
(1987) 10 DEL CK 0029

In the Delhi High Court

Case No : Criminal Writ Petition No. 219 of 1987

Bal Chand Bansal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-10-1987

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3

Constitution of India, 1950 — Article 22

Citation : (1987) ILR Delhi 100

Hon'ble Judges : D.P Wadhwa, J

Bench : Single Bench

Advocate : Kapil Sibal, R.C. Chawla, P. Misra, R.M. Bagai, S.K. Mishra, S.K. Dubey and B.L. Wali, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) The petitioner a detenu under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 (for short "the Act"), seeks to have the order of detention quashed and also issuance of a writ of habeas corpus directing the respondents to produce the petitioner and then to set him at liberty.

(2) The petitioner was arrested on 3-4-1987 for offences under the Foreign Exchange Regulation Act 1973 and produced before the Additional Chief Metropolitan Magistrate, New Delhi, who remanded him to judicial custody up to 13-4-1987. The impugned order of detention was made on 13-4-1987 with a view to preventing the petitioner from acting in any manner prejudicial to the conservation of foreign exchange. In the order of detention the petitioner has been described as Bal Chand @ Bal Chand Bansal @ Bal Chand Aggarwal @ Bal Chand Rajgarhia. The petitioner was detained in pursuance to the order of detention on 13-4-1987 itself while he was in judicial custody. He was also communicated the grounds of his detention as required under sub-s. (3) of S. 3 of the Act. He was told that if he wanted to make a representation against his

detention to the detaining authority or to the Central Government, he could do so. He was also told that if he desired to make a representation to the Advisory Board that also he could do and further that he would be heard by the Advisory Board in due course. Hearing before the Advisory Board took place on 30-4-1987. The petitioner was present with his two counsel. The Advisory Board sent its report dated 21-5-1987 with covering letter dated 3-6-1987. It was of the opinion that there was sufficient cause for the detention of the petitioner. Meanwhile, the present petition was filed on 2-5-1987.

(3) The grounds of detention are in the narrative form and may be briefly referred to. Deputy Director, Enforcement Directorate, received secret information on 27-1-1987 that certain firms were engaged in import of goods from places outside India and had remitted huge funds abroad against import documents received from Hongkong and Singapore but no corresponding imports in fact took place. Enquiries revealed that five firms were involved in clandestinely remitting of the funds abroad. These were :

(A)M/s. North Eastern Electronics, (Prop. Shri P.K. Ao), 6687, Kila Kadam Sharif, Nabi Karim, Paharganj, New Delhi:

(B)M/s Hill Electronics, (Prop. Shri Bandai A.O. @ B.K. Ao), 6687, Kila Kadam Sharif, Nabi Karim, Paharganj, New Delhi.

(C)M/s Beam Trading Co., (Prop. Shri Choth Mal), A-210, Azadpur, New Delhi.

(D)M/s International Imperial Co., (Prop. Shri Vinay), 521, G.T. Karnal Road, Delhi.

(E)M/s Asia Commercial Co., (Prop. Shri Vinay), 521, G.T. Karnal Road, Delhi.

The addresses of the last two firms were changed to M-1A, 12-13 Mukherjee Nagar, Delhi, as per the records of Vijaya Bank, Karol Bagh, New Delhi. Enquiries showed that none of these firms existed at the addresses given to their bank, namely, Vijaya Bank, nor the persons who were shown as proprietors were traceable. During the course of further enquiries, information was received that one Sita Ram Aggarwal was connected with M/s North Eastern Electronics and M/s Hill Electronics, and was handling the affairs of these two firms. On 20th February 1987 residential premises of Sita Ram Aggarwal at Kamla Nagar and his business premises at Basti Harhpool Singh were searched and certain documents recovered.

(4) Statement of Sita Ram Aggarwal was recorded on the same day. He stated that he knew the petitioner. In 1985, while in Delhi, the petitioner asked him to open a few firms in which the petitioner would be depositing Indian currency, through Sita Ram Aggarwal and petitioner would be sending documents from Hongkong and Singapore which Sita Ram Aggarwal would take to the bank and the bank, in turn, would remit the money in respect of those documents to Hongkong and Singapore. It is the admitted case that the petitioner is an Indian national and is presently based in Hongkong. He went to Nepal in 1968 and from

