

(1986) 02 GUJ CK 0001
In the Gujarat High Court

Abdula Mamad Mithani and etc.

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 10-02-1986

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 10, 2, 3, 8, 9
Constitution of India, 1950 — Article 21, 22, 226

Citation : (1986) CriLJ 1880 : (1986) 2 GLR 628

Hon'ble Judges : D.H. Shukla, J;A.M. Ahmadi, J

Bench : Division Bench

Judgement

A.M. Ahmadi, J.—These writ petitions arise out of the find of contraband goods from a mechanised vessel "Umed-Pasa" MNV 120 which was intercepted on 10th February 1985 near Piroton Island off the coast of Jamnagar. The vessel was tindelled by Daud Mamad Mithani and had as many as fifteen crew men on board at the time of its interception. The registered owner of the vessel was one Aminabibi, the maternal aunt of the tindel Daud. The said vessel left Dubai with a cargo of wet dates on 5th February 1985 which it was expected to unload at Jamnagar. The officers of the Customs Department received intelligence reports on 9th February 1985 that the said vessel tindelled by "Daud was carrying contraband gold and other articles in secret cavities specially prepared for that purpose and was likely to touch either Jamnagar or Porbandar port for shedding the same. On receipt of this information, field formations were alerted to intensify sea patrolling and to intercept the vessel. "Al-Rafiqui", the departmental vessel, was specially moved from Mandvi on the evening of 9th February 1985 with instructions to trace and intercept "Umed Pasa" and escort it to Mandvi. The said vessel "Umed-Pasa" was sighted on the morning of 10th February 1985 at about 5.00 A.M. near Piroton Island off the coast of Jamnagar. It was immediately Intercepted and the officers of the Customs Department inquired of the tindel if the said vessel was carrying contraband goods. The tindel Daud declared that he was not carrying contraband goods in the said vessel

whereupon it was escorted to Mandvi. It was noticed that it was loaded with wet dates. On rummaging the said vessel on 10th February 1985, 1253 wrist watches and 294 watch straps valued at Rs. 2,79,260/- were recovered from a specially built secret cavity outside the forepeak of the vessel. On further rummaging, other contraband goods such as television sets, VCR Cassettes, fabrics and ladies Umbrellas, all of the aggregate value of Rs. 1,18,163/- were found from the said vessel. During rummaging of the said vessel, the Customs Officers observed that there were secret cavities therein specially prepared for smuggling contraband goods. After the aforesaid contraband goods were found, the tindel of the vessel admitted in the presence of the panchas that he had brought gold in the said secret cavities but had jettisoned the same after sighting the customs launch "Al-Rafiqui". The officers of the Customs Department, however, had a lurking suspicion that the vessel carried gold and, therefore, kept it under guard. The contraband goods which were found on the rummaging of the vessel on 10th February 1985 were seized under a panchanama under the reasonable belief that they were liable to confiscation under the Customs Act, 1962.

2. Since the officers of the customs department suspected that gold was carried in the said vessel, it was further rummaged on 20th February 1985 on which date, 21 gold lagadies each weighing 10 tolas and one half lagady weighing approximately 57.850 grammes of the total value of Rs. 4,94,400/- was recovered from below the engine foundation of the vessel. On the next day, 21st February 1985, 10 more legadies each weighing 10 tolas valued at Rs. 2,30,000/- were recovered. The aforesaid gold lagadies of foreign origin of the total value of Rs. 7,24,000/- were seized under the reasonable belief that they were smuggled into India and were liable to confiscation under the Customs Act, 1962. A seizure panchnama was prepared in respect thereof.

3. In the course of investigation the statement of the tindel Daud Mamad Mithani was recorded on 12th February 1985. On the same day statements of certain crew men were also recorded. From their evidence and the find of contraband gold and other articles from "Umed Pasa" it became evident that the tindel of the vessel had received the contraband goods from one Haji Sattar for delivery to one Jumma at Bombay. On the basis of this material placed before the State Government, the latter passed orders of detention against the detenus concerned in these petitions under Sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter called "the Act"). The grounds of detention of even date were supplied to the detenus after their actual detention. These grounds of detention are identical to all the detenus. Subsequently, the Additional Secretary to the Government of India made a declaration u/s 9(1) of the Act on his being satisfied that the detenus were likely to smuggle goods into Bombay and the coast of Gujarat, areas highly vulnerable to smuggling. In view of the declaration so made, the cases of the detenus were placed before the Advisory Board after the expiry of the normal period of five weeks but before the expiry of the enlarged period of 4 months and 2 weeks. The Advisory Board constituted u/s 8 of the Act opined that

"there was and is sufficient cause" for the detention of each detenu. On the basis of this opinion of the Advisory Board, the State Government confirmed the detention of each detenu.

