

(2012) 02 MAD CK 0325

In the Madras High Court

Case No : Habeas Corpus Petition No. 1498 of 2011

D. Vijayakumari

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(5)
Criminal Procedure Code, 1973 (CrPC) — Section 161
Goondas Act, 1923 — Section 3, 5A

Citation : (2012) 02 MAD CK 0325

Hon'ble Judges : K. Mohan Ram, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : N.R. Elango, SC for Mr. R. Vivekananthan, for the Appellant; I. Subramani, Public Prosecutor assisted by Mr. A.N. Thambidurai, APP, for the Respondent

Final Decision : Dismissed

Judgement

K. Mohan Ram, J.—The petitioner in the above petition is the wife of the detenu. The detenu came to the adverse notice of the Police Authorities in the following cases :

S.No.

Police Station

Cr.No.

Section of Law

1

R8 Vadapalani P.S.

25 of 2010

147, 148, 448, 427, 506(ii) IPC r/w 3 of Tamilnadu Property (Prevention of

Damage and Loss) Act

2

R10 MGR Nagar P.S.

880 of 2011

447, 294(b), 323, 427, 506(ii) IPC

3

R10 MGR Nagar P.S.

916 of 2011

120(b), 342, 380, 406, 420, 420, 427, 448, 454, 467, 468 and 506(ii) IPC

4

R10 MGR Nagar P.S.

1161 of 2011

147, 448, 323, 294(b), 506(ii) IPC @ 147, 148, 448, 323, 294(b), 427, 336, 506(ii) IPC & 397 IPC.

5

R7 K.K.Nagar P.S.

916 of 2011

147, 148, 294(b), 448, 451, 354, 380, 384 & 506(ii) IPC

6

R7 K.K.Nagar P.S.

1107 of 2011

120(b), 409, 420, 386, 506(ii) & 3 r/w 4 of Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003

The Sponsoring Authority, by placing relevant materials, recommended the detention of the detenu as a "slum grabber" under The Tamilnadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) (hereinafter referred to as "the Act"). The Detaining Authority, after considering the relevant materials relating to the aforesaid six cases, came to the following subjective satisfaction :

The above acts of threatening the original land owners with dire consequences, demolishing the wall by keeping the inmates inside the house by wrongfully confining them, obtaining power of attorney under threat and coercion as if given

by the owner, assaulting the inmates and stealthily removed and taking away the properties, threatening a woman by sending rowdy elements inside the house nudely, keeping the owners and the children inside the house and demolishing the wall and annexing the land, entering into the house and taking away the properties and threatening them not to enter in to the house, etc., show that he had no regard to the law of the land but believes that the political and the muscle power is greater and created everything. This has created a sense of insecurity and panic in the minds of land owners of the local area. Thus showing such wrong signal would also amount to disturbance of public order.

These cumulative acts show that Tr. Dhanasekaran has no regard for law of the land and has brazenly misused his influence to forcibly usurp the property of innocent civilians. Thus, depriving them of the fundamental rights to property as unstrained and atrocity in that locality by Tr. Dhanasekaran not only has an impact on the victims and their families but also in the neighbourhood and adjoining localities since there is every likelihood that their respective lands may also be grabbed by adopting similar tactics. Such act has created panic and frustration among the public.

The Detaining Authority further came to the following subjective satisfaction:

The act having regard to the amplitude of the gravity of the offence, perpetrated in an organized and systematic manner, the nature of the offence and his deleterious effects are against the civilised society at large which will amount to disturbance of public and order and thus Thiru Dhanasekaran acted in a manner prejudicial to the maintenance of public order as such he is a slum grabber as contemplated u/s 2(h) of the Tamilnadu Act 14 of 1982."

2. The Detaining Authority, after considering the imminent possibility of the detenu coming out on bail, on the basis of the materials placed before him, came to the subjective satisfaction that if the detenu comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order. Further, the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such unlawful activities, which are prejudicial to the maintenance of public order. On the materials placed before him, the Detaining Authority was fully satisfied that the detenu is a slum grabber and that there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future, which are prejudicial to the maintenance of public order under the provisions of the Tamilnadu Act 14 of 1982 and accordingly passed the impugned order of detention dated 16.9.2011. Challenging the same, the above habeas corpus petition has been filed.

3. Heard both.

4. Mr. N.R. Ilango, learned Senior Counsel appearing on behalf of Mr.Vivekanandan, learned counsel for the petitioner submitted that though several grounds have been raised in the above petition, he is confining himself to the following submissions :

The detenu had sent a pre-detention representation dated 6.9.2011 to the Home Secretary, Government of Tamilnadu, to the second respondent - the Commissioner of Police, Greater Chennai, namely the Detaining Authority and the Chief Secretary, Government of Tamilnadu. The postal certificate shows that the said representation had been delivered to the second respondent on 7.9.2011 and similarly, the aforesaid other Authorities also received the said representation on 7.9.2011. But, the pre-detention representation of the detenu had not been considered and disposed of before passing the detention order by the Detaining Authority. The grounds of detention do not reveal that the said pre-detention representation dated 6.9.2011 was considered by the Detaining Authority and no order rejecting the said representation was communicated to the detenu and therefore, on this ground alone, the order of detention is liable to be set aside.

5. Learned Senior Counsel further submitted that in paragraph 18 of the affidavit, the said ground has been taken. In reply to the said ground taken in the affidavit, the second respondent, in his counter affidavit, has stated as follows :

Regarding the contention raised in grounds 18 of the affidavit, I submit to the best of my understanding that there is no pronouncement by Hon"ble Supreme Court in cases of this nature. However assuming otherwise a representation strict to sensu should be emanating from the detenu or on his behalf setting out circumstance prima facie should that no order of detention can be passed against the detenu. I further submit that there is no constitutional mandate under Clause (5) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention. In this case the order of detention was confirmed only on 6.12.2011. Hence the non consideration of the pre-detention representation will not vitiate the order of detention."

