* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(CRL) No. 55/2011**

% Reserved on: 31st January, 2012

Decided on: 20th March, 2012

ANANT BRAHMACHARI ..... Petitioner

Through: Mr. G. Tushar Rao and Mr. Atanu Mukherjee, Advocates.

Versus

UOI & ORS ..... Respondents

Through: Mr. Baldev Malik, Advocate for Respondent No. 1.
Mr. Hiren P. Raval, Additional Solicitor General with Mr. Amit Sharma and Mr. Ahmed Khan, Advocates for Respondent Nos. 2 to 5.
Mr. Dayan Krishnan, Additional Standing Counsel for the State with Mr. Nikhil A. Menon, Advocate with ASI Nanak Chand, PS Hazrat Nizaumuddin.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. In this petition vide order dated 11th May, 2011 after addressing arguments at some length, learned counsel for the Petitioner submitted that he was confining his petition limited to the reliefs sought in prayers 'c', 'e', 'f' and 'h' of the present petition, which are as under:

> "c. Issue a writ, order or direction directing the respondent No.2 NIA to be guided by the principles of laid down in *D K Basu's* case even in the case of summoning witnesses under Section 160 Cr.P.C. for recording statements;

e. Issue an order or direction permitting the petitioner to be accompanied at all times by two lawyers as and when the petitioner is issued notice under Section 160 Cr.P.C. for recording his statement;

f. Issue a writ, order or direction or pass necessary order for conducting judicial enquiry into the atrocities and third degree methods resorted to by the respondent No.2 NIA against the Petitioner as also the illegal detention and wrongful confinement by the NIA officers on 4/1/2011; and appropriate legal action be initiated against officers responsible for the same;

h. Issue appropriate order/directions to the UOI and other respondents to jointly and severely compensate the Petitioner for the illegal detention, wrongful confinement and for the uncalled for unconstitutional atrocities committed upon the petitioner by the officers of the respondent No.2 NIA;"

2. Learned counsel for the Petitioner contends that calling the Petitioner to join the investigation without serving a notice under Section 160 Cr.P.C. amounts to illegal restrain. Further, when the Petitioner came to join the investigation on 4th January, 2011 he was handed over a notice to join the investigation on the 5th January, 2011. The Petitioner was threatened and coerced to the extent that the Petitioner attempted to commit suicide and had been taken to the hospital and on being declared fit he alleged that the officials of National Investigating Agency (in short 'NIA') were threatening and harassing/ torturing him physically and mentally because of which he tried to end his life.

3. It is further contended that the Petitioner was at Mumbai when he was served with a notice under Section 160 Cr.P.C. to appear before the Investigating Agency on 5th January, 2011 at 10.00 AM at NIA Camp,

Moginand, Panchkula, Haryana. Thereafter, without serving any notice the Petitioner was illegally detained and made to join the investigating on 4th January, 2011 when he was harassed and tortured mentally and physically. Though a notice under Section 160 Cr.P.C. can be given for calling a witness to give the statement, however the said notice can only be given to a person who resides within the jurisdiction of said Police station or any adjoining Police station. The NIA Police officer does not have the jurisdiction to serve a notice to a person beyond the territorial jurisdiction of the Police Station he is appointed for. The National Investigating Agency Act, 2008 clothes the Police officers with the powers under Criminal Procedure Code and they are bound to act in accordance with the procedure laid therein. Thus, extra Constitutional methods were employed by the Respondents for recording the statement of the Petitioner.

4. Referring to *D.K. Basu Vs. State of West Bengal (1997) 1 SCC 416* it is contended that even the arrestee has the right to meet the lawyer during interrogation and the right of the Petitioner, who was not even a suspect at the time when he was summoned, stands on a higher pedestal. Relying upon *Nandini Satpathy Vs. P.L. Dani and Anr.(1978) 2 SCC 424; State v. N.M.T. Joy Immaculate, (2004) 5 SCC 729 and State NCT of Delhi Vs. Navjot Sandhu @ Afsan Guru (2005) 11 SCC 600* it is contended that a person who is an arrestee enjoys a Constitutional benefit of the presence of a lawyer and an atmosphere free from coercion. The Petitioner, who is not even a suspect at this stage, is on a better footing and is entitled to the Constitutional right as enshrined in Articles 21 & 22 of the Constitution of India. Even by giving a notice under Section 160 Cr.P.C. a person cannot be called at a place

