

(2005) 03 GAU CK 0109

In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 55 of 2004

Chandan Lahon

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(5)
Maintenance of Internal Security Act, 1971 — Section 3(1), 3(2), 8
Penal Code, 1860 (IPC) — Section 120(B), 19, 34, 370, 379
Petroleum Act, 1934 — Section 23, 24
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3(1)

Citation : (2005) 3 GLT 645

Hon'ble Judges : R.B. Misra, J;A.H. Saikia, J

Bench : Division Bench

Advocate : G.N. Sahewalla, A.K. Goswami and A. Das, for the Appellant; S. Ali, S.S. Ali and H. Rahman, for the Respondent

Final Decision : Allowed

Judgement

R.B. Misra, J.—Heard Mr. G.N. Sahewalla, learned Senior Counsel and Mr. A.K. Goswami, learned Senior Counsel assisted by Mr. A. Das, learned Counsel for the Petitioner. Also heard Mr. S. Ali, learned Additional Advocate General, Assam assisted by Ms. S.S. Ali, learned Govt, counsel on behalf of State-Respondents. Also heard Mr. H. Rahman, learned Assistant Solicitor General of India on behalf of the Union of India.

2. In this writ petition, the detention order dated 21.9.2004 passed in reference to Section 3(1) of the Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (here-in-after referred to as the "Act") by the District Magistrate, Sivsagar (Annexure-1 to the writ petition) and the grounds of detention (Annexure-2 to the writ petition) are under challenge.

3. The facts necessary for adjudication of the present writ petition in conspectus

are that in reference to the information received from the Superintendent of Police, Sivsagar along with Dossier, First Information Report (FIR), Seizure List and recorded statement of the Petitioner (Shri Chandan Lahan) in connection with eight criminal cases in reference to different Sections of Indian Penal Code as well as of the Essential Commodities Act, 1955 (for short E.C. Act) read with Section 23/24 of the P. Act, it has been made to appear to the District Magistrate, Sivsagar that the detenu/Petitioner was involved in the activities of pilfering crude oil which were found to be prejudicial to maintenance of supply of commodities essential to community and such action of the Petitioner was punishable under the E.C. Act., therefore, on being satisfied, the detention of the Petitioner u/s 3(1) of the "Act" was found necessary with a view to prevent him from acting in above noted activities. The District Magistrate, Sivsagar has passed a detention order dated 21.9.2004 and had duly served the same to the Petitioner along with grounds of detention with an indication to the detenu/Petitioner to submit his written representation, if any, to the State Government as well as to the Government of India. In reference to the demand dated 22.9.2004 of Petitioner, legible copy of documents were furnished to him. On receiving the detention order dated 21.9.2004 by the Commissioner and Secretary, Department of Food and Civil Supplies, Government of Assam on 24.9.2004, the same was processed through the Chief Secretary, Hon"ble Minister of Food and Civil Supplies and Hon"ble Chief Minister and the approval of the detention order was finally made on 29.09.2004 by the State Government. The representation dated 6.10.2004 of the detenu/Petitioner through Jail Superintendent, Sivsagar was received by the District Magistrate on 7.10.2004, who, along with his comments, had forwarded the same to the State Government on 10.10.2004 which was received by the State department on 11.10.2004 and on the same day the Commissioner and secretary to the Government of Assam, Department of Food and Civil Supplies forwarded along with his parawise comments to the Secretaries to the Government of India, Ministry of Consumer Affairs, Food and (Public Distribution), as well as Ministry of Home Affairs and also to the Secretary, Advisory Board constituted under the "Act". In reference to the communication dated 13.10.2004 of Government of India, the representation of the detenu/Petitioner, was rejected on 15.10.2004 by the State Government and accordingly the same was communicated to the Petitioner on 18.10.2004. The State Government has finally passed an order dated 26.10.2004 confirming the detention order passed by the District Magistrate for 6(six) months with effect from 21.9.2004.

4. The Petitioner had initially pleaded in his writ petition that he was not supplied the relevant documents and the grounds of detention. The grounds were vague, and not supported by the basic facts and materials, the Petitioner is not named in the FIR, the Petitioner has not been afforded the earliest opportunity of making his representation against the detention order in view of Article 22(5) of the Constitution of India. According to the Petitioner passing of detention order in these facts and circumstances was by way of non-application of mind and the

subjective satisfaction having been arrived at by the detaining authority was on vague and irrelevant grounds and materials, the detention order is bad, illegal and therefore is to be quashed.

