

(1985) 10 GUJ CK 0023
In the Gujarat High Court

Chotumal Sugansingh Rajput	Vs	APPELLANT
State of Gujarat and Another		RESPONDENT

Date of Decision : 28-10-1985

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 9(1)
Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3(1), 3(4)

Citation : (1986) 1 GLR 688

Hon'ble Judges : S.B. Majmudar, J; R.J. Shah, J

Bench : Division Bench

Judgement

R.J. Shah, J.—The petitioner, (hereinafter referred to as the detenu) in the above petition has challenged the order of detention dated 5th

August 1985 passed against him under the provisions of the Gujarat Prevention of Anti-Social Activities Ordinance, 1985 (hereinafter referred to

as the Ordinance) by the Commissioner of Police, Ahmedabad City. The grounds of detention, Annexure "C, which also bear the same date and

which were in Gujarati were supplied to the detenu in English rendering of the said grounds so far as is relevant is as follows:

You are carrying on an anti-social activity by stocking, possessing and selling illicit liquor in Chamanpura area of the City of Ahmedabad. In this

connection, offences under the Bombay Prohibition Act, 1949 have been registered against you as stated below and in respect of which you had

been arrested. (Serially 7 offences have been listed)

You are therefore known as a person dealing in illicit liquor.

Because of your such activity an atmosphere of fear and harassment has spread amongst the citizens staying in the said area. By conducting such

activity you have become an obstacle in the maintenance of public order. As yours is still continuing, you have become an obstacle in the maintenance of public order.

Even though steps under the ordinary law are taken against you are continuing such activities.

From all the aforesaid facts as I am satisfied that it is necessary to detain you in order to prevent you from carrying on activities which may turn out

to be detrimental to the maintenance of public order I have passed an order accordingly.

2. Along with the grounds, a list with 13 documents was given to the detenu. In the said documents, 5 were statements of persons, one was

pertaining to Crime Register No. 316/82 and the remaining 7 were regarding the 7 offences listed in the grounds as stated above.

3. Petition has been permitted to be amended as per the order dated 27th September 1985, Shri B.K. Jha, Commissioner of Police, filed his first

affidavit-in-reply (pages 26 to 35) on 25th September 1985. He has filed a further affidavit-in-reply (pages 36 to 40 dated 16th October 1985).

He has also filed a further affidavit-in-reply on 21st October 1985. (pages 41 to 45 which pertains to paragraph 9(XX)) and subsequent

paragraphs of the petition. Shri M.T. Parmar, Under Secretary, Home Department has filed an affidavit-in-reply dated 19th October 1985 (pages

46 to 48).

4. When one examines the Ordinance and conjointly reads Sub-section (1) and (4) of Section 3 along with explanation to Sub-section (4) one

finds that before an order of detention can be passed the concerned authority must be satisfied that it is necessary to preventively detain a person

with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. As per Sub-section (4) a person shall be

deemed to be ""acting in any manner prejudicial to the maintenance of public order"" when such a person is engaged in or is making preparation for

engaging in any activities, whether as a bootlegger or dangerous person or drug offender or immoral traffic offender or property grabber, which

affect adversely or are likely to affect adversely the maintenance of public order. There is therefore a two fold requirement;

(1) The concerned person must be engaged in or making preparation for

engaging in any activities, whether as a bootlegger or some such person mentioned in Sub-section (4), and

(2) The activities of the concerned person must be such as affect adversely or one likely to affect adversely the maintenance of public order.

The explanation to Sub-section (4) for the purpose of the said sub-section clearly provides that a public order shall be deemed to have been

affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in Sub-section (4)

directly or indirectly in causing or is likely to cause any harm, danger, alarm or feeling of insecurity among the general public or any section thereof

or a grave or widespread danger to life, property or public health. The satisfaction referred to above is, of course, subjective satisfaction. If

subjective satisfaction is found to have been based on material which satisfies the aforesaid two requirements then in view of the said explanation,

the concerned nefarious activities of the proposed detenu will be deemed to have adversely affected the public order.

