

(2008) 09 OHC CK 0076

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 279 of 2008

Jagadish Narayan Singh

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Arms Act, 1959 — Section 25, 27
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 5A
Constitution of India, 1950 — Article 14, 19, 19(1)(5), 19(5), 21
Criminal Procedure Code, 1973 (CrPC) — Section 161, 173(5)
Explosives Act, 1884 — Section 15, 9
National Security Act, 1980 — Section 3(1), 3(2), 3(2), 5A, 8
Penal Code, 1860 (IPC) — Section 294, 302, 304, 307, 323

Citation : (2008) CLT 1312 (Suppl CrI)

Hon'ble Judges : B.S. Chauhan, C.J.; B.N. Mahapatra, J

Bench : Division Bench

Advocate : R.N. Mohanty, R.C. Ojha and A.K. Jena, for the Appellant; Anil Deo, C.G.C. for O.P. No. 3 and P. Panda, ASC for O.P. Nos. 1, 2 and 4, for the Respondent

Final Decision : Allowed

Judgement

B.S. Chauhan, C.J.—This habeas corpus petition has been filed challenging the order of detention dated 8.4.2008 by which the District Magistrate, Puri (hereinafter called the "Detaining Authority") in exercise of his powers u/s 3(2) of the National Security Act, 1980 (hereinafter called the "Act") has directed detention of the Petitioner.

2. The facts and circumstances giving rise to this case are that the Petitioner has been indulged/involved in nine criminal cases and the Superintendent of Police, Puri submitted a report dated 5.4.2008 to the Detaining Authority that the Petitioner was a hardened criminal and anti-social being involved in large number of criminal cases and anti-social activities in Sea Beach and Sadar areas of Puri town. The anti-social activities of the Petitioner had created sense of terror in the

minds of the general public of the locality and such activities were prejudicial to the maintenance of peace, tranquility, and public order therein. The said report of the Superintendent of Police, Puri contained all information and particulars of criminal cases. It further provided that the Petitioner had been detained in judicial custody and had moved bail application in the Court of Sessions Judge, Puri and it was apprehended that he would be released on bail and after coming out of jail he would again resort to the activities prejudicial to the public order. Along with the said report all other documents were also furnished to the Detaining Authority and after taking all these facts into consideration the Detaining Authority passed impugned order dated 8.4.2008. The said order was served upon the Petitioner on 12.4.2008 while he was in custody. However, the grounds of detention were served upon the detenu-Petitioner after four days thereof. The order of detention was approved by the State Government on 18.4.2008. Representation made by the Petitioner was rejected by the Advisory Board on 21.4.2008. Hence, this petition.

3. Mr. R.N. Mohanty, learned Counsel appearing on behalf of the Petitioner has raised grounds, inter alia, that since the Petitioner was in custody the order of detention could not have been passed at all and even if the Detaining Authority was competent to pass such an order it could have been passed after applying his mind on the relevant materials/All the documents which were necessary in support of the allegations made against the Petitioners the report of the Superintendent of Police had not been placed before the Detaining Authority. The Detaining Authority passed the detention order in a mechanical way without application of mind and while passing the detention order he ignored some relevant materials and took into consideration the irrelevant material. It has been further submitted by Mr. Mohanty that the grounds of detention has to be prepared simultaneously and it should be served upon the detenu at the earliest. In the instant case there was inordinate delay of four days in serving the grounds of detention. There was not a single instance which could be held to be serious enough to warrant initiation of such proceeding under the preventive law. The Detaining Authority failed to understand the distinction between law and order and public order. The detenu has not been supplied with all the materials on the basis of which the detention order has been passed. Copy of the report of the Superintendent of Police was not given to the detenu even after being asked for. Therefore, the detenu was not in a position to make an effective representation. It is a crystal clear case of violation of fundamental rights of the Petitioner guaranteed by Constitution of India. Personal liberty, in view of the constitutional scheme, is sacrosanct and therefore the state authority cannot be permitted to violate the same except as provided under the law. In such a situation, the detention order is liable to be quashed.

4. On the other hand, Mr. P. Panda, learned Additional Standing Counsel has submitted that the Petitioner had been involved in large number of criminal cases. He has been acquitted in one case which was of serious nature. The Petitioner indulged in anti-social activities which are prejudicial to the peaceful

atmosphere and cause serious problems of public order and not only of the law and order. His case has been dealt with strictly in accordance with law. Detenu had been supplied the copies of charge sheets and all other relevant papers including copies of statements of witnesses recorded u/s 161 Code of Criminal Procedure, in one case where charge sheet had not been filed. Grounds had been prepared on the day the order was passed but were signed subsequently. Therefore, it is not a case of non-application of mind by the Detaining Authority. Non-supply of the copy of the report of the Superintendent of Police or any other document did not cause any prejudice to the detenu as all the papers, on the basis of which the report had been prepared were given to him. The petition lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by the learned Counsel for the parties and perused the records.