there to Hongkong in 1972 where he had a firm in the name of M/s B.N. Corporation. In his further statement, Sita Ram Aggarwal stated that the petitioner had also asked him to get some other persons shown as proprietors of the firms on record so that the authorities might not reach either the petitioner or Sita Ram Aggarwal. Sita Ram Aggarwal was promised certain amount of commission on the remittances made by him. Sita Ram Aggarwal, Therefore, opened two firms in the name and style of M/s North Eastern Electronics and M/s Hill Electronics with their registered offices in Nagaland and respectively showed P. K. Ao and B.K. Ao as the proprietors of these firms. He got the bank accounts opened in the names of both these firms in Vijaya Bank, Paharganj, and got the necessary papers signed from P.K. Ao and B.K. Ao. These firms were opened in September 1985 and during the course of 1-1/2 years the petitioner deposited a sum of about Rs. 60 lacs in the account of M/s North Eastern Electronics and about Rs. 40 lacs in the account of M/s Hill Electronics and out of these amounts, remittances were made by Vijaya Bank to Hongkong and Singapore against import documents which Sita Ram Aggarwal used to present in the bank. Sita Ram Aggarwal admitted that not even in a single case did he submit the bill of entry to the bank because it was not in existence and no goods had been imported. Sita Ram Aggarwal said that the money which he deposited in the bank was provided by the petitioner through his nephew Subhash Aggarwal or by Choth Mal, an employee of Subhash Aggarwal. Sita Ram Aggarwal said that he in all received Rs. 40,000.00 from the petitioner at the rate of 2 per cent on the remittances and that the final account was yet to be settled. He was shown photo-copies of 167 documents given to the Enforcement Directorate by Vijay Bank and Sita Ram , Aggarwal admitted that these related to the remittances sent out of the accounts of the aforesaid two firms to Hongkong and Singapore and further that the overseas parties to whom remittances were sent and in whose names these documents were prepared were either the companies owned by the petitioner or by other parties known to the petitioner. With reference to the documents of Vijay Bank, Sita Ram Aggarwal admitted that remitting totalling U.S. \$ 3,96,799.30 in the account of M/s North Eastern Electronics and U.S. \$ 3,87,077.44 in the account of M/s. Hill Electronics had been sent out of the country Sita Ram Aggarwal also admitted that when enquiries were set afoot by the Enforcement Directorate, the petitioner was in Delhi and he left for Hongkong on 13-2-1987 but before leaving he had assured Sita Ram Aggarwal that he would get the whole thing settled.

(5) The residential premises of Subhash Chand is Ashok Vihar, Phase I, and his business premises in the name of M/s Sankyo Mfg. Co., Noida, Ghaziabad, were searched and certain documents recovered. Subhash Chand did not appear in spite of summons issued to him under S. 40 of the Foreign Exchange Regulation Act 1973 (for short the FERA).

(6) Enquiries were also made as to how the accounts in the name of M/S Beam Trading Co., M/s International Imperial Co., and M/s Asia Commercial Co., came to be opened in the Vijaya Bank. Vijay Kumar, who was shown proprietor of the

last two firms, was traced to a residential premises in Ashok Vihar, Phase I, which were searched and certain documents seized and recovered. Vijay Kumar was not available. His father S.K.V. Shende stated that Vijay was working with M/s. Sankyo Mfg. Co., Noida, and that he got a job there because Subhash Chand, proprietor of that firm, was Ins neighbour.

(7) On 1-4-1987 Deputy Director, Enforcement Directorate, received information that the petitioner had arrived in India from Hongkong and was staying in a hotel at Calcutta. The petitioner was found staying in Room No. 316 in Hotel New Kennel worth International, Calcutta, with Mr. Satish Aggarwal of Paharganj, New Delhi, in whose name the room had been booked. On 2-4-1987 the hotel room was searched which resulted in recovery of certain material as per panchnama prepared in respect thereof. Statements of the petitioner were recorded at Calcutta and also at Delhi. He said that he was running a proprietorship firm/company by the name of M/s. Carlton Electric Engg. Co. at Hongkong and through that company he had floated another firm in the name of M/s B.N. Corporation and that both these companies were engaged in the export of electronic goods, textiles, garments and other general miscellaneous items to India, Nepal and Pakistan. He said he left Hongkong on 16/17th March 1987 for Nepal and from there he came to Delhi on 22-3-1987 up to Gorakhpur by bus and thereafter by train. Then he came to Calcutta on 24-3-1987 by an Indian Airlines flight in the name of "Mr. S.C. Aggarwal". He said Mr. Satish Mohan Aggarwal was his friend. He said the purpose of his visit to Calcutta was for getting released the goods which he had exported from Hongkong during the period November 1985 to March 1986 to certain firms in India. He also named certain firms to which he had exported goods from Hongkong.