5. Affidavit-in-opposition has been filed to controvert the statements and contentions made in the writ petition by asserting that in reference to the definite information and materials and on existing grounds for involvement of the Petitioner in criminal cases under the Indian Penal Code and E.C. Act and on subjective satisfaction of the District Magistrate, the detention order in question passed was duly served to the Petitioner along with the grounds of detention and after careful consideration by different relevant authorities i.e. by the State Government as well as by the Government of India, rejection of the representation of the Petitioner was duly conveyed to the detenu/Petitioner.

6. It has been argued on behalf of the Petitioner that the detention order is bad for the following reasons:

- (a) The detaining authority has passed the detention order on irrelevant grounds;
- (b) The detention order is vague;
- (c) Among the grounds taken for passing the detention order, even if one ground alone is declared to be bad or illegal for its irrelevancy or vagueness, the entire detention order shall have to be set aside.

7. The detention order dated 21.9.2004 has referred following eight offences:

1. Kamargaon P.S. Case No. 32/04 u/s 120(B)/379/471/472 IPC R/W Section 7(1)(C) E.C. Act 1955 R/W Section 23/24 P. Act.
2. Amguri P.S. Case No. 53/98 u/s 379/427/34 IPC
3. Bokota Nemuguri P.S. Case No. 6/2003 u/s 379/511
4. Halwatig P.S. Case No. 25/03 u/s 379/IPC
5. Nazira P.S. Case No. 105/03 u/s 379/511 IPC
6. Demow P.S. Case No. 64/03 u/s 379/120(B) 19 PC R/W Section 7(1)(C) E. Act 1955, R/W Section 23/ 24 P. Act
7. Sivsagar P.S. Case No. 27/02 u/s 120(B)/370 IPC and R/W Section 3 P.D.P.P. Act, 1984
8. Nazira P.S. Case No. 39/03 u/s 379/ 511 IPC

8. Article 22(5) of the Constitution of India is provided as below :

(5) When any person is detained in pursuance of an order made any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a

representation against the order.

Section 3 of the "Act" is provided for convenience as below:

3. Power to make orders detaining certain persons-(1) The Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government specially empowered for the purposes of this Section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this Section by that Government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary to do, make and order directing that such person be detained. Explanation: For the purposes of this Sub-section, the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" means-

(a) Committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community; or

(b) Dealing in any commodity-

i. Is an essential Commodity as defined in the Essential Commodities Act, 1955, or

ii. With respect to which provisions have been made in any such other law as is referred to in Clause (a).

With a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid.

(2) Any of the following officers, namely:

(a) District Magistrates;

(b) Commissioners of Police, wherever they have been appointed, may also, if satisfied as provided in Sub-section (1), exercise the powers conferred by the said Sub-section.

(3) When any order is made under this Section by an officer mentioned in Sub-section (2), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless in the mean time it has been approved by the State Government.

Provided that where u/s 8 the grounds of detention are communicated by the authority making the order after five days but not later than ten days from the date of detention, this Sub-section shall apply subject to the modification that for

the words "twelve days", the words "fifteen days" shall be substituted.

(4) When any order is made or approved by the State Government under this Section or when any order is made under this Section by an officer of the State Government not below the rank of Secretary to that Government specially empowered under Sub-section (1), the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

10. According to the learned Counsel for the Petitioner, the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" used in Section 3(1) of the "Act" covers within its ambit only such activities as have been specified in Clause (a) or (b) of the Explanation appended to the said-section and no other activity. It has further been submitted on behalf of the Petitioner that before an activity can be said to be prejudicial to maintenance of supplies essential to the community under the second part of Explanation (a) to Section 3(1), it has to be shown that the activity has resulted in contravention of a law relating to the control of (i) production, (ii) supply or distribution, or (iii) trade and commerce in any commodity essential to the community. According to the learned Counsel for the Petitioner, the detention order has contemplated mainly the offences mentioned in all above referred eight cases and the relevant grounds at serial Nos. 1 and 8 the grounds of detention are being provided as below:

1. You were found involved in the Amguri PS. Case No. 53/98 u/s 397/427 IPC. You with your co-associates had stolen the Crude Oil from pipe line in Lalim Sapor Gaon under Amguri P.S. on 16.7.98 and a Oil Tanker No. As-01 5195 in this connection was seized with loaded Crude Oil. You are involving in this case as per FIR submitted by police.