6. There can be no quarrel with the settled legal proposition that preventive detention is an anticipatory measure and does not relate to any particular offence. The criminal proceedings are launched to punish an offender for an offence committed by him. The purpose and object of the detention law is only to prevent the accused from indulging in any activities which may endanger the tranquillity and peace of public in a particular locality. Thus, the preventive detention is only preventive and not punitive. The law of prevention is permissible to be resorted to only when the competent authority is satisfied that in order to prevent the person from acting in a manner prejudicial to certain objectives which are specified by the concerned law. The satisfaction of the Detaining Authority has always been considered to be of primary importance with great latitude in the exercise of his discretion. The authority may act on any material/information which is placed before him, as such material may afford the basis for a sufficiently strong suspicion to take action, though it may not satisfy the test of legal proof, of which alone a conviction for offence would be tenable. The compulsions of very preservation of the values of freedom and democratic society and social order might compel curtailment of individual's liberty. (Vide Union of India (UOI) Vs. Amrit Lal Manchanda and Another, ; and The Commissioner of Police and Others Vs. Smt. C. Anita,). But such a curtailment is permissible only by adopting the procedure prescribed by law.

7. A Constitutional Bench of the Apex Court in A.K. Gopalan Vs. The State of Madras, , explained the meaning of "due process of law" observing that Article 19 of the Constitution pre-supposes that the citizen to whom fundamental rights are guaranteed, retains the substratum of personal freedom on which alone the enjoyment of these rights necessarily rests. But where the law permits imposing the penalty for committing a crime or otherwise, the citizen is lawfully deprived of his freedom. Article 22 must prevail insofar as there are specific provisions therein regarding preventive detention but where there are no such provisions in that Article, the operation of Articles 19 and 21 cannot be excluded. Procedure prescribed by law means a procedure which has a statutory origin, for no

procedure is known or can be said to have been established on such vague and uncertain concept as "the immutable and universal principles of natural justice and law must mean only State made law or positive law."

8. Similarly, in AIR 1979 745 (SC) , the Court held that Article 21 did not mean *jus naturale*, but means positive or State law. Procedure established by law did not, however, mean any procedure which may be prescribed by a competent Legislature but the ordinary well established criminal procedure.

9. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , a Seven Judge Bench of the Supreme Court again dealt with the issue "procedure established by law" and while dealing with the provisions of Passport Act, made applicable to provisions of Articles 14, 19 and 21 of the Constitution, held that even if the law does not permit any administrative proceedings which involves civil consequences, the doctrine of natural justice is applicable and the order under any Statute cannot be passed in infringement of fundamental rights guaranteed by Part-III of the Constitution.

10. In *Charles Sobraj v. Supdt. Central Jail, Tihar New Delhi* AIR 1978 SC 7514, the Supreme Court recognised the fundamental rights of a convict observing that imprisonment does not spell farewell to fundamental rights although the Court has given a vital meaning of Article 21 read with Article 19(1)(d)(5) requiring evolving standards of decency and dignity that mark the progress of a mature society. Fair procedure is the soul of Article 21, reasonableness of the restriction is the essence of Article 19(5) and sweeping discretion degenerating into arbitrary discrimination is anathema for Article 14. When law ends tyranny begins, therefore, the procedure prescribed by law requires strict adherence not only to the statutory provisions but also to the Constitutional provisions.

11. Similar view has been reiterated in *Sunil Batra Vs. Delhi Administration and Others etc.*, ; *Francis Coralie Mullin v. The Administrator Union Territory of Delhi and Ors.* AIR 1981 SC 746; and *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*, .

12. In *Murli S. Deora Vs. Union of India and ors*, , while taking recourse of Article 21 of the Constitution, the Supreme Court held that smoking in public places indirectly deprives non-smoking persons of their lives without any process of law, therefore, non-smokers cannot be compelled to become helpless victim of pollution caused by cigarette-smokers, and therefore, it was held that smoking must be prohibited in public places.

13. Therefore, it becomes evident from the above that constitutional and legal rights of an individual have to be protected and no order can be passed without adopting the procedure prescribed by law. The order should be passed by application of mind by the Authority concerned. An irrelevant/extraneous material cannot be the basis of the subjective satisfaction of the Detaining Authority. However, at the same time, 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, their would be failure of application of mind, which would vitiate the detention order.

14. It is not in dispute that the order passed by the Detaining Authority can be scrutinized by the Court being subject to judicial review and safeguards of personal liberty of an individual guaranteed under the Constitution, i.e., Articles 19, 21 and 22 are to be read as embodied in law permitting detention, as consistently held by the Apex Court in *Khudiram Das Vs. The State of West Bengal and Others*, ; *Narendra Purshotam Umrao Vs. B.B. Gujral and Others*, ; *Mangalbhai Motiram Patel Vs. State of Maharashtra and Others*, . Further it is also settled law that in case of doubt benefit of doubt is to be given to the detenu (Vide *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, . However the Court has to take an objective approach taking into account all the relevant circumstances and considerations in order to strike a balance between the need to protect the community on the one hand and the need to preserve the liberty of a citizen (Vide *State of U.P. Vs. Hari Singh Thakur*,). Past activities of the detenu should ordinarily be proximate in point of time in order to justify the order of detention. There must be live link between the alleged criminal activities and detention order. But no straight jacket formula can be laid down for counting the period of such interval. (Vide *Sahib Singh Dugal Vs. Union of India (UOI)*, ; *Lakshman Khatik Vs. The State of West Bengal*, ; *Golam Hussain alias Gama Vs. The Commissioner of Police Calcutta and Others*, ; *Gora Vs. State of West Bengal*, ; and *Kamal Pramanik Vs. The State of West Bengal*,).

