civil) No. 1484 of 2026

PRIYANKA SARKARIYA …PETITIONER (S)

VERSUS

THE UNION OF INDIA & ANR. … RESPONDENT(S)

WITH

SPECIAL LEAVE PETITION (Criminal) No. 24/2026

J U D G M E N T

M. M. Sundresh, J.

1. The petitioners being aggrieved over the impugned judgments dated 19.12.2025 rendered by the Division Bench of the High Court of Karnataka upholding the Detention Orders dated 22.04.2025, issued in exercise of the powers under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short, **'COFEPOSA Act**'), are before us praying that the detenus - Smt. Harshavardhini Ranya in **SLP (Criminal) No. 24/2026** and Shri Sahil Sarkariya Jain in **SLP (Civil) No. 1484/2026** be set at liberty.

2. Heard Mr. Amol B. Karande and Mr. T. Chezhiyan, learned counsel appearing on behalf of the petitioner - Priyanka Sarkariya in **SLP (Civil) No. 1484/2026** and Mr. R. Basant, learned Senior Counsel appearing on behalf of the petitioner - H.P. Rohini in **SLP (Criminal) No. 24/2026** and the learned Additional Solicitor General of India ('ASG') appearing on behalf of the respondents. We have also perused the records and relevant documents necessary for the adjudication of the present Special Leave Petitions.

FACTUAL BACKGROUND

3. It is the specific case of the respondents that the detenu - Shri Sahil Sarkariya Jain had facilitated the disposal of consignments of foreign-marked gold bars on four different occasions between 14.11.2024 and 14.02.2025, along with the other detenu - Smt. Harshavardhini Ranya.

4. Specific intelligence was received by the Department of Revenue Intelligence ('DRI'), Bengaluru Zonal Unit that one female passenger bearing an Indian Passport was suspected of carrying gold, either in the form of gold bars or in the form of a paste, would be travelling from Dubai, United Arab Emirates to Bengaluru, India. Subsequently, an interception of the detenu - Smt. Harshavardhini Ranya was made on 03.03.2025, near the Green Channel of the International Customs Arrival Hall, Terminal 2 of the Kempegowda

International Airport, Bengaluru. This was followed by the recovery of a huge quantity of gold amounting to 17 foreign-marked gold bars, weighing approximately 14.2 kilograms. On the next day, i.e., on 04.03.2025, the detenu – Smt. Harshavardhini Ranya was arrested, followed by the recording of her statement under Section 108 of the Customs Act, 1962 (for short, **'Customs Act'**) on 10.03.2025, along with that of her associate Shri Tarun Konduru Raju on 12.03.2025.

5. Based on the statements given, the detenu - Shri Sahil Sarkariya Jain was also arrested on 07.04.2025. This was preceded by the recording of his statement under Section 108 of the Customs Act on 30.03.2025.

6. In exercise of the powers conferred under Section 3(1) of the COFEPOSA Act, detention orders were passed on 22.04.2025 by the Joint Secretary, Government of India, Ministry of Finance, DRI, Central Economic Intelligence Bureau ('CEIB'), COFEPOSA Wing. Further, the grounds of detention were served on the detenu - Smt. Harshvardhini Ranya on 22.04.2025, and the detenu - Shri Sahil Sarkariya Jain on 23.04.2025. The grounds of detention, served on both the detenus, contain substantial particulars of the allegations, including the evidence recovered, running into several pages. Suffice it to state that earlier transactions involving

both the detenus have been captured with adequate particulars in the grounds of detention.

7. Both the detenus have also been shown the contents of a pen drive containing the CCTV footage of the interception at the airport, in the prison, through a laptop brought for the said purpose by the concerned officials. Their signatures were obtained and due intimation was given to the counsel. Insofar as the detenu - Smt. Harshvardhini Ranya is concerned, on the failure of her counsel to receive the pen drive, it was furnished to her mother. Insofar as the detenu - Shri Sahil Sarkariya Jain is concerned, an e-mail was sent to his family members, intimating that the pen drive may be received.