4. The detention orders have been challenged by the detenus on several grounds but we think that these petitions can be disposed of on the two-fold contentions bearing on the legality and validity of the declaration made u/s 9(1) of the Act and the omission on the part of the Advisory Board to opine as to whether or not there is sufficient cause for "the continued detention" of each detenu. Before we state the nature of the challenge put forth on behalf of the detenus, it may be advantageous to refer to the relevant provisions of the Act and the Constitution bearing thereon.

5. Section 9 of the Act was substituted by the Amendment Act No. 58 of 1984 which came into force with effect from 13th July 1984. Under the newly incorporated Section 9(1) of the Act, any person in respect of whom an order of detention is made before the 31st day of July, 1987, can be detained without obtaining the opinion of an Advisory Board for a period longer than three months but not exceeding six months from the date of his detention, where the order of detention has been made with a view to preventing the detenu from smuggling goods or abetting the smuggling of goods or engaging in transporting or concealing or keeping smuggled goods provided the Central Government or its officer not below the rank of an Additional Secretary, specially empowered for this purpose is satisfied that such person (a) smuggles or is likely to smuggle goods into, out of or through any area highly vulnerable to smuggling; or (b) abets or is likely to abet the smuggling of goods into, out of or through any area highly vulnerable to smuggling; or (c) engages or is likely to engage in transporting or concealing or keeping smuggled goods in any area highly vulnerable to smuggling and makes a declaration in that behalf within five weeks of the detention of such person. Explanation I to that sub-section defines "area highly vulnerable to smuggling". It is not necessary to set out the definition but it is sufficient to state that the declarations were not challenged before us on the ground that the activities of the detenus were not in "area highly vulnerable to smuggling". Subsection (2) of Section 9 effects certain amendments in clauses (b), (c) and (f) of Section 8 of the Act. Under Clause (b), the appropriate Government has to make a reference to the Advisory Board within five weeks from the date of detention. Under Clause (1) of Sub-section (2) of Section 9, the period of five weeks is extended to four months and two weeks. Again under Clause (c) of Section 8 the Advisory Board has to opine whether or not there is sufficient cause for the detention of the person concerned and submit its report within eleven weeks from the date of detention. By the amendment brought about by Clause (ii) of Section 9(2), the words "the detention of the person concerned" are substituted by the words "the continued detention of the person concerned" and instead of the period of eleven weeks, the period is extended to five months and three weeks. The effect of this amendment is that the Advisory Board is in cases where a declaration is made u/s 9(1) of the Act called upon to

decide within a period of five months and three weeks from the date of detention whether or not there is sufficient cause for the continued detention of the person concerned. Similarly, by Clause (iii) of Section 9(2), in Clause (f) of Section 8, the words "for the detention" appearing at both the places have to be substituted by the words "for the continued detention" of the person concerned. In other words, the appropriate Government can confirm the detention order and continue the detention of the person concerned if the Advisory Board has opined that there is sufficient cause for his continued detention. Once this is done, by virtue of Section 10 of the Act the maximum period of detention gets enlarged to two years from the date of detention. From the above scheme of the Act it becomes clear that once a declaration is made u/s 9(1) of the Act, it has the effect of (i) extending the period within which a reference must be made to the Advisory Board from five weeks to four months and two weeks and (ii) extending the maximum period of detention from one year to two years from the date of detention.

