(2002) 03 MAD CK 0083

In the Madras High Court

Case No : H.C.P. No. 1112 of 2001

B. Krishnakumar APPELLANT

Vs

State of Tamil Nadu and Goverment of India RESPONDENT

Date of Decision : 04-03-2002

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3, 3(3), 5, 5A
Constitution of India, 1950 — Article 22(5), 226
Criminal Procedure Code, 1973 (CrPC) — Section 54
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (2002) 03 MAD CK 0083

Hon'ble Judges : P. Thangavel, J;P. Shanmugam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—The Writ Petition is for the issue of a Writ of Habeas Corpus by calling for the records of the first respondent State of

Tamil Nadu in G.O. No.SR.I/365-5/2001 Public (SC Department) dated 19.4.2001 issued under the provisions of the Conservation of Foreign

Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Act) and for the release of the detenu.

2. The detention order is passed in exercise of the powers conferred by Section 3(1)(i) of the Act. On the materials placed before the State

Government that the petitioner had indulged in smuggling of goods, the above order came to be passed. The facts necessary for the disposal of the

case are stated hereunder.

3. Petitioner is the proprietor of M/s. Blue Wave Impex, a company dealing in import and export business. It is stated that previously, he started a

business in the name of M/s. Sri Krishna Trading and had made ten imports from March 1999 to 7.2.2001. In August 2000, he started another

concern by name M/s. Blue Wave Impex, opened a bank account and obtained Importer Exporter Code. In the case on hand, the petitioner had

placed an order for import of 336 pedestal fans from Singapore and the same arrived by the Vessel ""TIGER METRO 865-N"" from Singapore on

19.1.2001. On behalf of the petitioner, his Customs House Agent M/s. Lotus International Service submitted the import documents such as

Invoice and Bill of Lading to the Electronic Data Inter Phase System of the Customs House and the consignment was electronically assessed on

22.1.2001. On an intelligence report that high priced electronic goods are being smuggled into India through Chennai Port in other covered

consignments from Singapore in Container Number TRLU-4436638 by the Vessel ""TIGER METRO 865-N"" on 2.2.2001, the officers of the

Directorate of Revenue Intelligence made efforts to locate the office of M/s. Blue Wave Impex which was found locked. Thereafter, the

consignment was examined under the Customs Act in the presence of the said customs agent and the custodian of the imported goods namely the

Chennai Port Trust officials. Thiru T.S. Kamalakannan, the customs house agent, in his statements dated 4.2.2001 and 5.2.2001, informed that

M/s. Vinodh Kumar, Ravi alias Sticker Ravi and Mohd. Khuddus were the organizers of the consignment. After the seizure was effected,

summons were effected to the detenu on 10.2.2001, 20.2.2001 and 12.3.2001. The detenu did not respond to the summons, but was absconding.

However, the detenu appeared on 14.3.2001 before the Joint Director, D.R.I., Chennai and gave a voluntary statement admitting his role in the

transaction and that of the other persons. This statement corroborated with the material facts. The petitioner alleged ill treatment by the D.R.I.

officers and states that the statement was obtained from him by force. He was arrested and was produced before the Additional Chief

Metropolitan Magistrate (E.O. II), Egmore on 15.3.2001, who remanded him. The petitioner did not make any complaints to the Magistrate about

the alleged ill treatment in his first opportunity. As a matter of fact, the Magistrate had recorded as follows :

The accused produced. No complaints of ill treatment. Prima facie case is made out. Remanded till 29.3.2001.

According to the petitioner, in the Sub-jail, the Sub-jailer asked him whether he has any injuries on his body and he told him that his front upper

teeth were broken and shaking and the lips, upper and lower, were having cuts and thereby blood clots were there. According to the petitioner,

the injuries were noted down in the Admission Register and the Gate Register and signature of the D.R.I. officer was obtained. Petitioner filed an

application u/s 54 of the Code of Criminal Procedure Code to refer him to the Government General Hospital for treatment and call for reports

from the Doctor. Immediately thereafter, he was admitted in the Government Royapettah Hospital and he was an in-patient there. He was also

under treatment at the Dental College Hospital. He had filed a bail application before the Additional Chief Metropolitan Magistrate, Egmore on

15.3.2001, wherein he had alleged that the respondents have obtained a statement from him by way of threat and coercion. However, the same

was denied in the counter affidavit filed by the D.R.I. officers. The remand period was extended upto 26.4.2001 and in the meanwhile, the

detention order came to be passed on 19.4.2001. The above order is now under challenge.