8. While the detenue - Smt. Harshavardhini Ranya made a representation to the Joint Secretary, COFEPOSA, Government of India on 05.05.2025, the detenue - Shri Sahil Sarkariya Jain did not make any representation to the concerned authorities throughout, except for the one which was made after the disposal of the writ petition by the High Court *vide* one of the impugned judgments.

9. On 08.05.2025, the detenu - Smt. Harshavardhini Ranya made a further representation to the Government of India, CEIB. Further, on 09.05.2025, she made a representation before the Chairman of

the Advisory Board seeking legal assistance to be represented during the proceedings before it.

10. The representations made by the detenue - Smt. Harshvardhini Ranya were duly considered by the Detaining Authority and the Government of India, CEIB and the rejection was, accordingly, communicated as well by way of the *memoranda* dated 13.05.2025 and 14.05.2025, respectively. However, the communications for both the rejections have been sent by the same officer, who is neither the Detaining Authority nor the Central Government. In other words, the decision to reject was made by the competent authorities, but the communications on the representations were sent by the same named official - Director, COFEPOSA.

11. The representation made by the detenue - Smt. Harshavardhini Ranya seeking legal assistance during the proceedings before the Advisory Board was also rejected. Both the detenus represented themselves virtually. The Advisory Board, upon perusing the records produced on behalf of the Detaining Authority, was pleased to opine that sufficient cause had been made out for the detention of the detenus and that they could be proceeded against further. The reports of the Advisory Board were accepted by the Central Government, thereby, confirming the Detention Orders *qua* both the detenus.

12. Aggrieved, writ petitions were filed before the High Court of Karnataka. The petitioner - H.P. Rohini in **SLP (Criminal) No. 24/2024**, being the mother of the detenu – Smt. Harshavardhini Ranya, raised various contentions, as listed below:

i. The Detention Order is vitiated due to the failure in furnishing the complete list of relied upon documents. Supplying the pen drive which is at Serial No. 51 of the relied upon documents, appended to the Detention Order, merely to verify the contents and size of the pen drive, and service of the same upon the mother of the detenu – Smt. Harshavardhini Ranya amounts to non-service. The same is also beyond the stipulated period of 15 days, in accordance with the statutory mandate, to supply all the relied upon documents.

ii. The Detention Order is further vitiated since pages 1010 and 1011, being in Kannada language, have not been read and understood by the detenu, which renders the Detention Order illegal.

iii. Furthermore, pages 1077 and 1099 of the relied upon documents have been furnished in a truncated form.

iv. No subjective satisfaction has been recorded in the Detention Order, since the Detaining Authority did not consider the prospect of the detenu being released on bail for issuing an

Detention Order, whilst in judicial custody. No materials existed to derive subjective satisfaction that the detenu had traveled 31 times from January 2024. The entire subjective satisfaction has been derived only upon the purported statement of the detenu.

v. The Detention Order stood vitiated, as there was no prospect of the detenu indulging in smuggling activities in the future and further the passport of detenu was in custody of the Court.

vi. The Detention Order is vitiated inasmuch as the detenu – Smt. Harshavardhini Ranya was not apprised of her right of being assisted by a friend in the proceedings before the Advisory Board, neither in the grounds of detention nor in the communication from the Advisory Board itself. Further, the Detention Order is vitiated inasmuch as the Advisory Board has not considered the representation of the detenu dated 09.05.2025, seeking permission to be represented by a legal practitioner in the proceedings before the Advisory Board.