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8. You have been found involved in oil theft case of Kamargaon P.S. Case No. 32/04 u/s 120(B)/379/471/472 I.P.C. read with Section 7(1)(c) E.C. Act, 1955 R/W Section 23/24 P. Act. Moreover you are closely related with one Sri Putul Gogoi who is well known crude oil smuggler and presently detained at Golaghat District Jail. You being a close associates of Sri Putul Gogoi with the background stated above makes the undersigned (District Magistrate. Sivsagar) to believe beyond reasonable doubt, that there is every likelihood continue. Such prejudicial

activities by you unless you are prevented from continuing such activities by an order of detention under provisions of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

11. According to the Petitioner in respect of ground No. 1, the detaining authority has placed his reliance that the Petitioner is involved in Amguri P.S. Case No. 53 of 1998 as per F.I.R. submitted by the police. In such old case the Petitioner's name was neither mentioned in the FIR nor any document reveals the involvement of the Petitioner. Therefore, the ground No. 1 as a material for passing detention order is irrelevant. Such assertion of the Petitioner, however, has not been denied by the Respondents during the course of argument. According to learned Counsel for the Petitioner, the allegations regarding closeness of the Petitioner/detenu to one Shin Putul Gogoi a well known crude oil smuggler, who was said to be detained at Golaghat District Jail at relevant time as mentioned in ground No. 8 was vague ground as no document, communication or inter linking material showing the closeness of the Petitioner with Shri Putul Gogoi was enclosed or brought or was served upon the detenu/ Petitioner or was before the detaining authority for consideration. As such the allegations made against the Petitioner in ground No. 8 for his alleged involvement in oil theft case of Kamargaon P.S. Case No. 32/2004 is vague and cannot be a basic material or fact for passing the detention order, more so, when for passing the detention order no material for alleged involvement of the Petitioner in the said criminal case with Putul Gogoi either directly or indirectly was ever communicated to the Petitioner. The ground of alleged involvement of the Petitioner in Amguri P.S. Case No. 53/08 u/s 379/427 I.P.C. as indicated in ground No. 1 is "irrelevant" and the allegations and material as shown in ground No. 8 as Anr. ground for passing detention order is "vague". For the "irrelevancy" and vagueness of ground No. 1 and 8 respectively the same could not be part of basic facts and materials and cannot be a basis for subjective satisfaction of the detaining authority. Relying on the information or non-existent materials without furnishing the same to the detenu/Petitioner in respect of these grounds No. 1 and 8 for the purpose of passing the detention order shall tantamount to have been passed in derogation to the provisions of Article 22(5) and without affording the opportunity of making a representation against the order of detention as provided under Article 22(5) of the Constitution.

12. In Pushkar Mukherjee and Others Vs. The State of West Bengal, it has indicated that the satisfaction of the detaining authority to which Section 3(1)(a) referred is a subjective satisfaction as such cannot be justifiable. However, if the subjective satisfaction is based on the vague ground, detention order shall be subject to judicial review and cannot be legally sustainable. The relevant paragraphs referred by the learned Counsel for the Petitioner are quoted as below:

(2) Nothing in Sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

It will be noticed that before an order of detention can be validly made by the detaining authorities specified by Section 3(2) of the Act, the authority must be satisfied that the detention of the person is necessary in order to prevent him from acting in any prejudicial manner as indicated in Clauses (i) to (iii) of Section 3(1)(a). It is well-settled that the satisfaction of the detaining authority to which Section 3(1)(a) refers is a subjective satisfaction, and so is not justiciable. Therefore, it would not be open to the detenu to ask the Court to consider the question as to whether the said satisfaction of the detaining authority can be justified by the application of objective tests. It would not be open, for instance, to the detenu to contend that the grounds supplied to him do not necessarily or reasonably lead to the conclusion that if he is not detained, he would indulge in prejudicial activities. The reasonableness of the satisfaction of detaining authority cannot be questioned in a Court of law; the adequacy of the material on which the said satisfaction purports to rest also cannot be examined in a Court of law. That is the effect of the true legal position in regard to the satisfaction contemplated by Section 3(1)(a) of the Act (See the decision of this Court in *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, .