which does not fall within the jurisdiction of the Police Station where he resides. There is no dispute that in view of Section 3 of the NIA Act, a Police officer under the NIA discharges functions throughout India, however, wherever he exercises the jurisdiction he can only exercise jurisdiction in his Police Station or the adjoining Police station in view of Section 3(2) of the NIA Act. Reference is made to 2(1)(b) and (i) of the NIA Act to contend that the meaning of the expression would be as per the Criminal Procedure Code. The Petitioner is stationed at Uttarakhand and in case the Respondents want to interrogate him, they can come to Uttarakhand. No doubt the Petitioner is a monk moving here and there, however he has his ordinary place of residence which he has revealed in the petition.

5. As regards prayers 'f' and 'h', learned counsel for the Petitioner contends that the Respondents in their affidavit have admitted that Inspector Prabhat Bajpayee called the Petitioner on telephone and thus admittedly no notice under Section 160 Cr.P.C. was given when he was made to join the investigation on 4th January, 2011. Even if the Petitioner attended the proceedings, the same were without issuance of notice under Section 160 Cr.P.C., wherein the Petitioner was coerced and tortured, which amounts to illegal detention. In view of the torture meted out to the Petitioner and the fact that another notice was issued for appearance on 5th morning, the Petitioner attempted suicide which fortifies the claim of the Petitioner. In view of the guidelines laid in *D.K. Basu* (supra), a judicial enquiry be directed and contempt proceedings be initiated against the Respondents. Reliance is placed on *Tar Balbir Singh Vs. Union of India and Anr. 1992 (2) Crimes 394 Punjab & Haryana; Deepak Mishra and Anr. Vs. State of U.P. And Anr. 1999 Crl.L.J. 4123; Krishan Bans Bhadur and Anr. Vs. State of*

Himachal Pradesh 1975 Crl.L.J. 620 (H.P.); Mathews Peter Vs. Asst. Police Inspector & Ors. 2002 Crl.L.J. 1588; Akhilesh Vs. State of U.P. & Anr. 2011 (2) Crimes 602 (All.) and M/s. Pusma Investment Pvt. Ltd. & Ors. Vs. State of Meghalaya & Ors. 2010 Crl.L.J. 56 to contend that notice under Section 160 Cr.P.C. cannot be given beyond territorial jurisdiction of the Police Station or the adjoining Police Station.

6. Learned Additional Solicitor General appearing for Respondent No.2 to 5 contends that the issue whether a person has a right of counsel when his statement under Section 160 Cr.P.C. is being recorded is no more res-integra in view of the decision of Hon'ble Supreme Court in *Senior Intelligence Officer Vs. Jugal Kishore Sharma CRL.A. No. 1266/2011 decided on 5th July, 2011* wherein the Hon'ble Supreme Court considered all earlier decisions including that in the case of *Nandini Satpathy (supra)*. It was held that the law laid down in *Nandini Satpathy (supra)* was not good law in view of the fact that it did not consider the earlier Constitution Bench decisions and the decision in *Nandani Satpathy (supra)* has not been followed in the later decisions of the Hon'ble Supreme Court. Thus, the observations made by the Hon'ble Supreme Court in *Nandani Satpathy (supra)* cannot be used to allow prayer 'e' of the Petitioner.

7. As regards prayer 'c' is concerned, it is contended that the NIA Act entitles its officers to summon any person, who is in a jurisdiction outside the territorial jurisdiction where the officer is stationed and there is no mandate that the person can be called to give statement only in the territorial jurisdiction of the police station in which the person resides or in the adjoining Police Station. When the present petition was filed, the Petitioner

had already complied with the first summon. He did not take any steps to challenge the same and thus now the Petitioner cannot challenge the said summon which has already been complied with. Further, the documents on record itself show that though initially a notice was served at Mumbai to the Petitioner to join the investigation at Panchkula on 5th January, 2011, however since the Petitioner was on his way at Delhi, as per his convenience, he was made to join the investigation at the NIA Headquarter, Delhi on 4th January, 2011. The Petitioner was accompanied by a lawyer. The Petitioner was at Delhi and thus asked to come at Delhi. The questioning took place in two sessions and the Petitioner was permitted to go for lunch. Thus, the contention regarding the illegal restrain and thus illegal custody is wholly unfounded. The second summon for appearance on 5th January, 2011 was issued to the Petitioner on 4th January, 2011 when he came to join the investigation at NIA Headquarter and was admittedly in Delhi. The Petitioner in the petition at different places has stated that he is residing at Surat, Uttarakhand though he was found at Mumbai. The investigation also reveals that the Petitioner is a resident of Gomti Nagar, Lucknow on the basis of Cell I.D.