5. The first ground of attack against the detention order centres round the aspect of public order. In petition paragraph XVII and XVIII (pp. 8 (b)

and 8(c)) the petitioner has alleged as follows:

XVII. It is alleged that an atmosphere of danger and terror has been prevalent amongst the residents of the aforesaid locality. The petitioner

submits that the said allegation is not correct. The petitioner is not supplied with any material in respect of the said allegation. The time, place and

the persons amongst whom the said atmosphere of danger and terror has been prevailing has not been mentioned. The incidence from which such

an atmosphere has been prevailing is also not mentioned. Under the circumstances, the allegation is vague and the petitioner was unable to make an

effective representation in respect of the said allegation. The petitioners continued detention has therefore become illegal. XVIII. The petitioner

submits that all the cases mentioned in the grounds of detention are under the Bombay Prohibition Act for the possession of liquor. It has nowhere

been alleged in this complaints of the said cases that public order was disturbed either at the time of the commission of the said offences or

thereafter. The said instances are the instances of law and order situation and not of public order situation. The petitioner is not supplied with any

material to show that public order was ever disturbed as a result of the said offences. The order of detention is thus passed on irrelevant material

and the same has been passed without any application of mind.

6. The reply to the aforesaid paragraphs in the petition is to be found in paragraphs 5 and 6 of the affidavit-in-reply of Mr. B.K. Jha,

Commissioner of Police, Ahmedabad City (pp. 38 and 39 of the paper book).

5. With reference to the averments and allegations made in para 9-A (XVII) of the petition, I say that the petitioner has been supplied with all the

materials to show that the atmosphere of danger and terror had been prevailing amongst the residents of the area where the petitioner resides. I say

that the petitioner has been given all the relevant materials so as to enable him to make effective representation against the order of detention. I

deny the allegation that the continued detention of the petitioner has become illegal.

6. With reference to the averments and allegations made in para 9-A(XVIII) of the petition, I say that the activities of the petitioner are such by

which the maintenance of public order is disturbed. I say that I had taken into consideration all the relevant materials, copies of which have been

supplied to the detenu, and from those materials I was satisfied that it was necessary to detain the petitioner with a view to preventing him from

acting in any manner prejudicial to the maintenance of public order in the area of Ahmedabad City. I deny the allegations that the cases cited are

instances of law and order and not public order. I say that the even tempo of life was disturbed by the activities of the petitioner and the materials

for coming to the said conclusion had already been supplied to the petitioner in order to enable him to make effective representation.

7. It has therefore been contended that the grounds of detention supplied to the petitioner with a view to enabling the petitioner to file a

representation as per Article 22(5) of the Constitution against the impugned order of detention are very vague and consequently the petitioner was

denied a reasonable opportunity of making his representation against the impugned order. Hence the constitutional guarantee under Article 22(5)

was violated.

8. At this stage, it may be mentioned that the learned advocate for the petitioner Shri H.L. Patel has fairly conceded that in view of the material on

record it cannot be gainsaid that the petitioner is a bootlegger. Otherwise also there was ample material before the detaining authority in the shape

of statements and documents on the basis of which he was subjectively satisfied in this connection. It is not possible to say in the present case that

the subjective satisfaction on the aforesaid first aspect was based on no material or on vague material.