13. The petitioner - Priyanka Sarkariya, in **SLP (Civil) No. 1484/2026**, who is a cousin of the detenu – Shri Sahil Sarkariya Jain raised the following contentions before the High Court:

i. There is no material to connect the detenu – Shri Sahil Sarkariya Jain to the incident dated 03.03.2025, as there is no evidence to show the involvement of the detenu in the seizure of the foreign-

marked gold bars made at the airport, or in any other financial transactions, except for the ones admitted by him that took place between November, 2024 to February, 2025.

ii. The relied upon documents were not supplied to the detenu for enabling him to make an effective and meaningful representation before the Detaining Authority and the Central Government, and extraneous materials have been taken into consideration while passing the Detention Order.

iii. The involvement of Shri Sahil Sarkariya Jain is alleged to have been traced only from the digital evidence and subsequent statements dated 25.03.2025 to 02.04.2025, in which, he had stated that he was an intermediary between Smt. Harshavardhini Ranya and one Shri Avinash, in pursuance of which he has transferred *hawala* money on four occasions to the extent of Rs. 39,26,46,619/-. Apart from the said four *hawala* transactions, there was no material to show his involvement in the remaining 27 trips undertaken by the smuggling syndicate. Thus, there is a mechanical attribution to the detenu as being part of the smuggling syndicated involved in smuggling 99.1337 kilograms of gold. The sweeping reference to his involvement in all transactions (31 trips) is vitiated by non-application of mind. The last transaction connecting the detenu as alleged by the

respondents was on 14.02.2025, and there is no reason to justify the preventive detention of the detenu, since there is no live and proximate link between the last incident on 14.02.2025 and the one on 03.03.2025.

iv. The detenu's bail application was rejected on 15.04.2025. Thus, there was no material before the Detaining Authority to indicate any probable release on bail or otherwise, or any real possibility of him indulging in illegal activities of smuggling upon being released. When a person is in custody and no bail application preferred by him/her is pending, there is no basis to assume the likelihood of release on bail and, hence, the subjective satisfaction stands vitiated.

v. There is a violation of Article 22(5) of the Constitution of India (for short, **'the Constitution')**, since a conclusion was drawn that the electronic devices seized from the detenu - Smt. Harshavardhini Ranya established a connection between her and the detenu - Shri Sahil Sarkariya Jain. However, it is contended that the relied upon documents served upon the detenu did not contain details of the transcripts from such electronic devices or any other electronic evidence, supporting the said conclusion.

14. Before us, Mr. R. Basant, learned Senior Counsel appearing for the petitioner in **SLP (Criminal) No. 24/2026** and Mr. Amol B. Karande and Mr. T. Chezhiyan, learned counsel appearing for the petitioner in **SLP (Civil) No. 1484/2026** have raised some additional grounds laying particular emphasis on them, as against the grounds raised before the High Court.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

15. We shall cumulatively narrate the submissions made before us by the learned Senior Counsel and the learned counsel appearing on behalf of the detenus. It is submitted by the learned counsel appearing for the petitioner in **SLP (Civil) No. 1484/2026**, that the Detention Order passed on the basis of the alleged recovery of the foreign-marked gold bars is not connected to the detenu – Shri Sahil Sarkariya Jain. There is neither a live-link, nor is the same proximate. Copies of the relied upon documents which were sought for, have not been furnished to the detenu. The representation to the Central Government, though made after the passing of the impugned order by the High Court, has not been considered. Further, merely supplying the pen drive to a third party would not tantamount to proper service in favour of the detenu. There is no substantial material to arrive at the conclusion that there is an imminent possibility of a similar offence of smuggling being committed upon

the release of the detenu. Thus, the factum of alleged propensity to commit the offence of smuggling also has no factual basis.