6. Learned Senior Counsel appearing for the petitioner submitted that in the additional counter affidavit filed by the second respondent in paragraph 4, the second respondent has stated that the Greater Chennai Police is having vast jurisdiction consisting of four zones, which comprise of 12 Police Districts and totally, 132 Police Stations are under the control of Chennai Police. It has been further stated that on every working day, nearly 100 petitions are received directly by the second respondent or by the Additional Commissioner of Police from the public between 11 AM and 3 PM. Similarly, on every working day, 700 petitions were received from public/Government/DGP's Office/Collector's Office/CM Cell for the above Police Districts and they were forwarded to the Joint Commissioners of Police, who enquire through their Deputy Commissioners of Police and Assistant Commissioners of Police and put up reports to the second respondent in important petitions where his attention is required. If any tapal or petition is placed before him, the second respondent will consider the same without any delay whatsoever by giving instructions to take further action. The acknowledgment card produced by the petitioner reveals that the pre-detention

representation dated 6.9.2011 was received by the Tapal Section on 7.9.2011. But, the same was not placed before the second respondent while passing the order of detention. The alleged non consideration of the pre-detention representation is neither willful nor wanton, but due to the circumstances beyond his control.

7. Learned Senior Counsel for the petitioner submitted that admittedly, the pre-detention representation sent by the detenu has been received by the second respondent and the same has not been placed before the second respondent. Thus, it is admitted that the said representation had not been considered by the second respondent either before or at the time of passing the order of detention, which according to the learned Senior Counsel, will amount to non application of mind while arriving at the subjective satisfaction and will vitiate the order of detention.

8. In support of the said contention, learned Senior Counsel for the petitioner placed reliance on the decision of the Apex Court in the case of Ahamed Nassar Vs. The State of Tamil Nadu and Others, and the decisions of the Division Benches of this Court in the case of

- (i) Michel Joseph Lawrance Vs. District Magistrate and District Collector, Tirunelveli and another, ;
- (ii) Viji Vs. Commissioner of Police, Greater Chennai {2003 M.L.J. (Crl.) 571};
- (iii) Chandra Vs. The Secretary to Government {2010 (1) MWN (Crl.) 129};
- (iv) Kalimath Sahadiya Vs. The State of Tamilnadu {2009 (1) MWN (Crl.) 257};
- (v) Haja Najumudeen Vs. State of Tamilnadu {2007 (2) MWN (Crl.) 346};
- (vi) P.M.S. Mohiadeen Sahib Vs. State of Tamilnadu {2005 (2) MWN (Crl.) 305};
- (vii) Suresh Kumar Vs. State {2004 (1) MWN (Crl.) 230};
- (viii) A. Pushparani Vs. The Commissioner of Police Greater and Others, ; and
- (ix) R. Durairaj Vs. State of Tamilnadu {2000 (2) MWN (Crl.) 143}.

9. Learned Senior Counsel for the petitioner further submitted that at page 16 of the grounds of the detention, the Detaining Authority, while referring to the aspect of the detenu moving the bail application before the 23rd Metropolitan Magistrate Court, Saidapet, Chennai for R7 K.K. Nagar Police Station Cr. No. 1107 of 2011, has mentioned about the criminal miscellaneous petition and stated that the same is pending. But, the criminal miscellaneous petition number is left blank. This shows the clear non application of mind on the part of the Detaining Authority. Learned Senior Counsel further submitted that such a ground has been taken in paragraph 19-ii of the affidavit, which reads as follows :

There are some blanks in the grounds of the detention which is found in Vernacular version page 21 and English version page 16 without furnishing the

entire details the detention order was passed hence the detention order is liable to be quashed.

10. Learned Senior Counsel further submitted that the said ground has been dealt with by the second respondent in paragraph 25 of the counter affidavit, which reads as follows :

I also submit non mention of the Crl. M.P. No. 9518 of 2011 in the grounds of detention will not cause any prejudice to the detenu since the copy of the bail application with its vernacular version furnished to the detenu as document No. 536 to 541 and I also submit that it is his own bail application.

11. In support of his contention that leaving blanks in the grounds of detention will amount to non application of mind, the learned Senior Counsel for the petitioner placed reliance on the following decisions :

- i. Chandran Vs. State of Tamilnadu {2000 (2) MWN (Crl.) 286}; and
- ii. Sathi (a) Muthuswamy Vs. Secretary to Government of Tamilnadu {1994 (2) LW (Crl.) 552}.

12. Learned Senior Counsel for the petitioner further submitted that in page 14 of the grounds of detention, in the English version, the Detaining Authority has, while referring to the further statement of the complainant Kalaivanan dated 10.9.2011, stated as follows :

added that during the transaction of committing dacoity at his shop by the accused Dhanasekaran aimed at the head of Kalaivanan and assaulted him with an iron rod but fortunately, he turned and bent his head, thus averting the assault on his head and luckily escaped from the death and grievous hurt and ran towards outside by shouting "help" and pleading to the public to save him..."

Similarly, in the Tamil version of the grounds of detention at page 19, it has been stated as follows :

Vernacular matter deleted

13. But according to the learned Senior Counsel, in his statement u/s 161 of the Criminal Procedure Code, the complainant Kalaivanan has not stated that the detenu Dhanasekaran attempted to assault him with an iron rod, whereas he had stated that one Govindaraj attempted to hit him on his head with an iron rod. The said statement of Kalaivanan is made available at page 417 of the booklet furnished to the detenu.

14. This, according to the learned Senior Counsel for the petitioner, will amount to clear non application of mind on the part of the Detaining Authority. Such ground has been taken in paragraph 11 page 5 of the affidavit of the petitioner, which has been replied by the second respondent in his counter statement. In paragraph 11 of the counter affidavit, the second respondent has stated as follows :

"Further regarding overt act, the matter to be agitated at the time of trial. If he was detained as a slum grabber and no overt act of assaulting the victim is required."

15. Learned Senior Counsel for the petitioner further submitted that a post detention representation dated 10.10.2011 was sent by the detenu to the first respondent, the Advisory Board and the Detaining Authority and the representation had been received on 3.11.2011. But, the same had been disposed of with a delay and the delay has not been explained.

16. Learned Senior Counsel for the petitioner finally submitted that the pre-detention representation sent by the detenu to the Detaining Authority was not placed before the Advisory Board or the first respondent before confirmation of the order of detention. In the confirmation order, there is no reference to the pre-detention representation. In support of the said contention, learned Senior Counsel placed reliance on the decision of the Division Bench reported in Michel Joseph Lawrance Vs. District Magistrate and District Collector, Tirunelveli and another, . Except the aforesaid submissions, no other submission has been made by Mr.N.R.Elango, learned senior counsel, for the petitioner.

