
(1986) 07 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No's. 84 and 85 of 1986 (HC)

G. Pichaimani

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 25-07-1986

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) — Section 2 (e), 3, 3 (1) (iii)
Constitution of India, 1950 — Article 22, 22 (5), 226
Customs Act, 1962 — Section 123, 2 (39)

Citation : (1986) 10 ECC 148 : (1986) 9 ECR 194 : (1986) 2 KarLJ 206

Hon'ble Judges : R.S. Mahendra, J; K.S. Puttaswamy, J

Bench : Division Bench

Advocate : B. Kumar and K.G. Raghavan, for the Appellant; N. Santosh Hegde, Advocate General, for the Respondent

Judgement

Puttaswamy, J.—As the questions that arise for determination in these cases are common and are inter-connected we propose to dispose them by a common order.

2. In these petitions under Art. 226 of the Constitution, the petitioner who is common has challenged the detention orders made by Government of Karnataka on 3-3-1986 against Sriyuths P. Selvaraj and K. Ganesh of Tamil Nadu State under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act No. 54 of 1974 ("the Act")).

3. On 10-8-1985 the detenus were travelling in Bombay-Madras Mail (Train No. 9) via Wadi Railway Station of Gulbarga District. When the said train reached and halted at Wadi Railway Station platform, the authorised officers of the Customs and Central Excise Department of Government of India (C & B Officers) on the reasonable belief that the detenus were carrying smuggled gold of foreign origin, entered Railway Bogie No. 9337 in which they were travelling and attempted to apprehend and arrest them. But, then Selvaraj attempted to escape and run

away in which he failed, as the C & B officers caught him before he reached one end of the platform of the railway station. In the meanwhile, the train had left Wadi Railway Station with Ganesh and a few C & E Officers that followed him, who caught him at the next railway station, called Nalwar and then brought him to Wadi. At the Wadi railway station the C & E officers searched the bodies of the detenus and recovered from them 15 and 14 pellets of gold respectively. On the same day the C and E officers arrested the detenus for the alleged violations of the Gold Control Act of 1968, Customs Act of 1962 and Foreign Exchange Regulation Act of 1973 and commenced their investigation under the said Acts.

4. On 20-8-1985 the Judicial Magistrate Forest Class, Gulbarga enlarged the detenus on bail on the terms and conditions set out in his orders of that date.

5. After the C & E Officers completed their investigation under the said Acts, the Collector of Customs and Central Excise, Bangalore (Collector) on 22-11-1985 moved Government to examine the cases of the detenus for preventive detection under the Act. On an examination of all the circumstances and material place by the Collector, Government had made separate orders against the detenus under S. 3 of the Act. Selvaraj has been detained with the object of preventing him from engaging in concealing, keeping and transporting smuggled goods. Ganesh has been detained with the object of preventing him from engaging in concealing, keeping and transporting smuggled goods and in dealing with smuggled goods. In pursuance of the said orders of Government, the detenus have been detained in the Central Prison, Bangalore from 10-3-1986. Hence, these petitions by the petitioner who is related to them who are related to each other.

6. The detention orders are challenged on three submitted grounds that will be noticed and dealt by us in due course. In justification of the impugned orders one Sri S. K. Ghoshal, Home Secretary to Government had filed separate counter-affidavits.

7. Sriyuths B. Kumar of Madras Bar and K. G. Raghavan of Bangalore Bar have appeared for the petitioner. Sri N. Santhosh Hegde, learned Advocate General has appeared for the respondents. Sri J. Jestmal; an Advocate of this Court had intervened and supported Sri Kumar on the contention touching on the necessity to furnish documents demanded by the detenus.

8. Sri Kumar contends that Government had detained the detenus solely or principally on presumptions or burden of proof engrafted to S. 123 of the Customs Act of 1962 (Central Act 62 of 1962) (Customs Act) without relevant circumstances and material in support of its orders under the Act.

9. Shri Hegde refuting the contention of Sri Kumar, contends that Government had not acted on the presumptions or burden of proof engrafted to S. 123 of the Customs Act but had acted on relevant circumstances and material that had nexus to the object of detention under the Act.