9. Coming to the aforesaid second aspect, the document at serial No. 6 of the said list in connection with Crime Register No. 316 of 1982 has not

been relied upon as it does not find a mention in the grounds though the remaining 7 cases have been expressly referred to in the grounds. It is

therefore clear that in order to be subjectively satisfied, the detaining authority has not takes the same into consideration. The documents listed at

serial Nos. 7 to 13 correspond to 7 cases mentioned in the grounds Annexure C. On page 8-A in paragraph XV it has been averred by the

petitioner that he has never been involved in the cases mentioned at serial Nos. 2, 3, 5, 6 and 7 in the grounds of detention. The corresponding

documents in the said list are at serial Nos. 8, 9, 11, 12 and 13. In the said documents, we do not find the name of the petitioner anywhere. The

documents referred to in the grounds, Annexure "C at serial Nos. 1 and 4 pertain to Shahibaug Crime Register No. 1193/83 and 425/84. In the

said list, the corresponding documents are at serial Nos. 7 and 10 respectively. In the case at serial No. 1 in the grounds, it is stated in petition

paragraph XV (p. 8-A of the petition) that the petitioner has been acquitted and this fact is not denied in any of the affidavits-in-reply. In the case

mentioned at serial No. 4 in the grounds, the corresponding documents in the said list being at serial No. 10, at best what is noticed is that the

petitioner is a bootlegger but there is no material in it on the basis of which it can be stated that the same is relating to public order. Thus none of

the cases mentioned at items Nos. 1 to 7 in Annexure "C and one of the documents mentioned at serial Nos. 7 to 33 mentioned in the said list

contain any material from which it can be spelt out that they or any of them relate to public order.

10. The second set of material on which reliance has been put to arrive at the subjective satisfaction in passing the present order of detention is in

the shape of 5 statements at serial Nos. 1 to 5 of the list of documents. The first statement is that of Madanlal Nemchand dated 29th May 1985.

The statement at best shows that the detenu is a bootlegger. The contents of the said statement are very vague. The said statement contains no material at all from which it can be gathered that the situation is concerning public order. The next statement of Kanaiyalal Bhijaji dated 29th May 1985 is similar to that of Madanlal Nemchand. From the said statement also it is not possible to find any material concerning the aspect of public order. The next statement is of Mahesh Ramjidas dated 4th August 1985. In this statement, inter alia, Mahesh has stated that before about 8 days when he told the detenu to cease selling liquor, the detenu got excited and had abused him as well as threatened him, that the detenu carries on such business through his servants, that as he doing not remain present he is not caught by the police, but his servants are caught. That he transports liquor from one place to another place, that near the place where he sells liquor the residents of the locality are harassed and that people get drunk and harass others. The contents of the said statement at best go to show that there may be a situation of law and order, but certainly not one concerning public order. In our view, the said statement contains no material from which it can be spelt out that a situation pertaining to public order existed. The next statement is of Chetansinh Kalasinh dated 4th August 1985. Amongst other things, it has been stated that before about 15 days at the place where liquor was sold people had become drunk and were abusing and he had told the said persons not to do so and therefore the detenu had come near him and caught the shirt and had told him that if he told anything to his clients he would kill him and so saying himself started abusing. It has also been stated that at the place where liquor is sold harassment is caused to the persons staying near it. In our view, the said statement also may be pointing in the direction of law and order situation but certainly not in the direction of public order. The last statement in this connection is that of Satsharansinh Ramavtarsinh dated 4th August 1985. In this statement infer alia, it has been stated that before about 10 to 12 days at the place where liquor was sold people had got drunk and started abusing and so he had told them not to do so and therefore the detenu had come near him and caught him by the shirt and had told him that if he told anything to his clients then he would kill him and he himself started abusing. It has also been stated that near the place where liquor was sold harassment was caused to the residents staying in the locality.

From this statement also, it is difficult to say that it contains any material pointing in the direction of a situation concerning public order.

11. Thus examining the entire material both documentary and oral it appears that the said material showed that the petitioner was a bootlegger and

further that at best a problem of law and order had arisen. From the said material, we are unable to find that there is any material in any of the

statements either when read singly or when read conjointly that the material found therein pointed in the direction of a problem having arisen

regarding public order. Our conclusion therefore in this connection is that there is activities carried on by the detenu as a bootlegger from which it

can be spelt out that the same facts adversely affected the maintenance of public order.