15. The Court has to give latitude to the discretion of the Detaining Authority considering the interest of the society. Once the Court comes to the conclusion that the ground of detention is one which is permissible and recognised by the statutory provisions of the Act, it is not for the Court to probe into the correctness of the alleged facts since Court has a limited role in the matter of examining validity of the detention order. (Vide *Mrs. U. Vijayalakshmi Vs. State of Tamil Nadu and another*,).

16. The subjective satisfaction of the Detaining Authority should be based on relevant material, and it should be evident from the order itself. The detention order based on stale, irrelevant or vague grounds is liable to be quashed. A bald statement in this regard remains merely an ipse dixit of the Authority concerned. (Vide *Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others*, ; *Poonam Lata Vs. M.L. Wadhawan and Another*, ; *Shashi Aggarwal Vs. State of U.P. and Others*, ; and *Shiv Parsad Bhatnagar Vs. State of M.P. and Another*,).

17. Prior to the amendment of the Act, i.e. insertion of Section 5-A w.e.f. 21.6.1984, the law had been that even if one of the grounds was found to be vague or irrelevant, the entire order of detention would fall. In such an eventuality, the Court had to examine as to whether the vague or irrelevant grounds were such as, if excluded, might reasonably had affected the subjective satisfaction of the appropriate authority. (Vide *Dwarka Dass Bhatia Vs. The State of Jammu and Kashmir*, ; *Biram Chand Vs. State of Uttar Pradesh and Others*, ;

Dwarika Prasad Sahu Vs. The State of Bihar and Others, ; and Bimla Dewan Vs. Lieutenant-Governor of Delhi,).

18. After the amendment the doctrine of severability of grounds has been adopted. After insertion of Section 5-A in the Act, it does not remain in issue as to whether if one of the grounds is found to be vague, the detention order would stand vitiated, if other grounds are specific, clear and relevant. (Vide State of Gujarat Vs. Chamanlal Manjibhai Soni, ; and Smt. Rukmani Devi and Others Vs. Narendra Lal Gupta, ; and Shafiq Ahmad v. District Magistrate Meerut and Ors. AIR 1990 SC 220).

19. In Vashisht Narain Karwaria Vs. State of U.P. and another, , the Apex Court held that where detention order was held to be vitiated due to placing of extraneous materials before Detaining Authority and not on ground that one of the grounds of detention order had become invalid, Section 5A would not be applicable.

20. The Court has to keep in mind that standard of proof required in a case like instant is not beyond reasonable doubt.

21. In Ram Manohar Lohia (supra), the Hon''ble Apex Court explained the distinction in "public order" and "law and order" describing them totally different and distinct concept, observing as under:

One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.

22. In Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others, the Constitution Bench of the Apex Court held that when an activity of a person disturbs public tranquillity or are breaches of the peace, issue of public order is involved, and not of the law and order. The expression in the interest of public order" cannot. be given a narrow meaning.

23. In Arun Ghosh Vs. State of West Bengal, ; and Kanu Biswas Vs. State of West Bengal, , the Apex Court held that whether the activity of a person is likely to cause a disturbance of the public order or not would depend upon "the degree and the extent of the reach of the act upon the society". Public order is something more than ordinary maintenance of law and order. If the current of life to the community is disbursed, it will affect the public order. However, if it affects only an individual, leaving the tranquillity of the society undisturbed, it will fall under the category of law and order.

24. In Pushkar Mukherjee and Others Vs. The State of West Bengal, ; Dipak Bose alias Naripada Vs. State of West Bengal, ; Babul Mitra Vs. State of West Bengal and Others, ; Milan Banik v. The State of West Bengal and Ors. AIR 1974 SC 7274, Jatindra Nath Biswas Vs. The State of West Bengal, ; Dhenan Hembram Vs.

The District Magistrate, West Dinajpur and Another, ; and Ashok Kumar Vs. Delhi Administration and Others, ; the Apex Court observed that the true distinction between the "law and order" and "public order" is one of the degree and extent of the reach of the act in question upon society, and the act by itself is not detrimental of its gravity. In the quality it may not differ, but in its potentiality it may be very different. Therefore, one has to examine as to what is the impact of the Act of the detenu on society.

25. In Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Others, , the Supreme Court considered the expression "acting in any manner prejudicial to the maintenance of public order" and referring to its earlier decision in Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others, , held that the fallout and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him and to prevent his subversive activities affecting the community at large or a large section of society and it is the degree of disturbance and its impact upon the even tempo of life of the society of the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to breach of "public order." The two concepts have to be examined keeping in mind that stray and unorganised crimes are not matters of public order since the same do not tend to affect the flow of public life. Though infraction of law may lead to disorder, but any infraction of law does not necessarily result in public disorder.

26. Law and order "comprehends disorder of less gravity than those affecting public order just as public order attracts disorder of less gravity than those effecting security of the State. (Vide Kuso Sah Vs. The State of Bihar and Others, ; State of Maharashtra Vs. Mohd. Yakub and Others, ; Mrs. Harpreet Kaur Harvinder Singh Bedi Vs. State of Maharashtra and another, ; and T.K. Gopal alias Gopi v. State of Karnataka AIR 2000 SC 1669).