16. The learned counsel appearing for the petitioner in **SLP (Civil) No. 1484/2026** seeks to rely upon the following decisions in support of his submissions:

i. **Shalini Soni (Smt) and Others v. Union of India and Others, (1980) 4 SCC 544.**

ii. **Icchu Devi Choraria (Smt) v. Union of India and Others, (1980) 4 SCC 531.**

iii. **Jaseela Shaji v. Union of India and Others, (2024) 9 SCC 53.**

iv. **Nenavath Bujji And Others v. State of Telangana and Others, (2024) 17 SCC 294.**

v. **Khaja Bilal Ahmed v. State of Telangana and Others, (2020) 13 SCC 632.**

vi. **Sarabjeet Singh Mokha v. District Magistrate, Jabalpur and Others, (2021) 20 SCC 98.**

vii. **P.P. Rukhiya v. Joint Secretary, Government and Another, (2019) 20 SCC 740.**

17. Shri R. Basant, learned Senior Counsel appearing for the petitioner in **SLP (Criminal) No. 24/2026** has made the following submissions:

The rejection of the request for legal assistance by the Advisory Board to appear before it would vitiate the entire proceedings. There was a delay in considering and communicating the decision on the representation dated 05.05.2025. Both the representations have been considered by the same authority who is not competent, especially when there is no power of delegation available. Though a display of the video contained in the pen drive was made to the detenu in the laptop of the concerned department in the prison, no facility has been provided for further viewing of the contents. In other words, the pen drive containing the relied upon materials has not been supplied to the detenu. To buttress his submissions, learned Senior Counsel has placed reliance upon the following decisions of this Court:

i. **A.K. Roy v. Union of India and Others, (1982) 1 SCC 271.**

ii. **State of Andhra Pradesh and Another v. Balajangam Subbarajamma, (1989) 1 SCC 193.**

iii. **Choith Nanikram Harchandani v. State of Maharashtra and Others, (2015) 17 SCC 688.**

iv. **K.M. Abdulla Kunhi and B.L. Abdul Khader v. Union of India and Others, (1991) 1 SCC 476.**

v. **Kamleshkumar Ishwardas Patel v. Union of India and Others, (1995) 4 SCC 51.**

vi. **Venmathi Selvam (Mrs) v. State of T.N. and Another, (1998) 5 SCC 510.**

vii. **Harshala Santosh Patil v. State of Maharashtra and Others, (2006) 12 SCC 211**

viii. **Ankit Ashok Jalan v. Union of India and Others, (2020) 16 SCC 127**

ix. **Rama Dhondu Borade v. V.K. Saraf, Commissioner of Police and Others, (1989) 3 SCC 173**

x. **Icchu Devi Choraria (Smt) v. Union of India and Others, (1980) 4 SCC 531.**

xi. **Smitha Gireesh v. Union of India & Ors., 2016 SCC OnLine Del 3697**

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

18. Learned ASG made the following submissions on behalf of the respondents:

The High Court, while adjudicating the writ petitions, has considered all the contentions raised by the petitioners in *extenso.* Therefore, in the absence of any illegality, there is no need for any

interference. The representations made by the detenu - Smt. Harshavardhini Ranya have been duly considered and decisions thereof have been communicated. The fact remains that one of the representations made by the detenu - Shri Sahil Sarkariya Jain, after the disposal of the writ petition, was made to the incorrect authority. It is only after due intimation of the mistake committed that a subsequent representation was made by the detenu on 06.02.2026, which was also duly considered by the Detaining Authority, and its rejection was communicated *vide* a memorandum dated 23.02.2026. The receipt of the said communication is not in doubt, as could be seen from the additional documents filed by the petitioner – Priyanka Sarkariya herself. All the documents relied upon have been served upon the detenus or their representatives. Further, the representations have been considered within the permissible time limit. Not only was a pen drive provided, but also due display of the content therein, was made to the satisfaction of the detenus. The same has been acknowledged by them and, thereafter, they did not renew any such request for displaying the contents. The detenus were duly informed regarding the availability of the pen drives. It is incorrect to state that the officials/legal advisors of the respondents/Detaining Authority had participated in any hearing before the Advisory Board. They merely carried the

records and assisted the Advisory Board, to peruse the same, as and when required. While there is no dispute regarding the law laid down in the decisions relied upon by the learned Senior Counsel and learned counsel for the petitioners, they do not have any application to the facts governing the present case.

