

(1986) 08 DEL CK 0010

In the Delhi High Court

Case No : Criminal Writ Appeal No. 83 of 1985

Amrit Lal Seth

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 01-08-1986

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)
Constitution of India, 1950 — Article 22(5)
Customs Act, 1962 — Section 111

Citation : AIR 1987 Delhi 340 : (1985) 28 DLT 396

Hon'ble Judges : Prakash Narain, J;N.N. Goswamy, J

Bench : Division Bench

Advocate : Soli J. Sorabjee, Harjinder Singh, H.N. Salve, R.K. Anand and A.K. Bhasin, for the Appellant;

Judgement

Prakash Narain, C.J.

(1) For years now the superior courts in our country have been at pains to point out that preventive detention under the preventive detention laws is permissible only by a strict and meticulous compliance with the provisions of the relevant preventive detention law sought to be invoked and the provisions of the Constitution. Time and again, the Courts have had to, though with some regret, order a detenu to be set at liberty because of lapses on the part of the administrative authorities. This is yet one other such case.

(2) The petitioner, Amrit, Lal Seth has been detained by virtue of an order dated July 21, 1984 passed by an Additional Secretary to the Government of India in exercise of the powers conferred by Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing him from smuggling goods and abetting the smuggling of goods. The petitioner challenges the said detention order and his continued detention as a consequence of the said order having been executed.

(3) Briefly stated the facts of the case are these. Searches pursuant to intelligence received on July 13, 1984 that huge quantities of contraband goods like scotch whisky and foreign marked gold worth several lakhs of rupees were lying in the possession of Amrit Lal Seth and one Jaswinder Singh and also on the basis of intelligence reports earlier received regarding alleged smuggling activities of Amrit Lal Seth, searches of the residential and business premises of Amrit Lal Seth were conducted by the officers of the Directorate of Revenue Intelligence on July 13 and 14, 1984. Certain recoveries were allegedly made from the residential and business premises of Amrit Lal Seth. His statement was recorded by officers of the aforesaid Directorate on July 14 and 15, 1984. Simultaneously, one Jaswinder Singh, said to be an associate of the petitioner was also detained by the officers of the said Directorate and interrogated on July 14 and 15, 1984. Attempts made by petitioner's advocate to have an interview with the petitioner on July 14, 1984 were unsuccessful. A telegraphic complaint in that regard was sent to the Directorate of Revenue Intelligence. Communications were sent to Hon'ble the Finance Minister as well as to the Secretary, Delhi Administration, Delhi regarding denial of interview to an Advocate with his client, namely, the petitioner. Allegedly, the petitioner was made to give incriminating statement under duress and torture. Jaswinder Singh's wife also sent a telegram Complaining about her husband's illegal detention on July 14, 1984. On being released from interrogation the petitioner on July 16, 1984 retracted the statement alleged to have been made by him u/s 108 of the Customs Act to the officers of the said Directorate. Likewise, Jaswinder Singh also retracted the statement alleged to have been made by him on July 18, 1984. One Kailash Kumar was also interrogated by the officers of the said Directorate. He also retracted his statement by communication dated July 18, 1984. As noticed earlier, the impugned detention order was passed on July 21, 1984. The petitioner was, however, not arrested, as allegedly he absconded. On September 22, 1984, the Directorate of Revenue Intelligence informed the petitioner's advocate about the detention order having been passed on July 21, 1984 in regard to the petitioner. The petitioner's advocate by a communication dated October 11, 1984 asked the Directorate of Revenue Intelligence to supply him the grounds of detention. On October 22, 1984 an order either u/s 7(I)(a) or 7(I)(b) of the said Act is stated to have been passed in regard to the petitioner. A representation made on behalf of the petitioner to the Hon'ble the Finance Minister is said to have been rejected as per the communication dated October 26, 1984. Yet a second representation for revocation of the detention order was also rejected on November 17, 1984. On January 2, 1985 a show cause notice was issued by the Customs Authorities to the petitioner to show cause why time for holding the documents and other material seized should not be extended. A reply was sent on behalf of the petitioner to the show cause notice on January 3, 1985, and on January 10, 1985 an order was passed extending the time for holding the documents. On January 14, 1985, a representation was made by the petitioner to the President of India. This representation was rejected as per communication dated March 13, 1985. A writ petition was filed by the manager

and son of the petitioner on March 16, 1985 complaining about the alleged high handedness of the officials of the Directorate of Revenue Intelligence. That is still pending in this Court. On inspection of the record it was discovered that the Central Government had passed an order u/s 7(l)(a) of the aforesaid Act and not u/s 7(l)(b). The petitioner was actually arrested from Sir Ganga Ram Hospital where he was under medical treatment on April 12, 1985 and was served with the order of detention as well as grounds of detention dated July 21, 1984. The present petition for issue of a writ of habeas corpus was filed in this Court on April 18, 1985 and rule nisi was obtained on April 19, 1985.