27. Therefore, from the above it can be held that public order is synonymous with public tranquility. If public order is disturbed, it would lead to public disorder. Therefore, to find out as to whether the incident involved is problem of "law and order" or "public order"; does it lead to disturbance of the current of life of the community or the tempo of life is disturbed, so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed. The question has to be examined on the facts and circumstances giving rise to any individual case. Personal liberty of person is sacrosanct and state authority cannot be permitted to take it away without following the procedure prescribed by law, otherwise it would be violative of the fundamental rights guaranteed under Articles 19, 21 and 22 of the Constitution. The concept of preventive detention is based and could be described as a "jurisdiction of suspicion", and the compulsions to preserve the values of freedom of a democratic society and of social order which may compel to the curtailment of individual liberty.

28. Case of the Petitioner is required to be examined in the light of the aforesaid legal propositions.

29. Undoubtedly Ground No. 1 taken in the grounds of detention is stale as it relates back to the incident dated 27.12.1998. Even the charge levelled against the Petitioner are under the provisions of Sections 341/323/294, IPC.

30. Ground No. 2 deals with the incident dated 5.6.2003 under the provisions of Sections 302/307/304, IPC read with Section 9(b) of the Indian Explosives Act wherein the Petitioner has been acquitted.

31. Ground No. 3 deals with the incident dated 18.10.2006 wherein just in front of the hostel Sea Hawk he reached along with three other criminals and brutally attacked one Shyam Sundar Prusty while he was busy in the immersion procession of Goddess Gajalaxmi.

32. Ground No. 4 relates to the incident dated 18.10.2006 wherein the Petitioner has allegedly committed offences under Sections 341/452/294/506/435/34, IPC.

33. Ground No. 5 also relates to the incident dated 18.10.2006 wherein the Petitioner is involved in a case punishable under Sections 341/294/323/506/379/34, IPC read with Section 25(a) of the Indian Arms Act.

34. Ground No. 6 relates to the incident dated 6.1.2007 under Sections 458/379/380/506/354/34 IPC read with Section 15 of the Indian Arms Act wherein the Petitioner along with his associates being armed with deadly weapons like sword, Bhujali, pistol, crowbar etc. raided the houses of Smt. Saraswati Sil and Smt. Dhumi Behera with an intention to commit dacoity.

35. Ground No. 7 is in respect of the incident dated 26.2.2007 under Sections 363/387/34, IPC, wherein it is alleged that the Petitioner had been coming along with his criminal associates repeatedly and demanding Dada Bati at the construction site. He threatened Malelo Satya Venkat Prasad Rao for purpose of extracting money.

36. Ground No. 8 relates to an F.I.R. dated 14.8.2007 wherein it has been alleged that free movement of the detenu in the society was hazardous to the life, liberty and property of the general public.

37. Ground No. 9 relates to an incident dated 3.3.2008 in which the Petitioner was involved for throwing bomb and causing injuries to others attracting provisions of Sections 325/326/307/427/34, IPC read with Section 9(b) of the Indian Explosives Act and Sections 25(a)/27 of the Indian Arms Act.

38. From the aforesaid grounds it is evident that except Ground No. 1 other grounds cannot be said to be old and stale. Ground No. 1 can also not be termed to be irrelevant in the facts and circumstances of the case, where the allegation against the Petitioner is that for a long period he has been behaving in such a manner that his mere entry at public places become dangerous for public safety and creates problem of public order.

39. Mr. R.N. Mohanty learned Counsel appearing for the Petitioner has not stated that either of these grounds is non exists or did not relate to the Petitioner or any wrong information has been furnished in either of these grounds. Every allegation had been in other respect i.e. non-application of mind by the Detaining Authority and non-furnishing of the materials to the detenu on the basis of which the grounds have been drafted.

40. The first question raised by Mr. Mohanty as to whether, in the facts and circumstances of the case, where the Petitioner as already been in judicial custody, it was warranted to invoke the provisions of Section 3(2) of the Act, has to be answered taking into consideration various factors.

41. This Court in Subrat Kumar Naik v. State of Orissa and Ors. (2008) 41 OCR 224, while deciding this very issue considered the Judgments of the Apex Court in Rameshwar Shaw Vs. District Magistrate, Burdwan and Another, ; Masood Alam etc. Vs. Union of India (UOI) and Others, ; Dulal Roy Vs. The District Magistrate, Burdwan and Others, , Alijan Mian Vs. District Magistrate, Dhanbad and Others, ; Ramesh Yadav Vs. District Magistrate, Etah and Others, ; Suraj Pal Sahu Vs. State of Maharashtra and Others, ; Shashi Aggarwal Vs. State of U.P. and Others, ; Dharmendra Suganchand Chelawat and another Vs. Union of India and others, ; Kamarunnissa and Others Vs. Union of India and another, ; Rivadeneyta Ricardo Agustin v. Government of the National Capital Territory of Delhi; Amritlal and Others Vs. Union Govt. Through Secy. Ministry of Finance and Others, ; Rajesh Gulati Vs. Govt. of N.C.T. of Delhi and Another, ; Union of India (UOI) Vs. Paul Manickam and Another, ; A. Geetha Vs. State of Tamil Nadu and Another, ; Senthamilselvi Vs. State of Tamil Nadu and Another, ; and Ibrahim Nazeer Vs. State of Tamil Nadu and Another, ; and came to the conclusion that there is no prohibition in law to pass the detention order in respect of a person who is already in custody in respect of criminal case. However, if the detention order is challenged the Detaining Authority has to satisfy the Court the following facts:

(1) The authority was fully aware of the fact that the detenu was actually in custody.