(8) Statement of Satish Mohan Aggarwal was also recorded wherein he stated that he knew the petitioner for the last 4 or 5 years, and that when the petitioner last came to Delhi he had discussed with him the problem relating to finding of alternate buyers for taking delivery of the goods which were lying unclear at Calcutta and that he had introduced one firm M/s Y. K, Enterprises of Noida for this. Satish Mohan Aggarwal said he was to get Rs. 3.00 per piece from the alternate buyers. He said on 22-3-1987 the petitioner had come to his house at Delhi and made out the programme for Calcutta and for that purpose he had come there. Satish Mohan Aggarwal also admitted, with reference to certain documents seized for the hotel " room, that these contained break-ups of value/ Item wise charges relating to imports made from M/s B.N. Corporation and further that these were under-invoiced. He gave description of the imports made earlier which were under-invoiced, In his further statement dated 2-4-1987 recorded at Delhi the petitioner stated that he was working at the instance of one Deepak of Hongkong and he, in turn, was also getting commission at the rate 2 percent He, however, said he did not know the address of Deepak either in Hongkong or in India though he knew his telephone number of Singapore. He admitted that: his firm M/s B.N. Corporation had sent export documents to the afore-mentioned five firms in Delhi. He admitted that he knew C. M. Goyal, a

brother in-law of his elder brother Mahabir Prasad, but he denied if he was the person who had opened the firm M/s Beam Trading Co. under the false name of Choth Mal. He said he did not know the name of the proprietors of those five firms. He again " admitted that goods were never shipped to the five firms mentioned above. He said he knew Sita Ram Aggarwal who used to handle the affairs of Mis. North Eastern Electronics and M/s. Hill Electronics. He. also .said that his nephew Narender was running two firms in Singapore in the flame of M/s Rajgarhia Impex and M/s Sunny Import and Exports. Lastly, the petitioner said that he held Indian passport issued to him at Hongkong which was lying at Nepal with his brother Hanuman Pershad.

(9) Then the grounds of detention refer to the proceedings . in court regarding remand of the petitioner, his making allegations against the "officers of the Enforcement Directorate and his having been falsely implicated in the case. Reference was also to his bail application which was listed for hearing before the Additional Chief Metropolitan Magistrate on 18-4-1987. Reference in the grounds has also been made to statements of various other persons recorded by the officers of the Enforcement Directorate, particularly of the Vijaya Bank.

(10) After seeking permission from the court statement of the petitioner was again recorded on 9-4-1987 while he was in jail. In this he denied in effect his earlier two statements. He was shown the statement of Sita Ram Aggarwal which he described as incorrect though he said he know Sita Ram Aggarwal since June 1986 and that there was, no enmity between the petitioner and Sita Ram Aggarwal. There is also reference in the grounds to the arrest of Site Ram Aggarwal on 20-2-1987 and his retraction and his moving application, for his release on bail. Then the grounds refer to four bills of lading in the name of M/s. International Imperial Co. and M/s. Asia Commercial Co., of the value of about Us \$ 1.75 lacs which were said to be bogus and these had been received by the Vijaya Bank from M/s B. N. Corporation from Hongkong, the firm belonging to the petitioner.

(11) The detaining authority came to the conclusion that the petitioner was indulging in unauthorised transactions in foreign exchange in violation of the provisions of the Fera and that these unauthorised transactions affected that foreign exchange resources of the country adversely. The grounds also. show the awareness of the detaining authority of the fact that the petitioner was in Jail and-that his bail application was coming up for hearing on 13-4-1987 and further that adjudication proceedings and prosecution proceedings under the Fera were likely to be initiated against him.