(4) The grounds of detention served on the petitioner runs into 52 paragraphs. Along with the grounds of detention the petitioner was also served with "list containing copies of intelligence report, information report, punchnama, statements and documents placed before the detaining authority."

(5) The petitioner's challenge is two fold. He contends that the impugned detention order is liable to be struck down on account of the satisfaction postulated by Section 3(1) of the Act being vitiated inasmuch as the detaining authority failed to take into account all the relevant material which was or could be made available to him; on application of mind by the detaining authority even to the material on which he has relied to pass the impugned detention order; and finally failure to apply his mind to, these aspects which in law and under the Constitution he was bound to look into before passing the impugned order. The continued detention is challenged on the ground that petitioner has been denied the opportunity postulated by Article 22(5) of the Constitution to make an effective representation inasmuch as the documents and material necessary for him to make that representation have not been supplied.

(6) Rule has been opposed by the respondents by filing an affidavit of Shri M.V.N. Rao, Additional Secretary to the Government of India, Ministry of Finance (Department of Revenue), New Delhi by way of return to the rule nisi. Shri Rao is the Additional Secretary, who passed the impugned detention order and has strongly controverted the Contentions and allegations of the petitioner. We will deal with the respective stands taken by the parties as we proceed to examine the various contentions raised by the petitioner. We may note here that on behalf of the petitioner his son Shri Rajiv Seth has filed the rejoinder affidavit and that the petition also is supported by the affidavit sworn by Rajiv Seth,

(7) Before we proceed to deal with the contentions raised by the petitioner and the stand taken by the respondents in regard thereto, it will be necessary to read a few paragraphs of the grounds of detention dated July 21, 1984 as it is these grounds which give out the mind of the detaining authority. Para-I of the grounds of detention reads as under :

"Pursuant to specific intelligence received on 13-7-1984 to the effect that huge quantities of contraband goods like scotch whisky and foreign marked gold worth several lakhs of rupees were lying in the possession of Shri Amrit Lal Seth and

one Jaswinder Singh (an associate of Shri Seth), which specific intelligence was proceeded by general intelligence regarding smuggling activities of Shri Amrit Lal Seth, immediate searches of the residential and business premises of said Shri Amrit Lal Seth were conducted by Directorate of Revenue Intelligence Officers at the following addresses ; 1. E-80. Paschimi Marg, Vasant Vihar, New Delhi. 2. D-4/4, Vasant Vihar, New Delhi. 3. B-7/1 A, Vasant Vihar, New Delhi. 4. 16-D/B, Community Centre, Vasant Vihar, New Delhi and two farm houses belonging to Shri A.L. Seth at Bijwasan, Gurgaon Road. As a result of the searches conducted on 13-7-84 and 14-7-84, the following contraband goods were recovered from the residential and business premises of Shri A.L. Seth ; Air Conditioners, Liquors, Indian Currency, and Miscellaneous electronic goods, etc., totally valued at Rs. 5,55,000.00 approx. Along with incriminating documents (in 67 loose sheets and 3 note books copies of which are enclosed in the Annexure. (A copy of seizure report and Panchnama enclosed)."

