

(1980) 01 CAL CK 0007
In the Calcutta High Court

Bhawani Shankar Chachan

APPELLANT

Vs

Assistant Collector of Customs (Preventive) and Others

RESPONDENT

Date of Decision : 17-01-1980

Acts Referred:

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

Constitution of India, 1950 — Article 22, 226

Citation : (1981) CriLJ 505

Hon'ble Judges : P.C. Borooah, J; D.C. Chakraborti, J

Bench : Division Bench

Judgement

P.C. Borooah, J.—Bhawani Shankar Chachan has, in this application under Article 226 of the Constitution of India, challenged the detention of his brother Dungarmall Chachan, who was detained pursuant to an Order No. F. 673J 25/78-Cus. VIII dated Jan. 12, 1979 passed by Shri B. B. Gujral, Additional Secretary to the Government of India, Ministry of Finance, Department of Revenue, in exercise of the powers conferred by Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter the Act) and has prayed for a writ in the nature of Habeas Corpus.

2. The aforesaid order was passed with a view to prevent the detenu from smuggling goods, abetting the smuggling of goods and engaging in transporting, cancelling and keeping smuggled goods.

3. The detenu was taken into custody pursuant to the said order on Dec. 9, 1979 and on Dec. 12, 1979 the grounds of detention contained in Order No. F. 673/25/78-Cus. VIII dated Jan. 12, 1979 were served upon him. The said Order reads as follows:

Grounds on which detention Order No. 673/25/78/Cus. VIII dated 12th Jan. 1979 has been made against Shri Dungarmall Chachan alias Dungarmall Daga u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974:

1.1. On 26-8-75, Officers of the Calcutta Custom House received information that large quantities of contraband goods which had been smuggled from Nepal by you had been stored in a godown at Beliaghata by arrangement of one Pursutham Das Jalan's associates, Amar Singh and Mohamed Osman. The Officers kept surveillance and intercepted a tempo van bearing registration No. WBV 4129 near No. 2, Digambar Jain Temple Road, Calcutta, in the early hours of 27-8-75. On search this van was found to carry 624 pieces of Debonair still cameras of the value of Rs. 18,720/- and the same were seized on a reasonable belief that they were smuggled and liable to confiscation under the Customs Act. Six keys were recovered from the person of one Mohamed Osman, an occupant of the vehicle. This Mohamed Osman stated that he was employed by one Amar Singh who had instructed him to give delivery of the goods from a godown at Beliaghata Main Road, Calcutta. He took the Customs Officers to the godown located at 109/1, Beliaghata Main Road, Calcutta and opened the locks of the same with the keys mentioned above. A search of this godown resulted in seizure of various smuggled goods like cameras, hypodermic needles, radiant yarn, motor vehicle parts, synthetic fabrics etc. of the value of about Rs. 10 lakhs. These goods were seized on a reasonable belief that they were smuggled and liable to confiscation under the Customs Act.

1.2. Mohammed Osman, mentioned in the above paragraph, identified one Purshottam Das Jalan as one of the associates of Amar Singh. The said Jalan on interrogation, stated on 27-8-75, that along with one Ghuttu Singh and Amar Singh, they had taken a godown at 109/1, Beliaghata Main Road, Calcutta from one Dr. B. Halder in the name of M/s. Lotus Transport Co. He also mentioned that through Ghuttu Singh he came in contact with you and that you are staying at Bir-ganj, Nepal, visiting Calcutta very often and frequently staying at M/s. New Friends Transport Co. 134/4, Mahatma Gandhi Road, Calcutta-7. Jalan also disclosed that you informed him that you had heard about the joint partnership business of Jalan and Ghuttu Singh and proposed that you might help them by sending goods from Nepal. Thereafter the Customs investigation could not make much progress because Amar Singh alias Ghuttu Singh could not be traced.

1.3. The Officers of the Zonal Office of Directorate of Revenue Intelligence, Calcutta, apprehended Bhuttu Singh alias Ghuttu Singh on 26-11-77 when contraband goods of the value of Rs. 14,41,840/- were seized from a godown at 4/1, Ahmed Mamuji Street, Howrah, which was under his possession and control. Later investigation revealed that this Bhuttu Singh alias Ghuttu Singh alias Amar Singh is one of the most important associates of a smuggling gang led by one Kamdeo Singh operating from Nepal and sending contraband to India. Bhuttu Singh, on interrogation had given a complete picture of the activities of this gang which consists inter alia of you and your son. Ghan-shyam, stationed at Biraganj, Nepal, being the suppliers of the goods into India. He confessed that Kamdeo Singh and one Bhadoi Singh, moved the contraband to safe places on border with Nepal first and employed trusted drivers of trucks to smuggle the goods across the border for onward transmission to Calcutta, Bombay and other places.