(2) There was reliable material before the said authority on the basis of which he could have reasons to believe that there was real possibility of his release on bail.

(3) Further on being released he would probably indulge in activities which are prejudicial to public order.

(4) Whether in view of the above, the authority felt it necessary to prevent him from indulging n such activities and therefore, detention order was necessary.

(5) In case either of these facts does not exist the detention order must be declared invalid.

42. If the instant case is examined in the light of the aforesaid settled legal proposition, it is event from the detention order impugned herein that the

Detaining Authority was of a view that:

(1) He had been indulged in anti-social activities and had been taken into custody several times and after being released on bail he again indulged in grievous criminal activities repeatedly.

(2) In Puri Sea Beach Case No. 4 of 2007, he had been granted conditional bail but he breached the privilege and did not report till he was arrested on 4th March, 2008.

(3) He did not honour the bond executed before the State Authorities to behave properly and would not indulge in further criminal and antisocial activities.

(4) He was in judicial custody Since 4.3.2008 in Puri District Jail.

(5) He had already moved for bail before the Sessions Court, Puri and it was apprehended that he would be released on bail and after being so released, he would again indulge in the activities prejudicial to the maintenance of Public Order and Peace.

(6) The normal procedure of law had failed to curb his criminal activities and thus it was imperative to take recourse to the provisions of the Act.

43. The facts mentioned therein make it clear that the said conclusion had been drawn by the Detaining Authority after examining the reports submitted by the Superintendent of Police and documents submitted in support thereon. Therefore it cannot be held to be a case of non-application of mind on the part of the Detaining Authority or a case where a person already in jail could not be subjected to such a detention order and the facts mentioned hereinabove meet the requirement of law as explained hereinabove.

44. It has further been urged by Mr. Mohanty, learned Counsel for the Petitioner that vital documents had not been placed before the Detaining Authority and in support of his submissions he has placed reliance upon the Judgments in *Ashadevi v. K. Shivraj Addl. Chief Secretary to the Govt, of Gujarat* AIR 1979 SC 447; *Sita Ram Somani Vs. State of Rajasthan and Others*, ; and *V.C. Mohan Vs. Union of India and Others*, .

45. In the pleadings, in respect of this very ground, it has not been stated as what were those documents, which had not been placed before the Detaining Authority and the further question would be as to such documents were of such a nature that had the same been placed before the Detaining Authority, perhaps the detention order could not have been passed. In absence of particulars of such documents, the issue is not worth further examination.

46. It has been submitted by Mr. Mohanty that grounds of detention have to be prepared simultaneously while passing the detention order and not doing so would vitiate the detention order. In this context it has been pointed out that detention order was passed on 8.4.2008, while the grounds have been signed on 12.4.2008. Thus clearly two communications bear different dates.

47. In order to fortify his submission, he has placed reliance upon a Judgment of the Hon"ble Supreme Court in Krishna Murari Aggarwala Vs. Union of India (UOI) and Others, , wherein while dealing the provisions of Maintenance of Internal Security Act, 1971, the Court held "since the order is based on grounds to be served on the detenu, the order of detention could be passed only if the grounds are in existence and are prepared contemporaneously otherwise the order of detention becomes purely illusory.

48. In Dhananjay Das Vs. District Magistrate, Darrang and Another, , the Apex Court reiterated the similar view observing that there could be no denial of the fact that the grounds of detention must be in existence on the date when the order was passed and the authority concerned has to be satisfied about the grounds of detention on the date of the order and the satisfaction of the Detaining Authority must be clear on the face of it from the grounds of detention.

49. A Division Bench of the Gauhati High Court in Jyoti Prasad Baruah Vs. State of Assam and Others, , considered the similar issue and observed as under:

Shri Medhi has assailed the validity, first, by contending that the grounds were not in existence when the order was passed which is apparent from the fact, according to the learned Counsel that the two communications bear different dates. We had occasion to deal with such submission in detail in Mahendra Mohan Choudhuary v. State of Assam (Civil Rule (HC) 42/83 disposed of on 28.4.83). As pointed out therein, such a conclusion cannot follow from the mere fact that the order of detention bears a date anterior to that of grounds. Of course, if it would be a case of nonexistence of grounds, the matter would definitely be different as noted in Mahendra Mohan (supra) itself. To satisfy us, whether it was a case of non-existence of "grounds", which expression has to be understood in this context to mean basic facts and factual materials as explained in Mahendra Mohan, we have perused the records of the District Magistrate and we find that the facts mentioned in the "grounds" as communicated to the detenu are in the dossier which was enclosed along with the letter of the Superintendent of Police, Dibrugarh dated 17.2.83 addressed to the District Magistrate, Dibrugarh. As such, the basis facts which were mentioned in the grounds cannot be said to be non-existent. This submission has, therefore, no force. (Emphasis added)

50. In view of the above, legal proposition can be summarised that what preparing the detention order the ground should be recorded. However, it does not require signing of the same simultaneously and there should be sufficient material before the Detaining Authority to have the grounds for detention. Had it been the intention of the legislature that the ground of detention should also be signed simultaneously along with the detention order then it could not have been provided that the grounds have to be served upon the detenu as soon as may be, but ordinarily not later than 10 days from the date of detention.