4. Though several grounds were raised in the affidavit against the order of detention, the main grounds raised by the petitioner''s counsel for the

purpose of consideration in this case are as follows :

(a) Some of the documents have been given only in English without there being a translation in Tamil. Since the petitioner does not know English,

there cannot be a proper communication of grounds.

(b) The statement was obtained from the petitioner by force as evidenced by the external injuries on the body of the petitioner. The detaining

authority has failed to apply his mind on this vital aspect. There is non-application of mind in that the statement was taken into account without

reference to the force said to have been used against the petitioner.

(c) The sponsoring authority has suppressed certain vital facts and material in reference to the injuries while he was being admitted in the Sub Jail.

(d) The petitioner had sent his retraction letter after he was discharged from the hospital on 29.3.2001, detailing about the ill treatment. In the

circumstances, the retraction and the injury report were not placed before the detaining authority.

(e) The petitioner did not file the bill of entry, but only a checklist - bill of entry was filed by clearing agent.

5. In meeting this, the learned Public Prosecutor submitted the following in reference to the specific grounds argued before us :

(a) Copies of all the materials placed before the detaining authority had been furnished to the detenu. Translation of all the documents except those

relating to customs clearance, opening of bank account, obtaining of import export code from the office of the Joint Director General of Foreign

Trade, which the detenu has dealt with as such, has been furnished. There is a proper comunication of the grounds and there has not been any

failure in this regard.

(b) The detenu did not make any complaint at the earliest opportunity available to him before the remanding Magistrate. A reading of the remand

report shows that the detenu had not made any complaint of ill treatment by the officers of D.R.I. Similar such allegations were made before the

Advisory Board, but the order of detention was confirmed.

(c) The petitioner''s allegation before the Additional Chief Metropolitan Magistrate in his bail application that the statement was obtained under

threat, coercion and undue influence and that he had retracted the statement as involuntary was denied in the counter filed by the D.R.I., Chennai.

The Government has taken into consideration the allegations contained in the bail application and found that they are baseless, after-thought and

devoid of merit.

(d) In the alternative, assuming that the statement should not be relied upon, there is sufficient ground to justify the order of detention u/s 5-A of the

Act.

6. Learned counsel Mr. B. Kumar, while not opposing the legal submission raised on Section 5-A, submitted that there are no two grounds

available in this case to invoke Section 5-A.

7. We have heard the counsel elaborately, gone through the records and considered the matter carefully.

8. Non-furnishing of translation in Tamil :

At the outset, it has to be stated that the petitioner has made a vague complaint in reference to this main ground of attack. In the fag end of his affidavit, what he says is as follows :

6(x). Petitioner further submits that some of the documents have been given only in English without there being a translation in Tamil. Since the

detenu does not know English, there cannot be said to be proper communication of grounds within the meaning of the said Article. This factor by

itself vitiates the continued detention of the detenu.

The petitioner had not set out the documents which have not been translated. In the counter, it is stated that Tamil translation of all the documents

excepting the customs clearance, opening of bank account, obtaining of import export code from the Office of the Director General of Foreign

Trade, which the detenu has dealt with as such, have been furnished. The detenu is aged 35 years and he has studied upto X Standard. He had

been dealing in the business of export and import. He had applied for the allotment of Importer Exporter Code Number in his application dated

30.10.2000 for his company M/s. Blue Wave Impex. He had obtained a rental agreement for the premises bearing Door No.3, Dr. Thirumurthy

Nagar, Fifth Street, Nungambakkam, Chennai-34 dated 30.8.2000. He had applied to the Manager, Bank of Baroda to open a current account.