(12) In support of the petition Mr. Kapil Sibal, learned counsel for the petitioner, raised the following contentions: (1) The petitioner was shown to have been arrested on 3-4-1987 and was remanded to judicial custody till 13-4-1987. His statements were recorded at Calcutta and at Delhi a day earlier. Yet another statement of the petitioner was recorded on 9-4-1987 while he was in judicial custody and this statement formed part of the documents relied upon by the

detaining authority. The screening committee Scrutinised the proposal of the sponsoring authority on 10-4-1987. April 11 and 12, 1987, were holidays and the impugned order of detention was passed on 13-4-1987. The detaining authority had hardly, any time to scrutinise independently the documents which are voluminous for the purpose of arriving at the decision that the petitioner was to be detained (2) The detaining authority relied on irrelevant documents. The vast mass of documents supplied to the petitioner along with the grounds of detention consisted of material which was neither inculpatory nor exculpatory and was consequently irrelevant. The supply of the said material and the purported reliance by the detaining authority on the said material in passing the impugned order showed complete non-application of mind. (3) The petitioner was already in judicial custody at the time of passing of the order of detention on 13-4-1987 and there was no compelling necessity for passing the same. "The detention of the petitioner was not preventive but punitive in nature. The order of detention was passed for a collateral purpose being the impugned order showed complete non-application of mind. If he had moved an application before the Additional Chief Metropolitan Magistrate for his release on bail which was to be heard on 13-4-1987.

(13) The first two submissions can be dealt together. I will, however, note that the first submission does not as such find mention in the grounds in the petition challenging the order of detention. It was raised at the time of arguments. It was contended that the detaining authority had taken into account a vast mass of irrelevant documents having no connection with the petitioner whatsoever. In this connection a reference was made to the import documents of M/s. Getat Import and Export Pte. Ltd. and M/s. Tongkok Trading Co. Pte. Ltd., both of Singapore, with which the petitioner had no concern. It was submitted that the detaining authority appeared to have proceeded on an assumption that the imports made by "Sita Ram Aggarwal from the aforesaid two companies also involved the petitioner which was not true. The detaining authority was thus carried away by large transactions entered into by Sita Ram Aggarwal with the aforesaid two foreign companies which ran into crores of rupees. It was submitted that even the case of the respondents had been limited to the exports made by M/s B.N. Corporation a firm of the petitioner, "where exports have in fact been effected and remittances received in lieu thereof". The fact, Therefore, that the aforesaid two foreign companies having not exported any goods to India and yet Sita Ram Aggarwal having remitted funds to them could not have been taken into account by the detaining authority as the ground for passing the impugned order of detention. Documents at page 92 to 248 of the seizure list A-6 were stated to be merely papers of a writ petition filed by the petitioner in the High Court at Calcutta which had no bearing to the transactions imputed to the petitioner. These documents were thus absolutely redundant and yet these were relied upon by the detaining authority which showed non-application of mind and consideration of irrelevant documents. In support of this argument reliance was placed on a Bench decision of, this court in *Madhu Khanna V. Union*

of India & Ors. (Cr. Writ No. 146/87. decided on Sep. 25, 1987) . In support of the other argument that there was hardly any time for the detaining authority to independently scrutinise hundreds of pages of the documents referred to and relied upon in the grounds of detention and thus there was complete non-application of mind, reference was made to an unreported decision of the Supreme Court in Umesh Chandra Verma v. Union of India & Ors (Criminal Appeal No. 878 of 1985, decided on December 20, 1985 (2). This is a short order and may be reproduced in full :

"SPECIAL leave granted. The appellant was intercepted" by the Officers of the Directorate of Revenue Intelligence on the evening of 12-6-1985 and a large quantity of alleged contraband, gold was recovered from him. He was interrogated on 13-6-1985, almost the whole day, and thereafter at 6 p.m. he was formally arrested u/s 104 of the Customs Act. The same night a detention order was made by the Joint Secretary to the Government of India, Finance Department. Shri Jechmalani's contention before us is that the detaining authority could not have possibly applied his mind to the facts and circumstances of the case having regard to the fact that the documents on which the detaining authority purported to rely in making the order of detention ran to about 234 pages and the documents included the arrest memo which was prepared at 6 p.m. on 33-6-1985. The reference to the arrest memo which was prepared at 6 p.m. as one of the documents which was relied upon by the detaining authority indicates that the documents and the proposal for detention must have been placed before the detaining authority sometime after 6 p.m. in which case it would certainly be Difficult if not impossible for the detaining authority to make the order the same night. We think that in the facts and circumstances of the case the detaining authority could not have possibly applied his mind to the voluminous documentary evidence which was placed before him and for that reason alone the order of detention has to be quashed. The detenu is directed to be set at liberty forthwith. The appeal is disposed of accordingly "

