
(1999) 04 BOM CK 0074
In the Bombay High Court
Case No : Writ petition No. 649 of 1998

Bawne Ignatius John Rego	Vs	APPELLANT
The State of Maharashtra and others		RESPONDENT

Date of Decision : 08-04-1999

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 3

Citation : (1999) 5 BomCR 701 : (2000) 1 MhLj 575

Hon'ble Judges : T.K. Chandrashekhara Das, J;A.V. Savant, J

Bench : Division Bench

Advocate : Satish L. Maneshinde, for the Appellant; Rajiv Patil , Assistant Public Prosecutor and R.M. Agarwal, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—The petitioner, a detenu challenges the order of detention passed on 2-4-1998 by the 2nd respondent under the provisions of Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 annexed and marked Exh. "A". Exh. " B" annexed to the petition contains the grounds of detention. The grounds of detention spelt out that the Detaining Authority was satisfied that the petitioner is indulging in smuggling the Narcotic Substances and is likely to continue that business unless he is detained.

2. The story unfolded from the grounds of detention is that on 9-10-1997 the security personnel had intercepted s suit case while screening the baggage of Air India Flight No. A.I-101, going to New York via London and this fact was communicated by the Security Personnel, to the Air Intelligence Unit of Customs by telephone and immediately the Air Intelligence Unit of Customs rushed to the X-ray machine counter at Module-11 of Sahar Airport, Bombay and they found that the suit case was carried by one Capt. Dastur who was to operate Flight No. AI-101 on that day as Commander. The Air Intelligence Unit found that the narcotic substances were concealed in that suit case and according to the

statement of Capt. Dastur, the suit case was handed over by one Dinesh Pashtakiya at the instance of one Somani who had obtained narcotic drugs from one Rai. It is revealed from the statements of the Pashtakiya that the petitioner was keeping the suit case for some time and had arranged for the suit case to be handed over to his son Dinesh @ Derryl Rego after it reaches London, Derryl Rego is settled in U.S.A. For the purpose of this case, we are not concerned about the details of the offence that has been committed by the petitioner and others concerned. However it is revealed from the grounds of detention that the petitioner was playing an important role in smuggling the narcotic substances from India outside as an important link and he was a member of a gang to commit an organized crime. It is also relevant to be noted that the grounds of detention indicate that the petitioner was on an earlier occasion, arrested by Scotland Yard for the similar prejudicial activities. The Detaining Authority after relying upon the relevant materials and statements has come to the conclusion that the propensity and potentiality does very much exist to commit such offence by the petitioner again and with a view to preventing him from indulging him in illicit traffic in narcotic substances in future, the detention order was passed.

3. The main argument of the learned Counsel for the petitioner Mr. Maneshinde, though he has raised several contentions in the writ petition, was confined only to the following points:

(1) the apprehension entertained by the Detaining Authority that the petitioner is likely to commit offence in future when he was in judicial custody in pursuance of the alleged offences, which attracts minimum imprisonment of 10 years and that there is no possibility of moving for bail, is quite out of place and does not sound-logic and the order of detention was passed without proper application of mind.

(2) The petitioner has not filed any bail application and this fact has been noted by the Detaining Authority. The Detaining Authority has also noted that the bail application of Capt. Dastur was rejected twice one on 12-12-1997 and he filed another bail application and the same was rejected on 27-3-1998. The fact of rejection of bail on 27-3-1998 must have been known to the Detaining Authority and the orders of rejection of bail has not been relied upon, and nor supplied by the Detaining Authority which vitiated the order of detention, as his right under Article 22(5) of the Constitution was vitally affected.

4. Regarding the first point, the learned Counsel for the petitioner Mr. Maneshinde has relied on the decisions of the Supreme Court in *Sita Ram Somani Vs. State of Rajasthan and Others*, *N. Meera Rani Vs. Government of Tamil Nadu and Another*, *Dharmendra Suganchand Chelawat and another Vs. Union of India and others*, *Dharmendra Suganchand Chelawat and another Vs. Union of India and others*, *Principal, Rajni Parekh Arts, K.B. Commerce and B.C.J. Science College, Khambhat and Another Vs. Mahendra Ambalal Shah*, . We do not consider it necessary to discuss about all the above decisions cited by the learned Counsel for the petitioner.