RELEVANT STATUTORY PROVISIONS

Article 22(3)(b) of the Constitution of India, 1950

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

(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."

(emphasis supplied)

Section 8(c) & (e) of the COFEPOSA Act

"8. Advisory Boards.—For the purposes of sub-clause (a) of clause (4), and sub-clause (c) of clause (7), of Article 22 of the Constitution,—

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(c) the Advisory Board to which a reference is made under clause (b) shall after considering the reference and the materials placed before it and after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if in any particular case, it considers it essential so to do or if the person concerned desires to be heard in person, after hearing him in person, prepare its report specifying in a separate paragraph thereof its opinion as

to whether or not there is sufficient cause for the detention of the person concerned and submit the same within eleven weeks from the date of detention of the person concerned;

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(e) a person against whom an order of detention has been made under this Act shall not be entitled to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified shall be confidential;"

(emphasis supplied)

LEGAL ANALYSIS

19. The import of Article 22(3)(b) of the Constitution can be seen on a reading of Section 8(e) of the COFEPOSA Act. A detenu cannot seek legal assistance as a matter of right. The hearing provided under Section 8(c) of the COFEPOSA Act is meant for the detenu alone and, therefore, an officer representing the Detaining Authority has no other role while participating in the proceedings, except for producing the records. It is only when a hearing takes place where there is an active participation of the Detaining Authority, and that too with the leave of the Advisory Board, does the question of affording an opportunity of being heard through a legal practitioner arise *qua* the detenu. Any interpretation of the provision to the contrary would render Section 8(e) of the COFEPOSA Act otiose and redundant, especially, when it draws its source from the mandate provided under Article 22(3)(b) of the Constitution.

20. In **A.K. Roy v. Union of India and Others, (1982) 1 SCC 271** a Constitution Bench of this Court was pleased to hold as follows:

> **"93. We must therefore hold, regretfully though, that the detenu has no right to appear through a legal practitioner in the proceedings before the Advisory Board. It is, however, necessary to add an important caveat. The reason behind the provisions contained in Article 22(3)(b) of the Constitution clearly is that a legal practitioner should not be permitted to appear before the Advisory Board for any party. The Constitution does not contemplate that the detaining authority or the government should have the facility of appearing before the Advisory Board with the aid of a legal practitioner but that the said facility should be denied to the detenu. In any case, that is not what the Constitution says and it would be wholly inappropriate to read any such meaning into the provisions of Article 22. Permitting the detaining authority or the government to appear before the Advisory Board with the aid of a legal practitioner or a legal adviser would be in breach of Article 14, if a similar facility is denied to the detenu. We must therefore make it clear that if the detaining authority or the government takes the aid of a legal practitioner or a legal adviser before the Advisory Board, the detenu must be allowed the facility of appearing before the Board through a legal practitioner.** We are informed that officers of the government in the concerned departments often appear before the Board and assist it with a view to justifying the detention orders. **If that be so, we must clarify that the Boards should not permit the authorities to do indirectly what they cannot do directly; and no one should be enabled to take shelter behind the excuse that such officers are not "legal practitioners" or legal advisers. Regard must be had to the substance and not the form since, especially, in matters like the proceedings of Advisory Boards, whosoever assists or advises on facts or law must be deemed to be in the position of a legal adviser.** We do hope that Advisory Boards will take care to ensure that the provisions of Article 14 are not violated in any manner in the proceedings before them. Serving or retired Judges of the High Court will have no difficulty in understanding this position. Those who are merely "qualified to be appointed" as High Court Judges may have to do a little homework in order to appreciate it."
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> (emphasis supplied)