Paragraphs 52 to 54 of the grounds of detention read as under :

"52. From your statements dated 14-7-84, 15-7-84 and the various incriminating documents seized from your premises which have been explained, clarified and interpreted by yours self, and also from the fact of recovery of contraband goods including sale proceeds of contraband goods from your premises, it is seen that you have not only been actively engaged in smuggling of contraband goods in and out of the country from 1973 onwards till recently but you have become in due course one of the principal operators in the fields of smuggling by way of planning, organising and master-minding the smuggling operations and also by investing your money on a large scale in the smuggling of various commodities, such as, gold, silver, watches, snake skins, etc., inter-alia through the area highly vulnerable to smuggling such as the west coast and Madras City. In your above said smuggling operations, you are admittedly in collaboration with the smuggling syndicates operating in Bombay, Madras, Calcutta, Dubai and Nepal. Your statements in which you have sought to explain and clarify the documents seized reveal that the total quantum of contraband goods which have been smuggled by you into and out of this country are worth several crores of rupees. 53. From what is stated hereinabove, it is seen that you have been successfully smuggling various commodities from 1973 onwards till recently unabatedly and also abetted the smuggling of various commodities in association and collusion with the smuggling syndicates active in various major cities of this country and also abroad as per your own deposition. I have, Therefore, no hesitation to conclude that you have been smuggling and abetting the smuggling of goods. Even though investigation in the matter is in progress and adjudication and prosecution proceedings under the Customs Act, 1962 are likely to be initiated against you, I am satisfied that you should be detained under that Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing you from smuggling goods and abetting the smuggling of goods. 54. While passing the detention order under the Conservations of Foreign

Exchange and Prevention of Smuggling Activities Act, 1974, I have relied on the material contained in the Panchnama, statement and documents mentioned in the list."

(8) The ground No. 1, read earlier, speaks of search and recoveries. Grounds 2 to 46 contain a narrow of what petitioner allegedly stated in his statement made u/s 108 of the Customs Act when he allegedly described his activities and explained the documents alleged to have been recovered. Grounds 47 to 51 are linked with the statement of Jaswinder Singh. Grounds 52, 53, and 54 contain what may be called the thinking of the detaining authority. Ground 55 is a statement that the source of information cannot be supplied to the petitioner in public interest. Ground 56 makes it known to the petitioner that he may make a representation against the order of detention to the detaining authority and ground 57 states that the grounds of detention have been communicated to the detenu in pursuance of the requirement of clause (5) of Article 22 of the Constitution.

(9) With regard to the list of documents etc. attached to the grounds of detention, we find that the petitioner was supplied with copies of various General Intelligence Reports and copies of panchnamas prepared at residential and business premises of the petitioner on July 14, 1985. Seizure report dated July 17, 1984 and the statement allegedly made by the petitioner to the officers of the aforesaid Directorate on July 14, 1984, and July 15, 1984.

(10) It is contended on behalf of the petitioner that the satisfaction postulated by Section 3(1) of the Act stands vitiated on account of the failure of the detaining authority to take into consideration, before passing the detention order, inter alia, The following documents :

(A) Statement of Adam & Co. of Madras admittedly recorded by the officers of the Directorate of Revenue Intelligence ; (b) statement of one Kailash recorded by the officers of the said Directorate; (c) Retraction statement of Jaswinder Singh ; and (d) The telegram and the letter dated July, 17, 1984 sent by the advocate of the petitioner (see paragraphs 4, 5 and 7 of the petition)

(11) The averments in the petition with regard to Adam & Co., Madras are to be found in ground (iv) under paragraph 22 of the petition, This reads as under :

"That in the grounds of detention there is mention about M/s Adam & Co. of Madras to whom an order was placed regarding consignment of snake-skins. The petitioner submits that the statements of the owners of M/s Adam & Co. were recorded by the Directorate of Revenue Intelligence at Madras. Their premises were also searched. The petitioner says that neither a copy of the statement of the owners of M/s Adam & Co ; had been placed before the detaining authority nor the panchnamas and the documents if any seized had been placed. These were very relevant and vital facts. These having been suppressed from the detaining authority vitiates the satisfaction. It is also submitted that the investigations made by the Dri officers at Madras regarding the alleged snake-

skins have also not been placed before the detaining authority. There is thus non-application of mind and order is thus vitiated."

(12) In the return Shri Rao states as under by way of reply :

"The name of M/s Adam & Co. was mentioned by the petitioner in his statement. The admission of the petitioner regarding his dealings with M/s Adam & Co. Only corroborated the fact of involvement in smuggling activities. Certain goods were seized from the petitioner's house and his admissions regarding his involvement in smuggling activities satisfied the detaining authorities regarding the necessity of detaining the petitioner with a view to preventing him from smuggling of goods and abetting in smuggling of goods. The search of M/s Adam & Co. was not relevant for the detention of the petitioner as there was sufficient material otherwise for the satisfaction of the detaining authority."