10. In driving home his point Shri Kumar has solely relied on para 14 of the grounds of detention supplied to the detenus which are couched in identical terms in both the cases. That para that is material reads thus :

"14. The gold seized from your possession attracts the provisions of S. 123 of the Customs Act, 1962, Moreover, importation of gold into India is prohibited under S. 13(1) of the Foreign Exchange Regulation Act, 1973, except with general or special permission from the Reserve Bank of India. Since neither yourself nor Shri K. Ganesh has produced any such permission or any other documents in support of the licit importation at the time of seizure, the gold under seizure are deemed to be smuggled gold within the meaning of S. 2(e) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 read with S. 2(39) of the Customs Act, 1962."

In para 6 of the petitions, the petitioner has reiterated this contention.

11. In answer to the aforesaid plea of the petitioner Sri Ghoshal in his counter-affidavit had stated thus :

"6 RE-Para 6 : The averments in this para are not tenable. It is well settled that the detaining authority is entitled to invoke the provisions of S. 123 of the Customs Act while passing an order under S. 3(1)(iii) of the COFEPOSA Act. Para 14 of the grounds of detention is specific and clear and there is no substance in the allegation of the petitioner that it is vague. As already stated the detaining authority has independently applied its mind and formed the subjective satisfaction, bona fide, on the basis of the relevant materials on record. It is incorrect to state that the presumption cannot be acted upon until an opportunity is given to the person concerned to lead rebuttal evidence."

We must first ascertain the true scope and ambit of what is stated at para 14 of the grounds of detention.

12. We must read para 14 or for that, every other para of sentence in the context in which they occur or in the context of grounds of detention and not in isolation. If read in isolation, the para may not even convey any meaning. We will, therefore, read the grounds of detention as one document and ascertain the true effect and content of para 14.

13. We have carefully read the grounds of detentions supplied to the detenus (Annexure A in both the writ petitions), para 14 in particular, and the pleadings touching on the contention urged before us.

14. We are of the view that Government at para 14 read in the context in which that para occurs, does not state that it was acting on the presumption or burden of proof incorporated in S. 123 of the Customs Act. In para 14 Government was only referring to the presumption or burden of proof alluded to by the officers of the Customs Department under the Customs Act. Whether Government could or could not act on the presumptions drawn by the Customs Authorities under the Customs Act is another matter. But, that is not the same as saying that

Government itself had made the detention orders solely or mainly on the basis of presumptions or burden of proof incorporated in S. 123 of the Customs Act. We have no doubt that para 14 of the grounds of detention is not capable of that construction at all. We see no merit in this contention and we reject the same.

15. Sri Kumar next contends that there can be no preventive detention by Government on presumptions, drawn by the Customs Authorities under the Customs act.

16. Sri Hegde refuting the contention of Sri Kumar contends that under S. 123 of the Customs Act, the Customs authorities were free and competent to draw the presumptions on satisfying with the requirements of that provision and Government was free to act on the same as ruled by a Division Bench of this Court consisting of Malimath, C.J. and one of us (Mahendra, J.) on Writ Petn. No. 1 of 1985 decided on 12-3-1985 (Baba Saheb v. State of Karnataka).

17. In the course of their investigation under the Customs Act, the Customs authorities were free and competent to invoke S. 123 of the Customs Act if the terms and conditions provided in that section are satisfied and its validity had also been upheld by the Supreme Court are not rightly disputed by Sri Kumar.

18. When the Customs Authorities are free and competent to draw their presumptions or cast the burden of proof against the person from whom the goods are seized, we cannot place any fetter on those authorities or on Government to rely on the same and act also under the Act. In Baba Saheb's case this very contention has been examined and rejected by this court. We see no merit in this contention of Sri Kumar and we reject the same.

19. Sri Kumar contends that Government was bound to furnish the documents demanded by the detenus and on its failure to furnish the documents demanded by them for making their effective representations against the order of detention necessarily results in violation of Art. 22(5) of the Constitution as ruled by the High Courts of Mohd. Hussain Vs. Secretary, Govt. of Maharashtra, Home Department, Mantralaya, Bombay and others, Vinod Kumar Arora @ Vinod Kumar Vs. Administrator, Union Territory of Delhi and Others, Govind Ram v. Union of India (1985) 1 Crimes 776 (Delhi); G. S. Sakthivel v. State of Tamil Nadu (Writ Petn. No. 11285 of 1984 decided on 6-2-1985) (Reported in 1985 Mad LJ (Cri) 219) and Thayalla Vass v. State of Tamil Nadu (Writ Petn. No. 770 of 1986 decided on 26-6-1986).