17. Countering the said submissions, Mr. I. Subramani, learned Public Prosecutor made the following submissions : The right to make a representation flows from Article 22(5) of The Constitution of India and Section 8 of the Tamilnadu Act 14 of 1982. Article 22(5) of The Constitution of India as well as Section 8 of the Tamilnadu Act 14 of 1982 only provide for a representation by the detenu against the order of detention and both the provisions do not provide for a pre-detention representation. Therefore, according to the learned Public Prosecutor, there is no constitutional or statutory right available to the detenu to make such a predetention representation either to the Detaining Authority or to the Advisory Board or to the State Government.

18. In support of the said contention, learned Public Prosecutor placed reliance on a Full Bench decision of the Apex Court in the case of State of Tamilnadu and another Vs. R.Sasikumar (2008 CrL. L.J. 3511) wherein in paragraph 5, it has been held as follows :

The question of making a representation to the Advisory Board arises only after the order of detention had been passed and served on the detenu. The High Court, therefore, was clearly in error in quashing the order of detention. "

From the aforesaid passage, learned Public Prosecutor submitted that the question of making a representation to the Detaining Authority arises only after the order of detention had been passed and served on the detenu and not before the order of detention is passed. The non consideration of the pre-detention representation by the Detaining Authority has not violated any constitutional or statutory right of the detenu and therefore, it will not vitiate the order of detention.

19. Learned Public Prosecutor further submitted that even if the predetention representation sent by the detenu had been received at the office of the Detaining Authority, as stated in the additional counter by the second respondent, hundreds of communications are received daily and it would be impracticable to expect the Detaining Authority to remember the pre-detention representation sent by the detenus at the time of passing the order of detention.

20. Learned Public Prosecutor placed reliance on a decision of the Apex Court in the case of District Magistrate Vs. R. Kumaravel {1994 SCC (Crl.) 229} and submitted that the contention of the detenu in that case was that the relevant and vital documents, namely the telegrams sent on behalf of the detenu to the Police Authorities and other Authorities wherein it was complained that the detenus were taken to police custody at 11 AM in on November 25, 1991, were neither placed before the Detaining Authority nor the copies of the said telegrams were supplied to the detenu in spite of the request made by them in their representations and therefore, the detention order was vitiated for non consideration of vital documents and non application of mind. But, the said contention was sought to be rebutted by the State by contending that the detenu was not arrested at 11 AM in the court premises as alleged, but the detenu and his associates were arrested only after the incident that took place at 3 PM on November 25, 1991. It was contended that in the bail application filed by the detenu, the very same averment had been made by the detenu and the bail application had been considered by the Detaining Authority in that case. Considering the aforesaid facts, the Apex Court has held that it is thus obvious that the District Magistrate had applied his mind to the bail application, which contains the averment that the detenus were arrested by the police at 11.30 AM on November 25, 1991. The District Magistrate had before him the case of the detenus that they were arrested by the police at 11/11.30 AM. In this view of the matter, the argument of the learned counsel for the detenus based on the telegrams loses its relevance.

21. Learned Public Prosecutor submitted that the detenu in his predetention representation had stated that he belongs to DMK party and holds an important post in the party and earlier also, when AIADMK party came to power, cases were foisted against him and he was detained under the Tamilnadu Act of 1982 in 2005. It has been further stated that after the present Government assumed office, false cases are being foisted against him to wreck vengeance on him. Foisting false cases one after another is for the purpose of detaining him under the Goondas Act. He further requested the State Government not to confirm the order of detention, if any, passed against him.

22. Learned Public Prosecutor submitted that in the anticipatory bail petition filed in Crl. O.P. No. 18509 of 2011 in Cr. No. 916 of 2011 on the file of the Inspector of Police, R7 K.K. Nagar Police Station, before this Court, the very same allegations/averments in the pre-detention representation have also been made and the said bail application had been placed before the Detaining Authority, the

English version of which is made available at page 638 of the booklet and the Tamil version of which is made available at page 642 of the booklet. The same had also been considered by the Detaining Authority in the grounds of detention and he has stated that the said anticipatory bail application is pending. Therefore, according to the learned Public Prosecutor, though the pre-detention representation of the detenu had not been placed before the Detaining Authority, when the very same allegations/averments contained in the pre-detention representation are also found in CrI. O.P. No. 18509 of 2011 and the same has been considered by the Detaining Authority, the non consideration of the pre-detention representation will not amount to non application of mind on the part of the Detaining Authority and consequently, it will not vitiate the order of detention.

23. Learned Public Prosecutor submitted that the object of the law of preventive detention is to protect the society at large and the court must be conscious and mindful of the fact that this is a "suspicious jurisdiction" i.e jurisdiction based on suspicion and an action is taken "with a view to preventing" a person from acting in a manner prejudicial to certain activities enumerated in the relevant detention law. In support of his contention, learned Public Prosecutor placed reliance on the decision in the case of State of Maharashtra and Others Vs. Bhaurao Punjabrao Gawande, .

24. Placing reliance on the decision of the Apex Court in the case of Union of India Vs. Paul Manickam {2004 SCC (CrI) 239}, learned Public Prosecutor submitted that 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 manner has necessarily to be left to the discretion of the executive authority. According to the learned Public Prosecutor, since the Detaining Authority is convinced on the materials placed before him that the detention of the detenu is necessary in order to prevent him from acting in a manner prejudicial to certain objects which are specified by law, the non consideration of the pre-detention representation will not in any manner vitiate the order of detention.

25 Learned Public Prosecutor placed reliance on a Division Bench decision of the Bombay High Court in the case of Deepesh Mahesh Zaveri Vs. Union of India (1996 CrI. L.J. 4112) and submitted that the non consideration of the pre-detention representation sent by the detenu will not vitiate the order of detention. In the said decision, a similar contention was made by the detenu, namely that the pre-detention representation made by the detenu on 5.10.1995, which was addressed to the Detaining Authority has not been considered by the Detaining Authority, when actually the detention order came to be passed only on 5.10.1995 and the order of detention has been served on the detenu on

10.10.1995. While considering the said contention, the Bombay High Court observed that that representation was not a representation against the order of detention, but was in anticipation of the issuance of the order of detention. After considering various decisions, the Bombay High Court has laid down as follows :

"Thus, in our considered view, the scope of a representation and even a petition to this Court at the pre-execution stage would be extremely limited. At any rate, we have no hesitation in rejecting Mr. Karmali's contention that a representation at the preexecution stage like the one in the present case made on the 5th October 1995 before the order of detention was executed on the 10th October 1995 must be placed on the same pedestal as the representation made under Clause (5) of Article 22 of the Constitution."