12. There is another aspect in this connection which requires consideration. It is apposite to consider the Full Bench decision of this Court dated

5th December 1984 in Special Criminal Application No. 399 of 1984 with other applications. The matter had arisen out of a reference concerning

the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. It has been noted in the decision that no

question had been framed or posed by the Division Bench making reference and so the Full Bench had posed the question in the following terms:

In a case where the declaration u/s 9(1) of the COFEPOSA records satisfaction in terms of Clauses (a), (b) and (c) of Section 9(1) of the Act

could such declaration be upheld if such satisfaction is based only on material relating to incidents of dates prior to the date of declaration and even

prior to the date of the order of detention.

While considering the said question in paragraph 10 of the judgment, it has been stated as under:

Now we come to the another part of the question which we are called upon to answer in this reference. We have indicated earlier that the

satisfaction in these cases is on two points, namely, that the detenu smuggles and the detenu is likely to smuggle so is the case with satisfactions

falling under Clauses (b) and (c) of Section 9(1). We have also indicated that these are two different satisfactions contemplated in the Act and any

one of them would sustain the declaration. It may be that the materials before the authority to be so satisfied were such as to justify only one

satisfaction, namely, that the detenu ""smuggles"" or it may be that they were such as to justify the other satisfaction, namely that he ""is likely to

smuggle."" The likelihood of a prejudicial activity such as smuggling in the future is to be predicated upon an assessment of the nature of the past

conduct. If the past conduct is such as would not lead to an assumption that the person who is responsible for such past prejudicial activity is likely

to indulge in such conduct in the future, past conduct by itself may not be relevant. A man who commits a crime for instance, need not repeat the

same crime. He might have committed the crime for various reasons such as emotional imbalance of the moment and there would be no justification

in all cases, without anything more, to as that he is likely to commit such crime again. There are other crimes which person may indulge in, not

because of any momentary emotional imbalance or such other reasons, but because of greed, because of the desires to become quick rich.

Operations such as smuggling, holding black marketing, illicit dealing in foreign exchange and other activities of a similar character are generally

under-taken for economic advantage, in that process exploiting the economic order of the country. Carried on in a reasonably noticeable scale any

person could be assumed to do it for undue economic advantage for himself and in such cases evidence of past activity may have relevance in the

matter of satisfaction as to likelihood of persisting in such activity in the future.

13. It has been also observed by the Full Bench in the said Judgment as under:

There are two independent satisfactions contemplated u/s 9(1) and any one of them can sustain the declaration. It is not a case of different grounds

being urged to sustain one and the same satisfaction. This is not a question of different aspects of a question arising for notice. The two satisfactions

being independent the failure of one satisfaction would not necessarily result in the failure of the other.

14. In the said Full Bench decision regarding the case of Smt. Rekhaben Virendra Kapadia Vs. State of Gujarat and Others, , it has been

observed as under:

It is said that it is not competent for this Court to hold as above for the simple reason that in Smt. Rekhaben Virendra Kapadia Vs. State of

Gujarat and Others, , the Supreme Court, finding that there was no material to satisfy the empowering officer that the detenu engages in the

transport of goods, despite the satisfaction on the second part of Section 9(1)(c) held the declaration to be bad. We have only to advert to the

observation of the Supreme Court in B. Shama Rao Vs. The Union Territory of Pondicherry, ; at page 1486 that only the ratio of a decision is

binding and not the conclusion, the court in that case said:

It is trite to say that a decision is binding not because of its conclusion but in regard to its ratio and the principle laid down therein.

The question whether the two satisfactions are independent and whether on the failure of one satisfaction the other satisfaction will nevertheless

support the declaration u/s 9(1) was not in issue in the case before the Supreme Court and the Supreme Court has not spoken on it. No doubt, the

conclusion in that case was that the declaration was not valid, but that is a conclusion on a consideration of the earlier part of Section 9(1) only. In

these circumstances, as we hold the view that there are two independent satisfactions contemplated the mere fact that one of the satisfactions fails

need not result in the failure of the other satisfaction and the declaration would nevertheless be good.