6. The constitutional framework in regard to personal liberty in the context of preventive detention is to be found in Articles 21 and 22. These two Articles together constitute an integrated Code, the former prohibits deprivation of personal liberty except according to the procedure established by law whereas the latter outlines the procedure in respect of preventive detention. Clauses (1) and (2) of Article 22 which provide for punitive detention prescribe certain safeguards to ensure that a person who is deprived of his personal liberty is informed of the grounds of his arrest and is produced before the nearest Magistrate within twenty four hours of his arrest. By virtue of Clause (3) these safeguards are not available to an enemy alien or a person taken in preventive detention. Preventive detention though abhorrent to the concept of personal liberty has received constitutional recognition with a view to curbing prejudicial activities of anti-social and subversive elements detrimental to national interest. Article 22(4) provides that there shall be no law providing for preventive detention for more than three months unless such law makes provision for the constitution of an Advisory Board of persons who are, or have been, or are qualified to be appointed as Judges of the High Court and such Board has opined before the expiration of three months that there is sufficient cause for the detention of the detenu. After the Advisory Board has opined that there is sufficient cause for the detention of the concerned individual, the maximum period of detention will have to be determined in each case provided that if the statute enacted under Sub-clause (b) of Clause (7) prescribes the maximum period, it shall not exceed such maximum limit. The limitation that a person shall not be detained for more than three months is again subject to any law made under Sub-clauses (a) and (b) of Clause (7). Clause (7) empowers Parliament to prescribe by law (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 without obtaining the opinion of the Advisory Board; and (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. Therefore, on a conjoint reading of clauses (4) and (7) of Article 22, it becomes clear that ordinarily no person can be kept in preventive detention for a period exceeding three months unless Parliament has by law permitted detention for a longer period, as in the case of Section 9(2) of the Act. The Parliament is also authorised by Sub-clause (b) of Clause (7) of Article 22 to prescribe the maximum period for which any person may be detained, which period is prescribed by Section 10 of the Act. Thus, in the case of a detenu in respect of whom a declaration is made u/s 9(1) the minimum period of detention prescribed by Section 10 as two years from the date of detention. In the background of this constitutional framework and the scheme of the Act which we have outlined hereinabove, we may now consider the rival contentions canvassed before us.

7. In the light of the above provisions, counsel for the detenus argued that u/s 9(1) of the Act, the Central Government or its specially empowered officer not below the rank of Additional Secretary must be satisfied that any person who has been detained under clauses (i), (ii) or (iii) of Section 3(1) of the Act smuggles or is likely to smuggle goods or abets or is likely to abet the smuggling of goods into, out of or through any area highly vulnerable to smuggling or engages or is likely to engage in transporting or concealing or keeping. smuggled goods in any such area before making a declaration to that effect. The declaration must be made within five weeks of the detention of such person. Any declaration made under this provision would, therefore, be based on the subjective satisfaction of the Central Government or its specially empowered officer. The immediate effect of the declaration would be to extend the period within which the opinion of the Advisory Board must be obtained from five weeks to four months and two weeks. Secondly, on the confirmation of the detention order u/s 8(f), the maximum period of detention would stand extended to two years if a declaration is made u/s 9(1) of the Act. Now, once there is a declaration the Advisory Board has to opine whether or not there is sufficient cause for "the continued detention" of the person concerned. Counsel, therefore, submitted that since the declaration is based on the subjective satisfaction of the authority making it, it is imperative on the part of the said authority to supply to the detenu the material justifying the making of the declaration. According to him, unless the basic material in this behalf is supplied, the detenu would not be able to make an effective representation against the declaration to the concerned authority or the Advisory Board which has to be satisfied that his "continued detention" was justified. To put it differently, counsel submitted, that the Advisory Board would have to pierce the veil to determine whether or not there existed sufficient material for making the declaration and be further satisfied about the legality and validity thereof in order to express its opinion on the continued detention of the detenu. Unless the basic material on which the declaration is founded is supplied to the detenu, the detenu would not be able to satisfy the Advisory Board that the declaration was not justified on the said material and consequently his continued detention was also unjustified. Non-supply of the basic material on which the

declaration is founded would, therefore, deprive the detenu of his right to make an effective representation before the Advisory Board which would be fatal to his continued detention.