(14) It would thus be seen that on the facts and circumstances of the case before the Supreme Court, it came to the conclusion that "the detaining authority could not have possibly applied his mind to the calumnious documentary evidence which was placed before him". This is not the case before me. The relevant file was produced in Court by Mr. R. M. Begai, learned counsel for the respondents. He submitted that it was on 6-4-1987 that the sponsoring authority sent the proposal .along with the material to the detaining authority which was placed before the detaining authority on the same day. The detaining authority, however. dispirit that the proposal be first placed before the screening committee which consisted of the 4 members, the detaining authority not being a member of the screening committee. Thereafter, complete sets of the proposal along with the document were sent to the members of the screening committee while the original proposal and the documents remained with the detaining authority. The screening committee on 10-4-1987 an I after examine the proposal found the case fit for desertion The statement of the petitioner which

had been recorded on 9-4-1987 was also before the screening committee as well as before the detaining authority. The advice of the screening committee was placed before the detaining authority on 10-4-1987, who, as mentioned earlier, was already seized of the matter. The detaining authority after carefully considering the material placed before him and having satisfied himself that it was necessary to detain the petitioner immediately, passed the impugned order on 13th April 1987. Mr. Bagai surmised that though 11-4-1987 and 12-4-1987 were holidays being Saturday and Sunday there was no bar under the law for the detaining authority to attend to his official work on these days". The question that has been raised before me is if in the circumstances of the case there was time enough for any reasonable person to go through the mass of documents which has been relied upon by the detaining authority. Argument was also raised by Mr. Sibal that it was had for the detaining authority to act on the opinion of the screening committee and further he wanted to know what was the material which was placed before the screening committee and whether the same very material was placed before the detaining authority, in *Pratap Jeevanlal V. State of Maharashtra* 1986 Cri. LJ. 1157 the court, while considering the question of delay in passing the order of detention, made the following observation -

" MOREOVER, it is noticed that decision to detain a person is not taken hastily at least in this State because a system seems to be prevailing where a proposal is placed before the Screening Committee and after the Screening Committee has given its clearance the decision is taken. We do not see law a system which is in fact for the benefit of a possible detainee can be said to be creating delay on which ground the order of detention can be vitiated. We are, Therefore, satisfied that the period between the date of the incident and the date of the passing of the order of detention has been satisfactorily explained."

In the present case, though the matter had been referred to the screening committee, yet the detaining authority applied his independent mind and himself considered the material placed before him and after he was satisfied the impugned order was made. The question as to whether the material which was placed before the screening committee was the same as before the detaining authority appears to me to be irrelevant. I may also note that Mr. Sibal also referred to a decision of the Punjab and Haryana High Court in *Jaswant Rai v. State of Punjab* [1978] 80 P.L.R. 629 to contend that the detaining authority could not act on the recommendation of the screening committee. In this case, however, the court observed, after referring to various documents in the relevant file, that it was obvious that the decision of detention was not made by the Home Secretary who was the only competent authority in view of the provision of S. 3 of the Act but that decision was taken by the so called screening committee which consisted of 5 officers and that the screening committee had no status in the eyes of law and had thus no authority to arrive at any such decision, the court also observed that from what had been said above it appeared that the Home Secretary abdicated his functions to the so called screening committee which had no existence under the statute. This is not the case before me and this decision of the Punjab and

Haryana High Court is Therefore inapplicable. No doubt, the screening committee is not a statutory body. but its functions are purely to assist the detaining authority and, as noted in the judgment of the Bombay High Court in Pratap Jeevanlal (supra), there could be no bar for the detaining authority to take assistance of the screening committee. When rule is issued by the court it would be for the detaining authority to justify the impugned action but that does not mean That the detaining authority is put in the dock. In view of the clear statement by the detaining authority that he had carefully considered the material placed before him, it cannot be said that he could not have reasonably applied his mind to the material placed before him. This contention has, Therefore, to be rejected.

(15) It was submitted by Mr. Bagai that the provisions of article 22(5) of the Constitution had been complied and the petitioner was supplied with all the documents relied upon by the detaining authority. He said no irrelevant material had been taken into consideration by the detaining authority and he said that the ratio in Madhu Khanna's case (supra) was inapplicable in the instant case. He said what the court held in the case of Madhu Khanna was that the detaining authority was obliged to supply only those documents which were relied by the detaining authority. The following observations made in that case may be referred to, to understand the rival contentions :-