8. Section 3, NIA Act starts with a non-obstante clause and confers the powers on the Police officials to conduct investigation in any part of India in terms of Section 3(2) of the Act. Section 3(3) of the NIA Act has been added as an abundant caution. Section 3(2) is a complete answer to the queries raised by the Petitioner. Different High Courts have taken the view and have not accepted the contention that a notice under Section 160 Cr.P.C. can be given to a person who resides in the territorial jurisdiction of the

concerned Police Station or the adjoining Police station. Reliance in this regard is placed on *Dr. Rajinder B. Lal Vs. State of U.P., MANU/UP/0754/2006; Anirudha S. Bhagat Vs. Ramnivas Meena & Anr., MANU/MH/0699/2005; Rajesh @ Unni S/o of Rajagopalan Nair Vs. State of Kerala DGP and CB-CID MANU/KE/0529/2010 and Pulavar B.M. Senguttuvan, Panneerselvam Vs. State, 2004 CrlLj 558.* In fact, the Respondents even offered the Petitioner reimbursement of the expenses which he stated that he would take later. Relying upon *Director CBI and Ors. Vs. Niyamavedi (2009) 10 SCC 488 and Union of India Vs. Prakash P. Hinduja and Anr. AIR 2003 SC 2612* it is contended that this Court should not interfere in the investigation and permit the same to be carried out by the authorities concerned.

9. As regards the prayer for 'f' and 'h', it is contended that the status report filed by the Delhi Police shows that no poison was detected in the gastric lavage of the Petitioner and thus the act of the Petitioner was a well-planned, well-thought measure to suppress NIA to carry out investigation fearlessly and properly. A perusal of the facts as stated in the reply affidavit by the Respondent clearly shows that the Petitioner was accompanied by a lawyer and no protest for the harassment was lodged at that time. Further, the Petitioner was examined at two time periods and was permitted to go for lunch which itself shows that there was no illegal detention. The photographs of the register wherein the Petitioner and his lawyer have signed have been enclosed along with the reply affidavit which has not been denied in the rejoinder. Hence, there is no merit in the contention that the Petitioner

was illegally detained and thus coerced to make statement. Hence the writ petition be dismissed being devoid of merit.

10. Heard learned counsels for the parties. The issues that arise for consideration in the present petition are:

(i) Whether the Respondents on the facts and in law were competent to examine the Petitioner at Delhi by serving a notice under Section 160 Cr.P.C. on him?

(ii) Whether the Petitioner has a right of being accompanied by an advocate at the time of recording of statement?

(iii) Whether the act of the Respondents calling the Petitioner without serving the notice under Section 160 Cr.P.C. and thereafter harassing/coercing him to make a statement amounted to illegal detention, thus calling for a judicial enquiry and compensation?

11. While dealing with the issue No. (i), it is relevant to note Section 160 Cr.P.C. and Section 3 of the NIA Act which provide:

> "**160. Police Officer's power to require attendance of witnesses**.
> (1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who from, the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:
>
> Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides.
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> (2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable

expenses of every person, attending under sub-section (1) at any place other than his residence."

"3. Constitution of National Investigation Agency.

(*1*) Notwithstanding anything in the Police Act. 1861 (5 of 1861.), the Central Government may constitute a special agency to be called the National Investigation Agency for investigation and prosecution of offences under the Acts specified in the Schedule.

(2) Subject to any orders which the Central Government may make in this behalf, officers of the Agency shall have throughout India in relation to the investigation of Scheduled Offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers have in connection with the investigation of offences committed therein.

(3) Any officer of the Agency of, or above, the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise throughout India, any of the powers of the officer-in-charge of a police station in the area in which he is present for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station."