He had intimated about the change of premises to the Bank of Baroda. He had issued a Certificate of Proprietary Form for his company to the

various offices, all written in English and signed by the detenu in English. Apart from this, invoices were raised in the name of the detenu''s company

M/s. Blue Wave Impex by the Singapore Company and these were submitted to Lotus International Service, the detenu''s clearing agent stating

that he had imported 336 pedestal fans. Though the invoice as well as the checklist - bill of entry did not contain the signature of the detenu, these

documents namely the invoice, checklist, declaration form for filing a bill of entry were and could have been processed only with the clear

knowledge and understanding of the detenu. All other documents like opening of bank account, rental agreement, application for exporter importer

code number etc. were all filled up in English and signed by the detenu in English. Therefore, we are unable to agree with the contention of the

learned counsel for the petitioner that the petitioner was not served with the true English translation of these documents in order to make a proper

representation. From these documents, it is very clear that the detenu had a good working knowledge of English even though he has studied only

upto X Standard and all these transactions, namely opening of bank account, obtaining of import export code as also the documents relating to

customs clearance through his clearing agent, which according to him are not translated, have originated only with the knowledge of the petitioner.

9. In this context, some of the decisions cited on either side which are relevant can be referred to. In QUBEC DARIZO VS. UNION OF INDIA

1990 S.C.C. (CRL.) 227, while explaining the word ""communicate"" found in Article 22(5) of the Constitution of India, their lordships of the

Supreme Court held that what is considered necessary is a working knowledge of the language enabling the detenu to understand the grounds or

full explanation or translation thereof in the language understood by the detenu. It was held that it would be open for the court to consider the facts

and circumstances of a case to reasonably ascertain whether the detenu is feigning ignorance of the language or he has such working knowledge as

to understand the grounds of detention and the contents of the documents furnished. It would involve a subjective determination. In ABDUL

SATTAR VS. UNION OF INDIA 1990 S.C.C. (CRL.) 242, it was held that copies of the documents (bail application filed by the detenu

himself) not relied upon, bot only incidentally referred to in the grounds would not violate Article 22(5) and vitiate the detention. In this case,

though it cannot be stated that the invoice, checklist, declaration form for filing a bill of entry and his application for opening the bank account are

not translated. We find that all these documents have emanated from the detenu or under his authority and hence are his own documents. In

Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, , it was held that the Constitution requires that the

ground must be communicated. Therefore, it must follow as an imperative that the grounds must be communicated in a language understood by the

person concerned so that he can make effective representation. Their lordships further held that there is no rule of law that common sense should

be put in cold storage while considering constitutional provisions for safeguards against misuse of powers by authorities, though these constitutional

provisions should be strictly construed. On these premises, their lordships, considering in that case that the petitioner was constantly accompanied by persons who knew English very well and that he had been communicating to the authorities by way of mercy petitions, not knowing the contents

were all disbelieved and it was held that the court is not the place where one can tell all tales. As rightly pointed out, in this case, the petitioner had

been making applications and declarations on his own which were signed by him in English and he is dealing in import of materials, admittedly

placing orders with exporters. Therefore, it follows that the petitioner was merely feigning ignorance of English even in reference to the few of his

own documents. In Nainmal Partap Mal Shah Vs. Union of India (UOI) and Others, , the Supreme Court was dealing with a case where the

complaint of the detenu was that he did not know and did not understand the language in which the detention order was passed and stated that no

translated script thereof was supplied to him. In that context, it was held in that case that the suggestion of the respondent that the detenu had

signed number of documents in English and hence it must be presumed that he was fully conversant in English was held to be based on pure

speculation when the detenu has expressly stated that he did not know English. Here, it is not the case that the grounds of detention running to 11

pages and the list of documents containing 283 pages were not translated and given to the detenu in the language known to him. Even according to

him, only some of the documents were not translated. We find that the documents that were not translated were only the invoice raised by the

foreign company in the name of the detenu on his order and the application to open a current account in the name of the detenu''s concern and the

declaration and application made for obtaining the I.E. Code were the few documents which were not translated. All other documents were duly

translated and supplied to the detenu. Even here, the reference in the grounds of detention to these documents were also translated to the detenu.