In view of the said Full Bench decision, it is clear that there could be two different and distinct satisfactions in a given case and the satisfactions

being independent, the failure of one satisfaction would not necessarily result in the failure of the other. In the present case we have stated above

that the satisfaction of the one kind named above was no good in the absence of material on which the same could be arrived at. So far as the

present ordinance is concerned feel that this is also a case where two different satisfactions independent of each other are contemplated in view of

the fact satisfaction u/s 3(1) of the Ordinance is not alone in the field. When we read Section 3(1) along with the said Sub-section (4) and the

explanation we feel that the Legislature has contemplated another distinct satisfaction on the ""likely to affect"" aspect. So far as this aspect is

concerned, we do feel in the light of the material on record in the shape of statements referred to hereinabove that there is some material on the

basis of which the said second sort of satisfaction could have been reached. However, it must be said at once that the said satisfaction of necessity

has to be of the detaining authority. It cannot be gain said that the Court cannot substitute its satisfaction for that of the detaining authority. There is

nothing in the detention order which points in the direction that the detaining authority was subjectively satisfied on the basis of the material on record on the aspect of "likely to affect" contemplated u/s 3(1) read: with Sub-section (4) and the explanation thereto it therefore seems that in the present case where the detaining authority has reached subjective satisfaction, we find that the same was not based on any material. So far as the other satisfaction is concerned even though we feel that there was some material on which the subjective satisfaction could have been reached, the detaining authority has not reached that subjective satisfaction in the present case.

15. Mr. J.M. Panchal, the learned Additional Public Prosecutor, has invited our attention to several authorities in support of his submissions. In

Joydeb Gorai Vs. State of West Bengal, , the question was concerning a detention order passed under the West Bengal (Prevention of Violent

Activities) Act, 1970 (Act 19 of 1970). The first ground in the ground of detention was as follows:

That on 7-2-71 at 13-30 hours you and your associates had been to the house of Shri Bibhuti Bhusan Ghosh of Ranchi Dhowrah, Police Station

Kulti, and asked him to rub (out) the anti-naxalite slogans written on the wall of his house. Being refused you threatened to kill him. Your such act

terrorised the common public and as such they could not pursue the normal avocations of life. Moreover, it disturbed public order.

The question therefore was whether threat to kill the said Bibhuti Bhusan Ghosh amounted to "acting in any manner prejudicial to the maintenance

of public order" as defined in Section 3(2)(d) of the Act. Ground No. (1) further alleged that the threat to kill the said Ghosh administered to him

on account of his refusal to rub out the anti-naxalite slogans written on the wall of his house "terrorised the common public and as such they could

not pursue the normal avocations of life" and furthermore disturbed public order. It was concluded that the said assertion coupled with the

satisfaction of the other requirement of Clause (d) of the offence of threatening to kill would bring the act in question within the expression "acting in

any manner prejudicial to the maintenance of public order" as defined in Section 3(2). It was held that it could not be argued that ground No. (1)

was extraneous or irrelevant to the objects set out in Section 3 of the Act and in respect of which a valid order of detention could be made under

the Act. As stated above, in the facts of the present case, we have not been able find that there was any material so far as the aforesaid first

category of satisfaction was concerned. So far as the aforesaid second category of satisfaction is concerned, no subjective satisfaction had been

reached by the detaining authority. The present case is clearly distinguishable on the said consideration. We therefore feel that this decision is of no

assistance to the respondents. Another decision referred to by Mr. Panchal is the one in the case of Nandalal Roy Vs. State of West Bengal, .