12. Section 3(1) of the NIA Act starts with a non-obstante clause providing that notwithstanding anything in the Police Act, 1861, the Central Government may constitute a special agency for investigation and prosecution of offences under the Act specified in the schedule. Further, subject to any orders which the Central Government may make in this

behalf, officers of the agency shall have throughout India in relation to the investigation of scheduled offences and arrest of the person concerned in such offences, all powers, duties, privileges and liabilities which Police officers have in connection with the investigation of the offences committed therein. Thus, an officer of the NIA has jurisdiction to investigate and arrest any person relating to scheduled offences anywhere in India coupled with all the powers, duties, privileges and liabilities of a Police Officer. Sub-Section (3) of Section 3, NIA Act does not restrict the power of the Police Officer to investigate beyond the jurisdictional area where he is present and he can exercise any of the powers of a Police Officer of the Police Station in the area in which he is present for the time being and he would be deemed to be an officer in-charge of the Police Station discharging the functions of such an officer within the limits of the Station. Sub-Section 3 supplements Sub-Section (2) by permitting any place where officer of the NIA is investigating to be treated as a Police Station and the investigating Officer the officer in-charge of the said Police Station. Sub-Section (3) does not override or restrict the powers of an officer of the agency to investigate in relation to the scheduled offences and exercises all powers, duties, privileges and liabilities of a Police officer throughout India in relation to the investigation of the said offence. Further, NIA Act is a special enactment. The provisions under the NIA Act will override the provisions of the Code of Criminal Procedure, 1973.

13. No doubt, different High Courts have taken different views that Police Officer by an order in writing can require the attendance before himself of any person within the limits of his own or adjoining station, who appears to

be acquainted with the facts and circumstances of the case. When a Police officer is investigating an offence, he has to investigate all the facets thereof. The power of investigation cannot be fettered by directing a Police officer to be able to call only persons acquainted with the facts of the case who resides either under the jurisdiction of the Police station or adjoining thereto. Further, there can be no limit prescribed to an adjoining station. Section 160(1) Cr.PC does not restrict the power of a Police Officer to examine only a person who is residing within the limits of such Police Station or adjoining Police Station. The qualifying words are 'summons to a person who appears to be acquainted with the facts of the case'. The purpose of investigation is to collect material evidence. The same cannot be restricted by limiting the scope of Section 160(1) Cr.P.C. to persons who are residing within the limits of the said Police station or adjoining Police Station. The contention of the Petitioner is also fallacious on the count that in a case where statements of number of witnesses or persons are required to be recorded who reside within jurisdictions of different Police Stations and are required to be confronted with each other to find out the true facts, the same would not be possible if they cannot be called to a Police Station beyond the jurisdiction in which they live or adjoining police station.

14. Even on facts, in the present case admittedly the first notice was issued at Mumbai to appear at Panchkula on 5th January, 2011. However, on speaking to the Petitioner on phone it was found that the Petitioner was in Delhi and thus subject to his convenience the investigation was conducted at Delhi. Even as per the Petitioner from 3rd to 6th January, 2011 he was admittedly in Delhi. Further though the Petitioner has stated that he

ordinarily resides at Dandi Aashram, Uttarkashi, Uttarkhand, but this fact is disputed by the Respondents. According to Respondents, the Petitioner is a resident of Lucknow as per the address available in the subscriber detail report of his mobile number 9021738177, however, no notice could be served on the Petitioner at Lucknow as he was not found there. Since Petitioner was traced at Mumbai, a notice under Section 160 Cr.P.C. was sent by ASP, NIA on 30th December, 2010 for being served upon the Petitioner at Mumbai through ACP, ATS, Mumbai. On 3rd January, 2010, the Petitioner was contacted over his cell phone to ascertain his location when he informed that he was at Delhi. Since the entire NIA team which was camping at Panchkula (Haryana) was going to Gujarat for investigation, the Petitioner was requested if he could come to the Headquarters of Respondent No.2, located at New Delhi. The Petitioner accepted the request again without any protest and it was with his concurrence that the questioning was advanced to 4th January, 2011 at the Headquarter of Respondent No.2 at New Delhi. This arrangement was made keeping the interest of the Petitioner in mind. It was convenient for the Petitioner as it saved him from travelling all the way to Panchkula (Haryana), which was about 250 Km from Delhi. The Respondent No.2 did not threaten the Petitioner at any point during the telephonic conversation, as alleged by him. It is the admitted case of the Petitioner that he is a monk and he keeps travelling throughout the country. Thus, I find no merit in the contention that the Petitioner was served by a notice beyond the jurisdiction of a Police Station of the officer in-charge of the investigating team and thus no notice under Section 160 Cr.P.C. could be given to the Petitioner to join investigation at Delhi.