26. As far as the contention of the learned Senior Counsel for the petitioner that there are blanks both in the English version as well as in the Tamil version of the detention order in respect of the CrI. M.P. Number filed by the detenu for anticipatory bail is concerned, learned Public Prosecutor submitted that the said blanks had not in any way affected the right of the detenu to make an effective representation. Learned Public Prosecutor submitted that it is not a material mistake, which will affect the order of detention. Learned Public Prosecutor further submitted that the blanks in the grounds of detention will not cause any prejudice to the detenu, since the copy of the bail application with its vernacular version furnished to the detenu as document No. 536 to 541 contains the CrI. M.P. Number and further, it is his own bail application. Therefore, the said blanks will not amount to non application of mind on the part of the Detaining Authority and it will not vitiate the order of detention.

27. Learned Public Prosecutor further submitted that in the decision in the case of Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, the Apex Court observed that there is no rule of law that common sense should be put in cold storage while considering constitutional provisions for safeguards against misuse of powers by Authorities though these constitutional provisions should be strictly construed. Learned Public Prosecutor submitted that the judgment is not to be read as a statute. He placed reliance upon the decision in the case of Deepak Bajaj Vs. State of Maharashtra and Another, wherein it has been held as follows :

"It is well settled that a judgment of a Court is not to be read mechanically as a Euclid's theorem nor as if it was a statute." The Apex Court has further observed that the ratio of any decision must be understood in the background of the facts of that case.

28. Learned Public Prosecutor placed reliance on the decision of the Apex Court in the case of Ramesh Chand Daga Vs. Rameshwari Bai, wherein in paragraph 22, it has been laid down as follows :

"CONSTRUCTION OF THE JUDGMENT : A judgment, as is well known, is not to be read as a statute. A judgment, it is trite, must be construed upon reading the

same as a whole. For the said purpose the attendant circumstances may also be taken into consideration. Islamic Academy of Education and Another Vs. State of Karnataka and Others, , Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, and P.S. Sathappan (Dead) by Lrs. Vs. Andhra Bank Ltd. and Others, ."

29. As far as the third contention of the learned Senior Counsel for the petitioner that when the complainant Kalaivanan in his further statement in respect of Cr. No. 1 161 of 2011 had not stated that the detenu Dhanasekaran attempted to attack with iron rod on his head whereas he had stated that one Govindaraj had attempted to hit his head with iron rod, the Detaining Authority has stated as if Dhanasekaran had attempted to hit Kalaivanan on his head with an iron rod and that therefore, it will amount to non application of mind, learned Public Prosecutor submitted that this contradiction can be raised only at the time of trial and not while challenging the order of detention.

30. In the alternative, learned Public Prosecutor submitted that there are number of grounds based on which the order of detention has been passed and even assuming that because of the said contradiction, that ground cannot be relied upon, the same is severable u/s 5A of the Act and on the remaining grounds alone, the order of detention could be sustained.

31. In support of the said contention, learned Public Prosecutor placed reliance on the decision of the Apex Court in Appeal (Crl.) No. 701 of 1999 {State of Tamilnadu and another Vs. Kethiyan Perumal} dated 11.10.2004, wherein placing reliance on the decision of the Apex Court in the case of Mrs. U. Vijayalakshmi Vs. State of Tamil Nadu and another,), it has been held as follows :

It is to be noted that in D. Vijayalakshmi case (supra) this court categorically held that in view of Section 5A of the Act an extraneous and irrelevant ground does not affect validity of the detention order as Section 5A was introduced precisely to take care of such a situation."

32. Learned Public Prosecutor, by referring to the provisions of Section 5A of the Act, submitted that when a person had been detained under the order of detention mainly u/s 3 of the Act 14 of 1982, which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on aid of such grounds and accordingly, such order shall not be deemed to be invalid or inoperative, merely because one or some of the grounds is or are non-existent or invalid for any other reason whatsoever.

33. Learned Public Prosecutor submitted that Section 5A has been inserted if one or more grounds are vague and the order of detention still can be good if anyone of the grounds is deemed to be valid. In fine, learned Public Prosecutor submitted that the said contradiction pointed out by the learned Senior Counsel viz., as to whether the detenu attempted to attack the complainant Kalaivanan or Govindaraj attempted to attack Kalaivanan, will not vitiate the order of detention.

34. As far as the alleged delay in the disposal of the post detention representation of the detenu dated 10.10.2011 is concerned, learned Public Prosecutor submitted that there is no delay in the disposal of the representation. Learned Public Prosecutor furnished the details of the file movement in respect of the representation of the detenu dated 10.10.2011.

35. As far as the contention of the learned Senior Counsel for the petitioner that the pre-detention representation was not placed either before the Advisory Board or the State Government before confirmation and there is no reference to the pre-detention representation in the confirmation order is concerned, learned Public Prosecutor submitted that the post detention representation dated 10.10.2011 has been placed before the Advisory Board and the State Government and in the said representation also, the contents of the pre-detention representation have been mentioned and the same has been considered both by the Advisory Board as well as the State Government and only thereafter, the confirmation order has been passed and as such, no prejudice whatsoever has been caused to the detenu and on that ground, the detention order cannot be set aside.

36. Learned Public Prosecutor further submitted that the decision reported in Michel Joseph Lawrance Vs. District Magistrate and District Collector, Tirunelveli and another, is not applicable to the facts of this case, as in that decision, the facts stated in the pre-detention representation were so vital, which caused a doubt about the occurrence itself, which has been taken as a ground for quashing the order of detention whereas in this case, only a general allegation that false cases have been foisted against the detenu for the purpose of detaining him under the Goondas Act alone has been mentioned. In the anticipatory bail petition filed in Cr. No. 916 of 2011, the very same allegation has been made and the same has been referred to in the grounds of detention and therefore, when the grounds of detention have been forwarded to the Advisory Board and the State Government, the mere non mentioning of the pre-detention representation in the confirmation order will not vitiate the order of detention.