In Calcutta, this gang employs trusted persons for storage in different godowns. Instructions are issued by you and Bhadoi Singh, regarding distribution of the goods. The collection and transmission of the sale proceeds of the smuggled goods are being effected by one Rambreech, an agent of Bhadoi Singh. During this investigation, Bhuttu Singh admitted that he in partnership with one Purushottam Jalan, had taken a godown on rent in Beliaghata from which he had given delivery of foreign articles to one Murma Lal of Bagri Market in a truck and that he knew that all the foreign goods which were stored in the godown were supplied by you. These goods were brought to the Calcutta godown through Kamdeo Singh and Bhadoi Singh.

1.4. After the seizure effected in August 1975 mentioned in para. No. 1.1 above, intelligence was received from foreign sources by the Directorate of Revenue Intelligence to the effect that those goods belonged to Kamdeo Singh and that you are the person who had purchased the goods at Nepal for the purpose of disposing them at Calcutta. It is clear from the seizure of Aug., 1975 and the Intelligence that corroborated the details thereof that you, Kamdeo Singh and Bhadoi Singh along with Bhuttu Singh constituted the persons who had masterminded the smuggling operations and brought the goods and stored them in the godown at Beliaghata.

2.1. The Officers of the Zonal Unit of the Directorate of Revenue Intelligence, Calcutta received information during Oct., 1977 that the gang of Kamdeo Singh has become very active once again and that it was operating via Marar Village in Nepal opposite to Jayanagar Customs Station. The information further indicated that you are Kamdeo Singh's main partner and other partners are Bhadoi Singh, Bhuttu Singh, Sikandar Singh and others. On 24-11-77, further information was received to the effect that a truck bearing No. ASU-6441 has arrived at Calcutta and off-loaded contraband in a godown behind Jaiswal hospital. These goods have been brought by the gang of Kamdeo Singh. The information also indicated that you also arrived at Calcutta and were staying at Jhagra Kothi at 26/1, Armenian Street, Calcutta.

2.2. In the early morning of 26-11-77. the officers of the Directorate of Revenue Intelligence, Calcutta kept surveillance near the abovesaid godown and intercepted a jeep bearing No. UTE-4955 which came out of the godown and thereafter proceeded to Calcutta. Three packages were seen by the officers to be off-loaded and taken to a premises at No. 2, Umadas Lane. Thereafter the officers intercepted the packages as well as the jeep along with two occupants viz, Prabhakar Jha (Singh) and Sairam Rai (driver of the Jeep). Four packages were found inside the jeep and all the 7 packages seized were found containing Tego lighter flints made in Germany, totally valued at Rs. 56,000/-. Other officers kept a watch on the godown at 4/1, Ahmed Mamuji Street, Liluah. They noticed one Ambassador car bearing registration No. WMB 8341 come to a halt in front of the said godown. The officers could apprehend one person from the car, viz. Bhuttu Singh; but the driver of this car escaped in a scuffle. Bhuttu Singh

admitted that he was holding the key of the same godown which was thereafter searched. Various types of smuggled goods like lighter flints (made in Germany) stapler pins (made in Japan), Synthetic fabrics (made in Korea and Japan) etc. totally valued at Rs. 19,41,840/- were recovered and seized under the Customs Act on a reasonable belief that they were smuggled. Bhuttu Singh who had been carrying on smuggling activities under various assumed names like Amar Singh, Ghuttu Singh etc. was for the first time apprehended in this case.