" THUS, in our view, there are two stages of the matter. At the first stage the detaining authority has to come to the conclusion based on his subjective satisfaction on all the material facts and documents placed before him and the second stage arises after the detaining authority has arrived at its opinion regarding detention of a particular person. In. respect of the first stage, if any vital document or material which is beneficial to the detenu and is relevant to the matter, is not placed before the detaining authority the detention order can be struck down on account of non-application of mind. But where all relevant material and vital documents have been placed before the detaining authority then the second stage comes and at this stage the detaining authority may not consider it necessary to pass the detention order on all the information and documents before him. He may consider it sufficient to refer to or rely upon only some of the material or documents and may not seek the aid of the others in support of his order of detention. He thus has to go through a process of selection and then formulate the grounds of his satisfaction for passing the detention order. Such grounds would include the material documents on which the conclusion to detain is arrived at. It is only copies of such documents that should be supplied to the detenu even without his. demand, as part of the grounds of detention."

la that case it was argued by counsel for the detenu that all those documents and material which were considered by the detaining authority at the first stage should be deemed to be material and vital documents also when the second stage came for framing the grounds of detention and supplied to the detenu. This

was negated by the court. Based on this argument of Mr. Sibal was that the detaining authority should have sifted the material and the documents at the first stage and at the second stage he was to rely upon only that material or documents which were to be the basis of the order of detention. Thus, it was contended that the detaining authority had to go through a process of selection and then formulate the grounds of his satisfaction for passing the detention order, and that the requirement of law was that only such documents and material which had thus been relied upon should be communicated to the detenu. Mr. Sibal required as to how it could be said that the documents which had nothing to do with the petitioner in the instant case could be said to have been relied upon by the detaining authority. He complained that the process of selection was not gone into and whole mass of irrelevant material was relied upon and referred to while passing the order of detention. His grievance was not that all the documents had not been supplied but that the subjective satisfaction of the detaining authority was based on irrelevant documents which had no link with the petitioner. It was not disputed, may it could not be disputed, that there was some material on record which could link the petitioner with the activities alleged against him and which could possibly lead to the passing of the order of detention against him. At this stage, it may now be appropriate to refer to the documents and material mentioned above which, according to the petitioner, were irrelevant vitiating the order of detention. In the grounds of detention with reference to the statement of Sita Ram Aggarwal, it is mentioned that he was shown photo-copies of various documents furnished by Vijaya Bank and he stated that he had either submitted or negotiated those documents through Vijaya Bank and that those related to the remittances sent out of the accounts of two firms (M/s North Eastern Electronics and M/s. Hill Electronics) to Hongkong and Singapore and that regarding the overseas parties, who prepared those documents, they were either the companies of the petitioner or other parties known to him. Sita Ram Aggarwal also stated that he deposited Indian currency totalling about Rs. 57,59,000.00 and Rs.49,90,000.00 in the accounts of M/s Hill Electronics and M/s, North Eastern Electronics and corresponding remittances totalling U.S. \$ 3,87,077.44 and U.S \$ 3.96,799.30 respectively were effected to Hongkong and Singapore and further that the Indian currency deposited in those firms' bank accounts used to be received by him from Subhash, nephew of the petitioner, and his employee Choth Mal, under instructions of the petitioner and in consideration for receipt of funds outside by the petitioner and others. As noted above, the two firms M/s. North Eastern Electronics and M/s. Hill Electronics were floated, though owned by Sita Ram Aggarwal and the instance of the petitioner. Then the petitioner also in his statement recorded on 2-4-1987 stated that his firm M/s B. N. Corporation had sent export documents to 5 firms named in the beginning of this judgment though he did not know the names of the proprietors thereof. The petitioner further admitted in his statement that though his firm received remittances worth Rs. 85 lacs to Rs. 90 lacs during they year 1986 from the aforesaid 5 firms, no goods, were sent to India for which his firm had issued invoices favoring the said 5 firms and that after receiving the

remittances from these 5, firms in his Hongkong bank account he used to transfer those funds to other parties. Remittances were thus made by Sita Ram Aggarwal from the accounts of M/s North Eastern Electronics and M/s. Hill Electronics in Vijaya Bank to not only M/s. B. N. Corporation at Hongkong but also to M/s. Getat Import & Export Pte. Ltd. and M/s Tongkok Trading Co. Pte. Ltd. in Singapore when corresponding amounts which had been deposited in Indian currency in the accounts of M/s. North Eastern Electronics and M/s Hill Electronics were provided by the petitioner through his , nephew Subhash and his employee Choth Mal. In *Ashok Kumar Vs. Delhi Administration and Others*, the court observed that preventive detention was devised to afford" protection to society and that the object was not to punish a man for having done something but to intercept before he did it and to prevent him from doing it. Justification for such detention was suspicion or reasonable probability and not criminal conviction which could only be warranted by legal evidence. In *Khudiram Das Vs. The State of West Bengal and Others*, also, the Supreme Court observed that since every- preventive measure was based on the principle that a person should be prevented from doing something which, if left free and unfettered, it was reasonably probable he would do, it must necessarily proceed in all case, to some extent, on. suspicion or anticipation as distinct from proof. The Supreme Court then observed in this case as under :-