But there is no doubt that if any of the grounds furnished to the detenu are found to be irrelevant while considering the application of Clauses (i) to (ii) of Section 3(1)(a) and in that sense are foreign to the Act, the satisfaction of the detaining authority on which the order of detention is based is open to challenge and the detention order liable to be quashed. Similarly, if some of the grounds supplied to the detenu are so vague that they would virtually deprive the detenu of his statutory right of making a representation, that again may make the order of detention invalid. If, however, the grounds on which the order of detention proceeds are relevant and germane it would not be open to the detenu to challenge the order of detention by arguing that the satisfaction of the detaining authority is of reasonable based on any of the said grounds.

It is manifest that this ground is extremely vague and gives no particulars to enable the Petitioner to make an adequate representation against the "order of detention and thus infringes the Constitutional safeguard provided under Article 22(5). Reference may be made in this connection to the decision of this Court in *The State of Bombay v. Atma Ram Sridhar Vaidya* in which Kania, C.J., observed as follows:

What is meant by vague? Vague can be considered as the antonym of "definite". If the ground which is supplied is incapable of being understood or defined with sufficient certainty it can be called vague. It must vary according to the circumstances of each case. It is however improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it. That is a matter of detail which has to be examined in the light of the circumstances of each case. If on reading the ground furnished it is capable of being intelligently understood and it sufficiently definite to furnish materials to enable the detained person to make a representation against the order of

detention it cannot be called vague. The only argument which could be urged is that the language used in specifying the ground is so general that it does not permit the detained person to legitimately meet the charge against him because the only answer which he can make is to say that he did not act as generally suggested. In certain cases that argument may support the contention that having regard to the general language used in the ground he has not been given the earliest opportunity to make a representation against the order of detention. It cannot be disputed that the representation mentioned in the second part of Article 22(5) must be one which on being considered may give relief to the detained person.

13. In view of the decision of the Supreme Court in *Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others*, if one of the grounds communicated to the Petitioner is found to be vague, the detention orders must be pronounced to be bad. The relevant part referred to by the learned Counsel for the Petitioner is quoted below:

13. As one of the grounds communicated to the Petitioners is found to be vague, the detention orders must be pronounced to be bad on the basis of a series of decisions of this Court (see the *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, ; *Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others*, ; *Motilal Jain Vs. State of Bihar and Others*, and *Mishrilal Jain Vs. The District Magistrate, Kamrup and Others*, . These decisions followed the decision of the Federal Court in AIR 1943 1 (Federal Court) , where it was held:

If a detaining authority gave four reasons for detaining a man, without distinguishing between them, and any two or three of the reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one or two good reasons had been before them.

14. The fact that one of the grounds mentions that paddy and rice had been unearthed and seized from the unauthorized possession of the Petitioners from the rice mill in the inference that the Petitioners have been indulging in unauthorized milling of paddy, much less that they were smuggling the resultant rice to Meghalaya for earning undue profit. It cannot, therefore, be said that the first ground, namely, that the Petitioners are responsible for unauthorized milling of paddy and smuggling of the resultant rice to Meghalaya for earning undue profit is a conclusion reached from the fact of seizure of paddy and rice on July 25, 1973 or the seizure of rice on May 16, 1972 "from their unauthorized possession at Messrs. Srinivas Basudeo, Fancy Bazar, Gauhati."

15. These are not only cases where one of the grounds of detention was vague, but also cases where the detaining authority did not apply its mind at all to one of the grounds of detention. If the detaining authority had no particulars before it as regards the smuggling operation, how was it possible for it to have been satisfied that the Petitioners were smuggling rice to Meghalaya for earning under

profit? If there was any particular instance of smuggling of the kind in the in of the detaining authority, it would have been possible for it to specify the particular instance at least in the grounds.

14. The similar view as taken in Prabhu Dayal (supra) was also taken by the Supreme Court in (1994) 4 SCC 45 (Jagdish Prasad v. the State of Bihar and Anr.) where it has been observed that the detaining authority should be firm and clear as to why it is detaining the man and vagueness of even one ground is bad for legality of the detention order.