2.3. Bhuttu Singh in his statement stated that on different occasions Kamdeo Singh and Bhadoi Singh used to hire godowns at various places in Calcutta to conceal goods brought from Nepal; that the godown at 4/1 Ahmed Mamuji Street. Liluah was taken on rent by these persons for the first 10 months in the name of one Saroj Roy @ Majo Babu from one Kapur and that you, Kamdeo Singh and Bhadoi Singh stored foreign goods brought clandestinely from Nepal in the same godown that the responsibility of this godown was his but the goods actually belonged to you, Kamdeo Singh and Bhadoi Singh; that the seized goods which were stored in the godown were purchased a month ahead of last Durga Puja, and that the truck No. ASU 6441 was used to bring them from Nepal border; that this truck has two false number plates, viz. ASU and BHF 2739; that whenever such trucks started from Nepal to India, Kamdeo Singh, Bhadoi Singh, Sai Ram and Bhuttu Singh himself escorted them in Ambassador Car No. WMB 8341; that on 26-10-77, a truck with goods came from Nepal and at the time Kamdeo Singh, Bhadoi Singh, a driver Sai Ram and Bhuttu Singh had come along with the truck in the said Ambassador Car; that the most important hand in the Indo-Nepal smuggling lay. in you, Kamdeo Singh and Bhadoi Singh; that you supplied the goods from Birganj and Kamdeo Singh and Bhadoi Singh made arrangements for lifting of such goods from Nepal to Calcutta and other destinations from (for) disposal.

2.4. Prabhakar Jha (Singh) who was apprehended along with the jeep having registration No. UTE 4955 by Customs Officers stated that he approached Kamdeo Singh for some job and on his advice met Sri Ghuttu Singh at 134/4, Mahatma Gandhi Road, Calcutta that he worked for about six months and then went back to his village; that about one month back, he came to Calcutta and stayed for 3/4 days; that during those 3/4 days, he met Bhadoi Singh and Bhuttu Singh for arranging delivery of the goods to be brought from Nepal very soon; that he went to Begusarai and went to one person known as "Company" who told him that one truck No. ASU 4865 will go to Nepal to bring foreign goods of Kamdeo Singh; that on 20-11-1977 he boarded a truck coming from Nepal at Zero mile; that an Ambassador Car WMB 8341 also came to Zero mile from Nepal; that Bhadoi Singh and Kamdeo Singh followed the truck in the same Ambassador Car driven by "Sia Ram" that the same truck finally reached the godown near Jaiswal hospital and Bhuttu Singh opened the godown; that thereafter, the contraband goods were loaded there; that, he went to the residence of Bhuttu Singh in Rosemary lane, where he found Kamdeo Singh and Bhadoi Singh in the same flat; that after one day he saw you with Kamdeo Singh

discussing your accounts of the goods brought from Nepal.

2.5. In his further statement dated 12-12-1977, Prabhakar Jha stated that in the smuggling of imported goody from Nepal to India, you and Kamdeo Singh were the partners; that Saroj Hoy of 26, Rosemary lane, Calcutta was also a partner at Calcutta along with you and Kamdeo Singh; that Bhadoi Singh and Bhultu Singh were the working partners of the smuggling racket.

2.6. Sia Ram Rai who was also apprehended along with Prabhakar Jha, in his statement dated 26/27-11-1977 stated that he was working as a driver of the Ambassador Car No. WMB 8341 and Jeep No. UTE 4955, He confirmed the statement of Prabhakar that on 20-11-1977 Kamdeo Singh, Bhadoi Singh and Driver Saudagar Singh were sitting in Ambassador Car WMB 8341 at Zero mile; that he was made to sit in the same Ambassador car and that Kamdeo Singh said his truck No. ASU 4865 loaded with goods was moving ahead; that the truck thereafter reached the godown at Ahmed Mauji Street; Kamdeo Singh and Bhadoi Singh stayed with Bhuttu Singh at Rosemary Lane for about three days; that on 25-11-1977, Kamdeo Singh and Bhadoi Singh left towards Patna by Punjab Mail.

3.1. Intelligence available with the Directorate of Revenue Intelligence, Calcutta during the month of Jan., 1978 showed that the gang of Kamdeo Singh was still indulging in large scale smuggling despite the big seizure of goods valued over 20 lakhs on 26-11-1977. The gang was reported to be operating from the village Marar in Nepal opposite to Jaynagar Customs Station and that they were now sending their goods mainly to Bombay where his associates Assandeo Singh and Pappu were disposing the goods. In Calcutta, the notorious smuggler Gouri Sankar Agarwal and Matadin Santhalia were reported to be helping the gang in the disposal of the goods.

3.2. Intelligence available with the Directorate of Revenue Intelligence, Calcutta during the month of Feb., 1978 indicated that. Kamdeo Singh's gang had formed its base for transshipment of the goods at Kanpur from where it was sending goods to Bombay and Hyderabad. One Misrilal was reported to be acting as agent of his gang at Kanpur.