21.A thorough reading of the aforesaid decision would show that the Constitution Bench, after taking note of the constitutional mandate, was pleased to hold that a detenu has no right of being represented

by the counsel in the proceedings before the Advisory Board. It is only when a Detaining Authority makes a representation before the Advisory Board through a legal practitioner, that the said facility has to be extended to a detenu as well. In other words, when an officer merely places the records and assists the Advisory Board on behalf of the Detaining Authority, a detenu cannot seek legal assistance in a routine manner. As stated above, such officials do not have any other role, other than merely assisting the Advisory Board to produce necessary records/documents. Thus, we are of the view that the decision rendered in **A.K. Roy** ***(supra)*** actually helps the case of the respondents, as it has been specifically averred by them that the concerned officers did not participate in the proceedings, except for assisting in production of the relevant records.

22. Shri R. Basant, learned Senior Counsel, has also placed reliance upon the decision rendered by this Court in **Choith Nanikram Harchandani v. State of Maharashtra and Others, (2015) 17 SCC 688**. In the said decision, this Court took note of the fact that the officials of the respondent, the Sponsoring Authority and the Detaining Authority were actually heard in the course of the proceedings before the Advisory Board. Thus, the aforesaid decision does not benefit the case of petitioner in **SLP (Criminal) No.**

24/2026, as the said decision is not applicable to the facts governing the instant case.

23. Reliance has been further placed upon a decision of this Court in **Icchu Devi Choraria** ***(supra)*** to contend that new grounds can be raised in a petition seeking the writ of *habeas corpus*, since strict rules of pleadings shall not be applicable.

> **"4. It is also necessary to point out that in case of an application for a writ of habeas corpus, the practice evolved by this Court is not to follow strict rules of pleading nor place undue emphasis on the question as to on whom the burden of proof lies. Even a postcard written by a detenu from jail has been sufficient to activise this Court into examining the legality of detention.** This Court has consistently shown great anxiety for personal liberty and refused to throw out a petition merely on the ground that it does not disclose a prima facie case invalidating the order of detention. Whenever a petition for a writ of habeas corpus has come up before this Court, it has almost invariably issued a rule calling upon the detaining authority to justify the detention. This Court has on many occasions pointed out that when a rule is issued, it is incumbent on the detaining authority to satisfy the court that the detention of the petitioner is legal and in conformity with the mandatory provisions of the law authorising such detention: vide *Niranjan Singh* v. *State of Madhya Pradesh* [(1972) 2 SCC 542 : 1972 SCC (Cri) 880 : AIR 1972 SC 2215] ; *Shaikh Hanif, Gudma Majhi & Kamal Saha* v. *State of West Bengal* [(1974) 3 SCR 258 ; (1974) 1 SCC 637 : 1974 SCC (Cri) 292] and *Dulal Roy* v. *District Magistrate*, *Burdwan* [(1975) 1 SCC 837 : 1975 SCC (Cri) 329 : (1975) 3 SCR 186] . **It has also been insisted by this Court that, in answer to this rule, the detaining authority must place all the relevant facts before the court which would show that the detention is in accordance with the provisions of the Act. It would be no argument on the part of the detaining authority to say that a particular ground is not taken in the petition:** vide *Nizamuddin* v. *State of West Bengal* [(1975) 3 SCC 395 : 1975 SCC (Cri) 21 : (1975) 2 SCR 593] . **Once the rule is issued it is the bounden duty of the court to satisfy itself that all the safeguards provided by the law have been scrupulously observed and the citizen is not deprived of his personal liberty otherwise than in accordance with law:** vide *Mohd. Alam* v. *State of West Bengal* [(1974) 4 SCC 463 : 1974 SCC (Cri) 499 : (1974) 3 SCR 379] and *Khudiram Das* v. *State of West Bengal* [(1975) 2 SCC 81 : 1975 SCC (Cri) 435 : (1975) 2 SCR 832] ."
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> (emphasis supplied)

24. While substantial reliance has been placed by the petitioners upon the decision in **Icchu Devi *(supra)*,** to the effect that strict rules of pleadings and burden of proof shall not be applicable in a petition for *habeas corpus*, we have no difficulty in appreciating the fact that fresh grounds can be raised before us while challenging a Detention Order.