Therefore, we do not find any substance in this point.

10. Non-application of mind :

The detenu had placed orders for supply of 336 number of pedestal fans with a Singapore company for the alleged cost of 6652.80 Singapore

Dollars. The containers arrived by the Vessel on 19.1.2001. On specific intelligence information, the consignment was seized by the officials of the

Directorate of Revenue Intelligence and they found that the bill of entry was not signed till 2.3.2001 and therefore, after identifying the consignment

and finding that the import was contrary to the declaration and to evade customs duty, in the presence of mahazar, the consignment contained in 28

wooden cases was opened and examined. They were annexed to the mahazar and the C.I.F. value of the seized items was determined at

Rs.2,57,48,720/-. After this, summons were issued to the detenu on 10.2.2001, 20.2.2001 and 12.3.2001. A statement was obtained from the

petitioner''s Customs House Agent T.S. Kamalakannan on 4.2.2001 and 5.2.2001. It is under those circumstances and thereafter that the detenu

appeared before the D.R.I. and gave his statement dated 14.3.2001 admitting that he had lent his name to M/s. Vinodh Kumar, Ravi alias Sticker

Ravi and Mohd. Khuddus and that he had acted at Mr. Ravi''s instructions and that the import was made by the finance provided by the said Ravi.

The detenu was arrested and was produced before the Magistrate on 15.3.2001. The remand order of the Magistrate dated 15.3.2001

specifically says that there was no complaint of ill treatment. In reference to the allegations made in the petitioner''s bail application that the

statement was obtained by threat and coercion, the Senior Intelligence Officer, D.R.I., Chennai, in his counter, has stated that the detenu was

absconding since the date of seizure and did not respond to the summons issued to him under the Customs Act. However, on 14.3.2001, he

appeared on his own and gave a voluntary statement furnishing facts and circumstances which he alone could provide and has clearly admitted of

his involvement in the offence, not only in the present occasion, but also in the previous occasion and submits the contention of the detenu that the

statement was obtained from him under threat, coercion and undue influence is nothing but an after-thought, having realised the implications of his

voluntary statement and the consequences of the offence in which he is involved. Thus, these documents namely the statement made by the detenu

dated 15.3.2001 before the D.R.I., the remand order of the Magistrate dated 15.3.2001, the bail application dated 15.3.2001 and the counter

filed by the respondent were placed before the detaining authority and they were taken into account before the detention order came to be passed.

In the grounds of detention, in Ground Nos.xviii and xxii, these facts are clearly stated. The detaining authority has stated that having taken into consideration the allegations contained in the bail application and from the materials placed on record, the Government is satisfied that the said

allegations are baseless, after-thought and devoid of merits and hence, the Government rejected the same.

11. The main submission of the learned senior counsel for the petitioner is that there is failure on the part of the sponsoring authority to place before

the detaining authority the injuries said to have been noted by the jail authorities when the detenu was sent to the jail on 15.3.2001. In this context,

it has to be noted that in the affidavit filed by the detenu himself, he mixes his case with the case of S. Mohan and refers to the injuries alleged to

have been noted on the body of S. Mohan. Insofar as the detenu is concerned, he is said to have been ill treated by the officials of the D.R.I. No

particulars of his ill treatment have been given in paragraph 4 of his affidavit while describing about the ill treatment. Then, he refers to the Sub

Jailer asking him to show the identification marks of his body and asking him to remove his clothes as a routine checkup. Then he refers to the

injuries found on the body of S. Mohan. As far as his injuries are concerned, he says that his upper tooth is broken and is shaking and that the lips,

upper and lower, had cuts and thereby, blood clots were there. Thereafter, the brother of S. Mohan, who is the friend of the detenu, filed an

application before the Magistrate u/s 54 Cr.P.C. to refer him to the Government Hospital for treatment and immediately he was admitted in the

hospital from 16.3.2001 onwards. No medical certificate had been obtained or produced to show about his injuries and the nature of the

treatment. Petitioner has not stated specifically even in the affidavit filed in support of the writ petition that he was ill treated by the officials of the