3.3. Intelligence available with the Directorate of Revenue Intelligence, Calcutta during the month of Mar., 1978 indicated that the gang led by Kamdeo Singh, Bhadoi Singh and Rambrich was continuing their smuggling activities unabated and was sending the smuggled goods mainly to Bombay. They were also reportedly transporting the goods to Calcutta. According to Directorate of Revenue Intelligence sources this gang had brought two truck loads of goods to Calcutta after the seizure in Nov., 1977.

3.4. Intelligence available with the Directorate of Revenue Intelligence, Calcutta in the month of July, 1978 indicated that Kamdeo Singh and his associates were working through Gouri Shankar Agarwal and his son Purnamal Agarwal of 67/46, State Bank Road (Guddi at 46, K. K. Tagore Street) and that the gang was

presently bringing smuggled goods consisting mainly of synthetic fabrics, stapler machines/pins, numbering machines, zip fasteners etc. worth Rs. 10 lakhs at a time; that Bhadoi Singh and Rambreech, close associates of the gang were arranging for the storage and marketing of the goods at Calcutta. The Intelligence also indicated that, the truck ASU 6411 was still being utilised by them. While most of the goods were being diverted to Bombay, the goods in Calcutta were being received by Tarun and Kirit Bhai (M/s. Vrinda). The gang was still operating from Marar village.

3.5. Intelligence gathered by the Directorate of Revenue Intelligence, Calcutta also indicated that in the last week of July, 1978 the gang had brought contraband goods worth Rs. 10 lakhs to Calcutta and that Ambassador car bearing WBJ 8962 was being frequently used for effecting deliveries in Calcutta. Further intelligence also showed that a truck-load of foreign origin textiles brought by this gang had moved from Calcutta to Bombay on 24-7-1978 and that Gouri Shankar Agarwal had gone to Bombay on 25-7-78 to dispose of the goods. In Bombay your contacts are Yusuf Mohamed alias Poppu Hansraj of Madhu Chit Funds and Asan Deo Singh.

3.6. Intelligence available with the Directorate of Revenue, Intelligence, Calcutta during the month of Aug., 1978 indicated that you had smuggled goods worth Rs. 5 to 6 lakhs on 7-8-1978 by truck and that another truck load of synthetic fabrics was brought to Calcutta on 28-8-1978; that Bhadoi Singh of Begu-sarai was the main man organising their activities in Calcutta and one Harun of 5/2 Govinda Dhar Lane was arranging for distribution of the smuggled goods. Kirit Bhai of Brabourne Road and Jayanti Bhai of Territy Bazar were mostly purchasing the textiles.

3.7. Intelligence available with the Directorate of Revenue Intelligence Hqrs. during the month of Sept., 1978 indicated that you were very active these days and were reportedly sending 60,000 pant pieces at. a time every month to Bombay areas.

3.8. Intelligence available with the Directorate of Revenue Intelligence, Calcutta during the month of Oct., 1978 indicated that Kamdeo Singh's gang had brought; in goods to Calcutta during the last week of Oct., 1978. The goods were mainly given to Kalooram and his son staying at 33, Armenian Street, 2nd floor, Calcutta for distribution of the same. Kalooram is selling the synthetic fabrics to several parties including some coming from Rajnmundry (Andhra) who are booking the goods to various destinations in the south by road transport. Development of this intelligence led to seizure on 4-12-1978 of four bundles containing about 400 meters synthetics fabrics valued at Rs. 32,000/- which were sought to be booked through Ajanta Transport to Rajahrnundry in Andhra Pradesh. One Parasmal Jain of Rajahmundry who had come to Calcutta admitted that the aforesaid goods were received by him from 33, Armenian Street, through broker.

4.1. The above grounds are communicated to you in pursuance of Clause 5 of Article 22 of the Constitution of India.

4.2. I consider it to be against, the public interest to disclose the source of information referred to in the grounds herein above.

4.3. If you wish to make a representation against the order of detention, you may do so, address it to the undersigned and forward the same through the Officer-in-charge, Presidency Jail, Calcutta.

Sd. (B. B. Gujaral)

Additional Secretary to the Govt. of India.