15. Dealing with the issue No. (ii) it would be relevant to take note of the decision in *Senior Intelligence Officer Vs. Jugal Kishore* (supra). Their Lordships after considering the decisions held as under:

> "17. It may be mentioned here that in holding, "the prohibitive sweep of Article 20(3) goes back to the stage of police interrogation- not, as contended, commencing in court only" the decision in *Nandini Satpathy* apparently went against two earlier constitution bench decisions of this Court *in Ramesh Chandra Mehta v. State of West Bengal, 1969 (2) SCR 461 and Illias v. Collector of Customs, Madras, 1969 (2) SCR 613*.
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> 18. In *Nandini Satpathy*, the Court proceeded further, and though the issue neither arose in the facts of the case nor it was one of the issues framed in paragraph 10 of the judgment, proceeded to dwell upon the need for the presence of the advocate at the time of interrogation of a person in connection with a case. In paragraphs 61-65 of the judgment, the Court made the following observations:
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> > "61. It may not be sufficient merely to state the rules of jurisprudence in a branch like this. The man who has to work it is the average police head constable in the Indian countryside. The man who has to defend himself with the constitutional shield is the little individual, by and large. The place where these principles have to have play is the unpleasant police station, unused to constitutional nuances and habituated to other strategies. Naturally, practical points which lend themselves to adoption without much sophistication must be indicated if this judgment is to have full social relevance. In this perspective we address ourselves to the further task of concretising guidelines.
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> > 62. Right at the beginning we must notice Article 22(1) of the Constitution, which reads:
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> > 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.

The right to consult an advocate of his choice shall not be denied to any person who is arrested. This does not mean that persons who are not under arrest or custody can be denied that right. The spirit and sense of Article 22(1) is that it is fundamental to the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of near custodial interrogation. Moreover, the observance of the right against self-incrimination is best promoted by conceding to the accused the right to consult a-legal practitioner of his choice.

63. Lawyer's presence is a constitutional claim in some circumstances in our country also, and, in the context of Article 20(3), is an assurance of awareness and observance of the right to silence. The *Miranda decision* has insisted that if an accused person asks for lawyer's assistance, at the stage of interrogation, it shall be granted before commencing or continuing with the questioning. We think that Article 20(3) and Article 22(1) may, in a way, be telescoped by making it prudent for the police to permit the advocate of the accused, if there be one, to be present at the time he is examined. Overreaching Article 20(3) and Section 161(2) will be obviated by this requirement. We do not lay down that the police must secure the services of a lawyer. That will lead to `police-station-lawyer' system, an abuse which breeds other vices. But all that we mean is that if an accused person expresses the wish to have his lawyer by his side when his examination goes on, this facility shall not be denied, without being exposed to the serious reproof that involuntary self-crimination secured in secrecy and by coercing the will, was the project.

64. Not that a lawyer's presence is a panacea for all problems of involuntary self-crimination, for he cannot supply answers or whisper hints or otherwise interfere with the course of questioning except to intercept where intimidatory tactics are

> tried, caution his client where incrimination is attempted and insist on questions and answers being noted where objections are not otherwise fully appreciated. He cannot harangue the police but may help his client and complain on his behalf, although his very presence will ordinarily remove the implicit menace of a police station.
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> 65. We realize that the presence of a lawyer is asking for the moon in many cases until a public defender system becomes ubiquitous. The police need not wait for more than for a reasonable while for an advocate's arrival. But they must invariably warn and record that fact- about the right to silence against self-incrimination; and where the accused is literate take his written acknowledgment."

19. It is on these passages in *Nandini Satpathy* that Mr. Tulsi heavily relies and which practically forms the sheet-anchor of his case.

20. The difficulty, however, is that *Nandini Satpathy* was not followed by the Court in later decisions. In *Poolpandi & Ors v. Superintendent, Central Excise & Ors., (1992) 3 SCC 259*, the question before a three judge bench of this Court was directly whether a person called for interrogation is entitled to the presence of his lawyer when he is questioned during the investigation under the provisions of the Customs Act, 1962 and the Foreign Exchange Regulation Act, 1973. On behalf of the persons summoned for interrogation, strong reliance was placed on Nandini Satpathy. The Court rejected the submission tersely observing in paragraph of 4 of the judgment as follows:

> "4. Both Mr. Salve and Mr. Lalit strongly relied on the observations in *Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424*. We are afraid, in view of two judgments of the Constitution Bench of this Court in *Ramesh Chandra Mehta v. State of W.B., (1969) 2 SCR 461*, and *Illias v. Collector of Customs, Madras, (1969) 2 SCR 613*, the stand of the appellant cannot be accepted. The learned counsel urged that since *Nandini Satpathy* case was decided later, the observations

therein must be given effect to by this Court now. There is no force in this argument."