5. However, we have to refer certain observations made by the Supreme Court in view of the argument advanced in this case. The Supreme Court in *N. Meera Rani Vs. Government of Tamil Nadu and Another*, has observed in Para 22 as under:

"22. We may summarise and reiterate the settled principle. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when detenu is already in custody; the Detaining Authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order, but even so, if the Detaining Authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us to be the correct legal position."

6. Drawing our attention to the pleadings of the Detaining Authority and the Sponsoring Authority, the learned Counsel tried to argue that there was no cogent material before the Detaining Authority to come to the conclusion that there is compelling reason as laid down in the aforesaid decision to detain the petitioner. He drew our attention to some of the paragraph in the reply affidavit by the Detaining Authority, particularly, paragraph Nos. 8,9 and 14 of the affidavit filed by Mr. Sandhu, who is the Detaining Authority. The said paragraphs are reproduced under:

"8. With reference to paragraph 5(B) and 5(C) of the petition. I say that it is not open for the petitioner to know as to when the proposal/documents were received, and what time and date the scanning of the material started and what time and date it ended. However, for the purpose of perusal of this Hon'ble High Court, the said proposal will be produced as and when directed. I say that the Assistant Commissioner of Customs, P.I.T. N.D.P.S. CELL Sahar Airport, Mumbai submitted the proposal of the detenu along with other three proposals of the co-accused along with concerned documents which was received in the Home Department on 19-11-1997. I say that the Under Secretary scrutinized the proposal and noticed that the said proposal was not submitted with the proper Index and legible copies, and, therefore, the letter was sent to the Sponsoring Authority on 19-11-1997, for necessary compliance. I say that the concerned Desk Officer prepared the detained note and submitted the same to the Under Secretary on 26-11-1997. I say that concerned Officer Shri Arun Chakravorty of Customs department also discussed the matter with the Under Secretary and the Deputy Secretary on 26-11-1997. I say that additional information and documents were called for from the Assistant Commissioner of Customs vide

Government letter dated 29-11-1997. I say that the reminder was sent for the same vide Government letter dated 6-12-1997 and detained note about the four proposal was prepared by the Under Secretary on 8-12-98 and it was submitted through the Deputy Secretary. I say that mean while the required information documents, called from the Sponsoring Authority vide Government letter dated 29-11-97 and reminder dated 6-12-1997 were received in the Home Department on 15-12-1997. I say that the Deputy Secretary also considered the proposal and after putting his remarks he submitted the file to me on 15-1-1998. I say that I considered the proposal scrutinized the documents and formed opinion on 20-1-98 that the three cases along with the case of the present detenu are the fit cases for considering the proposal for detention. I say that in the meantime, I considered the proposals of the co-accused in the same case and instructed to process the case in respect of the present detenu. I say that the draft of the Detention Order was prepared on 5-2-1998. However, I thought it fit to modify the said draft on 11-2-1998. I say that I considered the above mentioned case once again on 19-2-1998 and I say that concerned office was permitted to submit the Court's order and Remand Application and other relevant documents. On 24-2-98, I say that I again considered the said proposal on 16-3-1998, and prepared the draft of the order of detention. I say that in the meantime on 30-3-1998 the Sponsoring Authority forwarded the additional information called for. I say that the additional information was once again included in the material and I considered the proposal afresh on 1-4-1998. I say that after considering the said proposal afresh and scrutinizing the all documents, I finalized the grounds of detention contemporaneously and issued the order of detention on 2-4-1998. No additional documents were received thereafter. I say that there is no delay in issuing the order of detention. I crave leave to refer to and rely upon the affidavit of the Sponsoring Authority in respect of other details; I deny that petitioner is entitled for in respect of the original Grounds of Detention formulated by me as whatever material which were considered and the grounds formulated by me are furnished to the detenu. I say that the contention of the petitioner in the said ground is misconceived and not tenable. I deny that the grounds of detention is mere repetition of the proposal with grammatical and consequential variation. I deny that there is any non application of mind of my part. I deny that order of detention is issued with casual, indifferent and in a routine manner. I further deny that the petitioner is entitled to know as to when the documents/proposals were received and at what time and date the scanning of material started and what time and date it ended. I say that working schedule of the Detaining Authority need not be disclosed as the finishing enquiry by the petitioner is not permitted. I say that the Detaining Authority is entitled to formulate, reformulate, modify and change and add, and/or delete the various grounds. However, the same cannot be recorded.