20. Sri Hegde, refuting the contention of Sri Kumar contends that the documents demanded by the detenus and refused to be furnished by Government were not those relied on by Government but were only "referred to in passing" and the failure to supply them does not violate Art. 22(5) of the Constitution. In support of his contention Sri Hegde strongly relies on the rulings of the Supreme Court in Khudiram Das Vs. The State of West Bengal and Others, Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, and a Division Bench ruling of the Kerala High Court in Krishnaveni v. State of Kerala (1986) 9 ECC 161.

21. In the grounds of detentions furnished to the detenus along with the orders of detentions, Government, expressly referring to certain documents placed by the Collector, had stated that some of them were not relevant for detention and was, therefore, excluding them from consideration. On that basis, Government declined to supply them to the detenus along with the grounds of detentions. But, on receipt of the orders and grounds, the detenus through their counsel addressed to Government on 8-5-1986 and 15-5-1986 demanded Government to furnish all those documents "referred to in passing" also which was rejected by Government in these words :

"Sub : Representation dated 8-1-1986 of Shri P. Selvaraj, COFEPOSA detenu (received through his Advocate) for the release from detention.

I am directed to state that the representation dt. 8-5-1986 sent by your Advocate, Shri B. Kumar of Madras on your behalf, has been examined by Government. The contentions that your present detention is a measure of punishment, there is no material to suggest that the gold seized was of foreign origin etc. are not tenable."

"2. As regards the request for supply of copies of the search warrant, authorisation for the search and the mahazar relating to the searches made in your house and others at Mannamadurai, I am to state that these documents are not relied upon for the purpose of your detention and hence the question of supplying copies of these documents to you does not arise.

3. I am also to clarify that the detention order was made against you by the Government of Karnataka as is clear from the detention order No. HD 175 SCF 85 (A) dt. 3-3-1986.

4. Therefore, the request for your release from detention under the COFEPOSA Act, 1974, it is regretted, cannot be granted and the representation dated 8-5-86, referred to above, is reject."

Whether this non-supply vitiated the detention orders is the controversial question that calls for our examination.

22. The term "grounds" occurring in sub-Art. (5) of Art. 22 of the Constitution and its two requirements has been explained by the Supreme Court in a large number of cases and it is unnecessary to notice all of them.

23. In Khudiram Das" case (1975 Cri LJ 446) Bhagwati, J. (as his Lordship then was) speaking for the Bench explained the true meaning of the "grounds" occurring in Art. 22(5) of the Constitution in these words :

"..... "grounds" mean all the basic facts and material which have been taken into account by the detaining authority in making the order of detention and on which, therefore, the order of detention is based"

In Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, Bhagwati, J. (as his Lordship then was) again speaking for the Bench reiterating the principles

enunciated in Khudiram Das" case further elaborated the same thus :

"..... It is difficult to see how the detenu can possibly make an effective representation unless he is also furnished copies of the documents, statements and other materials relied upon in the grounds of detention."

In all the later case, the Supreme Court had only reiterated this meaning to the term "grounds" occurring in Art. 22(5) of the Constitution.

24. In Khudiram Das" case (1975 Cri LJ 446) the Supreme Court explained the true scope and ambit of Art. 22(5) of the Constitution in these words :

"The constitutional imperatives enacted in this article are twofold : (1) the detaining authority must, as soon as may be, that is, as soon as practicable after the detention, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making a representation against the order of detention."

This statement of law has been reiterated by the Court in all the later cases.

25. Whether the documents referred to in passing in the grounds of detention at least when demanded by the detenu as in the present cases and their non-supply violates Art. 22(5) of the Constitution does not appear to be directly concluded by the Supreme Court in any of its rulings brought to our notice. We will therefore, examine this question first on principle and then deal with the authorities relied on by both sides.

26. On the principles enunciated in Khudiram Das" (1975 Cri LJ 446) (SC) and Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, reiterated in all the later cases, the detaining authority was bound to supply the detenu every one of those documents relied on by it, is no longer in doubt.

27. When a detaining authority expressly and categorically states that it was excluding certain documents to arrive at its subjective satisfaction under the Act, we fail to see as to why that authority at all should furnish them to the detenu. We are also of the view that that principle, if good, cannot and should not make any difference only on the ground that the detenu had demanded for their supply only.

28. Without an order of detention, there cannot be a detention under the Act. An order of detention is not made in a vacuum, but is made on the "grounds". The order and grounds are not two separate and isolated documents. The order is made on the "grounds". The representation made by the detenu against the order is really against the "grounds" appended to the order or later furnished to the detenu.