4. Mr. Balai Chandra Ray, learned Advocate appearing on behalf of the petitioner, has challenged the order of detention on several grounds. His first contention is that the detaining authority admittedly passed the order of detention for three reasons, namely to prevent the detenu from (a) smuggling goods, (b) abetting the smuggling of goods and (c) engaging in transporting, concealing and keeping smuggled goods; but the grounds are so confusing that it is impossible to correlate any particular ground to a particular reason for which the order of detention was passed and as such, the detenu was not in a position to make an effective representation against the order of detention.

5. Mr. Deva Prasad Chaudhuri learned Advocate appearing on behalf of the State, has submitted that grounds 1.1, 1.2, 1.4 and the last sentence of 1.3 relate to Section 3(1)(ii) of the Act, viz. to abetting the smuggling of goods. Mr. Chowdhury further submitted that the grounds in the 1 and 2 series relate to both (ii) and (iii) of Section 3(1) of the Act, or in other words, they relate to abetting the smuggling of goods and engaging in transporting concealing and keeping smuggled goods. Mr. Chowdhury also submitted that the 3 series of the grounds come under subcl. (ii) of Section 3(1) of the Act. Therefore according to Mr. Chaudhuri's own submission none of the grounds in the three series served on the detenu relate to Section 3(1)(i) of the Act or to the smuggling of goods.

6. The detaining authority has passed the order of detention dated January, 12, 1979 for three reasons which correspond to Sub-clauses (i), (ii) and (iii) of Section 3(1) of the Act. If the grounds of detention, as conceded by Mr. Chaudhuri, do not contain any ground which is germane to Sub-clause (i) of Section 3(1) of the Act, the detenu must have been prevented from making an effective representation, as he would not be in a position to correlate the grounds furnished to him with the reasons set out in the order of detention. The absence of any ground germane to Sub-clause (i) of Section 3(1) of the Act must have also confused the detenu because this was one of the purported reasons for passing the order of detention. The right to make an effective representation is a valuable right guaranteed to a detenu under Article 22(5) of the Constitution. It is not possible for a detenu to make a proper representation if the grounds which are served on him are not germane or are not fully consistent with the reasons

for which he is sought to be detained. The denial of such right is certainly fatal to the detention order.

7. Furthermore, when the detaining authority purported to pass the order of detention for the reasons set out in Sub-clauses (i), (ii) and (iii) of Section 3(1) of the Act, and there are no grounds in the order of detention which relate to Sub-clause (i), it, goes to show that the detaining authority acted mechanically and passed the order of detention without proper application of his mind. The non-application of mind of the detaining authority in passing the order of detention and the mechanical way of his acting, as is borne out by the above discussion, also goes to the root of the impugned order making it liable to be struck down.

8. Mr. Ray's next branch of argument related to the vagueness and irrelevancy of the grounds of detention. According to Mr. Ray grounds in both 1 and 2 series are vague as basic facts essential for making an effective representation have not been disclosed, As regards grounds 3.1 to 3.4 and 3.8, Mr. Ray contended that they were irrelevant as far as the detenu was concerned as there was no reference at all to him in the said grounds; and although reference was made to the detenu in grounds 3.5 to 3.7, the prejudicial activities alleged therein are completely vague and incapable of being effectively replied to.

9. Mr. Chaudhuri has contended that detailed particulars but not basic facts may not have been disclosed in the first two series of the grounds but the detenu could have always asked for such particulars and they would certainly have been furnished to him. As regards the grounds in the third series where the detenu's name has not been mentioned, Mr. Chaudhuri's submission is that he has been referred to as a member of Kamdeo Singh's gang and this could not possibly have prevented the detenu from making an effective representation because Bhutta Singh's statement after his apprehension on Nov., 26, 1977 and which has been referred to ground 1.3, makes it clear that references to Kamdeo Singh's gang in some of the grounds in the third series also include the detenu.