With reference to Paragraph 5(D) of the petition, I deny that the order of detention is issued mechanically and without application of mind. I further deny I did not read all the material carefully. I further deny that my subjective

satisfaction is impaired and has rendered the detention order illegal, unconstitutional and void.

14. With reference to paragraph 5(I) and 5(J) of the petition, I say that Bail Application No. 277 of 1997 in Remand Application No. 311 of 1997 dated 14-10-1997 by Capt. Zarius Dastur and reply dated 22-10-97 to the same filed by the Sponsoring Authority and the order dated 12-12-97 passed by the Special Judge, N.D.P.C. Court, Br. Mumbai were placed before me. I say that I considered those documents and I relied upon the said documents while passing the order of detention. I say that copies of those documents have been supplied to the detenu. I say that in para 35 of the Grounds of Detention, I have elaborately stated about awareness. I say that Application for bail by Mr. Zarius Dastur was rejected by the Special Judge, N.D.P.S. Court, Mumbai on 12-12-1997 and the said order of rejection of bail was also supplied to the detenu which is at Sr. No. 43 in the list of documents. I deny that there is any non-disclosure of fact and therefore, the Detention Order suffers from non-application of mind. I deny that order of detention is void and illegal. I deny that there is non-supply of documents. I deny that petitioner was prevented from making an effective representation against the order of detention and therefore, the Order of detention deserves to be set aside."

7. The learned Counsel for the petitioner also took us to the relevant portion of the affidavit in reply of Mr. Malkit Singh, Assistant Commissioner of Customs to show that the order was passed mechanically.

8. It has come out from the pleadings of Mr. Sandhu referred to above that the Assistant Commissioner of Customs, N.D.P.S. CELL, Sahar Airport Mumbai has submitted proposal of detenu along with three proposal of the co-accused with concerned documents. This proposal was received by the Home Department on 19-11-1997. The Under Secretary, Home Department scrutinized the proposal and some defects were pointed out in the indexing. It was therefore, returned to the Sponsoring Authority to correct certain defects and after correction of the defects in the index, the same was again submitted to the Under Secretary on 26-11-1997. The discussion was also held between the Deputy Secretary and Mr. Arun Chakravorty of Customs Department on 26-11-1997. After exchange of some correspondence, again detailed note about four proposals was prepared by the Under Secretary on 8-12-1998 and submitted through Deputy Secretary. The Deputy Secretary considered the proposal and after his remarks the file was sent to the Detaining Authority on 15-1-1998. The Detaining Authority had scrutinized the proposal and came to the conclusion on 21-1-1998 that all the four cases are fit to be considered for proposing the detention. The draft of the detention order was prepared on 5-2-1998. The same was modified on 11-2-1998. In his affidavit Mr. Sandhu, the Detaining Authority has stated that he once again considered the draft and proposal on 19-2-1998 and concerned officer was permitted to submit the Court orders, remand applications and other relevant documents on 24-2-1998. He says that he had again considered the proposal on

13-3-1998 and prepared the draft of the detention order. In the meantime on 13-3-1998 the Sponsoring Authority forwarded the additional information which was called for. After inclusion of the additional information, in the materials, again the Detaining Authority considered the proposal a fresh on 1-4-1998 and after considering the proposal afresh and scrutinizing all the documents once again he finalized the grounds of detention and contemporaneously issued impugned order of detention on 2-4-1998.