Here the only ground for detention under the West Bengal (Prevention of Violent Activities) Act, 1970 was as follows:

That on the night of 1-6-71 at about 01.30 hrs. while committing theft of rice from Wagon No. SB 36751 at Bongaon Rly. Station yard, you and

your associates charged bombs upon the R.P.F. Party on duty with a view to do away with their lives, when challenged by them. As a result of

your bomb charge SR 3179 Himanshu Bhushan Dhar Sharma of the R.P.F. Party sustained burn injury on his person. But the R.P.P. party with

the help of the police party managed to secure your arrest on the spot with 30 kgs. of stolen rice in a gamy bag and one iron made instrument. By

explosion of bombs you and your associates create panic in the station area and in the adjoining locality you cause disturbance of the public order

thereby.

It is unnecessary to refer to the other two paragraphs mentioned in the rounds of detention in the said case. It is true that while considering the

aspect of public order potentiality of the acts has also to be considered. The facts in Nandalal's case (supra) are entirely different from the facts of

the present case narrated in the said grounds. When an explosion of bombs takes place panic would be created in the area in question. So far as

the present case is concerned, we do not find any such telling facts. The next case relied upon by Mr. Panchal is that of Nagendra Nath Mondal

Vs. The State of West Bengal, . In this case, the target of arson on the assumption that the allegations were true was an educational institution. It

has been that where an accused trespasses into an educational institution, burns its record and books, threatens its staff with evil consequences and

puts a bomb therein, the object obviously is to create a scare so that neither the teaching staff nor the pupils would dare attend it for prosecution of

studies and that those acts constituted not merely mischief u/s 425 IPC but also constituted mischief which would disturb or was likely to disturb

public order. No such or similar facts existed in the present case. None of the statements in the present case contain anything to show that public

order situation had arisen. Mr. Panchal had invited our attention to the observations of the Supreme Court in Smt. Hemlata Kantilal Shah Vs. State

of Maharashtra and another, it may not take into consideration any reply given by the detaining authority to such an enquiry, for the reply may be

an after thought and that it will be for the Court to judge whether the facts narrated constitute a ground of detention or which fact might possibly

enter and influence the detaining authority in coming to its subjective satisfaction. We have made an effort to examine the present case in keeping

with the said principles and even after doing so we have not been able to accept Mr. Panchal's submission made in the present case.

16. A reference was also made to Tribhuvan Nath Vs. The State of Maharashtra, by Mr. Panchal. In paragraph 2 of the said decision, it has been

stated that the grounds of detention served upon the petitioner were two. The first was that on December 1, 1970, some time after midnight, the

petitioner along with certain other person after breaking open the doors entered into the room of the Head Master of the Maynaguri Higher

Secondary School and set fire to books, registers, a typewriter, furniture etc. causing heavy damage to the school, and placed thereafter a bomb in

the school premises thereby endangering the lives of the teaching staff and the students. The second was that on the April 16, 1971 at about 11

hours the petitioner together with certain other persons once again made a forcible entry into the said school, preventing under threats the members

of the school staff from offering any resistance to him and his companions and then set fire to the school building. The result of the aforesaid acts

was that the school had to be closed down for an indefinite period. The Supreme Court observed that the two incidents set out in the grounds for

detention would clearly fall u/s 3(1)(b) and (b) of the West Bengal (Prevention of Violent Activities) Act, 1970. The alleged setting of fire to the

school building on April 16, 1971 accompanied by threats to the members of the school staff to prevent them from offering any resistance, was

clearly aimed at seeing that the school did not re-open and carry on its usual educational activity. There can scarcely be any doubt that placing a

bomb in the school premises and attempting to destroy the school building itself must obviously cause scare and alarm not only amongst the pupils

and the teachers but also amongst the parents and the guardians of such pupils who would not venture to send their wards to the school for fear of

their personal safety. Such acts must be held to constitute disturbance of public order or at any rate acts which were likely to disturb public order,

thus falling u/s 3 (2)(b) and/or its Sub-clause (d). On the basis of this decision, it was submitted that the factual inference was only of one type and

it was not regarding "likely to cause" aspect. The question regarding subjective satisfaction as analysed in the said Full Bench decision was not for

consideration before the Supreme Court in the said decision. It is true that some facts can at times satisfy both the satisfactions but the vital

question is as to which is the authority that should reach the subjective satisfaction of both kinds. In the view that we are taking in the present case,

this decision cannot help Mr. Panchal because on the facts in the Supreme Court's decision, a composite satisfaction was arrived at by the

detaining authority. Same is not the case in the present petition. Another decision relied upon by Mr. Panchal is the one tendered in Subal Chandra