29. When the detaining authority itself states that it was not relying on certain documents placed by the Collector and was excluding them as a ground for the detention of the person against whom the proposal is made before it, we fail to

see any logic or sound reason for the detenu to insist on their supply to him. The supply of documents is not a mere ritual to be performed for its own sake. Without any doubt the supply of documents has a purpose and object to serve. If that is so, then we find it difficult to uphold the contention of the detenus.

30. With this we now turn to the authorities relied on by both sides.

31. In Ummu Saleema's case (1981 Cri LJ 889) (SC), Ummu Saleema challenged an order of detention made by Government of India (GOI) against one Jahaubar Moulana under the Act before the Supreme Court under Art. 32 of the Constitution. In that order of detention as in the present cases, GOI while referring to certain documents in the grounds had not furnished them to that detenu. On these facts, the petitioner urged that the failure to supply even the documents referred to in the grounds violated Art. 22(5) of the Constitution and vitiated the order of detention. The Supreme Court speaking through Chinnappa Reddy, J. noticed that contention and rejected the same in these words :

"5. Shri Jethmalani's submission was that the detaining authority was under an obligation to supply along with the grounds, copies of all documents to which reference was made in the grounds irrespective of whether such documents were or were not relied upon making the order of detention. He submitted that the very fact that the documents were mentioned in the grounds established that the documents were relied upon in making the order of detention. We are unable to agree with the submission of Sri Jethmalani. True, it was observed in some cases that copies of documents to which reference was made in the grounds must be supplied to the detenu as part of the grounds (vide Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, But, these observations must be read in the context in which they were made. In Shalini Soni's case, for example, the observations were made immediately after stating that "grounds" in Art. 22(5) did not mean mere factual inference by meant factual inferences plus factual material which led to such factual inference. In Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, the Court observed (at p. 1989) :

"It is difficult to see how the detenu can possibly make an effective representation unless he is also furnished copies of the documents, statements and other materials relied upon in the grounds of detention."

The stress was upon the words "relied upon". In Khudiram Das Vs. The State of West Bengal and Others, the constitutional requirement of Art. 22(5) was stated as insistence that basic facts and particulars which influenced the detaining authority in arriving at the requisite satisfaction leading to the making of the order of detention must be communicated to the detenu so that the detenu may have an opportunity of making an effective representation against the order of detention. It is, therefore, clear that every failure to furnish copy of a document to which reference is made in the grounds of detention is not an infringement of Art. 22(5), fatal to the order of detention. It is only failure to furnish copies of such documents as were relied upon by the detaining authority, making it

difficult for the detenu to make an effective representation, that amounts to a violation of the Fundamental Rights guaranteed by Art. 22(5). In our view it is unnecessary to furnish copies of documents to which casual or passing reference may be made in the course of narration of facts and which are not relied upon by the detaining authority in making the order of detention. In the case before us we are satisfied that such were the two documents copies of which were not furnished to the detenu. We are satisfied that the documents cannot be said to be documents which were relied upon by the detaining authority in making the order of detention. Therefore, the detenu could not properly complain that he was prevented from making an effective representation. There was no violation of the right guaranteed by Art. 22 of the Constitution."

Sri Hegde contends that this enunciation is a complete answer to the contention of Sri Kumar. But, in countering the same Sri Raghavan first contends that the enunciation in Ummu Saleema's case itself had been impliedly overruled by a larger Bench of the Supreme Court in State of Punjab and Others Vs. Jagdev Singh Talwandi, and was no longer good law.

32. In Jagdev Singh Talwandi's case, decided by a Constitution Bench, the Supreme Court had not referred and overruled the enunciation in Ummu Saleema's case. Sri Raghavan does not rightly dispute this. But, Sri Raghavan relying on a passage at para 23 of that ruling persuades us to hold that the enunciation in Ummu Saleema's case (1981 Cri LJ 889) (SC) had been impliedly overruled. That passage relied on by Sri Raghavan reads thus :

"..... His right is to receive every material particular without which a full and effective representation cannot be made. If the order of detention refers to or relies upon any document, statement or other material, copies thereof have, of course, to be supplied to the detenu as held by this Court in Smt. Ichu Devi Choraria Vs. Union of India (UOI) and Others,

We have carefully read these observations in isolation and also in the context in which they occur. In this case, the precise question on which the Court had expressed in Ummu Saleema's case never arose. We, therefore, find it difficult to hold that the above observation had overruled the principle enunciated in Ummu Saleema's case.