8. On the other hand, learned Counsel for the Central as well as the State Government argued that u/s of the Act what is required to be communicated to the detenu are the grounds on which the detention order was made. Once that is done, the obligation of Article 22(5) of the Constitution would stand satisfied. A detention order, as defined by Section 2(b) of the Act, is one made u/s 3 and does not include a declaration u/s 9 of the Act. Therefore, even though the declaration must be based on the satisfaction of the Central Government or its specially empowered officer, the requirement of Article 22(5) of the Constitution or Section 3(3) of the Act cannot be extended thereto, i.e., the law does not envisage that the material on the basis whereof the subjective satisfaction for the declaration was reached should be supplied to the detenu. While conceding that the declaration has the effect of extending the maximum period of detention, it was urged that fixation of the period of detention is within the exclusive discretion of the appropriate Government and is not subject to review by Court. Viewed in this context, the words "continued detention" substituted in Section 8(f) of the Act would only refer to the extended period of detention beyond five weeks prescribed by Section 8(b) of the Act and not the maximum of two years. It was, therefore, argued that all that the Advisory Board had to ascertain was, whether there was a valid declaration made u/s 9(1) of the Act to justify the detention of the detenu beyond five weeks without reference to it. According to the learned Counsel, the Advisory Board was not expected to test the subjective satisfaction of the concerned authority making the declaration but it had merely to verify whether the authority making the declaration was competent to do so and whether the satisfaction related to activities covered under Clause (a), (b) or (c) of Section 9(1) of the Act. In other words, counsel argued, the Advisory Board could not go behind the declaration to find out if there was sufficient material to support it to enable it to opine whether or not the continued detention of the detenu was justified. According to the learned Counsel all that the "Advisory Board must consider is, whether the declaration is ex facie in conformity with Section 9(1) of the Act without delving into the area of subjective satisfaction. If this is the limited inquiry to be made by the Advisory Board, it is not at all necessary to supply the material on the basis whereof the declaration was made to the detenu since no representation challenging the subjective satisfaction of the concerned authority could be entertained by the Advisory Board. There is, therefore, in the opinion of the counsel for the respondents, no merit in the contention that the non-supply of the basic material to support the subjective satisfaction for the declaration had robbed the detenus of their right to effectively represent against it before the Advisory Board. Counsel conceded that this, however, did not mean that the subjective satisfaction could not be inquired into as in the case of any other executive order by the Court in exercise of jurisdiction under Article 226 of the Constitution.

9. It is not in dispute that no material whatsoever was furnished to any of the detenus at the time of service of the declaration made u/s 9(1) of the Act nor were the detenus informed that the subjective satisfaction for the declaration was based on the very same material on which the detention orders u/s 3(1) of the Act were based. It must also be conceded that the material used in support of the declaration need not be the same as used for making the detention order. That is because the subjective satisfaction to be reached by the authority making the declaration is not the same as in the case of clauses (i), (ii) and (iii) of Sub-section (1) of Section 3 of the Act. If the authority making the detention order and the authority making the declaration do not operate in the same field, the material on which their respective satisfactions may be based, may not be identical although it may overlap to a large extent. There can, therefore, be no doubt that if it is found imperative in law to furnish to the detenu the material on which the declaration came to be made, a mere belated statement in the counter-affidavit that the declaration was made on the same material which formed the basis of the detention order would not suffice in law. In that event there would be no escape from the conclusion that the detenu ought to have been informed that the material was the same at the time of service of the declaration.

10. The declaration u/s 9(1) must be made within five weeks of the detention of the detenu, that is, before the period for approaching the Advisory Board u/s 8(b) runs out. Once a declaration is made, that period gets enlarged to four months and two weeks. In other words, the declaration permits detention for a period longer than that fixed u/s of the Act as well as Article 22(4) of the Constitution. This is permissible by virtue of law enacted under Article 22(7)(a) of the Constitution. There can, therefore, be no doubt that in the absence of a valid declaration u/s 9(1) of the Act, a detention of a person beyond five weeks would be illegal.

11. In a case where a declaration is made u/s 9(1) of the Act, the Advisory Board has to opine whether or not "the continued detention of the person concerned" was justified on the material before the competent authority. Sufficiency of cause for "continued detention" would obviously depend on the legality and validity of the declaration made by the competent authority. Unless the Advisory Board has opined in favour of existence of sufficient cause for the, "continued detention" of the "person concerned," it would not be open to the appropriate Government to confirm the detention order u/s 8(f) as amended by Clause (iii) of Section 9(2) of the Act. In a recent decision rendered by the Supreme Court on 20th December 1985, in the case of Satar Habib Hamdani v. K.S. Dilipsinhji Criminal Appeal No. 371 of 1985 and allied Criminal Appeal Nos. 651-655 of 1985 Reported in Satar Habib Hamdani Vs. K.S. Dilipsinhji and Others, Chinnappa Reddy, J., speaking for the Division Bench after examining the scheme of Sections 389 and 10 of the Act, observed, in the context of the use of the expression "continued detention" as under:

...the Advisory Board is to state its opinion not merely whether detention is

necessary but whether "continued detention" is necessary. The Advisory Board will necessarily have to go behind the declaration u/s 9(1) to consider the question whether there is sufficient cause for "continued detention". The two safeguards provided to the detenu against "continued detention", at that stage, are the application of mind by the specified authority before making a declaration u/s 9(1) and the consideration of the question by the Advisory Board.