9. Mr. Malkit Singh, The Asst. Commissioner of Customs, COFEPOSA Airport, Bombay, says in his affidavit that on 9th October 1997, the Air Intelligence Unit Sahar Port arrested the petitioner in respect of seizure of 1080 gms. of heroin valued to Rs. 2,16,000/- and the petitioner was playing a vital role in the said transaction as a transporter. The case was registered on 9-10-1997, investigation was in progress. The proposal for passing detention order was initiated and sent to the Screening Committee on 25-10-97. The proposal was approved in the meeting on 27-10-97 and the said approval is communicated to the COFEPOSA CELL on 6-11-97. On receipt of the approval of the proposal, the documents were prepared and proposal was sent to the Detaining Authority on 19-11-1997. The Detaining Authority had called for additional documents and the same were sent to Detaining Authority on 21-1-98. He says that on or about 19-2-1998 the Detaining Authority once again called for the documents such as copy of the Bail Application No. 9 of 1998 filed by Capt. Dastur, copies of the complaint filed in the N.D.P.S. Court by the department, copy of the Test Report received from the Chemical Examiner, etc. For the compelling reasons to detain the petitioner in custody, the Detaining Authority has replied in every details in the affidavit in reply. In the grounds of detention it is mentioned that the detenu was apprehended in 1965 by Scotland Yard, London for smuggling of Narcotic drugs and was sentenced to 8 months imprisonment and therefore, he was dismissed from the services of Air India. After considering the proposal and scrutinizing the documents and antecedents of the detenu and also after considering the important role played in the present prejudicial activities he was satisfied that the potentiality and propensity of the detenu to continue and engage himself in smuggling activities in future in Narcotic Drugs still persists and therefore, for that compelling reasons the Detaining Authority has passed the impugned order.

10. The learned Counsel for the petitioner Mr. Maneshinde submits that the conclusion arrived at by the Detaining Authority is not based on any materials, particularly, when the petitioner has never filed any application for bail and who is continuing in the judicial custody for the offence, the apprehension entertained by the Detaining Authority is only mechanical and therefore order is vitiated. In order to appreciate the contention of the Counsel it is necessary to refer to the affidavit in reply of the Detaining Authority in para 14. In paragraph 14 the Detaining Authority says the Bail Application No. 277 of 1997 and Remand Application No. 311 of 1997 dated 14-10-97 by Capt. Dastur and reply to it dated 22-10-97 along with order passed by the Special Judge, N.D.P.S. rejecting the Bail Application of Dastur on 12-12-97 was placed before the Detaining Authority.

He says that he has considered the bail application and the order and also he supplied the copy of the order and application to the detenu. He says that there is no non-disclosure of any material facts and therefore, impugned order of detention is not vitiated in any manner as alleged by the petitioner.

11. According to the Counsel for the petitioner, the non application of mind is writ large in the circumstances of the case. In view of the decisions cited above, the learned Counsel argues that the detention order is liable to be set aside on that sole ground.

12. The learned Counsel for the petitioner has vehemently argued that the Detaining Authority has failed to look into the fact that the detenu is already in custody and he has never applied for bail. Captain Dastur's application being rejected is a circumstance which is required to be taken into account for deciding as to the compelling circumstances to put the petitioner in to custody. The principle laid down by the Supreme Court has not been considered by the Detaining Authority, he argues.