(13) In the grounds of detention dated July 21, 1984, reference is found to M/s Adam & Co., inter alia, in grounds No. 5, 8 and 27. The alleged transaction of smuggling in the alleged smuggling of snake-skins by M/s Adam & Co. is associated with the petitioner, though according to grounds of detention on the basis of the statement made by the petitioner u/s 108 of the Customs Act. The detaining authority does not dispute the allegation of the petitioner that the statement of the owners of M/s Adam & Co. were recorded by the Directorate of Revenue Intelligence at Madras and the premises of the said company were also searched. The detaining authority also does not dispute that the statement of the owners of M/s Adam & Co. was not placed before the detaining authority nor were the Panchnamas and documents, if any, seized from the said company placed before him. In the context of the petitioner having retracted his statement made before the officers of the Directorate of Revenue Intelligence, the statement of the owners of M/s Adam & Co. and recoveries if any, made on search of the premises of the said company and panchnamas prepared on such occasions would be extremely relevant material for the detaining authority to consider whether or not there was any connection or dealings between the petitioner and M/s Adam & Co. For the detaining authority to contend that the search of M/s Adam & Co. was not relevant for the detention of the petitioner is invalid in law. The detaining authority was entitled to come to such conclusion as he liked but he had to consider all relevant material when he relied on the retracted statement of the petitioner in regard to his alleged connection with M/s Adam & Co. For ought we know or the detaining authority know the particulars of M/s Adam & Co. may have denied any connection or contact with the petitioner. If that was so, the retraction made by the petitioner would have greater force and may be the detaining authority in his subjective satisfaction had come to a conclusion other than the one which he did.

(14) Admittedly, the statement of one Kailash Kumar was recorded by the officers of the Directorate of Revenue Intelligence on July 14, and 15, 1985. In the grounds of detention dated July 21, 1984. mention of this Kailash is to be found in ground Nos. 49 and 50. What is stated by the detaining authority is that

Kailash was the contact-man of Jaswinder and the petitioner. According to the petitioner, Kailash Kumar in his statement given u/s 108 of the Customs Act did not mention the petitioner at all. This allegation is to be found in ground Ii under para 22 of the petition. In reply, Shri Rao states that the statement of Kailash Kumar was neither relied upon nor referred to in the grounds of detention and the same has no bearing on the detention order. We do not agree. As noticed earlier, in the grounds of detention, Kailash Kumar is described as the contact-man of Jaswinder and the petitioner. If Kailash in his statement has not mentioned the petitioner at all, as alleged in the petition and not disputed in the counter affidavit, it is a relevant fact to arrive at the subjective satisfaction in the context what is stated in paragraphs 49 and 50 of the grounds of detention. The detaining authority was bound to take into account the statement of Kailash and then correlate it not only with the statement of Jaswinder Singh but the statement made by the petitioner u/s 108 of the Customs Act in the light of the retraction made by the petitioner later on.

(15) With regard to the non-consideration of the retraction statement of Jaswinder Singh, there is a dispute. According to the petitioner, Jaswinder Singh retracted statement by a letter dated July 18,1984. According to the affidavit of Shri Rao no such letter was received and, Therefore, the question of its consideration did not arise. We, Therefore make no comment on this contention.

(16) With regard to the allegations in paragraphs 4,5 and 7 of the petition the allegations have been denied and the averments have been disputed by Shri Rao in his counter affidavit. In any case, we do not find these averments as relevant for the purposes of the challenge as made to the detention.

(17) Coming now to the contention that there has been non-application of mind by the detaining authority even to the material on which he has relied to pass the impugned detention order, the arguments on behalf of the petitioner is that the detaining authority has treated as "contraband goods" even those items which could by no stretch of imagination be regarded as contraband goods. We have already read ground No. 1 of the grounds of detention in full. Learned counsel for the petitioner urges that at least "Indian currency and incriminating documents" cannot be regarded as contraband goods. If this argument is correct, then ground No. I stands vitiated.

(18) Now the term "contraband" as such is not defined. The term can have a larger and restricted meaning. It is alleged that reading Sections 111 and 113 of the Customs Act, 1962 only such goods can be contraband which are liable to be confiscated. This would be a narrower interpretation. Shroud's Judicial Dictionary, 4th Edn. Volume I, at page 581 reads as: "contraband goods" are such as are prescribed by Act of Parliament or proclamation to be imported into, or exported out of the country. It is further urges that contraband can only be understood as applicable to "goods" particularly when it is said so in ground I of the grounds of detention and the term cannot be applied to anything other than what are "goods" (see 1908 (2) K B. 504). The contention is that there is thus no

application of mind inasmuch as the detaining authority has treated even those goods as contraband goods which are not so.