25. In the aforesaid decision, the relied upon documents were withheld completely. However, the facts governing the present case stand on a different footing, and even the fresh grounds raised before us do not come to the aid of the petitioners. We find that substantial compliance has been made on behalf of the respondent - authorities to establish that the Detention Order has not been issued in contravention to the constitutional mandate under Article 22(3)(b) of the Constitution.

26. On the contentions made by the petitioners with respect to the non-supply of the pen drive, we find that substantial compliance has been made by the officials of the respondents. Not only were the contents of the pen drive displayed to the detenus on a laptop in the prison, but endeavours were also made to supply the pen drive to the concerned representatives of the detenus. When the prison rules, as such, do not facilitate a detenu/prisoner to have access to electronic

gadgets, it cannot be said that the same should be made available to the detenus, more so, when no such requests were renewed by the detenus. Thus, we hold that the contention of non-supply of the pen-drive would amount to non-furnishing of the relied upon documents is nothing but an afterthought.

27. Reliance has also been placed by the learned Senior Counsel on the judgment passed by the Division Bench of the High Court of Delhi in **Smitha Gireesh vs Union of India & Ors, 2016 SCC OnLine Del 3697,** wherein, the following views have been expressed:

> **"58.** It is a settled law when clause (5) of Article 22 and sub-section 3 of Section 3 of COFEPOSA Act provide that the grounds of detention should be communicated to the detenue within five or fifteen days, as the case may be, what is meant is that the grounds of detention in their entirety must be furnished to the detenue. If there are any documents, statements or other material relied upon in the grounds of detention, they must also be communicated to the detenue, because being incorporated in the grounds of detention, as they form part of the grounds and the grounds furnished to the detenue cannot be said to be complete without them. It would not therefore be sufficient to communicate to the detenue a bare recital of the grounds of detention, but copies of the documents, statements and other materials relied upon in the grounds of detention must also be furnished to the detenue within the prescribed time. The stand of the respondents that they had shown the CDs to the detenu during the course of investigation is not a proper service as per law. The detaining authority heavily relied upon the CDs in the grounds of detention and thus were duty bound to show the entire contents of the same to the detenue as a matter of right. The Court cannot lose track of the fact that the detenue was in judicial custody and he could not have access to any facility for seeing the CDs and cannot be forced to rely on his memory for making an effective representation against the detention order. The right to make a representation is a right provided in the Constitution. The supply of 12 CDs as relied upon documents are not disputed by the respondents, but the respondents failed to provide the facility to see the CDs for making an effective representation even before the meeting of the Advisory Board which was held on 12.02.2016. It may also be noted that from the list of events enclosed by the respondents in their counter affidavit at Serial No. 106 of page No. 38, that an officer was deputed to the Sub-Jail Sada Goa

along with a laptop to facilitate the viewing of the CDS by the detenue-Imtiyaz Hussain. **There is no explanation why the respondents took a different approach against the request of the present detenue and could not provide a CD player to the detenue to view the CDs which form part of the relied upon documents.**

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69. There are reference to CCTV footage in paragraphs 87 to 89 and as many as 29 times in the entire grounds of detention. In effect, it can safely be said that to form a subjective satisfaction the detaining authority has relied on the CCTV footage, and thus, the CCTV footage in the 12 CDs are held to be relied upon documents. Merely because the CDs provided to the detenue along with the show cause notice or he was shown the CCTV footage at the time of recording of the statement under Section 108 of the Customs Act, in our view cannot take the place of providing the mechanism for viewing the CDs in view of the settled law of the land. On this ground as well, in our view, the order of detention is liable to be quashed."