21. Further, in paragraph 6 of the judgment, the Court referred to the Constitution Bench decision in *Ramesh Chandra Mehta* and observed as follows:

"6. Clause (3) of Article 20 declares that no person accused of any offence shall be compelled to be a witness against himself. It does not refer to the hypothetical person who may in the future be discovered to have been guilty of some offence. In Ramesh Chandra Mehta case, the appellant was searched at the Calcutta Airport and diamonds and jewelleries of substantial value were found on his person as also currency notes in a suitcase with him, and in pursuance to a statement made by him more pearls and jewellery were recovered from different places. He was charged with offences under the Sea Customs Act. During the trial, reliance was placed on his confessional statements made before the Customs authorities, which was objected to on the ground that the same were inadmissible in evidence inter alia in view of the provisions of Article 20(3). While rejecting the objection, the Supreme Court held that in order that the guarantee against testimonial compulsion incorporated in Article 20(3) may be claimed by a person, it has to be established that when he made the statement in question, he was a person accused of an offence. Pointing out to the similar provisions of the Sea Customs Act as in the present Act and referring to the power of a Customs Officer, in an inquiry in connection with the smuggling of goods, to summon any person whose attendance he considers necessary to give evidence or to produce a particular document the Supreme Court observed thus: (pp.469-70)

"The expression `any person' includes a person who is suspected or believed to be concerned in the smuggling of goods. But a person arrested by a Customs Officer because

> he is found in possession of smuggled goods or on suspicion that he is concerned in smuggling is not when called upon by the Customs Officer to make a statement or to produce a document or thing, a person accused of an offence within the meaning of Article 20(3) of the Constitution. The steps taken by the Customs Officer are for the purpose of holding an enquiry under the Sea Customs Act and for adjudging confiscation of goods dutiable or prohibited and imposing penalties. The Customs Officer does not at that stage accuse the person suspected or infringing the provisions of the Sea Customs Act with the commission of any offence. His primary duty is to prevent smuggling and to recover duties of Customs when collecting evidence in respect of smuggling against a person suspected of infringing the provisions of the Sea Customs Act, he is not accusing the person of any offence punishable at a trial before a Magistrate."
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> The above conclusion was reached after consideration of several relevant decisions and deep deliberation on the issue, and cannot be ignored on the strength of certain observations in the judgment by three learned Judges in Nandini Satpathy case which is, as will be pointed out hereinafter, clearly distinguishable."

22. An argument in support of the right of the persons called for interrogation was advanced on the basis of Article 21 of the Constitution. The Court rejected that submission also observing in paragraph 9 of the judgment as follows:

> "9. Mr. Salve has, next, contended that the appellant is within his right to insist on the presence of his lawyer on the basis of Article 21 of the Constitution. He has urged that by way of ensuring protection to his life and liberty he is entitled to demand that he shall not be asked any question in the absence of his lawyer. The argument proceeds to suggest that although strictly the questioning by the Revenue authorities does not amount to custodial interrogation, it must be treated as near

custodial interrogation, and if the same is continued for a long period it may amount to mental third degree. It was submitted by both Mr. Salve and Mr. Lalit that the present issue should be resolved only by applying the 'just, fair and reasonable test', and Mr. Lalit further added that the point has to be decided in the light of the facts and circumstances obtaining in a particular case and a general rule should not be laid down one way or the other. Mr. Salve urged that when a person is called by the Customs authorities to their office or to any place away from his house, and is subjected to intensive interrogation without the presence of somebody who can aid and advise him, he is bound to get upset, which by itself amounts to loss of liberty. Reference was made by the learned counsel to the minority view in *Re Groban, 352 US 330, 1 L Ed 2d 376*, declaring that it violates the protection guaranteed by the Constitution for the State to compel a person to appear alone before any law enforcement officer and give testimony in secret against his will."