37. In reply, Mr. N.R. Elango, learned Senior Counsel submitted that the contention of the learned Public Prosecutor that because of huge volumes of correspondence received at the office of Commissioner of Police, it will not be practically possible to remember and consider any pre-detention representation received from the detenus is concerned, the same cannot be countenanced. He submitted that in the detention order dated 16.12.2011 issued in Memo.No.741/BDFGISSV/2011 passed in respect of the detenu Mohan (a) Kattai Mohan, the same Commissioner of Police has stated in the grounds of detention itself that a pre-detention representation dated 7.12.2011 was placed before him and he had considered and rejected the same. According to the learned Senior Counsel for the petitioner, when the second respondent - Detaining Authority considers the pre-detention representations in some cases, it cannot be heard to be contended that it is not necessary for the Detaining Authority to consider the pre-detention

representation of the detenu either before passing the order or at the time of passing the order of detention.

38. We have carefully considered the contentions of the learned counsel on either side and perused the materials available on record.

39. The Apex Court in various decisions including the decision reported in {2004 SCC (Cri) 239} (referred to supra) has laid down that 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 manner has necessarily to be left to the discretion of the executive authority.

40. In the decision reported in State of Maharashtra and Others Vs. Bhaurao Punjabrao Gawande, (referred to supra) the Apex Court has laid down that the object of the law of preventive detention is to protect the society at large and the court must be conscious and mindful of the fact that this is a "suspicious jurisdiction" i.e jurisdiction based on suspicion and an action is taken "with a view to preventing" a person from acting in a manner prejudicial to certain activities enumerated in the relevant detention law.

41. In the decision reported in Union of India (UOI) and Another Vs. Shrimati Chaya Ghoshal and Another, the Apex Court has laid down that Preventive justice requires an action to be taken to prevent apprehended objectionable activities. But at the same time, a person's greatest of human freedoms i.e. personal liberty is deprived, and, therefore, the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however technical, is mandatory. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law.

42. In Ashadevi Mehta (Detenu) Vs. K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat and Another, the Apex Court has held as follows: (para 6 of AIR, Cri LJ)

If material or vital facts which would influence the mind of the detaining authority one way or the other on the question whether or not to make the detention order are not placed before or are not considered by the detaining authority, it would vitiate its subjective satisfaction rendering the detention order illegal."

43. In Ayya alias Ayub Vs. State of U.P. and Another, , the Apex Court has held as follows: (para 13 of AIR, Cri LJ)

There would be vitiation of the detention on grounds of nonapplication of mind if a piece of evidence, which was relevant though not binding, had not been

considered at all. If a piece of evidence which might reasonably have affected the decision whether or not to pass an order of detention is excluded from consideration, there would be a failure of application of mind which, in turn, vitiates the detention. The detaining authority might very well have come to the same conclusion after considering this material; but in the facts of the case the omission to consider the material assumes materiality. "

44. The Hon "ble Apex Court in the decision reported in 2005-4-L.W. 452 (referred to supra) in paragraph 22 has laid down as follows:-

22. CONSTRUCTION OF THE JUDGMENT :

A judgment, as is well known, is not to be read as a statute. A judgment, it is trite, must be construed upon reading the same as a whole. For the said purpose the attendant circumstances may also be taken into consideration."

45. Again in the decision reported in Deepak Bajaj Vs. State of Maharashtra and Another, the Hon "ble Apex Court has held that it is well settled that a judgment of a Court is not to be read mechanically as a Euclid's theorem nor as if it was a statute.

46. Further, in the decision reported in Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, the Apex Court observed that there is no rule of law that common sense should be put in cold storage while considering constitutional provisions for safeguards against misuse of powers by Authorities though these constitutional provisions should be strictly construed.

47. In the light of the aforesaid legal principles laid down by the Apex Court, the various contentions put forth by the learned senior counsel for the petitioner and the learned Public Prosecutor has to be considered.

48. Admittedly in this case, the detenu has been branded as a "Slum grabber" as defined u/s 2(h) of the Act. To arrive at the subjective satisfaction that the detenu is a "Slum grabber" and his detention under the Act is necessary, the Detaining Authority has relied upon six cases registered against the detenu and the details of which have been stated supra, in paragraph 1, and the Detaining Authority has considered all the materials relating to the aforesaid six cases placed before him and has come to the subjective satisfaction that the detenu has acted in a manner prejudicial to the maintenance of public order and as such he is a "slum grabber" and that there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future, which are prejudicial to the maintenance of public order under the provisions of the Act and accordingly passed the impugned order of detention dated 16.09.2011.

49. The first and foremost contention of the learned senior counsel for the petitioner is that the detenu had sent a pre-detention representation dated 06.09.2011 to the Detaining Authority and the same had been delivered to the Detaining Authority on 07.09.2011 and the second respondent had not disputed the delivery of the representation but has only stated in his counter affidavit that

the same was not placed before him. Learned senior counsel further submitted that it is further contended by the second respondent that because of the huge volume of correspondence received at the office of Commissioner of Police, it would be impracticable to place any pre-detention representation before the Detaining Authority after a gap of time when the order of detention is being passed. Learned senior counsel further submitted that the impracticableness or otherwise of placing of the pre-detention representation cannot be a defence for not considering the pre-detention representation.

50. Learned senior counsel for the petitioner further submitted that though it may not be a constitutional or statutory right conferred on the detenu to make a representation prior to the passing of the order of detention still if such a representation is made and if the same is not placed before the Detaining Authority and the same has not been considered by the Detaining Authority, it would amount to non application of mind on a material fact. In support of the said contention, the learned senior counsel based reliance on a number of decisions, which are referred to supra, in paragraph 9.