(emphasis supplied)

28. Facts involved in the aforesaid case are different. Firstly, in that case, the documents relied upon were in relation to CDs containing CCTV footage, which had been shown at the time of recording the statement of the detenu therein, under Section 108 of the Customs Act. Secondly, display of the contents of the CDs was made to a co-accused, while it was denied to the detenu in the said case.

29. However, in the case at hand, the contents in the pen drive were displayed after the passing of the Detention Order and before making the representation before the respondent authorities. As stated above, the detenus did not renew their request for further display of the 90-minutes video footage pertaining to the interception incident at the Kempegowda International Airport, Bengaluru. Thus, the said decision of the High Court of Delhi also does not apply to the present case.

FACTUAL ANALYSIS

30. Though submissions have been made that the representations of the detenu - Smt. Harshavardhini Ranya were disposed of by the incorrect authority, that too, representing two different statutory authorities, the said submission also falls to the ground, as the signatory of the two *memoranda* rejecting the representations, merely communicated the decisions made by each concerned authority, namely, the Detaining Authority and the Government of India. In other words, it was not the decision of the signatory which was communicated to the detenu, but rather that of the concerned authority. To put it differently, what was done by the signatory was a mere ministerial act.

31. The submission that affidavits have not been filed by the concerned authorities cannot be sustained. The said contention has been raised to show that an incompetent authority has, in fact, disposed of the representation. The authority, who had attested the rejection of the representations, has filed an additional affidavit before this Court citing the procedure followed by the Detaining Authority and the Central Government while considering the representations as well as the administrative process relating to the manner in which the decisions were communicated to the detenu. The concerned official has also clearly stated that the representations dated 05.05.2025 and

08.05.2025 have been examined by the Detaining Authority, i.e. the Joint Secretary, COFEPOSA and the Director General, CEIB on behalf of the Central Government, and he merely communicated the same to the detenu - Smt. Harshavardhini Ranya *vide* the *memoranda* dated 13.05.2025 and 14.05.2025, respectively.

32. The satisfaction of the Detaining Authority is a subjective one. Having perused the grounds of detention, we find that adequate reasons have been recorded therein. The materials are also to the effect that there were prior occurrences of disposal of foreign marked-gold bars in India, and a live and proximate-link *qua* the present incident also stands established insofar as the detenu - Shri Sahil Sarkariya Jain is concerned. Further, all the documents relied upon have been duly furnished to the detenus.

33. The submission that the representation dated 30.01.2026 filed by the detenu – Shri Sahil Sarkariya Jain was not considered by the Detaining Authority and the outcome thereof was not communicated to him also has no factual basis, in view of the affidavit filed by the petitioner - Priyanka Sarkariya herself. In any case, the subsequent representation dated 06.02.2026, which was filed before the Competent Authority immediately upon the receipt of communication dated 04.02.2026, wherein, the detenu was informed to make the representation before the appropriate

authority, would also falsify the aforesaid contention. Not only have the documents relied upon been furnished to the detenus within the requisite time, but also the translated copies of the documents.

34. Law is quite settled that every document need not be supplied and the said requirement is only *qua* the relied upon documents. The High Court of Karnataka has considered the contention of non-supply of the relied upon documents in the right perspective and correctly found that due service of the same has been made. In our view, the Detention Order is also quite clear *qua* the imminent possibility of the detenus being released on bail.

35. Though the learned Senior counsel and the learned counsel appearing for the petitioners have placed substantial reliance upon numerous other judgments, we do not wish to reiterate the law laid down thereunder, simply for the reason that the said decisions do not have any application the facts governing the present case. Suffice it to state, that adequate procedural compliance has been made by the respondent(s) while passing the Detention Order dated 22.04.2025, which is under challenge.

36. In such view of the matter, both the Special Leave Petitions are dismissed.

37. Pending application(s), if any, shall stand disposed of.

38. No order as to costs.

..……..J.
(M. M. SUNDRESH)

…… J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
APRIL 16, 2026