23. Referring to the facts in *Re Groban* and the view taken in the minority judgment in the case the decision in *Poolpandi* observed in paragraph 10 as follows:

"10.....We do not share the apprehension as expressed above in the minority judgment in connection with enquiry and investigation under the Customs Act and other similar statutes of our country. There is no question of whisking away the persons concerned in these cases before us for secret interrogation, and there is no reason for us to impute the motive of preparing the groundwork of false cases for securing conviction of innocent persons, to the officers of the state duly engaged in performing their duty of prevention and detection of economic crimes and recovering misappropriated money justly belonging to the public. Reference was also made to the observation in the judgment in *Carlos Garza De Luna, Appt. v. United States, American Law Reports 3d 969*, setting out the historical background of the right of silence of an accused in a criminal case. Mr. Salve has relied upon the opinion of

> Wisdom, Circuit Judge, that the history of development of the right of silence is a history of accretions, not of an avulsion and the line of growth in the course of time discloses the expanding conception of the right than its restricted application. The Judge was fair enough to discuss the other point of view espoused by the great jurists of both sides of Atlantic before expressing his opinion. In any event we are not concerned with the right of an accused in a criminal case and the decision is, therefore, not relevant at all. The facts as emerging from the judgment indicate that narcotics were thrown from a car carrying the two persons accused in the case. One of the accused persons testified at the trial and his counsel in argument to the jury made adverse comments on the failure of the other accused to go to the witness box. The first accused was acquitted and the second accused was convicted. The question of the right of silence of the accused came up for consideration in this set up. In the cases before us the persons concerned are not accused and we do not find any justification for "expanding" the right reserved by the Constitution of India in favour of accused persons to be enjoyed by others."

24. In the end, the Court allowed the appeal filed by the Revenue authorities in the case in which the High Court had directed for interrogation to take place in presence of the advocate and dismissed all the other appeals in the batch on behalf of the individuals in whose cases the High Court had declined to give any such direction.

25. It is seen above that the respondent applied for and got anticipatory bail on the premise that he was not an accused in the case. There was no change in his position or status since the grant of bail till he was summoned to appear before the DRI officers. On the facts of the case, therefore, it is futile to contend that the respondent is entitled, as of right, to the presence of his lawyer at the time of his interrogation in connection with the case. Moreover, the respondent's plea for the presence of his lawyer at the time of his interrogation clearly appears to be in teeth of the decision in *Poolpandi*. Nonetheless, Mr. Tulsi contended that the respondent's right was recognized by this Court and preserved in *Nandini Satpathy* and the

> decision in *Poolpandi* has no application to the present case. According to Mr. Tulsi, the respondent is summoned for interrogation in connection with a case registered under the NDPS Act, which Mr. Tulsi called a "regular criminal" case, while Poolpandi was a case under the Customs Act and so were the two cases before the constitution bench in *Ramesh Chandra Mehta* and in Illias that formed the basis of the decision in Poolpandi. In our view, the distinction sought to be drawn by Mr. Tulsi is illusory and non-existent. The decision in *Poolpandi* was in cases under the Customs Act, 1962 and the Foreign Exchange Regulation Act, 1973. Both these Acts have stringent provisions regarding search, seizure and arrest and some of the offences under each of these two Acts carry a punishment of imprisonment up to 7 years. We, therefore, fail to see, how a case registered under NDPS Act can be said to be a "regular criminal" case and the cases under the Customs Act and the Foreign Exchange Regulation Act, not as criminal cases.
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> 26. In view of the clear and direct decision in *Poolpandi*, we find the order of the High Court, affirming the direction given by the Sessions Judge clearly unsustainable."

16. Thus, as held by their Lordships, when a person is not called for interrogation as an accused the Constitutional protections entitled to the accused will not be available to him, the Petitioner has no right to be accompanied by a counsel when he is called to know the facts relevant to the investigation of the offence.