13. In reply to the argument of the Counsel for the petitioner, the learned Additional Public Prosecutor, Mr. R.L. Patil has contended that though in certain cases non-furnishing of bail application and order passed thereon will be fatal to the detention order, in this case, it is not applicable. According to him, the petitioner cannot have any grievance of non furnishing of bail application and order rejecting the bail application of Capt. Dastur. The detenu can make the complaint only if the bail application filed by him before the Court and the order passed thereon is not furnished to him. As far as this case concerned, according to the learned A.P.P. the order is not vitiated because the petitioner has never applied for bail. The petitioner was supplied of course, the bail application and order passed thereon in respect of the custody of Cap. Dastur which does not mean that the non furnishing of every application of Capt. Dastur is fatal vitiating the detention order. Mr. R.L. Patil also submits that the circumstance relied upon by the Detaining Authority that the petitioner is likely to apply for bail is relevant circumstance which Detaining Authority has taken into consideration for arriving at his conclusion. He submits that the smuggling activities in the present case were in an organized manner where the petitioner has played important role. It is sufficiently made clear in the detention order that the drugs originated from Rai handed over by Somani who in turn handed it over to detenu on 23-9-97, and according to their arrangement, the detenu was supposed to deliver the same to Dinshaw Pashtakiya and Dinshaw Pashtakiya to deliver it to Cap. Dastur to take it to London and from where it should be sent to U.S.A. where the detenu had arranged his son Dinesh @ Derryl Rego to deliver it to the destination in New York. There are enough materials before the Detaining Authority to come to the conclusion, particularly taking into account the antecedents of the petitioner, that the petitioner is likely to indulge in smuggling activities in future. At this juncture, the learned Counsel for the petitioner Mr. Maneshinde has argued that the Detaining Authority has not made clear in the detention order on which of

the specific material the Detaining Authority has come to such conclusion. To this argument, the learned A.P.P. Mr. Patil drew our attention to the decision of Supreme Court in AIR 1988 S.C. 923 in State of Gujarat v. Sunil Fulchand Shah and another. It says that the Detaining Authority is not required to mention reaction regarding every piece of materials specifically and separately. In para 9 of the Judgment, the Supreme Court has observed thus:

"9. The next point urged by Mr. Bobde was that it was necessary to have mentioned in the grounds (Annexure B) served on the detenu the fact that the Detaining Authority was of the view that "Not much credence could be given to the" statements in the petition, dated 3-10-1984. The state of the mind of the Detaining Authority while holding that much credence could not be given to the document should be treated to be a ground essential to be served on the detenu. Reliance was placed on the observations in Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, . The contention is that factual inference is included in the expression "grounds" and has to be expressly and specifically stated. We are afraid the assumption on which the argument is founded is not correct. So far as the inference drawn by the Detaining Authority from the materials on the record and his subjective satisfaction in this regard are concerned, they are expressly stated in the grounds and there cannot be any grievance on that score. The objection of the respondent, properly analysed comes to this, that the reason why the Detaining Authority is not impressed by a particular piece of evidence or on the other hand the reason why he prefers to rely on any other evidence should be detailed in the grounds. Mr. Bobde urged that if the respondent had known that the Detaining Authority didn't attach much credence to the statements in the petition dated 3-10-1984 he would have attempted to impress upon the relevant authorities to take a contrary view. We do not find any merit in this contention and hold that it is not necessary to mention in the ground the reaction of the Detaining Authority in relation to every piece of evidence, separately, Besides, the recital in Annexure B that the Detaining Authority formed his opinion after consideration of the aforesaid document by itself clearly implied that he was not impressed by the statement therein. The detenu cannot, therefore, be heard to say that he was prejudiced in any manner."

14. The learned A.P.P. though admit that circumstance that there is no prospect of the detenu being released on bail is a ground for setting aside the detention order in some cases, but in this case merely because of the fact that the petitioner has not filed bail application at all cannot consider it sufficient for the release of the detenu. The apprehension that detenu is likely to be released as entertained by the Detaining Authority in this case cannot be treated as one made on conjectures or irrelevant materials. In this, connection, he brought to our attention that Capt. Dastur was subsequently granted bail by this Court on 29-7-1998. This circumstance will go to show that merely because the petitioner has not filed any bail application one cannot automatically come to the conclusion that there was no possibility or prospect that the detenu is not likely

to be enlarged on bail. In the facts and circumstances of this case, we have to agree to the submissions made by the learned A.P.P. on this point. Therefore, the contention of the learned Counsel for the petitioner that the conclusion reached by the Detaining Authority was mechanically and without proper application of mind has to be rejected. Therefore, both the points formulated above, are to be decided against the petitioner.