These observations would indicate that the introduction of the words "continued detention" is not formal but it is a matter of substance and failure on the part of the Advisory Board to apply its mind to this important aspect would have a direct bearing on the confirmation of the detention order u/s 8(f) of the Act.

12. In the present group of cases, the Advisory Board has opined that there was and is sufficient cause for the detention of the detenus. Does this mean that the Advisory Board had applied its mind to the sufficiency of cause for the "continued detention" of the detenus? It must be realised that the words "continued detention" were introduced in clauses (b), (c) and (f) of Section 8 as a part of the scheme of the newly added Section 9 which is intended to extend the period for approaching the Advisory Board and the maximum period of detention. These words must, therefore, be read and understood to provide an additional safeguard in cases where Section 9(1) is invoked inasmuch as it casts an additional burden on the appropriate authority to satisfy the Advisory Board that there existed sufficient cause for the continued detention of the detenu beyond the normal period of detention. A reciprocal duty is also cast on the Advisory Board to address itself to this vital requirement. It is not sufficient for the Advisory Board to come to the conclusion that there exists or existed sufficient cause for the detention of the detenu u/s 3(1) of the Act but it must also come to the conclusion that the continued detention of the detenu on the strength of the declaration made u/s 9(1) of the Act was justified, meaning thereby that there existed sufficient cause for making the declaration. Since the report of the Advisory Board is confidential, it is difficult to say that the Advisory Board had addressed itself to this additional requirement merely from the use of the words "there is" sufficient cause for detention. The use of the said expression in the opinion tendered by the Advisory Board is no guarantee that the Advisory Board had applied its mind to the fact that the "continued detention" of these detenus was justified. A more or less similar submission was made before the Supreme Court in Satar Habib Hamdani Vs. K.S. Dilipsinhji and Others, . Dealing with the said submission, the Supreme Court observed as under :

Section 8 is enacted and professedly enacted for the purpose of Article 22, Clause (4), Sub-clause (a) and Article 22, Clause (7) Sub-clause (c) and Section 9 expressly refers to Article 22, Clause (4), Sub-clause (a). That is why in a case to which Section 9 applies it is important that the Advisory Board specifically considers and answers the question whether in its opinion there is sufficient cause for the "continued detention" of the person concerned. If the Advisory Board merely states that the detention of the person is necessary it is not for any

one else to supplement the Advisory Board's opinion and substitute the words "continued detention" for the word "detention". The matter is of vital importance for that. The omission of the words "continued detention" in the opinion of the Advisory Board cannot be slurred over in the fashion we are invited to do in the counter-affidavit. Nor can we treat the omission as a mere clerical or typographical error when that is not the express case of the respondents. We are of the opinion that in the absence of the Advisory Board's opinion to the effect that there is sufficient cause for the "continued detention" of the detenus, their detention for a period exceeding one year is without legal sanction.

These observations leave no doubt that the Advisory Board is expected to apply its mind to the question of "continued detention" of the detenus in the context of the declaration made u/s 9(1) of the Act. Therefore, even if the Advisory Board comes to the conclusion that there was and is sufficient cause for the detention of the detenus u/s 3(1) read with Section 8(c) of the Act, that is not enough. The Advisory Board must also come to the conclusion that there existed sufficient cause for the "continued detention" of the detenus. When the Advisory Board addresses itself to the question of continued detention, it has to satisfy itself that a valid declaration u/s 9(1) of the Act exists qua the concerned detenu. The material in support of the declaration may not be the same as in the case of a detention order since the field of operation is not wholly identical and the authorities applying the mind may not be the same. Therefore, if the opinion of the Advisory Board does not specifically deal with the question of continued detention of the detenus, it would not be permissible for the appropriate Government to confirm the detention order u/s 8(f) of the Act. As stated earlier, the opinion of the Advisory Board qua the detenus before us merely stated that there was and is sufficient cause for their detention; but it did not go further to say that in its opinion even the continued detention of these detenus was justified.