D.R.I. and that the statement was forcibly obtained from him. He did not say as to how the injuries had occurred. As rightly suggested by the

learned Public Prosecutor, there is no record to show regarding the age of the injuries and that the injuries occurred only when he came to the

D.R.I. office on 14.3.2001. Therefore, the relevant materials available in reference to the detenu namely the remand order, bail application and the

counter, were all taken into account before passing the detention order. In the absence of the allegation that the front teeth was broken and shaking

and that it has been caused by the D.R.I. officials, it is not possible to infer assuming for the sake of argument that the injuries were noted in the

Register and absence of placing these before the detaining authority has vitiated the order. As stated earlier, petitioner is said to have been

admitted in the hospital immediately thereafter and remanded there for ten days for this alleged injury and he refused to remove the shaking teeth

and also admits that the teeth was not broken. Therefore, we do not find that there is any genuineness in the contention of the petitioner in his

affidavit that there was physical violence against the detenu and that only because of that, he gave a statement.

12. Some of the decisions referred to in this context can be summarised here. In Gurdev Singh Vs. Union of India and ors, , it was held that the

subjective satisfaction arrived at by the detaining authority is based on consideration of all relevant materials placed before it by the sponsoring

authority. It is not the case of the appellant in that case that the sponsoring authority did not place before the detaining authority any material in its

possession which is relevant and material for the purpose and such material, if considered by the detaining authority, might have resulted in taking a

different view in the matter. Whether the detention order suffers from non-application of mind by the detaining authority is not a matter to be

examined according to any straight-jacket formula or set principles which depends upon the facts and circumstances of the case. The Act does not

lay down any set parameters for arriving at subjective satisfaction. Keeping in view the purpose for which the enactment is made and intended to

achieve, the Parliament, in its wisdom, has not laid down any set standards for the detaining authority to decide whether an order of detention

should be passed against a person.

13. In Sanjay Kumar Aggarwal Vs. Union of India (UOI) and Others, , the Supreme Court, repelling the contention of non-application of mind by

a detaining authority, held that the detaining authority in that case has considered the allegations that the detenu was manhandled etc. At any rate,

the detaining authority has clearly noted that the detenu has retracted from the alleged statement and therefore, it cannot be said that there is non-

application of mind in this regard. In our case also, the detaining authority was aware of the retraction and the allegation of coercion and

compulsion to get the statement.

14. Learned senior counsel for the petitioner relied on the judgment in K.T.M.S.

Mohd. and another Vs. Union of India, and D.K. Basu Vs. State

of West Bengal, in support of his contention that the statement obtained by use of force cannot be relied upon and that the arrestee should have

been examined at the time of his arrest of his injuries. We are not concerned with the prosecution and the criminal trial under the Act. The only

concern of this court is whether the relevant materials were placed before the detaining authority to come to his subjective satisfaction. As we have

noticed, even as to the alleged injuries of breakage and shaking teeth, there is no medical report and it is a grey area as to where, when and how

the detenu has sustained the injuries. The alleged fact that he had given the statement under force was made by the petitioner in his bail application

and it was countered and was also taken into account by the detaining authority. Even when the detenu had the first opportunity to explain the

injury, he did not make any such complaint at all. On the contrary, the Magistrate, on enquiries, found that there is no complaint of any physical

violence. Therefore, the decisions cited by the learned senior counsel for the petitioner have no avail in this case.

15. Section 5-A :

Learned Public Prosecutor alternatively argued that assuming for the sake of argument that the confession statement was obtained by coercion is

true and that the injuries relied upon were not placed before the sponsoring authority, there are other material grounds to make the detention order

valid, namely the attempt to import 336 pedestal fans in 28 wooden cases for 6652.80 Singapore Dollars, which is equivalent to Rs.1,80,623/-,

whereas on inspection, it was found to contain electronic goods valued at about Rs.21/2 crores and its market value was assessed at about

Rs.41/2 crores and that the address of the detenu''s concern was found to be a small locked room and that the I.E. Code was obtained and bank

account was opened recently for the purpose of this import and that T.S. Kamalakannan, partner of M/s. Lotus International Service, C.H.A.