10. According to para. 1.3 of the grounds, a statement made by one Bhuttu Singh after his apprehension on Nov., 26, 1977 disclosed that the detenu was a member of a smuggling gang led by one Kamdeo Singh. The facts set out in the third series of the grounds are based on intelligence reports obtained by the Directorate of Revenue Intelligence during the period January to Oct., 1978. The detenu might have been a member of Kamdeo Singh's gang in Nov., 1977 but nothing has been disclosed in any of the grounds from which it would appear that the detenu continued to associate himself with the said gang till Oct., 1978. Therefore, at the time of passing of the order of detention the detaining authority must have had before him not only the materials contained in the grounds served on the detenu but other materials, such as the intelligence reports referred to in the 3 series of the grounds, from which he arrived at his satisfaction that the detenu continued to associate himself with the gang of Kamdeo Singh even in Oct., 1978 and as such his detention was necessary. In

para. 10 of the affidavit-in-opposition the detaining authority has stated that after the receipt of the materials from all the agencies, which collected the materials relating to the detenu, he had perused and considered the same and then passed the order of detention. Therefore the aforesaid intelligence reports and other materials which the detaining authority considered were not put forth before the detenu, thus depriving him of making an effective representation against the same. This is a serious infirmity which strikes at the root of the detention order making it difficult to sustain.

11. Mr. Ray's final submission is that there is lack of proximity between the incidents relied on in the grounds and the order of detention. Elaborating this branch of argument Mr. Ray contended that the purported seizures of smuggled goods in Aug., 1975 and Nov., 1977, as disclosed in the first two series of the grounds, cannot possibly lead to the conclusion that the detenu was likely to act in a similar manner in Jan. 12, 1979 when the order of detention was passed.

12. Mr. Chaudhuri on the other hand contended that along with the seizures referred to in the first two series of the grounds the detaining authority took into consideration the facts set out in the ground No. 3.8 which referred to a seizure of synthetic fabrics on Dec, 4, 1978 from a godown at Calcutta; and as the order of detention was passed a little over a month thereafter the detaining authority was justified in coming to his satisfaction that the order of detention was necessary.

13. The seizure on Dec, 4, 1978, if actually considered along with the prejudicial activities attributed to the detenu in the years 1975 and 1977, will knock the bottom out of Mr. Ray's argument of proximity. The question which therefore has to be decided is whether the detaining authority at the time of taking a decision about passing the order of detention had before him the particulars relating to the seizure on Dec, 4, 1978, and how far the detenu was involved in such activity?

14. For this purpose it will be necessary to set out in full para. 10 of the detaining authority's affidavit-in-opposition. The said para, is in the following terms:

With reference to the statements contained in para. 10 of the said petition I say that I made the order of detention after all the materials relating to the detenu were placed before me on or about the 4th Dec, 1978. After receipt of the materials from all the agencies who collected the materials relating to the detenu, I perused the same, considered the materials and then passed the order of detention. Until I received all the materials relating to the detenu the question of making detention order did not and could not arise. I deny that the detention order has been passed arbitrarily and for extraneous reasons as alleged.

15. According to the copy of the seizure list produced by Mr. Chaudhuri the seizure referred to in ground No. 3.8 took place on Dec. 4, 1978 at about 11.00 hrs. from a godown of Messrs Ajanta Transport Company (Private) Ltd. at 4,

Blackburn Lane, Calcutta.

16. Mr. Chaudhuri was therefore asked to satisfy the Court from the documents in possession of the respondents as to whether the aforesaid seizure list or the facts relating to such seizure along with the facts mentioned in para. 3.8 of the grounds were placed before the detaining authority at New Delhi on Dec, 4, 1978 when the detaining authority had allegedly perused and considered all the materials relating to the detenu?

17. Mr. Chaudhuri produced before us a few sheets of paper containing what appeared to be a cyclostyled copy of the grounds of detention. In the end a para was added in pencil, and its contents were more or less similar to the facts set out in para. 3.8 of the grounds. The penciled writings were neither signed nor dated nor was this Court informed when and by whom the said writings were made.

18. It is therefore apparent that in order to show some proximity between the prejudicial acts attributed to the detenu in the years 1975 and 1977 and the order of detention, a ground, viz. ground No. 3.8, was added. It is also apparent that the detaining authority at the time he was considering all the materials placed before him on Dec, 4, 1978 and which related to the detenu did not have any of the materials disclosed in ground No. 3.8.

19. In the premises it must be held that there is no proximate connection between the prejudicial activities attributed to the detenu in years 1975 and 1977 and the order of detention. This is fatal to the detention. In the light of the aforesaid discussion it must further be held that the detaining authority did not act in a bona fide manner when passing the order of detention.

20. This application therefore succeeds. The impugned order is quashed and the detenu is directed to be set -at liberty forthwith, unless he be in custody in connection with some other case.

21. Rule made absolute,

D.C. Chakraborti, J.

22. I agree.