51. In the instant case we have examined the original record. All the grounds of

detention are therein the file and had been enclosed alongwith the report of the Superintendent of Police dated 5.4.2008. Therefore, merely on the ground that the detention order and the detention grounds bear different dates, detention order would not suffer from any infirmity.

52. It has next been contended by Mr. Mohanty that as one of the ground relates to a case where the Petitioner had already been acquitted, therefore, the detention itself stands vitiated. The Apex Court in *Rameshwar Lal Patwari Vs. State of Bihar*, ; and *Ramesh Yadav v. District Magistrate, Etah and Ors.* (supra), held that if the incident, which is the basis of detention, had ended in acquittal then the incident cannot be available to be used as the basis of detention.

53. However, in *Haradhan Saha Vs. The State of West Bengal and Others*, ; and *Kanchanlal Maneklal Chokshi Vs. State of Gujarat and Others*, the same issue has been dealt with by the Supreme Court differently observing that power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a paralleled proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. The possibility of launching a criminal prosecution is not an absolute bar to an order of preventive detention.

54. In *Bimla Dewan Vs. Lieutenant-Governor of Delhi*, , the Apex Court held that as most of the grounds of detention related to criminal cases where detenu had already been acquitted could not have been taken into consideration for the reason that detenu has been found to be not guilty. However, in the said case the Apex Court itself held that there was no provision providing for severability of the grounds and if one ground was found to be based on irrelevant material the detention order would stand vitiated. The Apex Court itself observed that under the Act there was no provision analogous to Section 5-A of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act.

55. As subsequently the Act has been amended w.e.f. 21st June, 1984, even if a ground relates to on incident where there has already been an acquittal the detention order can survive on the remaining grounds.

56. A Full Bench of the Allahabad High Court in *Ram Prasad Chaudhary Vs. State of U.P. and Another*, , held that the incident wherein there is already acquittal of the detenu, cannot be a ground of detention not because that the discharge or acquittal of an accused does not necessarily mean that the grounds on which the detention is sought to be maintained is non-est and has to be ignored. But the principle lies that if in a regular trial the finding recorded is that the incident such as is alleged is not supported by any evidence then it will be taken that no such incident took place. However, the Court further observed that while deciding such a case the Court should not lose sight of the statutory provisions of Section 5A of the Act. If the detention order is based on several grounds, unless all of them are interrelated and are not severable, the detention order can be held to be invalid

on other grounds.

57. It remains undisputed legal proposition that even a single incident is enough to invoke the power u/s 3(2) of the Act. (Vide Debu Mahato Vs. The State of West Bengal, ; Anil Dey Vs. State of West Bengal, ; Dharua Kanu Vs. State of West Bengal, ; Babulal Das Vs. The State of West Bengal, ; Abdul Latif Vs. The District Magistrate, Malda and Others, ; Alijan Mian Vs. District Magistrate, Dhanbad and Others, ; Ayya alias Ayub Vs. State of U.P. and Another, ; Subhash Bhandari Vs. District Magistrate, Lucknow and Others, ; Gulab Mehra Vs. State of U.P. and Others, ; and State of U.P. and Another Vs. Sanjai Pratap Gupta @ Pappu and Others, .

58. In view of the above, we are of the view that even if one of the ground becomes redundant or should not have been incorporated therein, that would not vitiate the detention order.

59. It has next been submitted by Mr. Mohanty that the detenu had not been made available the documents and he failed to make the effective representation.

60. In paragraph 9 of the writ petition it has been submitted that the detenu in his application to the Detaining Authority submitted a list of documents to be made available to him to enable him to make the effective representation to the State Government. Central Government and the Advisory Board. The said documents are as under:

(A) The copy of the report of the Superintendent of Police to the District Magistrate on the basis of which the order of detention was passed.

(B) The Puri Sea Beach Case No. 26 of 2008. The Injury report, seizure list and u/s 161 Code of Criminal Procedure Statement of witnesses.

(C) The Puri Sea Beach Case No. 16 of 1998, the statement of witnesses and seizure list.

(D) The Puri Sea Beach Case No. 74 of 2003, the order of acquittal and statement of witnesses.

(E) The Puri Sea Beach Case No. 172 of 2006, 188 of 2006, 179 of 2006, witnesses statement, seizure list of injury report.

(F) The Puri Sea Beach Case No. 4 of 2007 u/s 161 Code of Criminal Procedure statement and seizure list. Similarly, Puri Sea Beach Case No. 98 of 2007 u/s 161 statement, injury report and compromise petition between accused and complainant and seizure list.

The said documents had never been supplied to the Petitioner. Therefore, it has caused prejudice to the Petitioner as he could not make an effective representation.