(19) The contention on behalf of the respondents is that ground I of the grounds of detention really describes what was recovered on July 13 and July 14, 1984. In any case air-conditioners, liquor and various electronic goods would be contraband goods whether a narrower or wider meaning is taken. It is further submitted that when the detaining authority speaks of contraband goods what he really says is that the goods or proceeds of goods which were illegally imported into the country would be contraband goods,

(20) Whichever view one takes, we find that the grounds of detention was not very happily drawn up. It is however not for us to supply the lacuna. We have to read the mind of the detaining authority as it is gleaned from the grounds of detention drawn up by him and served on the detenu. Indian money as such can never be contraband. Assuming it is proceeds of sale of illegal imported goods and a wider meaning has to be given to the term contraband and such money is also regarded as goods, we find that there is a contradiction. In ground No. 20 of the grounds of detention there is mention of money received for illegal export of snake-skins. Likewise there are other grounds of detention where there is mention of money received for illegal imports or exports. There is no indication as to whether the Indian currency seized from the premises of the petitioner was sale proceeds of contraband goods sold by him or sale proceeds for financing smuggling. Merely because money has been recovered does not convert into contraband goods even if money is to be treated as goods. It seems that the quantum of recovery weighed heavily with the detaining authority and he forgot that in ordering preventive detention he had to be very clear in his mind in regard to Indian currency and documents seized whether the same could or could not be described as "contraband goods"

(21) It is next contended by petitioner's counsel that air-conditioners and foreign liquor and even various electronic goods could not be described as contraband goods by any stretch of imagination until it is shown that the same were smuggled into India. In their jurisdiction of suspicion, it is difficult to agree with this contention. Possession of reasonably large quantities of foreign goods could create a suspicion in the mind of the detaining authority that the said goods were contraband goods.

(22) We now take up the contention that the order of detention is vitiated on account of failure of the detaining authority to apply his mind to those aspects which in law and under the Constitution he was bound to look into before passing the impugned order. As is well settled, preventive detention is something quite distinct from punitive detention. In the latter detention can be ordered only on eviction for a specified offence. In the former, detention is permissible on suspicion, provided the suspicion is based on some material having probative value, that it is necessary to detain a person in order to prevent him from indulging in specified nefarious activities. therefore. in this jurisdiction the

detaining authority has to see all the material placed before him and on examining all relevant material come to a conclusion whether it is necessary to detain a person for preventing him from indulging in specified nefarious activities. The purpose for which the petitioner has been detained is to prevent him from smuggling goods and abetting the smuggling of goods. If there was cogent material before the detaining authority to come to the conclusion that the petitioner was indulging in organized smuggling of goods and abetting the smuggling of goods and it was necessary to prevent him from indulging in such activities in future, he could order preventive detention. According to the detaining authority, and this is what is strongly urged by learned counsel for the respondents, Shri R.K. Anand, the detaining authority has ordered preventive detention of the petitioner on the basis of the statement given by the petitioner before the officers of the Directorate of Revenue Intelligence on July 14 and July 15, 1984, and the various incriminating documents seized from his premises which had been explained and clarified and interpreted by him and also from the fact of recovery of contraband goods including sales proceeds of contraband goods from the premises of the petitioner. This is also what the detaining authority clearly says in paragraph 52 of the grounds of detention dated July 21, 1985. Therefore it is contended there is nothing in law which he has not looked into before ordering the impugned preventive detention. Learned counsel for the petitioner, however, urges that the search and seizures were conducted on 13th, 14th and 15th July 1984. The alleged statements were recorded on July 14th, and 15th July, 1984. The preventive detention was ordered on July 21, 1984. At no time did the detaining authority consider that it was absolutely necessary to detain the petitioner under preventive detention law for allegedly committing economic offences and the propensity to commit economic offences, the commission of which could have been dealt with under the ordinary law. Reliance in this regard was placed on a decision of a Bench of this Court delivered on October 23, 1984 in *Hira Lal v. Shri M.V.N. Rao and another*, 28(1985) Dlt 9. We do not think that the ratio of that judgment is really attracted. What had been laid down in that case was that in the case of economic offences, every infraction of the specified law may not justify the passing of a detention order. Isolated acts of commission of economic offences would not justify passing of detention order under preventive detention law. The detaining authority had to come to the conclusion on the facts of the case before it that a person sought to be detained was carrying on the nefarious activities in an organized or systematic manner. This conclusion we find has been arrived at, rightly or wrongly by the detaining authority, as is evident from a reading ground No. 53 of the grounds of detention.