"THE matters which have to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of the surrounding circumstances and other relevant material, would be likely to act in a prejudicial manner as contemplated in any of sub-clauses (i), (ii) and (iii) of clause (1) of sub-section (1) of Section 3, and if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not matters susceptible of objective determination and they could not be intended to be judged by objective standards. They are essentially matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, Therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of the detaining authority which by reason of its special position, experience and expertise would be best fitted to decide them. It must in the circumstances be held that the subjective satisfaction of the detaining authority as regards these matters constitutes the foundation for the exercise of the power of detention and the Court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. The Court cannot, on a review of the grounds, substitute its own opinion for that of the authority, for what is made a condition precedent to the exercise of the power of detention is not an objective determination of the necessity of detention for a specified purpose but the subjective opinion of the detaining authority, and if a subjective opinion is formed by the detaining authority as regards the necessity of detention for a specified purpose, the condition of exercise of the power of detention wo "ld be fulfilled .This would clearly show that the power of detention is not a quasi-

judicial power."

Then the Supreme Court in this judgment held that it could not be said that the subjective satisfaction of the detaining authority was wholly immune from judicial reviewability and then set out certain principles on the basis of which the validity of the subjective satisfaction could be subjected to judicial scrutiny.

(16) Thus, with reference to the grounds of detention, the documents and the material which were placed before the detaining authority, it could not be said that the documents pertaining to remittances to M/s Getat Import & Export Pte. Ltd. and M/s. Tongkok Trading Co. Pte. Ltd. at Singapore were wholly irrelevant and could not be taken into consideration by the detaining authority. Same would be the case of the documents pertaining to M/s. Sunny Imports & Exports, Singapore, a firm belonging to Narendra, nephew of the petitioner. Mr. Sibal had also some comments to make about the reliance by the detaining authority on the writ petition filed by the petitioner in Calcutta High Court, documents pertaining to which were found at the time of search of his hotel room in Calcutta. According to him, it was again a case of non-application of mind by the detaining authority as filing of writ petition in the Calcutta High Court retarding release of certain consignment exported earlier by M/s. B. N. Corporation, Hongkong to certain Indian parties could certainly be of no relevance. Grounds of detention mentioned that the petitioner left Hongkong on 16/17th March 1987 for Nepal from where he came to Delhi on 22-3-1987 and that he had come up to Gorakhpur by bus and thereafter by train up to Delhi. From Delhi he went to Calcutta on 24-3-1987 by an Indian Airlines flight on ticket in the name of "Mr. S. C. Aggarwal" which ticket was seized from his Calcutta hotel room. The petitioner in his statement which again finds mention in the grounds of detention stated that he was having an Indian passport issued to him at Hongkong but he had left the same at Nepal with his brother Hanuman Parshad before coming to India. Then the grounds recite the purpose of the petitioner's visit to Calcutta and his filing of writ petition in the High Court there. Mr. Bagai said that the detaining authority did rely on the papers of the writ petition inasmuch as among others it showed that the petitioner did export goods to India on earlier occasion; documents annexed with the writ petition related to past activities of the petitioner in India; confirmed the fact that the petitioner was the proprietor of M/s. B. N. Corporation, Hong Kong; one of the parties to whom the petitioner wanted to sell part of the consignment detained at Calcutta was M/s. P.K. Enterprises which had the same address as two of the five firms mentioned in the beginning of the judgment when those two firms were not found at the addresses mentioned nor were their proprietors traceable. I do not, Therefore, find anything wrong in the detaining authority relying on the documents pertaining to the writ petition filed by the petitioner in the High Court of Calcutta. Even if the contention of Mr. Sibal regarding reliance by the detaining authority on irrelevant material has any weight, it cannot be upheld in view of the provisions of S. 5A of the Act. This section was introduced with effect from 1-7-1975. This makes the grounds of detention severable. I would, Therefore,

reject the first two contentions of the petitioner.