33. Sri Raghavan next contends that what is expressed at para 5 in Ummu Saleema's case (1981 Cri LJ 889) (SC), was only a decision on the facts of that case and does not lay down any binding principle and contention urged for the detenus was well founded on the ratio of the rulings of the Supreme Court in Ramchandra A. Kamat Vs. Union of India (UOI) and Others, and Shri. Tushar Thakker Vs. Union of India (UOI) and Others,

34. What had been expressed at para 5 in Ummu Saleema's case, rejecting a specific legal contention raised in that case cannot by any stretch of imagination, be treated as a decision on the facts of that case. We are of the view that what had been expressed at para 5 was a legal principle that is binding on all Courts in

India under Art. 141 of the Constitution. We see no merit in this contention of Sri Raghavan and we reject the same.

35. In Ramchandra A. Kamat Vs. Union of India (UOI) and Others, and Shri. Tushar Thakker Vs. Union of India (UOI) and Others, at some places, the Court had used the terms "documents" referred to must also be supplied. But, a careful reading of those rulings in the context clearly shows that the Court was referring to the documents relied on by the detaining authority and not to the documents "referred to" but not relied on. We are of the view that these rulings cannot be read in the manner suggested by Sri Raghavan. We are of the view that the ruling of the Supreme Court in Ibrahim Ahmad Batti alias Mohd. Akhtar Hussain alias Kandar Ahmed Wagher alias Iqbal alias Gulam Vs. State of Gujarat and Others, militates against the contention urged by Sri Raghavan and supports the contention urged by the learned Advocate General.

36. We are of the view that the firm legal principle enunciated by the Supreme Court, in Umma Saleema's case (1981 Cri LJ 889) is that the detaining authority was not bound to supply documents that were merely "referred to" but not relied on in the "grounds" furnished to the detenu. We are also of the view that that principle equally governs cases of demands made by the detenus also. We are of the view that the fact that there was a demand by the detenu to the documents referred to in the grounds makes no difference for the application of the principles enunciated in Umma Saleema's case. In other words the principles enunciated is a complete answer to the contention urged for the detenus before us.

37. In Mohd. Hussain Vs. Secretary, Govt. of Maharashtra, Home Department, Mantralaya, Bombay and others, before a Division Bench of the Bombay High Court consisting of Sawant and Kurdukar, JJ. a similar contention on similar facts found favour with their Lordships in these words :-

"We may therefore summarise the law laid down by the Supreme Court on the point as follows :-

(a) The copies of all the documents which are relied upon in or which form the basis of, the grounds of detention must be supplied to the detenu along with the grounds of detention; (b) the documents which are not relied upon or do not form the basis of the detention order but which are merely referred to casually or incidentally as any by way of narration of facts in the grounds of detention need not be supplied to the detenu; (c) however, even such documents, if the detenu request for the same have to be supplied to him, for whether they are relevant to his defence or not is for the detenu to decide and not for the detaining authority to judge".

We are concerned with what is enunciated at Clause (c) and not with what is stated at Cls. (a) and (b) on which there is no dispute.

38. We find what is enunciated at Clause (c) does not consider any one of the

factors noticed by us earlier for rejecting the contention. We are also of the view that what is enunciated in Clause (c) with great respect to their Lordships is not in accord with the principles enunciated by the Supreme Court in *Umma Saleema's* case (1981 Cri LJ 889) (SC). With great respect to their Lordships, we regard our inability to subscribe to the views expressed by their Lordships of the Bombay High Court in *Mohd. Hussain Vs. Secretary, Govt. of Maharashtra, Home Department, Mantralaya, Bombay and others*,

39. In *Vinod Kumar Arora @ Vinod Kumar Vs. Administrator, Union Territory of Delhi and Others*, a Division Bench of the Delhi High Court consisting of Prakash Narain, C.J. and Charanjit Talwar, J. have also accepted a similar contention following the ruling of the Bombay High Court in *Mohd. Hussain's* case, however, adding thus :

"15. However, we have proceeded on the basis that in a case like the present, on the request of the detenu seeking copies of those documents to which a reference has been made so as to enable him to make an effective representation, the failure of the detaining authority to supply copies of seized documents, amounts to an infringement of the provisions of Art. 22(5) of the Constitution".