(23) Learned counsel for the petitioner also relied in a Division Bench judgment of this Court delivered on May 17, 1984 in *Cr. W. No. 13 of 1984, Girdharilal Govindas Aggarwal v. Union of India and others*. In this case detention was ordered on the basis of a presumption raised u/s 11-M of the Customs Act in regard to that silver recovered. The Bench observed in that case that the presumption u/s 11-M of the Customs Act was rebuttable one, it could not be

raised without affording opportunity to the detenu to show that there was no justification for raising such a presumption. Inasmuch as no opportunity was afforded to the detenu to rebut the presumption, the detention was had as the satisfaction arrived at is vitiated on account of its being based on a rebuttable presumption which was not allowed to be rebutted. Learned counsel for the petitioner submits that the unholy haste with which the detention order was passed without affording adequate opportunity to the petitioner to explain the possession of various goods would vitiate the satisfaction. In particular, our attention has been invited to the sort of goods which were recovered, namely, stereo deck, T.V. Set, Video Recorder and some air-conditioners. We do find, as is recorded in the grounds of detention, that the petitioner offered to produce receipts for various goods recovered from various premises, but adequate opportunity has not been afforded to him to do so. Indeed, a reading of some of the grounds like ground No. 43 of the grounds of detention shows this. Further, the mere possession of liquor and electronic goods may amount to being in possession of smuggled goods but can hardly be recorded as relevant for either smuggling or abetting smuggling.

(24) Learned counsel for the respondents has urged that even if some of the grounds are vitiated Section 5-A of the Act can be invoked and the detention order upheld. In this context we will have to examine the grounds of detention somewhat in detail.

(25) As we have observed earlier, the grounds of detention can be divided into groups. Ground I deals with search and recoveries. This ground, in our opinion, stands vitiated because of non-application of mind in calling Indian currency and documents contraband goods. Furthermore, the documents would have no relevance and by themselves would mean nothing unless we read the statement made by the petitioner u/s 108 of the Customs Act. Grounds 2 to 46 contains the narration of what the petitioner stated in his statement. If the statement is excluded on account of non-consideration of relevant material which we have discussed earlier, there is no Explanation of the documents at all. As far as the goods are concerned, with the help of the statement of the petitioner the same can only be regarded as, at best, possession of smuggled goods. It cannot amount to smuggling or abetting smuggling. Ground No. I by itself, Therefore, cannot stand. Grounds 2 to 46 are vitiated for reasons already discussed earlier. Grounds 47 to 51 which are linked with the statement of Jaswinder Singh are not what the detaining authority relied upon for ordering the detention of the petitioner as is evident from a reading of ground No. 52. Therefore, Section 5-A of the Act would not be relevant as far as these grounds are concerned. Ground 53 does mention that reliance has also been placed on the statement of Jaswinder Singh as Jaswinder Singh's statement is mentioned as documents placed before the detaining authority and on which he has relied. Jaswinder Singh, as we have discussed earlier, has talked of Kailash as his and petitioner's contact-man. Kailash's statement, it is said, does not mention the petitioner. Kailash's statement has not been considered by the detaining authority. The

statement of Jaswinder Singh de hors the statement of Kailash is thus not good enough and the petitioner. Therefore, in the absence of consideration of relevant material mere statement of Jaswinder Singh cannot form the basis of valid detention.