(17) In support of his third and last contention relating to the compelling necessity to detain the petitioner, Mr. Sibal relied on certain decisions of the Supreme Court, particularly *Ramesh Yadav v. District Magistrate, Etah* AIR 1986 SC 314 and, an unreported decision of this court in *Kirpal Mohan Virmani v. Tarun Roy & Ors.* (Cr. Writ No. 39 of 1987, decided on Aug. 26, 1987) (8). He said it was not sufficient for the detaining authority to be merely aware of the fact that the detenu was in judicial custody. He must also be convinced that there was every likelihood of the detenu to be enlarged on bail and further that if enlarged the detenu would continue to indulge in similar activities for which he was detained. Mr. Sibal said that in the present case it could not be said that the detaining authority was either satisfied that there was likelihood that the petitioner might be released on bail or that the detaining authority applied his mind to the issue if the petitioner were to be released on bail he would be capable of continuing the activities for which he was detained. He stated various circumstances to show that the petitioner could not have continued to indulge in the activities alleged against him. These were : (1) The passport of the petitioner could have been impounded by the Enforcement Directorate; (2) The companies through which the petitioner was allegedly acting were known to the authorities (3) The name of the bank, namely Vijaya Bank, through which the petitioner was allegedly conducting dubious transactions was known : (4) Persons through whom the petitioner was allegedly dealing were also to the knowledge of the authorities; (5) All the alleged activities were undertaken outside India while the petitioner was in Hong Kong ;(6) Personally the petitioner did not commit any single activity alleged against him while in India; and (7) The presence of the petitioner could be secured by appropriate orders and measures. Mr. Sibal also contended that it was clear from the grounds of detention that the impugned order of detention was passed on 13-4-1987 because a bail application moved by the petitioner was to be heard on that date. He said it was only to circumvent the possible grant of bail that the impugned order of detention was passed and that consequent the order was passed for a collateral purpose. As noted above, when the petitioner entered into India last time, he left his passport at Nepal. In *Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others*, , the Supreme Court observed that there was no rule of law that commonsense should be put in cold storage while considering constitutional provisions for safeguards against the misuse of powers by authorities though these constitutional provisions should be strictly construed. Seeing the conduct of the petitioner in the present case and enormity of his dealings leading to draining out of the country scarce foreign exchange running into hundreds and thousands of U.S. Dollars it could hardly be said that there was no compelling necessity for the detaining authority to pass the impugned order of detention. Circumstances narrated by the petitioner which could have prevented his indulging in activities alleged against him are too flimsy to be taken notice of seriously by any one on the background of the grounds of detention in the

present case. It is not necessary for me to refer to the various judgments cited by Mr. Sibal on this point as I do not find any principle discernible from those authorities which could be made applicable in the present case. I may, however, refer to a decision of the Supreme Court in *Poonam Lata Vs. M.L. Wadhawan and Another*, on the question of passing the order of detention in a case where the detenu is already in jail. The following observation in that judgment may be quoted with advantage :-

"IT is thus clear that the fact that the detenu is already in detention does not take away the jurisdiction of the detaining authority in making an order of preventive detention. What is accessory in a case of that type is to satisfy the court when detention is challenged on that ground that the detaining authority was aware of the fact that the detenu was already in custody and yet he was subjectively satisfied that his order of detention became necessary. In the facts of the present case, there is sufficient material to show that the detaining authority was aware of the fact that the petitioner was in custody when the order was made, yet he was satisfied that his preventive detention was necessary."

The fact that the petitioner was in fact enlarged on bail on 13-4-1987 fully justified the apprehension of the detaining authority that he was likely to be released on bail. In *Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others*, the Supreme Court was considering an argument that there could be, no possible ground for entertaining a reasonable belief as required by sub-clauses (a), (b) and (c) of sub-s.(1) of S. 132 of the Income Tax Act before, ordering search in the given case. The Supreme Court observed as under :--

"INDEED the accident that undisclosed property is found on a search may not be a justification for the authorisation] of a search, if in fact there had been no grounds for entertaining reasonable belief. But finding of assets as expected by the Director of Inspection on the information received by him would at least support the view that the authority concerned had reliable information on which he could entertain the necessary belief."

(18) The contention that there was no compelling necessity for passing the order of detention, Therefore, also fails. The result of the above discussion is that the present petition has to be dismissed. Rule is discharged.