Ghosh v. State of West Bengal AIR 1972 S.C. 2146. In the said decision, one of the questions which required consideration was whether the

grounds upon which each of the petitioners had been detained were irrelevant or vague. In Writ Petition No. 306/71, the two grounds upon which

the petitioner had been detained were as follows:

1. That on 22-3-71 at about 22.50 hrs. you along with your associates committed theft in respect of cash, wrist watch, torch light etc. from one

Dilip Kumar Nindi, a Railway Storekeeper of Danpur and another at the point of daggers in between Shyamnagar and Kankinara Rly. Stations,

while they were travelling in train No. 45 Up (Naihati Local) from Sealdah. Your activities made the passengers of the compartment panicky and

public order was disturbed thereby.

2. That on 23-4-71 at about 22.30 hrs. you and your associates while moving in the platform of Ichapur Rly. Station with a view to commit a

cognizable offence, charged bombs on the on-duty Police and threatened them to kill by showing a dagger as they chased you. Your activities let

loose a reign of terror in the station area. You created disturbance of public order

thereby.

17. In respect of the first ground the learned Advocate Shri Dhingra, amicus curiae, assisting the Court contended that the ground was vague and

at any rate did not show that the acts of the petitioner were prejudicial to the maintenance of public order and that since this ground was not valid

the entire detention order had become invalid. A perusal of the decision clearly shows that the learned Counsel did not make a point that the

grounds in the present case were germane to the disturbance of public order.

18. Mr. Panchal had also referred to *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, to point out that when a statute enacts

that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what

purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be

carried to its logical conclusion. The said principle is well-settled and we do not think that the view that we are taking in the present case is in any

way inconsistent with the said principle.

19. Mr. Panchal had invited OUT attention to the observations made in paragraph 5 by the Supreme Court in *Israil Sk. Vs. The District*

Magistrate of West Dinajpur and Others, and had submitted that even a single incident would suffice to satisfy subjective satisfaction of the

detaining authority. It cannot be gainsaid that in a given case the facts before the detaining authority may be such which might fully satisfy

subjective satisfaction". The fact, however, remains that the facts in each case will govern the situation. In the present case, in our view no such

consideration arises.

20. Lastly, Mr. Panchal had referred to the provisions under the National Security Act, 1980, COFEPOSA Act, 1974 and those of the

Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on the aspect of subjective satisfaction. If

Section 3(1) of the Ordinance was the only provision in the field then the question would have been of only one kind of subjective satisfaction. So

far as the Ordinance is concerned, Section 3(1) cannot be read in a disjunctive manner ignoring the said Sub-section (4) of Section 3 as well as the

explanation thereto. That being the case, so far as the ordinance is concerned,

both the kinds of subjective satisfaction are in the field and in that view of the matter we are clearly of the opinion that the first kind of subjective satisfaction in the present case has not been based on the material which was available to the detaining authority and regarding the second kind of subjective satisfaction referred to by us the detaining authority has not reached any such subjective satisfaction. We are therefore of the opinion that the petition, requires to be allowed on the aforesaid ground alone. In the circumstances, we deem it unnecessary to enter upon a discussion regarding the other grounds, raised by the detenu.

21. In the result, the petition succeeds. The impugned order Annexure "A" is hereby quashed and set aside. The respondents are directed to set the detenu at liberty forthwith if not required to be detained pursuant to any other order. Rule is made absolute accordingly.