15. In view of the decision of Supreme Court in Dwarika Prasad Sahu Vs. The State of Bihar and Others, the detention order passed by the District Magistrate in reference to Section 3(2)(iii) and 8 of Maintenance of Internal Security Act was held invalid even On one non-existent or irrelevant ground only. The relevant paragraph of Dwarka Prasad (supra) is quoted below:

If there is one principle more firmly established than any other in this field of jurisprudence, it is that even if one of the grounds or reasons which led to the subjective satisfaction of the detaining authority is non-existent or misconceived or irrelevant, the order of detention would be invalid and it would not avail the detaining authority to contend that the other grounds or reasons are good and do not suffer from any such infirmity, because it can never be predicated to what extent the bad grounds or reasons operated on the mind of the detaining authority or whether the detention order would have been made at all if the bad ground or reason were excluded and the good grounds or reasons alone were before the detaining authority. See the decision of this Court in The State of West Bengal Vs. Bela Banerjee and Others, , Dr. Ram Manohar Lohia Vs. State of Bihar and Others, , Pushkar Mukherjee and Others Vs. The State of West Bengal, . In Biram Chand Vs. State of Uttar Pradesh and Others, , it has been pointed out:

It is well settled that in an order under the present Act the decision of the authority is a subjective one and if one of the grounds is nonexistent or irrelevant or is not available under the law, the entire detention order will fall since is not possible to predicate as to whether the detaining authority would have made an order for detention even in the absence of non-existent or irrelevant ground.

The conclusion is, therefore, inescapable that since ground No. 5 was wholly misconceived, non-existent and "not available under the law", the order of detention must be held to be invalid.

16. In Khudiram Das Vs. The State of West Bengal and Others, the Supreme Court has observed that it is the basic facts and materials which are to be taken into consideration by the detaining authority in making the order of detention for the purpose of reliance in passing the detention order. According to the learned Counsel for the Petitioner the detaining authority while furnishing the detention order with grounds of detention either has not bothered for the existence of basic facts and materials or has overlooked the same. Therefore, the grounds cannot be said to be sufficient for detention and subjective satisfaction arrived at by the

detaining authority shall tantamount to non application of mind. In this reference relevant paragraphs of Khudiram Das (supra) are quoted as below:

The constitutional imperatives enacted in this article are two-fold: (1) the detaining authority must, as soon as may be, that is, as soon as practicable after the detention, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making a representation against the order of detention. These are the barest minimum safeguards which must be observed before an executive authority can be permitted to preventively detain a person and thereby drown his right of personal liberty in the name of public good and social security. But, what is the content of these safeguards? What does not word "grounds" mean? Does it mean only the final conclusions reached by the detaining authority on which alone the order of detention can be made, or does it include the basic facts and materials from which the conclusions justifying the order of detention are drawn by the detaining authority? What is the interrelation between the requirements of the first and the second safeguards? Is the efficacy of the second safeguard violated by non-observance of the requirement of the first safeguard? If all the "grounds" which are weighed with the detaining authority are not communicated to the detenu, does it constitute merely a breach of the first safeguard or does it also involve the violation of the second?

The answer to these questions does not present any serious difficulty if only we consider the reason why the grounds are required to be communicated to the detenu "as soon as may be" after the detention. Obviously the reason is two-fold. In the first place, the requirement of communication of grounds of detention acts as a check against arbitrary and capricious exercise of power. The detaining authority cannot whisk away a person and put him behind bars at its own sweet will. It must have grounds for doing so and those grounds must be communicated to the detenu, so that, not only the detenu may know what are the grounds on the basis of which he is being deprived of his personal liberty, but he can also invoke the power of judicial review, however limited and peripheral it may be. Secondly, the detenu has to be afforded an opportunity of making a representation against the order of detention.

But if the grounds of detention are not communicated to him, how can he make an effective representation? The opportunity of making a representation would be rendered illusory. The communication of the grounds of detention is, therefore, also intended to subserve the purpose of enabling the detenu to make an effective representation. If this be the true reason for providing that the grounds on which the order of detention is made should be communicated to the detenu, it is obvious that the "ground" means all the basic facts and materials which have been taken into account by the detaining authority in making the order of detention and on which, therefore, the order of detention is based. To quote the words of one of us (Sarkaria, J.) in *Gulam alias Goam Malick v. The State of West Bengal* W.P. No. 270 of 1974 D? 12.9.1974 (SC.)