(26) Mr. R.K. Anand, learned counsel for the respondents strongly relied upon the decision of the Supreme Court rendered on April 12, 1984 in Writ Petition (Criminal) Nos. 1721, 1722 and 1724 of 1984, *Prakash Chandra Mehta v. Commissioner and Secretary, Government of Kerala and others*. This judgment of the Supreme Court lays down that even were a retraction statement is not considered by the detaining authority, in view of Section 5-A of the said Act, if the detention can be upheld on other factors mentioned in the grounds of detention which could lead the detaining authority to arrive at subjective satisfaction to detain a person, the detention would still be good. No one can have quarrel with this proposition and with respect we are bound by the rule enunciated in this judgment. In the present case, however, we find the situation to be different. We were also impressed when the documents said to have been recovered were shown to us and read and interpreted with the help of the petitioner's statement, that large scale smuggling was indulged in. We have, however, to keep in our mind that we are dealing with a case of preventive detention and not of punitive detention. If the statement of the petitioner is to be excluded from consideration, the seized documents make no sense. Why it has to be excluded from consideration, we have already dilated upon earlier. We repeat that non-consideration of the statement of the owners of M/s. Adam & Co. the alleged big smuggling of Syndicate of South India, the non-consideration of the statement of Kailash and merely relying on Jaswinder Singh's statement without looking into the statement of Kailash so as to implicate the petitioner vitiates the satisfaction arrived at on the basis of the alleged incriminating documents.

(27) Before we part with the case, we would like to observe that it is necessary for the State in habeas corpus matter to not only justify detention in all its facets but to meet allegations, if any, made so far as those allegations are relevant to the question of detention. In paragraph 11 of the writ petition supported by the affidavit of Shri Rajiv Seth, the son of the petitioner, it has been stated that petitioner's manager Shri Sharan Kapur and his son Rajiv Seth were also subjected to maltreatment and harassment by the officers of the Directorate of Revenue Intelligence. The petitioner's servants Harish Chander, Shyam Singh and Uma Kant were also forcibly lifted on July 13, 1984. The said persons were also compelled to depose against the petitioner and on their not doing so they were tortured and third degree methods were used against them. On July 19, 1984, a letter was addressed by the petitioner to the Hon'ble Finance Minister regarding this high-handedness of the officers of the Directorate of Revenue Intelligence. In reply to this submission, Shri Rao has deposed as under :

"IT is wrong to say that the petitioner's manager Sharan Kapoor and his son Rajiv Seth were maltreated or harassed by the DRI officers. It is also wrong to

say that the petitioner's servants Harish Chander, Shyam Singh and Uma Kant were forcibly lifted by the Dri officers on 13-7-1984 or they were compelled to depose against the petitioner or that they were tortured, maltreated or third degree methods were used against them. The petitioner's letter dated 19-7-1984 addressed to the Finance Minister was received only as enclosure to the representation submitted by M/s. P.H. Parekh, Advocates on 16-11-1984. The petitioner be put to strict proof regarding the dispatch of this letter."

(28) We cannot find out from the above reply whether the statements of the persons mentioned in paragraph 11 of the writ petition are recorded or not recorded on July 13, 1984. If these were recorded, the same should have been placed before the detaining authority. If these were not recorded and so not considered by the detaining authority, Shri Rao, as the detaining authority, should have clearly said so in his counter affidavit. We find that the detaining authority is perhaps not correctly advised of his obligation in contesting rules issued in habeas corpus matters.

(29) Mr. R. K. Anand, learned counsel for the respondents faced with the situation that developed in Court, very strongly urged that on a reading of the grounds of detention it is clear that there was overwhelming evidence for detention of the petitioner in order to prevent him from indulging in smuggling or abetting smuggling even, de hors his statement and the factors complained of by the learned counsel for the petitioner. He relied apart, from the Supreme Court decision in Prakash Chandra Mehta's case (supra) on a decision of this Court in Santosh Kumar Jain Vs. Union of India and Others, . In our opinion, the decision of this Court relied upon has no relevance to the contention raised, as the issues there were entirely different.

(30) We now come to the contention that the petitioner has been prevented from making an effective representation as postulated by Article 22(5) of the constitution because the documents and other material necessary for him to make a representation have not been supplied. We cannot accept the contention that anything and everything mentioned in punchnamas had to be supplied along with the grounds of detention. Petitioner has failed to show us what documents were asked for and not supplied. We, Therefore, reject this contention.

(31) As a result of the above discussion, we find, though with a heavy heart in this case, that the satisfaction postulated by Section 3(1) of the Act stands vitiated. Accordingly, the detention order is to be quashed. It is ordered accordingly.

(32) In view of our above finding we make the rule absolute and accept the petition. We direct that the petitioner be set at liberty forthwith unless required to be detained under any other valid order of an authority or a Court.