13. That takes us to the next question whether the law enjoins upon the authority making the declaration u/s 9(1) of the Act to furnish the detenu the material forming the basis of the declaration. We have already pointed out earlier, that the Advisory Board is duty bound to examine the legality and validity of the declaration with a view to opining on the sufficiency of cause for the "continued detention" of the person concerned. In this connection the controversy at the bar was, whether it was open to the Advisory Board to lift the veil in order to determine whether the material placed before the concerned authority permitted the reaching of that subjective satisfaction which was necessary for making a declaration. This question is no more open for discussion as the Supreme Court has in Satar Habib Hamdani's case 1986 Cri U 378 (supra) in terms stated as under:

The Advisory Board will necessarily have to go behind the declaration u/s 9(1) to consider the question whether there is sufficient cause for "continued detention".

If it is, therefore, settled law that the Advisory Board while determining the

question of sufficiency of cause for continued detention has to go behind the declaration made u/s 9(1) of the Act, it follows that the Advisory Board must examine the material on the basis whereof the declaration was founded.

14. If the Advisory Board is duty bound to go behind the declaration with a view to ascertaining whether there existed sufficient cause for the making of a declaration, there can be no doubt that it would be open to the Advisory Board to weigh the material on the basis whereof the Central Government or its specially empowered officer had reached the subjective satisfaction for the declaration. To put it differently, it would be open to the Advisory Board to test the subjective satisfaction reached by the Central Government or its specially empowered officer in making the declaration u/s 9(1) of the Act. Now, u/s 8(c) of the Act, the Advisory Board has to express its opinion after considering the reference and the material placed before it whether or not there is sufficient cause for the continued detention of the person concerned. It is intended to call for such further opinion as it may deem necessary from the appropriate Government as well as from the person concerned. If the detenu desires to be heard in person, the Advisory Board is obliged u/s 8(c) to give him an audience. The purpose of the hearing would obviously be to give the person concerned, an opportunity to satisfy the Advisory Board that there is no cause, much less sufficient cause, for his continued detention. He would not be able to make an effective representation before the Advisory Board in regard to his continued detention unless he is supplied the material on the basis where of the declaration u/s 9(1) came to be made. Non-supply of the basic material on which the subjective satisfaction for the declaration was reached would deprive the detenu of his right to make an effective representation before the Advisory Board with a view to persuading it to the view that there did not exist sufficient cause for his continued detention. It is only after the Advisory Board has reported that there is in its opinion sufficient cause for the continued detention of the detenu that the appropriate Government can confirm the detention order u/s 8(f) of the Act. Therefore, the right to be personally heard by the Advisory Board in regard to his continued detention would be rendered nugatory if the material on the basis whereof the declaration was made is kept back from the detenu. We are, therefore, of the opinion that after the decision of the Supreme Court in Satar Habib Hamdani Vs. K.S. Dilipsinhji and Others, there can be no doubt that the Advisory Board would have to go behind the declaration to consider the question of sufficiency of cause for continued detention. Once it is settled that the Advisory Board can go behind the declaration, it stands to reason to hold that the detenu must have an opportunity to represent against his continued detention by pointing out that the material on the basis whereof the declaration was made was not sufficient for reaching the subjective satisfaction required for making the declaration. In the instant case admittedly the basic material in support of the declaration was not supplied to the detenu nor was the detenu informed that the declaration was founded on this very same material on which the detention order u/s 3(1) of the Act was made by the appropriate Authority. We are, therefore, of

the opinion that the non-supply of basic material for the declaration is fatal and, therefore, the detention of the detenus cannot be upheld.

15. As we are of the opinion that the detention orders are liable to be quashed on the aforesaid two-fold submissions, we do not consider it necessary to examine the other grounds on which the detention orders have been challenged. These are our reasons for passing the following order on 13th January 1986:

For reasons which we will state hereafter, we allow these writ petitions, quash the orders of detention passed against each detenu and direct that each detenu be released at once unless required in any other matter. We make the rule absolute accordingly.