... In the contest "ground" does not merely mean a recital or reproduction of a ground of satisfaction of the authority in the language of Section 8 of the Act; nor is its connotation restricted to a bare statement of conclusions of fact. It means something more. That "something" is the factual constituent of the "ground" on which the subjective satisfaction of the authority is based. The basic facts and material particulars, therefore, which are the foundation of the order of detention, will also be covered by "grounds" within the contemplation of Article 22(5) and Section 8, and are, required to be communicated to the detenu unless their disclosure is considered by the authority to be against the public interest.

This has always been viewed consistently taken by this Court in a series of decisions. It is not necessary to burden this judgment with citation of all these decision. It would be sufficient if we quote the following observations of Patanjali Sastri, C.J., in *Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others*,the Petitioner has the right Article 22(5), as interpreted by this Court by a majority, to be furnished with particulars of the grounds of his detention "sufficient to enable him to make a representation which on being considered may give relief to him. We are of opinion that this constitutional requirement must be satisfied with respect to each of the grounds communicated to the person detained. *Venkatarama Ayyar, J....*, also pointed out in *Shamrao Vishnu Parulekar v. The District Magistrate, Thana* 1958 SCR 644 : AIR 1957 SWC 23 that construing the words "grounds on which the order has been made" in their natural and ordinary sense.

they would include any information or material on which the order was based. The Oxford Concise Dictionary gives the following meanings to the word "ground", "Base" foundation, motive valid reason". On this definition, the materials on which the District Magistrate considered that an order of detention should be made could properly be described as grounds therefore

(emphasis supplied).

It is, therefore, clear that nothing less than all the basic facts and materials which influenced the detaining authority in making the order of detention must be communicated to the detenu. That is the plain requirement of the first safeguard in Article 22(5). The second safeguard in Article 22(5) requires that the detenu shall be afforded the earliest opportunity of making a representation against the order of detention. No avoidable delay, no short fall in the materials communicated shall stand in the way of the detenu in making an early, yet comprehensive and effective, representation in regard to all basic facts and materials which may have influenced the detaining authority in making the order of detention depriving him of his freedom. These are the legal bulwarks enacted by the constitution-makers against arbitrary or improper exercise of the vast powers of preventive detention which may be vested in the executive by a law of preventive detention such as the Maintenance of Internal Security Act, 1971.

17. In view of the decision of *Kamla Kanyalal Khushalani Vs. State of*

Maharashtra and another, the learned Counsel for the Petitioner has submitted that documents and materials which form the basis of Retention order must be supplied to the detenu along with grounds of detention and when grounds of detention were not accompanied the detention of Petitioner cannot meet the parameter of Article 21 and 22 of the Constitution. For this purpose relevant paragraphs are quoted below:.

5. This Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , has widened the horizon of Article 21 and added dimensions to various features of and concept of liberty enshrined in Article 21. In view of the decision in the aforesaid case, Article 22(5) of the Constitution assumes a new complexion and has to be construed liberally and meaningfully so as to permit the legislature to impose the minimum possible curbs on the precious rights of a citizen, by virtue of preventive detention. If a procedure under Article 21 has to be reasonable, fair adjust, then the words "effective representation" appearing in Article 22(5) must be construed so as to provide a real and meaningful opportunity to the detenu to explain his case. to the detaining authority in his representation. If the words "effective representation" are interpreted in an artificial or fanciful manner, then it would defeat the very object not only of Article 22(5) but also of Article 21 of the Constitution.

6. Thus, we are of the opinion that in view of what has been laid down in *Maneka Gandhi* case and in a number of other cases following the aforesaid decision, the law of preventive detention has now to satisfy a two fold test: (1) that the protection and the guarantee afforded under Article 22(5) is complied with, and (2) that the procedure is just and reasonable. In this view of the matter unless the materials and documents relied on in the order of detention are supplied to the detenu along with the grounds, the supply of grounds simpliciter would give him not a real but merely an illusory opportunity to make a representation to the detaining authority.