51. Whereas it is the contention of the learned Public Prosecutor that neither Article 22(5) of The Constitution of India nor Section 8 of the Act provide for a representation by the detenu even before the order of detention is passed. What Article 22 (5) of The Constitution of India and Section 8 of the Act provide to the detenu is only a post-detention representation and therefore, according to the learned Public Prosecutor, there is no constitutional or statutory right conferred on the detenu to make a pre-detention representation and therefore even if a pre-detention representation of the detenu dated 06.09.2011 had not been placed before the Detaining Authority and not considered by him, it will not vitiate the order of detention. Learned Public Prosecutor submitted that even otherwise as the contents of the pre-detention representation of the detenu dated 06.09.2011 are found in the Anticipatory Bail bail petition filed in CrI. O.P. No. 18509 of 2011 in respect of Cr.No.916 of 2011 on the file of the Inspector of Police, R7 K.K. Nagar Police Station and in the Anticipatory Bail petition in CrI. O.P. No. 18511 of 2011 filed in respect of Crime No. 880 of 2011 on the file of the R10 MGR Nagar Police Station and the said Anticipatory bail applications had been placed before the Detaining Authority at pages 186 and 638 of the booklet furnished to the detenu and the same have been considered by the Detaining Authority in the grounds of detention, the non placement of the 26 pre-detention representation or the non consideration of the same will not in any manner vitiate the order of detention. Learned Public prosecutor further submitted that the contents of the pre-detention representation cannot be said to be vital facts which would affect the subjective satisfaction of the Detaining Authority.

52. In the decision reported in Ahamed Nassar Vs. The State of Tamil Nadu and Others, after referring to Ashadevi's case (referred to supra) and Ayya alias Ayub's case (referred to supra), the Hon "ble Apex Court has considered whether there is an obligation cast on the Sponsoring Authority to place the

letter, dated 19th April 1999 of the detenu before the Detaining Authority and the Apex Court has held that the Sponsoring Authority is obliged to place it before the Detaining Authority. Further, in respect of the letter dated 23rd April 1999 of the detenu which reached the Secretary concerned at 3.00 pm on 26th April 1999 which was much before the formal detention order dated 28th April 1999, the Apex Court has held that the Secretary concerned was obliged to place the same before the Detaining Authority and the Secretary was not right in not placing it as it contains not only what is already referred to in the bail application dated 1st April 1999 but something more and in the said factual background, the Apex Court has held that there was really non-application of mind and there should be consideration of all relevant materials in case such materials were within the reach of the detaining authority till a formal detention order was issued. Thus it is clear that if a pre-detention representation sent by the detenu contains vital facts and if the same is not placed before the Detaining Authority by the Sponsoring Authority or the same had not been placed by the other concerned authorities after the proposal for detention had emanated, it would amount to non application of mind on the part of the Detaining Authority. But in this case the pre-detention representation had been sent by the detenu to the Detaining Authority on 06.09.2011, which has been received by the Detaining Authority on 07.09.2011 and whereas the proposal for detention had been sent thereafter, on 15.09.2011 and the detention order has been passed on 16.09.2011. Thus the facts of this case and the facts of the case reported in Ahamed Nassar Vs. The State of Tamil Nadu and Others, are different. While in the case relating to Ahamed Nassar Vs. The State of Tamil Nadu and Others, the representation had reached the Sponsoring Authority before the proposal was sent and the same has reached the Secretary concerned before the formal issue of the detention order, in this case, the representation had been sent and received much before the proposal for detention had been made. This distinguishing feature, in our considered view, makes a difference. The Sponsoring Authority was not aware of the predetention representation sent by the detenu and therefore, he could not be expected to place it before the Detaining Authority. But, however, the Detaining Authority has received it before passing the order of detention, but the explanation of the Detaining Authority is that in view of the huge volume of correspondence received at his offence, it would be impracticable to place the pre-detention representations received from the detenus at the time of passing the detention order. The said explanation of the Detaining Authority cannot be accepted.

53. When the personal liberty of the detenu is being curtailed by passing a detention order, the Detaining Authority should take proper care as to whether the pre-detention representation had been placed before him. It is no doubt true that in view of the huge volume of correspondence received at the Office of the Commissioner of Police, it would be difficult for the Detaining Authority to remember the pre-detention representation received much earlier to the actual passing of the order of detention. But that cannot be an excuse. The

Commissioner of Police or the Detaining Authorities should set up a separate Cell or a Section to exclusively deal with the representations received from the persons, who anticipate their preventive detention or who have already been detained. If such a Cell/Section is formed and they maintain a register it would be possible for the Commissioner of Police or the Detaining Authorities, at the time of passing the detention order, in respect of a particular person, to call for the details from such Cell/Section as to whether any pre-detention representation has been received from the concerned detenu. In that event, the concerned Cell/Section would be obliged to place the pre-detention representation before the Detaining Authority and the question of non consideration of the pre-detention representation could be avoided. We hope at least from now onwards, such an arrangement would be made by the Commissioner of Police and other Detaining Authorities.

54. In the decision reported in 1996 Cri. L.J. 4112 (referred to supra) a Division Bench of the Bombay High Court had an occasion to consider the effect of the non consideration of the pre-detention representation made by the detenu to the Detaining Authority and it was contended on behalf of the detenu that the representation dated 5th October 1995 should be considered on the same footing as the representation made by the detenu under Clause (5) of Article 22 of The Constitution of India. The Bombay High Court, after considering the said contentions in the light of various decisions of the Apex Court, has held that the scope of a representation and even a petition to the High Court at the pre-execution stage would be extremely limited. At any rate, they have no hesitation in rejecting the contention that the representation at the pre-execution stage like the one in that case made on the 5th October 1995 before the order of detention was executed on the 10th October 1995 must be placed on the same pedestal as the representation made under Clause (5) of Article 22 of The Constitution of India. The Court has further held that the non consideration of such a representation made before the execution of the order of detention cannot vitiate the order of detention which was executed subsequently.

55. Learned Public prosecutor inspired by the said decision submitted that the non consideration of the pre-detention representation sent by the detenu in this case will not vitiate the order of detention. But, we are unable to accept the said contention of the learned Public Prosecutor. In the case before the Bombay High Court, after the detention order was passed but before the execution of the order of detention, the detention order was sought to be challenged at the preexecution stage and in that context it has been held as above. But in this case the representation has been made even prior to the passing of the detention order. The question herein is whether the non placement of the pre-detention representation addressed to the Detaining Authority will amount to non application of mind. In our considered view, if the pre-detention representation contains vital facts or materials which are likely to affect the subjective satisfaction of the Detaining Authority such pre-detention representation should be placed before the Detaining Authority and the non placement of the

predetention representation will amount to non application of mind on the part of the Detaining Authority. But, however, in this case, it has to be pointed out that as rightly contended by the learned Public Prosecutor in the pre-detention representation the detenu has stated that as he belongs to the opposition party, namely, DMK, and he was an unsuccessful candidate in the General Elections to the Assembly and in the year 2006 also, when AIADMK party was in power, he was detained under the Act and with a view to detain him under the Goondas Act, false cases are being foisted against him and the very same allegations/averments are found in the two Anticipatory Bail Applications, namely, Crl. O.P. Nos. 18509 of 2011 and 18511 of 2011 and the same have been placed before the Detaining Authority and the same have been considered by the Detaining Authority and therefore, it will not amount to non application of mind.