appeared before the D.R.I., Chennai and gave voluntary statement and that the detenu had brought all these materials and after tendering the

declaration forms for filing bill of entry on 22.1.2001 and obtaining checklist, the detenu did not turn up and that the boxes were opened in the

presence of independent witnesses and most of the goods were found to be undeclared electronic items and that the detenu did not respond to the

three summons issued and that the detenu appeared after having knowledge of the seizure of the goods on 3.2.2001 only on 14.3.2001 to give the

statement. Thus, according to the Public Prosecutor, de hors the alleged statement, there are overwhelming documentary and other evidence to

establish and support the subjective satisfaction arrived at by the detaining authority in order to pass an order u/s 3 of the Act.

16. In support of this contention, reliance was placed on the judgment of the Supreme Court in Mrs. U. Vijayalakshmi Vs. State of Tamil Nadu

and another, , wherein the Supreme Court held that assuming without deciding that a particular contention is well founded, Section 5-A of the Act

takes care of it. Even if they were to hold that a particular ground is extraneous or irrelevant, that would not affect the validity of the detention

order, as Section 5-A was introduced precisely to take care of such a situation. That was a case of an order passed u/s 3(1) of the Tamil Nadu

Prevention of Dangerous Activities of Boot Leggers etc. Act, 1982. Two main grounds of detention in that case were that the felling of

sandalwood trees is causing widespread danger to ecological system and loss of revenue to the Government and secondly that the huge money

falling into the hands of tribals makes them susceptible to drinking and gambling and thereby converting the poor and innocent tribals into anti-

socials. The Supreme Court repelled the contention that the order is vitiated since the second ground is too remote to think that the tribals resort to

drinking, gambling etc. In AHMED NASSER VS. STATE OF TAMIL NADU 1999 (8) J.T. 252, the Supreme Court held that in the light of the

Preamble as also the objects and reasons of COFEPOSA, justiciability of acts of every statutory functionary performing statutory obligations

under the Act has to be scrutinised and decided on the basis of the Preamble and objects and reasons of the COFEPOSA. If there be two

possible interpretations, then the one that subserves the object of the statute should be accepted. In that case, it was held that even in the absence

of bail application, the conclusion of the detaining authority that there is a likelihood of his being released on bail cannot be said to be based on no

relevant material. Their lordships further held that non-placement of two material documents before the detaining authority, which were relevant and were likely to affect the satisfaction, will not vitiate the detention order.

17. Per contra, learned senior counsel for the petitioner submitted that there was only one ground in the detention order namely smuggling of goods

and all others were only materials and not grounds of detention. According to him, Section 5-A can be invoked only when there are two grounds

in the detention order. In support of his contention that omission to consider relevant material by the detaining authority will vitiate the order on the

ground of non-application of mind, learned senior counsel referred to the judgment of the Supreme Court in Ayya alias Ayub Vs. State of U.P. and

Another, , wherein their lordships held that if a piece of evidence which might reasonably have affected the decision whether or not to pass an

order of detention is excluded from consideration, there would be a failure of application of mind which, in turn, will vitiate the detention. In this

case, it cannot be stated that the detaining authority was not aware of the allegation that the detenu was ill treated and that the statement was

obtained by coercion and force. Both the applications as well as the counter were placed before the detaining authority. In Attorney General for

India and Others Vs. Amratlal Prajivandas and Others, , the Constitution Bench of the Supreme Court was dealing with the validity of the

COFEPOSA. In the course of the judgment, their lordships, while dealing with Section 5-A, have held that single acts of wagon-breaking, theft of

signal material, theft of telegraphic copper wires in huge quantity and removal of railway fish plates is sufficient. COFEPOSA is designed to

prevent these acts. They are all either acts of smuggling or foreign exchange manipulation. These acts are indulged in by persons who act in concert

with other persons and quite often, such activity has international ratifications. These acts are preceded by a good amount of planning and

organisation. It is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention. Where the order of

detention made is based on more than one ground, the Section creates a legal fiction namely that it must be deemed that there are as many orders

of detention as there are grounds, which means that each of such orders is an independent order. Section 3 of the Act, which empowers to make

an order of detention, provides for the communication to the person detained the grounds on which the order has been made.