15. The learned Counsel for the petitioner next contended, though he has not raised in the writ petition, that going by the averments in the reply filed by the Detaining Authority and Sponsoring Authority, it cannot be said that the grounds of detention have been formulated by the Detaining Authority contemporaneously. He pointed out from the above referred pleadings that the draft detention order was prepared even according to the Detaining Authority as far back as on 5-2-1998. Therefore, the decision has been taken by the Detaining Authority to detain the petitioner on 5-2-1998. Going by the affidavit of the Detaining Authority, after taking this decision, he was considering several materials and called for different documents such as Court orders, remand applications and other relevant documents and those documents were received on 24-2-1998 and after that he again considered the proposal. After that, the Detaining Authority has entertained additional information also and that additional information was again included in the material and once again he considered the proposal on 1-4-1998. This procedure adopted by the Detaining Authority, according to the Counsel for the petitioner is impermissible under law. Such piecemeal consideration of materials and decision taken thereon vitiate the order of detention.

16. The learned A.P.P. Mr. Patil has stoutly contested this contention of the Counsel for the petitioner. He argues that the Detaining Authority has finally taken the decision on 1-4-1998 and issued order of detention on 2-4-1998. All the activities before this date are only treated as consideration of materials. Merely because draft has been prepared that cannot be said to be the circumstances where the Detaining Authority has finally formulated the grounds. There may be various stages with sufficient intervals, materials would flow to the Detaining Authority from the Sponsoring Authority or other sources. The Detaining Authority has to consider such materials at different stages, before formulation of grounds. This procedure is approved by this Court as well as the Apex Court. The learned A.P.P. has cited a decision of this Court reported in 1997(VI) L.J. 257 in Zahoor Ahmed Peshimam v. Union of India & others, where one of us (Savant, J.) is a party. The said decision has made detailed survey of all the Supreme Court decisions on this point. This Court has very comprehensively and exhaustively discussed this aspect of the matter particularly taking into account the decision of the Supreme Court in Tarapada De and Others Vs. The State of West Bengal, and the case of A.K. Gopalan Vs. The Government of India, . In para 37, in Zahoor Ahmed Peshimam v. Union of India and others, this Court observed thus :

"37. The above movement of the papers from the Sponsoring Authority in Mumbai to its head office in Delhi and then immediately from head office to the Detaining Authority would clearly show that the Detaining Authority had ample time to apply its mind to the question of expediency of making an order of detention. As is clear from the approach of the Apex Court in (i) Tarpada De and (ii) A.K. Gopalan (supra), the question of passing the order of detention can be under consideration of the Government for quite some time when the Government applies its mind to the material before it and then finally formulates the ground and issues the order of detention. It is not as if the entire exercise of sitting and scanning material, drawing the conclusions therefrom and formulation of the grounds takes place on one and the same day."

17. The same stand has been reiterated in another decision in Smt. Sharifa Abubaker Zariwala v. The Union of India & others, reported in 1997 All.M.R. (Cri.) 528 where the Division Bench of this Court where one of us (Savant, J.,) is a party, has held in para 8 that Detaining Authority may go on with the scanning of the documents as and when the documents are placed before it, which reads as under :

"8. On behalf of the petitioners reliance was also placed on the judgment of this Court in Criminal Writ Petition No. 833 of 1992 Bhanwarilal Khetaram Saini v. The Union of India and others decided on 15-9-1992, Criminal Writ Petition No. 991 of 1992 Smt. Varsha Vilas Jadhav v. The State of Maharashtra & others, decided on 23-10-1992 and Criminal Writ Petition No. 425 of 1992 Sardul Singh v. The Union of India and others, decided on 29-9-1992. Perusal of the judgments in these cases shows that each case has turned on the facts of that particular case where the Court, after going through the record, found that voluminous documents were required to be perused by the Detaining Authority in a very short time and the Court, after taking into consideration the volume of the documents and the time at the disposal of the Detaining Authority, came to the conclusion that adequate time was not available to the Detaining Authority to apply its mind to all the documents that has been placed before it before making the detention order. As indicated above, in the present case, however, the facts are that the proposal was already with the Detaining Authority, only one document came into existence on 23-6-1995, namely bail order, which was immediately supplied to the Detaining Authority; and after considering that document and other material on record, the Detaining Authority made the detention order on 26-6-1995. In this regard, our attention has been drawn on behalf of the respondents to a judgment of the Supreme Court in Tarapada De and Others Vs. The State of West Bengal, . Perusal of this judgment shows that the Supreme Court has laid down as a law that the Detaining Authority has to apply its mind to the suspected activities of the detenu and then record the satisfaction that it is necessary to preventively detain him in order to prevent him from indulging in such activities in future. It is pointed out by the Supreme Court that it is necessary that the Detaining Authority should scan the documents supplied to it by the sponsoring authority as and when the documents