56. The said contention of the learned Public Prosecutor is well founded in the light of the decision of the Apex Court reported in 1994 SCC (Crl.) 229 (referred to supra). In that case, the contention of the detenu was the relevant and vital documents, namely the telegrams sent on behalf of the detenu to the Police Authorities and other Authorities wherein it was complained that the detenus were taken to police custody at 11 AM on November 25, 1991, were neither placed before the Detaining Authority nor the copies of the said telegrams were supplied to the detenu in spite of the request made by them in their representations and therefore, the detention order was vitiated for non consideration of vital documents and non application of mind. But, the said contention was sought to be rebutted by the State by contending that the detenu was not arrested at 11 AM in the court premises as alleged, but the detenu and his associates were arrested only after the incident that took place at 3 PM on November 25, 1991. It was contended that in the bail application filed by the detenu, the very same averment had been made by the detenu and the bail application had been considered by the Detaining Authority in that case. Considering the aforesaid facts, the Apex Court has held that it is thus obvious that the District Magistrate had applied his mind to the bail application, which contains the averment that the detenus were arrested by the police at 11.30 AM on November 25, 1991. The District Magistrate had before him the case of the detenus that they were arrested by the police at 11/11.30 AM. In this view of the matter, the argument of the learned counsel for the detenus based on the telegrams loses its relevance.

57. In our considered view, the decision referred to in paragraph 57 above, squarely applies to the facts of this case. Admittedly, the averments/allegations made in the pre-detention representation dated 06.09.2011 are found in the Anticipatory Bail Petitions filed in Crl. O.P. Nos. 18509 of 2011 and 18511 of 2011 and the Anticipatory Bail Petitions had been placed before the Detaining Authority and the same have been referred to and considered by the Detaining Authority in the grounds of detention, as stated above, and therefore the non placement of the pre-detention representation dated 06.09.2011 will not amount to non application of mind on the part of the Detaining Authority and therefore,

on this ground, the order of detention cannot be set-aside.

58. The facts of the cases reported in,

(i) Michel Joseph Lawrance Vs. District Magistrate and District Collector, Tirunelveli and another,

(ii) Viji Vs. Commissioner of Police, Greater Chennai {2003 M.L.J. (Crl.) 571};

(iii) Chandra Vs. The Secretary to Government {2010 (1) MWN (Crl.) 129};

(iv) Kalimath Sahadiya Vs. The State of Tamilnadu {2009 (1) MWN (Crl.) 257};

(v) Haja Najumudeen Vs. State of Tamilnadu {2007 (2) MWN (Crl.) 346};

(vi) P.M.S.Mohiadeen Sahib Vs. State of Tamilnadu {2005 (2) MWN (Crl.) 305};

(vii) Suresh Kumar Vs. State {2004 (1) MWN (Crl.) 230};

(viii) A. Pushparani Vs. The Commissioner of Police Greater and Others, and

(ix) R.Durairaj Vs. State of Tamilnadu {2000 (2) MWN (Crl.) 143},

are totally different from the facts of the case on hand. In those cases very vital facts had been mentioned by the concerned detenus in their pre-detention representations and the non placement of such pre-detention representation was held to amount to non application of mind on the part of the Detaining Authority and on that ground, the detention orders were quashed. In those cases, the allegations contained in the pre-detention representations does not appear to have been made in any bail or anticipatory bail petitions filed by the detenus and the same were not placed before the Detaining Authorities and therefore, those cases cannot be considered to be similar to the case on hand.

59. As laid down by a catena of decisions of the Apex Court it is well settled that a judgment of a Court is not to be read mechanically as a Euclid's theorem nor as if it was a statute. A judgment, it is trite, must be construed upon reading the same as a whole. For the said purpose the attendant circumstances may also be taken into consideration and therefore, the aforesaid decisions relied upon by the learned senior counsel for the petitioner, have to be read in the light of the factual background of those cases and the factual background of the case on hand and therefore, in our considered view, the said decisions are not applicable to the facts of this case. Hence, we are of the considered view that the non placement of the pre-detention representation of the detenu, dated 06.09.2011, before the Detaining Authority will not amount to non application of mind on the part of the Detaining Authority and it will not vitiate the order of detention.

60. The second contention of the learned senior counsel for the petitioner is that at page 16 of the grounds of detention while referring to the Criminal Miscellaneous Petition moved by the detenu for bail before the 23rd Metropolitan Magistrate Court, Saidapet, Chennai, in respect of R7 K.K. Nagar Police Station Cr. No. 1107 of 2011, the Crl. M.P. Number is omitted to be mentioned and the

number is left blank and therefore the same will amount to non application of mind on the part of the Detaining Authority. In support of the said contention, two decisions of this Court reported in 2000 (2) MWN (CrL.) 286 (referred to supra) and 1994 (2) LW (CrL.) 552 (referred to supra) have been relied upon. But as rightly submitted by the learned Public Prosecutor the said two decisions does not relate to blanks found in the grounds of detention, but both the aforesaid decisions relate to insertions/corrections found in the grounds of detention in different inks than the one used by the Detaining Authority and also not initialed by the Detaining Authority and therefore the said decisions are not applicable. Further, it has to be pointed out that as rightly contended by the learned Public Prosecutor bail petition filed in respect of Crime No. 1107 of 2011 is CrL. M.P. No. 9518 of 2011 and the copy of the bail application, both in English and vernacular version has been furnished to the detenu at pages 536 to 541 of the booklet. Thus, it is clear that the Detaining Authority has applied his mind to those documents, which were placed before him and further it has to be pointed out that the bail application is filed only by the detenu and therefore, his right to make effective representation has not in any manner been affected by the blank left in the grounds of detention. Therefore, the said contention of the learned senior counsel for the petitioner cannot be countenanced.