What is expressed here is only a re-statement of what is expressed in *Mohd. Hussain's* case and does not contain any independent or additional reasons for accepting the same. For the very reasons on which we have dissented with the views expressed by the High Court of Bombay in *Mohd. Hussain's* case with respect we must dissent with the views expressed by their Lordships of the Delhi High Court in *Vinod Kumar Arora's* case. In *Govindaram's* case (1985 1 Crimes 776) another Division Bench of the Delhi High Court consisting of Prakash Narain, C.J. and another learned Judge speaking through Prakash Narain, C.J. without reference to the earlier ruling in *Vinod Kumar Arora's* case had also expressed the same view. For the very reasons on which we have dissented with the views expressed in *Vinod Kumar Arora @ Vinod Kumar Vs. Administrator, Union Territory of Delhi and Others*, we dissent with the views expressed by their Lordships in *Govinda Ram's* case (1985 1 Crimes 776) (Delhi).

40. In *Sakthivels*" (1985 Mad LJ (Cri) 219) and *Thayalla Vass*" cases the High Court of Madras had fallen in line with the views expressed by the High Courts of Bombay and Delhi. For the very reasons on which we have dissented with the views expressed by the High Courts of Bombay and Delhi, with respect, we dissent with the views expressed by their Lordships of the Madras High Court also in these cases.

41. In *Krishnaveni's* case a similar question came up for consideration before a Division Bench of the Kerala High Court consisting of Kochu Thommen and Pareed Pillay, JJ. and their Lordships without noticing the rulings of the High Courts of Bombay, Delhi and Madras have expressed that the documents that are not relied on but are only "referred to" were not required to be supplied to the

detenu for making an effective representation. We are in respectful agreement with the views expressed by their Lordships of Kerala High Court in Krishnaveni's case on this aspect.

42. Sri Kumar contends that representations are made against the "order" and not against the grounds and, therefore, Government was bound to supply all documents demanded by a detenu for making an effective representation.

43. Sri Hegde contends that representations are really made to the grounds accompanying the order of later furnished to the detenu.

44. We have earlier indicated the interrelationship of the order and the grounds and that effective representations are made only to the latter. When that is so, there is hardly any ground to uphold this contention based on too literal a reading of Art. 22(5) of the Constitution.

45. Sri Kumar contends that the failure of Government to examine the judgments or the reasons on which bail was granted to the detenus vitiates their detentions under the Act.

46. Sri Hegde contends that the order containing reasons on which bails were granted were not material and any failure to examine them do not vitiate the detention orders of Government.

47. Before Government the Collector only placed only that part of the bail order made by the Judicial Magistrate First Class containing the terms and conditions on which the detenus had been released on bail. In the grounds Government had noticed the same and reached its satisfaction. We do not think that production of the orders containing reasons on which the detenu had been enlarged on bail would have made any difference at all. At the highest Government had only to take note of such fact and that had been done. We are of the view that the failure of Government to examine the reasons on which the detenus had been enlarged on bail does not vitiate the detention orders.

48. In Writ Petition No. 84 of 1986 the petitioner in challenging the detention of Selvaraj had asserted that Government had not furnished assayer's certificate of gold seized from Ganesh and the same vitiates the order of detention made against Selvaraj. Sri Kumar contends that the same vitiates the order of detention made against Selvaraj.

49. We are of the view that this contention has only to be stated to be rejected. We are of the view that the assayer's certificate furnished to Sri Ganesh had no relevance for making the order against Sri Selvaraj and the failure, if any, to supply the same to him does not vitiate the order against Selvaraj.

50. As all the contentions urged for the petitioner fail, these writ petitions are liable to be dismissed. We, therefore, dismiss these writ petitions and discharge the rule issued in these cases. But, in the circumstances of the case, we direct the parties to bear their own costs.

51. Immediately after we completed our dictation dismissing these writ petitions, Sri Raghavan makes an oral application under Arts. 133 and 134A of the Constitution for a certificate of fitness to appeal from our order on the ground that the questions raised and decided are substantial questions of law of general importance and they need to be decided by the Supreme Court.

52. We are of the view that one of the questions raised and decided by us viz., whether the non-supply of documents referred to in the "grounds" when demanded at least vitiates the detentions, is likely to arise before the High Courts now and then. On that question, there is no direct ruling of the Supreme Court and there is conflict of opinion among the High Courts in the country. We are of the view that that question is a substantial question of law of general importance and the same needs to be decided by the Supreme Court. We, therefore, allow the oral application made by the petitioner and grant a certificate of fitness to appeal from our common order to the Supreme Court of India under Arts. 133 and 134A of the Constitution.

53. Petitions dismissed.