7. It is well settled that the court frowns on preventive detention without trial because the detenu is deprived of the right of proving his innocence in a trial by a court of law. It is, therefore, of the utmost importance that all the necessary safeguards laid down by the Constitution under Article 21 or Article 22(5) should be complied with fully and strictly and any departure from any of the safeguards would void the order of detention. This is so because in a civilized society, like ours, liberty of a citizen is a highly precious right and a prized possession and has to be protected unless becomes absolutely essential to detain a person in order to prevent him from indulging in anti-national activities like smuggling, etc. We are fortified in our view by a decision of this Court in *Sampat Prakash Vs. State of Jammu and Kashmir*, , where the following observations were made: "that the restrictions placed on a person preventively detained must, consistently with the effectiveness of detention, be minimal."

18. In *Shri Satya Brata Ghose Vs. Mr. Arif Ali, District Magistrate, Sibasagar, Jorhat and Others*, , the Supreme Court has observed that one ground is not

relevant and the grounds relevant to security of State cannot be taken into account in judging the validity of the detention order. The relevant paragraph relied on by the learned Counsel for the Petitioner is quoted below:

The Petitioner challenges the order of his detention, dated April 2, 1973. The order was made by the District Magistrate, Sibsagar, u/s 3(2) read with Section 3(1)(a)(ii) of the Maintenance of Internal Security Act, 1971 with a view to preventing the Petitioner from acting prejudicially to the maintenance of public order. The District Magistrate served the grounds of detention on him on April 3, 1973. There are nine grounds of detention. Ground 6 is this:

That on 29.12.72 he visited Moriani and made secret contacts with Amritlal Sarkar, Kartik Sarkar and Ors. of Moriani and spoke ill of assamese people and the State Government. At his instance, Moriani Area Council was formed under the C.D.B.A.

Some of the grounds given by the District Magistrate are relevant to the security of the State. But the detention order is related to the maintenance of public order only. For the reasons discussed in our judgment in *Bhupal Chandra Ghose v. Mr. Arif Ali and Ors.* (1974) 1 SCC 253 delivered today, the grounds relating to the security of the State cannot be taken into account in judging the validity of the detention order. We are of opinion that the detention order is bad. Accordingly, the petition is allowed.

19. It has been argued on behalf of Respondents that the subjective satisfaction of the detaining authority arrived at while considering the materials and records was the cumulative result of all the grounds of detention and for the involvement of Petitioner in different offences the present detention order passed in question has been justified in view of the decision of the Supreme Court in *P. Saravanan Vs. State of T.N. and Others*, . According to the learned Counsel for the Respondents no set standards have been laid down by the Act for arriving at subjective satisfaction of the detaining authority as the subjective satisfaction in the present case has been arrived at by the detaining authority on the basis of all the materials placed before it by the Superintendent of police, Sivsagar. Therefore, the detention order cannot be said to be illegal on the ground of non application of mind in view of the principles laid down in *Gurdev Singh Vs. Union of India and ors*, .

20. The Supreme Court in 2002(3) SCC 745 (*Chowdarpu Raghunandan v. State of Tamil Nadu*) has observed that the subjective satisfaction of the detaining authority should be reasonable and it is always open to the court exercising powers of judicial review to see whether there has been due and proper application of mind to relevant and vital materials. The relevant paras are quoted below:

An order of preventive detention is founded on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act or a

series of acts. It must be of such a nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts so as to warrant his detention. If there is non-application of mind by the authority on this aspect, then the court is required and is bound to protect the citizen's personal liberty which is guaranteed under the Constitution. Subjective satisfaction of the authority under the law is not absolute and should not be unreasonable. The question, therefore, would be whether from the past conduct of the Petitioner as set out in the grounds of detention or other circumstances a reasonable inference could be drawn that he is likely to repeat such acts in the future, (para 13).

Though the courts exercising powers of judicial review do not consider the challenge to an order of detention, as if on an appeal re-appreciating the materials, yet since an order of detention in prison involves the fundamental rights of a citizen, freedom of movement and pursuit of normal life and liberty, no absolute immunity can be claimed by the Respondents as to the decision arrived at and it is open to the courts to see whether there has been due and proper application of mind and that all the relevant and vital materials for the purpose have been noticed, adverted to and considered. In the instant case, apart from the absence of any positive or concrete materials to connect the baggage in question with the Petitioner, the nature of stand disclosed in the counter-affidavit file on behalf of the 1st Respondent on this aspect does not really help the authority to prove that the said material and such vitally relevant aspect was either diverted to or really considered before passing the order of detention. Consequently, the impugned order suffers from the vice of total non-application of mind to a relevant and vital material touching question of the culpability as well as the necessity to order the detention of the Petitioner. The impugned order of detention, therefore, has been rightly quashed and the writ Petitioner ordered to be realised from detention in prison.