61. The third contention of the learned senior counsel for the petitioner is that in page 14 of the grounds of detention, in English version, and in page 19 of the grounds of detention, in Tamil version, the Detaining Authority has, while referring to the further statement of the complainant-Kalaivanan dated 10.9.2011, stated as if the detenu Dhanasekaran aimed at the head of Kalaivanan and assaulted him with an iron rod but fortunately, he turned and bent his head, thus averting the assault on his head. Whereas in his statement u/s 161 of the Criminal Procedure Code, the complainant Kalaivanan has not stated that the detenu Dhanasekaran attempted to assault him with an iron rod, whereas he had stated that one Govindaraj attempted to hit him on his head with an iron rod. This according to the learned senior counsel would amount to non application of mind on the part of the Detaining Authority. It is sought to be rebutted by the learned Public Prosecutor that this contradiction is a matter for trial and this will not vitiate the order of detention. Further, the learned Public Prosecutor relied on Section 5A of the Act and contended that this is not the only ground relied upon by the Detaining Authority to pass the order of detention, but there are other five grounds which have been relied upon by the Detaining Authority to come to the subjective satisfaction that the detenu is a "slum grabber" and therefore this ground is severable and the detention order could be sustained on the other remaining grounds.

62. It is no doubt true that the Detaining Authority has committed the above mistake, as contended by the learned senior counsel for the petitioner, but as rightly contended by the learned Public Prosecutor Crime No. 1161 of 2011 on the file of R10 MGR Nagar Police Station is not the only ground based upon which the order of detention has been passed and there are five other cases registered

against the detenu which have also been relied upon as the grounds for passing the order of detention. It has to be pointed out that Section 5A of the Act has been inserted to save the order of detention if one or more grounds are vague and the order of detention still can be good if anyone of the grounds is deemed to be valid. A reading of Section 5A of the Act shows that when a person had been detained under the order of detention mainly u/s 3 of the Act, which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on aid of such grounds and accordingly, such order shall not be deemed to be invalid or inoperative, merely because one or some of the grounds is or are non-existent or invalid for any other reason whatsoever. Therefore, even if the said contention of the learned senior counsel for the petitioner relating to Crime No. 1161 of 2011 is accepted and the said ground relied upon by the Detaining Authority is invalid still as there are five other cases which have been taken into consideration by the Detaining Authority, the order of detention cannot be considered to be invalid. Therefore, we are of the considered view that the said contention of the learned senior counsel cannot be countenanced.

63. The fourth contention of the learned senior counsel for the petitioner is that there is delay in the consideration of the post-detention representation dated 10.10.2011 sent by the detenu to the first respondent. But the learned Public prosecutor submitted that there is no delay in considering the postdetention representation of the detenu, dated 10.10.2011 and has furnished the details relating to the movement of file in respect of the said representation. It is seen that the representation dated 10.10.2011 had been received by the first respondent on 13.10.2011 and on 14.10.2011 itself, remarks had been called for and the same had been received on 28.10.2011. The communication calling for the remarks had been received by the Detaining Authority on 17.10.2011 and the Detaining Authority, on 19.10.2011, had called for the remarks from the Sponsoring Authority and as 21st and 22nd October 2011 happened to be Saturday and Sunday on 24.10.2011, remarks had been received from the Sponsoring Authority and 26.10.2011 happened to be holiday for Deepavali and the remarks had been forwarded to the first respondent on 27.10.2011 and the same had been received by the first respondent on 28.10.2011. The file had been submitted on 01.11.2011 to the Under Secretary and in turn, he had submitted the same to the Deputy Secretary on 01.11.2011 itself and the same had been submitted to the Minister of Law on 03.11.2011 and the same had been rejected on the same day and the rejection order was served on the detenu on 08.11.2011 and between 03.11.2011 and 08.11.2011, 05.11.2011 and 06.11.2011 happen to be Saturday and Sunday and 07.11.2011 was holiday on account of Bakrid. Thus, there is no delay in considering the post-detention representation of the detenu and therefore, the contention of the learned senior counsel for the petitioner that there is delay in considering the post-detention representation of the detenu cannot be countenanced.

64. The fifth contention of the learned senior counsel for the petitioner is that

pre-detention representation sent by the detenu to the Detaining Authority was not placed before the Advisory Board or the first respondent before confirmation of the order of detention and there is no reference to the same in the confirmation report. In support of the said contention, the learned senior counsel based reliance on a Division Bench decision of this Court reported in (2003) M.L.J. (Cri.) 571 (referred to supra). In the said decision, the Division Bench was considering a question as to whether the non placement of the representation of the detenu sent by him against his order of detention before the Advisory Board would vitiate the order of detention. While considering the said question, the Division Bench has held that it is imperative on the part of the Government to put any representation made by the detenu challenging the detention before the Advisory Board. Further, it has been held that it is not for the Government to choose as to which representation should be put before the Advisory Board and which representation should not be put before it and it is not the choice of the Government. The direction of the law is loud and clear that every representation which has been made prior to the meeting of the Advisory Board must be put before the Advisory Board.

65. Thus it is clear that the Division Bench was considering the question as to whether the representation sent by the detenu challenging the order of detention should be placed before the Advisory Board or not. The Division Bench was not considering the question whether the non placement of the pre-detention representation before the Advisory Board will vitiate the order of detention or not and therefore the said decision is not applicable to the facts of this case. Further, it has to be pointed out that as already pointed out while considering the first contention that the allegations/averments contained in the pre-detention representation dated 06.09.2011 are found repeated in the Anticipatory Bail Petitions filed by the detenu which had been placed before the Detaining Authority and considered by the Detaining Authority as is seen from the grounds of detention. Therefore, it is clear that all these materials found in the booklet furnished to the detenu had been placed before the Advisory Board and therefore, in our considered view, the non placement of the pre-detention representation before the Advisory Board will not vitiate the order of detention. As already pointed out, except the aforesaid submissions, no other submission has been made by the learned senior counsel for the petitioner. Therefore, for the aforesaid reasons, we do not find any reason to interfere with the order of detention passed by the Detaining Authority/the second respondent herein. Accordingly, the above Habeas Corpus Petition fails and the same is dismissed.