are made available and it has to apply its mind to all the documents placed before it before making the detention order. Our attention has also been invited on behalf of the respondents to the judgment of the Supreme Court in the case of A.K. Gopalan Vs. The Government of India, . There also the Supreme Court has stated that the Detaining Authority has to scan the documents placed before it. It is not necessary that the Detaining Authority has to wait-even for scanning the documents till the last document is supplied to it. The Detaining Authority may go on with the scanning of the documents as and when the documents are placed before it. However, the Detaining Authority has to apply its mind afresh to all the documents before making the detention order. In the present case, we are satisfied that there is no scope for holding that adequate time was not available to the Detaining Authority to go through all the documents placed before it. Merely because one document is supplied to the Detaining Authority on 23-6-1995, it cannot be inferred that the order made by the Detaining Authority on 26-6-1995 suffers from non-application of mind on the ground that enough time was not available to the Detaining Authority to apply its mind. Ground No. 1 raised on behalf of the petitioner has no substance and therefore, has to be rejected."

18. In view of the above repeated pronouncement of this Court and Supreme Court we do not think the procedure followed by the Detaining Authority in making the draft and awaiting for the documents, again making a draft and again calling for documents, as submitted by the learned Counsel for the petitioner, will in any way vitiate the proceedings. In other words, the mode of consideration of materials by the Detaining Authority depends upon individual to individual. Therefore, some individual may consider the materials in piecemeal and some may consider in cumulatively but that will not affect the order of detention on the ground that the application of mind has not been exercised properly. What is impermissible under law which is discernible from the above decision is that after consideration of the materials the formulation of grounds of detention by the Detaining Authority being subjective, the decision should be taken and order issued contemporaneously. Once decision is taken it should not be changed on receipt of the materials, unless the decision is cancelled. Therefore, merely because the draft has been prepared by the Detaining Authority much before passing of the actual detention order can not afford us to come to the conclusion that there is improper application of mind and that the formulation of the grounds and issuance of the order was not made contemporaneously. In view of this we cannot accept the contention of the learned Counsel for the petitioner that the formulation of the grounds has been done by the Detaining Authority mechanically or it has not been done contemporaneously warranting setting aside the order of detention.

19. Lastly, the learned Counsel for the petitioner advanced a curious argument that in fact the detention order was made by the Deputy Secretary and the Detaining Authority's role was only to put his signature. He also relied upon the affidavit of Mr. Wankhede Section Officer, Home Department where he says that

the Dy. Secy, prepared a detailed note and submitted the same to the Detaining Authority along with the proposal on 15-1-1998 and Detaining Authority has considered the proposal and scrutinized the documents on 21-1-1998. He also says that in the meantime the case of the co-accused was considered and the Detaining Authority has instructed to process the case in respect of the detenu and accordingly the papers were processed and placed before the Detaining Authority on 5-2-1998. The Detaining Authority has considered the case on 11-2-1998 and after carrying out modifications as instructed by the Detaining Authority, the case of the detenu was put up for approval of the Detaining Authority by the Under Secretary and the Dy. Secretary on 19-2-1998 and the Detaining Authority has considered the same on 21-2-1998. He also says that the Customs Officer from the Custom Commissioner's office at Air Port Mumbai discussed the matter with the Detaining Authority on 19-2-1998 and asked to produce the Court orders and remand application submitted in the case and asked for the translation of the statement in Hindi and on receipt of this Detaining Authority has passed the order on 2-4-1998.