61. In the counter affidavit, the said paragraph has been replied by the State as under:

...In this context the O.P. No. 2 humbly submits that the Detaining Authority passed the order under provisions of the National Security Act, 1980 basing on the material facts and evidence on record. The District Magistrate had made the detention order u/s 3(2) of the National Security Act basing on the report of Superintendent of Police, Puri who has elaborately reported about the series of hazardous criminal and antisocial activities of the N.S.A, detenu. Superintendent of Police has submitted all the connected papers of the criminal cases committed by the detenu which were duly served on the detenu along with the grounds of detention. Sufficient materials supporting the grounds of detention were supplied to the N.S.A. detenu. These papers are sufficient to make effective representation, if the detenu has any valid points to put forth against the order of detention. The report of Superintendent of Police. Puri was not supplied to the detenu because it is confidential in nature and addressed to the District Magistrate. Puri. The F.I.R.s. Charge sheets along with the statements of independent witnesses were supplied by the Superintendent of Police, Puri and the same was served on the N.S.A. detenu. The connected papers of the cases to which the detenu has sought for has never caused any hindrance to make effective representation on behalf of the detenu. The N.S.A. detenu has raised some vague questions like enquiry report etc. seizure list. Statements u/s 161 Code of Criminal Procedure and injury report etc. which does not prove his non-involvement in the case. Be it stated here that all the connected papers available on record were supplied to the N.S.A. detenu. This shows that the N.S.A. detenu being hassled on the well founded grounds of detention has raised vague questions and made a desperate attempt to avoid the rigours of law. The F.I.Rs, Charge sheets, the station diary entry along with Statements recorded u/s 161 Code of Criminal Procedure in different criminal cases supplied by Superintendent of Police, Puri were duly served on the detenu along with the grounds of detention. The papers of the cases to which the Petitioner has sought for do not cause any hindrance to make effective representation. (emphasis added).

62. In the counter affidavit a very vague and general statement has been made that the required documents had been made available to the detenu. However, it may be pertinent to mention here that the following documents had been made available to the detenu alongwith the Grounds of Detention which is evident from Annexure-2:

1. Copy of F.I.R. of Puri Sea Beach P.S. Case No. 163 dt. 27.12.1998 along with Puri Sea Beach P.S. Charge Sheet No. 02 dt.20.01.1999.
2. Copy of F.I.R. of Puri Sea Beach P.S. Case No. 74 dt. 05.06.2003 along with Puri Sea Beach P.S. Charge Sheet No. 138 dt.18.10.2003.
3. Copy of F.I.R. of Puri Sea Beach P.S. Case No. 172 dt. 19.10.2006 along with Puri Sea Beach P.S. Charge sheet No. 184 dt. 23.12.2006.
4. Copy of F.I.R. of Puri Sea Beach P.S. Case No. 173 dt. 19.10.2006 along with Puri Sea beach P.S. Charge Sheet No. 188 dt.31.12.2006.

5. Copy of F.I.R. of Puri Sea Beach P.S. Case No. 179 dt. 26.10.2006 along with Puri Sea beach P.S. Charge sheet NO. 33 dt. 08.02.2008.
6. Copy of F.I.R. of Puri Sea beach P.S. Case No. 4 dt. 06.01.2007 along with Puri Sea beach P.S. Charge Sheet No. 77 dt. 31.08.2007.
7. Copy of F.I.R. of Puri Sea Beach P.S. Case No. 98 dt. 26.06.2007 alongwith Puri Sea Beach P.S. Charge Sheet No. 99 dt.23.08.2007.
8. Copy of Sea beach P.S. Non-F.I.R. No. 306 dt. 14.08.2007 along with Sea beach P.S. Station Diary Entry No. 65 dt. 03.05.2007.
9. Copy of F.I.R. of Puri Sea Beach P.S. Case No. 26 dt. 03.03.2008.
10. Copy of statement of Subhransu Mandhata recorded in Puri Sea Beach P.S. Case No. 172 dt. 19.10.2006 recorded u/s 161 Code of Criminal Procedure.
11. Copy of statement of Balaram Panda recorded in Puri Sea beach P.S. Case No. 173 dt. 19.10.2006 recorded u/s 161 Code of Criminal Procedure.
12. Copy of statement of Manoj Kumar Jena recorded in Puri Sea beach P.S. Case No. 179 dt. 26.10.2006 recorded untlor Section 161 Code of Criminal Procedure.
13. "Copy of statement of (i) Ajatashatru Mishra, (ii) Bijaya Mallick, (iii) Kailash Behera, (iv) Bholanath Das, recorded in Puri Sea beach P.S. Case No. 26 dt.03.03.2008 recorded u/s 161 Code of Criminal Procedure.

63. Admittedly the documents asked for by the detenu had not been supplied. In his application, the detenu did not ask for furnishing the copies of those documents which had already been made available to him along with the grounds of detention. Further, the copy of the report of the Superintendent of Police, which formed the very basis of detention order had not been made available to the detenu on the ground that it was a confidential document. However, copy of the same has been filed along with the counter affidavit. Therefore, the question does arise as what would be the effect of non-furnishing the copies of the aforesaid documents asked for by the detenu.