18. In Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, , the very question came up for

consideration and their lordships held as follows :

The grounds under Article 22(5) of the Constitution do not mean mere factual inferences, but mean factual inferences plus factual material which

led to such factual inferences.

.....

The concept of ''grounds'' used in the context of detention in Article 22(5) of the Constitution and in Sub-section (3) of Section 3 of the

COFEPOSA, therefore, has to receive an interpretation which will keep it meaningfully in tune with the contemporary notion, while the expression

''grounds'' for that matter includes not only conclusions of fact, but all the ''basic facts'' on which those conclusions were founded, they are different

from subsidiary facts or further particulars or basic facts.

The argument in that case that retraction should have been considered by the detaining authority and that the court does not know had that been

taken into consideration, what conclusions the detaining authority would have arrived at was not accepted. It was held that the court is not

concerned with the sufficiency of the grounds and the court is concerned whether there are relevant materials on which a reason for conviction

could have been entertained by the detaining authority. Whether other grounds should have been taken into consideration is not relevant at the

stage of passing of the detention order. If that is the position, then, in view of Section 5-A of the Act, there was sufficient material to sustain this

ground of detention. In STATE OF GUJARAT VS. CHAMAN LAL AIR 1980 S.C. 1480, their lordships of the Supreme Court held that it is

manifest that whenever the allegations of smuggling are made against a person who is sought to be detained by way of preventing further smuggling,

there is bound to be one act or several acts with the common object of smuggling goods, which is sought to be prevented by the Act. It would,

therefore, not be correct to say that the object of the Act constitutes the ground for detention. If this is so, in no case, there could be any other

ground for detention, except the one which relates to smuggling. What the Act provides is that where there are a number of grounds of detention

covering various activities of the detenu spreading over a period or periods, each activity is a separate ground by itself and if one of the grounds is

irrelevant, vague or unspecific, then that will not vitiate the order of detention. While referring to the background of Section 5-A, their lordships

held that the reason for enacting Section 5-A was the fact that several High Courts took the view that where several grounds are mentioned in an

order of detention and one of them is found to be either vague or irrelevant, then the entire order is vitiated because it cannot be predicated to what

extent the subjective satisfaction of the authority could have been influenced by the vague or irrelevant ground. It was to displace the basis of these

decisions that the Parliament enacted Section 5-A in order to make it clear that even if one of the grounds is irrelevant and the other grounds are

clear and specific, that by itself would not vitiate the order of detention. In SOWKATH ALI VS. UNION OF INDIA 2000 S.C.C. (Cri.) 1304,

strongly relied on by the counsel for the petitioner, their lordships held on the fact of that case that Section 5 has no application. In K.

Satyanarayan Subudhi Vs. Union of India, and others, , it was held that there were no two grounds, but only one ground and that the non-

placement of retraction of the confession statement by the detenu before the detaining authority makes the detention invalid.

19. Therefore, the order of detention is based on several grounds even though the act alleged against the detenu is to prevent him from smuggling

goods etc. The facts that the detenu had placed orders to a foreign country for import of pedestal fans, but actually imported electronic goods of a

large magnitude and that his clearing agent has admitted these facts and that it was found out in the inspection and also that the detenu has also

confessed of the said act are the grounds in support of the detention. Therefore, it cannot be stated that the order of detention was made only on

one ground. As a matter of fact, Sub-section (3) of Section 3 says, ""In pursuance to the grounds on which the order of detention has been made.

They contemplate several grounds for the detention order. When Section 5-A speaks of two or more grounds, it says that a detention order is

deemed to have been made separately on each of such grounds. Therefore, the argument of the learned Public Prosecutor has much force. Hence,

we find assuming for the sake of argument that the non-placement of the alleged injury record in the jail is true, it cannot be said to be fatal in this case.

20. For all the above reasons, we do not find any ground to interfere with the order of detention passed against the petitioner in this case. The writ

petition fails and it is accordingly dismissed. No costs.