20. Dwelling upon the statement of Wankhede, Section Officer, the learned Counsel for the petitioner has contended that only role played by the Detaining Authority is to ascribe his signature and all other work is done by his subordinate. This is impermissible as far as the law of preventive detention is concerned. The Laws of Preventive Detention lay emphasis on the subjective satisfaction of the Detaining Authority to detain the detenu. Therefore, he submits that the process and scrutiny of the documents and material, preparation of the draft by the other officers subordinate to Detaining Authority is impermissible and it will vitiate the detention order. To fortify his argument he cited the decision of Supreme Court in Krishna Murari Aggarwala Vs. Union of India (UOI) and Others, . In Para 7 of the said decision, it is observed as:

"7. Section 3(i) of the Act runs thus :

"3(1) The Central Government or the State Government may :--

(a) if satisfied with respect to any person (including a foreigner) that with a view to preventing him from acting in any manner, prejudicial to -

(in) the defence of India, the relations of India with foreign powers, or the security of India, or

(ii) the security of the State or the maintenance of public order, or

(iii) the maintenance of supplies and services essential to the community, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India;

it is necessary so to do make an order directing that such person be detained."

This power can also be exercised by the officers mentioned in subsection (2) and

in the instant case we are concerned with the District Magistrate. The words "make an order directing that such person be detained" clearly postulate three conditions (1) that the order must be made by the authority mentioned in section 3; (ii) the order must be duly signed by the said authority; and (iii) that only one authority and one authority alone can pass such order of detention. The statute does not contemplate a sort of composite or a joint order passed by several authorities. In the instant case the original order of detention passed by Mr. S.K.D. Mathur bears his signature and even, the grounds mentioned bear his signature. In these circumstances, we are unable to accept the affidavit of Mr. S.K.D. Mathur that the grounds framed by him were merely draft grounds prepared by him which were signed by the permanent District Magistrate later. It is obvious that unless the order made and the grounds prepared are signed by the authority concerned, the order is not made as contemplated by section 3 of the Act. Further more, since the order is based on grounds to be served on the detenu, the order of detention could be passed only if the grounds are in existence and are prepared contemporaneously otherwise the order of detention becomes purely illusory. In view, however, of the contradictory affidavits given by Mr. S.K.D. Mathur, it is difficult to determine whether Mr. S.K.D. Mathur or Mr. R.C. Arora passed the order of detention and as to who among them was satisfied regarding the grounds of detention. This is also a very serious infirmity from which the order of detention suffers and as a result of which the order has to be set aside. There appears to us to be a clear violation of the provisions of section 3 of the Act in this case."

We have closely examined this decision. This is the case where the scrutiny of the documents was done by one officer and order was passed by another officer. Therefore, Supreme Court held in that circumstances, a joint order of detention is vitiated u/s 3 of the Maintenance of Internal Security Act. Therefore, in that case, Supreme Court set aside the order of detention.

21. With great respect, we cannot apply the above principle in this case. The facts and circumstances of the case are quite different and distinguishable from the case before the Supreme Court. The entire process and drafting of the orders was done by the subordinate of the Detaining Authority in this case. The affidavit of Detaining Authority clearly shows that even though the drafts and other materials were prepared by the Deputy Secretary, Under Secretary, the final order of Detaining the petitioner and the formulation of ground of detention was made by the Detaining Authority himself considering all the materials before him. Therefore, the decision reported in Krishna Murari Aggarwala Vs. Union of India (UOI) and Others, cannot be applied in this case. The argument of the learned Counsel for the petitioner is only to be rejected.

22. In view of the above discussion, we do not find that the petitioner has made out any case to interfere with the order of detention impugned in this case.

23. In the result, writ petition is dismissed.

In the circumstances, no orders as to costs.

24. Petition dismissed.