17. As regards prayer 'f' and 'h', it may be noted that the primary contention of the Petitioner is that on 4th January, 2011 the Petitioner was called without a notice under Section 160 Cr.P.C. and coerced to make a statement which amounted to illegal detention. As per the Petitioner he received a notice on 1st January, 2011 at Mumbai for appearing in person on 5th January, 2011 at 10.00 AM at NIA camp office, Haryana Police complex,

Moginand, Panchkula, Haryana. In pursuance to the aforesaid notice under Section 160 Cr.P.C. the Petitioner left Mumbai on 2nd January, 2011 and reached Delhi on 3rd January, 2011 when the Petitioner received a call from one Shri Malviya claiming himself as Inspector NIA who according to the Petitioner in a threatening tone directed the Petitioner to meet him at the Delhi office of NIA on 4th January, 2011 at 10.00 AM failing which the Petitioner was threatened to be implicated in false cases. According to the Petitioner he reached office of NIA at 9.45 AM on 4th January, 2011 along with his advocate Shri Neeraj, however the officers of the NIA did not let the advocate accompany the Petitioner and was taken to the room alone. Inside the room the Petitioner was tortured mentally and physically and pressurized. The interrogation went on for many hours without break. Thereafter, the Petitioner was let off with a direction to be present on the next date i.e. 5th January, 2011 at 11.00 AM and a formal notice under Section 160 Cr.P.C. was handed over to him. According to the Petitioner he got scared and consumed some poison at around 6.00 AM on 5th January, 2011. He was taken to AIIMS hospital at 3.34 PM where he was treated. When the Petitioner was discharged from AIIMS on 6th January, 2011 he lodged complaint with the SHO PS Hazrat Nizamuddin giving the details of the physical and mental torture coupled with the threats of the extended encounter by the NIA officials.

18. It may be noted that in the affidavits filed by the Respondents photocopies of the register has been enclosed. As per the register the Petitioner entered the NIA office at 11.10 AM and left at 13:01 PM along with Shri Neeraj Shrotriya, an advocate. The Petitioner again came at 3.15

PM and left at 4.25 PM. This register is a continuous register mentioning the time of the arrival and departure of each person and there can be no tampering. In the rejoinder filed by the Petitioner the Petitioner has not disputed this fact nor denied the entries in the register. From the entries in the register, it is evident that the Petitioner was accompanied by an advocate and had gone out at the lunch time as well. Thus, I find no merit in the contention of the Petitioner that the Petitioner was continuously harassed.

19. The Petitioner claims that he took poisonous substance at around 6.00 AM on 5th January, 2011, however the first PCR call in this regard was received by Police post Jangpura at 12.55 PM on 5th January, 2011 stating that one Mahatma ji who has come in Sham Sher Hotel Jangpura Extn., his condition was not well. Since the address was incomplete, the place could not be located by the local Police as per the PCR Van. At 2.40 PM another PCR call was received at P.P. Jangpura that one person had consumed poison at Sham Sher Hotel near Mother Dairy Jangpura. The Police staff reached there and one Anant Brahamchari was lying unconscious in room No. 102. One empty tablet strip of ZEPOSE and one bottle of Mortein cockroach killer (Empty) were found on his bed. He was rushed to AIIMS where he was declared unfit for statement. From his possession, notice under Section 160 Cr.P.C. in his name by Shri Vishal Garg, ASP NIA, an election card, a copy of the application given to Police Station Mumbai, copy of SLP filed before the Hon'ble Supreme Court being SLP Crl. No. 5908/2010 titled as Pragya Singh Chandrapal Singh Thakur Vs. State of Maharastra and one khaki envelope torn from one side was found. On the khaki envelope it was written "NIA aur bharat sarkar ke karan ishwar ke

samukh aatam samarparan kar raha hui, mujhe nayay chahiye" On 6th the statement of the Petitioner was recorded wherein he alleged harassment and physical and mental torture. It may be noted that there is no record to show that the Petitioner had injuries when he was taken to AIIMS. Further, the CFSL report with regard to gastric lavage of the Petitioner has been received which has been filed by the Station House Officer, PS Hazrat Nizamuddin. As per the report "on chemical, TLC, GC-HS & GC-MS examination, metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and pesticides could not be detected in exhibits '1', '2', '3' & '4'." Thus it is apparent that though poison was allegedly consumed at around 6.00 AM on 5th January, 2011 the intimation was sent in the afternoon and no poison was detected. In view of the facts surfacing on record, I do not find any merit in the contention of the learned counsel for the Petitioner that the Petitioner was tortured to such an extent that the Petitioner attempted to commit suicide.

20. In the facts of the case and in view of the aforesaid discussion, I find no merit in the present petition. The petition is dismissed. Since the Petitioner has knowledge of all the facts, he is alleging, he would be at liberty to file a criminal complaint if so advised.

(MUKTA GUPTA)
JUDGE

MARCH 20, 2012
'ga'