21. The learned Counsel for the Respondents has submitted that on the materials, information, records, and after considering the relevant aspects, the detaining authority on his subjective satisfaction has passed an order as necessary for detaining the detenu/Petitioner by invoking Section 3(1) of the Act and as such the detention order is protected by the observation of the Supreme Court in *Safiya Vs. Government of Kerala and Others*, .

22. We have heard the learned Counsel for the parties and are conscious enough to the observations made by the Hon'ble Supreme Court in paragraph 7 of *Union of India (UOI) Vs. Paul Manickam and Another*, , as follows:

Preventive detention is an anticipatory measure and does not relate to an offence while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the executive is convinced on the materials available and placed before it that such detention is necessary in order to prevent the person detained from acting in a manner

prejudicial to certain objects which are specified by the law. The action of the executive in detaining a person being only precautionary, the matter has necessarily to be left to the discretion of the executive authorities. It is not practicable to lay down objective rules of conduct, the failure to conform to which alone should lead to detention.

The concept of grounds used in the context of detention in Article 22(5) has to receive an interpretation which will keep in meaningful, in tune with contemporary notions of the realities of the society, and the purposes of the Act in the light of concepts of liberty and fundamental freedoms. While the expression "ground" for that matter includes not only conclusions of fact but also all the basic facts on which those conclusion were founded; they are different from subsidiary facts or further particulars of the basic facts. The detenu is entitled to obtain particulars as to the grounds which will enable him to make an effective representation against the order of detention, (para 7).

23. Further, in view of the submission made by the learned Counsel for the Petitioner it has become clear that the ground No. 1 referred and relied upon by the detaining authority, was not the part of basic facts and materials and was irrelevant and the ground No. 8 referred and relied upon by the detaining authority so far the alleged close relation of Petitioner with Shri Putul Gogoi [whose detention order in reference to Section 3(1) of the Act has also been set aside by the order dated 2.9.2004 passed by this Court in W.P. (Crl.) No. 25/2005 (Putul Gogoi v. the Union of Indian)] was vague ground. When out of eight grounds, ground No. 1 is irrelevant and ground No. 8 is vague, then, in view of the law laid down by the Supreme Court in above noted cases, the detention order in question cannot be legally sustained. Therefore, this Court is of the opinion that where satisfaction of the detaining authority that is necessary to retain a person with a view to prevent him from acting in a manner prejudicial to the society, under a law relating to preventive detention, is based on a number of grounds and if it is found that there is no material to support existence of some of those grounds, the entire detention order is rendered invalid. In view of the present facts and circumstances, the detention order can not be said to be based on subjective satisfaction of the detaining authority, by virtue of same being based on irrelevant and vague ground and there is apparently non application of mind on the part of the detaining authority to pass the detention order by relying on those grounds which are deficient in comprising of basic facts and materials for which the Petitioner could be said to have not been afforded earliest opportunity of making his representation against the detention order and as such on the materials furnished by the detaining authority to the detenu/Petitioner, the said detention order shall be treated to have been passed in derogation to the spirit of Article 22(5) of the Constitution. Therefore, for breach of Article 22(5) this Court could interfere in the same detention order in view of Smt. Gracy Vs. State of Kerala and another, . The writ of Habeas Corpus could be granted when the detention is based on irrelevant or extraneous considerations in view of Machindra v. King AIR 1950 FC 129 and such detention

of Petitioner could be said illegal as the detention order has been passed without application of mind in view of observations of AIR 1943 75 (Federal Court) , and (Emperor v. Sibnath Banerjee) AIR 1945 PC. 138 as well as in view of Kishori Mohan Bera Vs. The State of West Bengal, .

24. In view of the above discussions and observations, the detention order is bad and legally not sustainable. Therefore, the Writ of Habeas Corpus as prayed is allowed and the detention order dated 21.9.2004 (Annexure-1 to the writ petition) is set aside and the grounds of detention (Annexure-2 to the writ petition) shall be of no relevance after quashing of the detention order dated 21.9.2004.

25. The Habeas Corpus petition is allowed. No order as to costs.