64. The object of communication of grounds to the detenu is to enable him to make an effective representation. Therefore it becomes necessary in the part of the Detaining Authority to disclose the basic facts and materials on which the satisfaction of the authority about the necessity of his detention is based. Non furnishing the grounds of detention amounts to denial of opportunity to make an effective representation. In fact the grounds within the contemplation of Sub-section 1 of the section mean materials on which the order of detention is primarily based. The grounds of detention are the conclusions of facts appearing against the detenu and they must be in existence while passing the detention order. Therefore the documents and materials relied upon in the order of detention form an integral part of the grounds and therefore it is necessary to furnish the copy thereof to the detenu.

65. This is a constitutional requirement of Article 22(5) as well as the statutory requirement of Section 8 of the Act. If the detenu wants the additional material, he could have asked for the same. But every failure to furnish copy of a document to which reference is made in the grounds of detention u/s 3(1) of the Act is not an infringement of Article 22(5) of the Constitution, fatal to the order of detention. (Vide Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr,).

66. In Mehrunissa Vs. State of Maharashtra, , the Apex Court placed reliance upon its earlier Judgment in Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, ; and Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, , and held that non supply of documents which had been relied upon by the Detaining Authority may become fatal and the observation taken by the State that non supply of the copies of the documents has not cause prejudice to the detenu for the reason that said documents had already been made available to him in criminal trial cannot be a valid ground. The Court held that the detenu was entitled to be supplied all copies of all materials/documents in respect of the everything to rely upon his memory in regard to the contents of the documents and the failure of the Detaining Authority to supply copies of such documents vitiated the detention.

67. However, in Wasiuddin Ahmed Vs. District Magistrate, Aligarh, U.P. and Others, , the Supreme Court while dealing with a similar issue held that non supply of documents which has already been given to the detenu in criminal trial would not vitiate the detention order. The Court has held as under:

Under Sub-section (5) of Section 173 of the Code of Criminal Procedure, 1973 the detenu had already been supplied with all the documents or relevant extracts thereof on which the prosecution relied in the criminal case in which he was convicted as well as on which the prosecution proposes to rely in the three criminal cases pending against him. There was, therefore, no need to supply the copies of the first information reports referred to in the grounds of detention over again, and no grievance can be made that the detenu was deprived of the right of making a representation at the earliest opportunity due to non-supply of these documents. The contention that the constitutional safeguards under Article 22(5) read with Section 8 of the Act were not complied with due to non-supply of documents or failure to supply the documents in a language with which the detenu was conversant, must, therefor, fail.

68. In Pritam Nath Hoon Vs. Union of India (UOI) and Others, , the Apex Court placing reliance upon its earlier Judgment in Ramchandra A. Kamat Vs. Union of India (UOI) and Others, , held that in order to make a effective representation, detenu required the copies of the documents relied upon by the Detaining Authority for formation of subjective satisfaction. Thus the copies of the documents must be furnished to the detenu without unreasonable delay and not supplying the copies would amounts to denial to make effective representation which may render the detention order itself illegal.

69. In *Ram Baochan Dubey v. State of Maharashtra*, (1982) 3 SCC 383: 1983 SCC (Cri) 59b; *Sunil Dutt Vs. Union of India (UOI) and Others*, ; *Yumnang Mangibabu Singh Vs. State of Manipur and Others*, , and *Sophia Gulam Mohd. Bham Vs. State of Maharashtra and Others*, , the Apex Court reiterated that non-furnishing the copies of some statements would make the detention order unjustified as non availability of such documents may not enable the detenu to make the effective representation and hence it violated the mandates of Article 22(5) of the Constitution. It was held to be a very serious lacuna which would make the continued detention void.

70. In *Kamla Kanyalal Khushalani Vs. State of Maharashtra and another*, while dealing with the issue the Apex Court held as under:

It is of the utmost importance that all the necessary safeguards laid down by the Constitution under Article 21 or Article 22(5) should be complied with fully and strictly and any departure from any of the safeguards would void the order of detention. The law of preventive detention has now to satisfy a two-fold test : (1) that the protection and the guarantee afforded under Article 22(5) is complied with, and (2) that the procedure is just and reasonable. If a procedure under Article 21 has to be reasonable, fair and just, then the words "effective representation" appearing in Article 22(5) must be construed so as to provide a real and meaningful opportunity to the detenu to explain his case to the Detaining Authority in his representation. In this view of the matter, unless the materials and documents relied on in the order of detention are supplied to the detenu along with the grounds, the supply of grounds simpliciter would give him not a real but merely an illusory opportunity, to make a representation to the Detaining Authority. (emphasis supplied).

71. In view of the above, law can be summarised that non-supply of documents, on the basis of which the Detaining Authority formed a subjective satisfaction, would render the detention order illegal. It is not permissible in law, though the Apex Court in one of the cases i.e. in *Wasi Uddin Ahmed (supra)*, as referred to above, has held otherwise. The detenu cannot be expected to rely upon his memory or may not be able even to collect the said documents for making effective representation. Thus, the detention order, in such a fact situation stands vitiated and cannot be sustained in the eyes of law.

72. In the instant case, in spite of being asked for, a large number of documents, which were very relevant for making effective representation, i.e., copies of the report of the Superintendent of Police, statement of witnesses u/s 161, Code of Criminal Procedure in some cases, FIRs referred to in the grounds of detention, charge sheets in some cases etc. had not been made available to the detenu. Thus, he might have been deprived of the opportunity to make an effective representation. The detention order becomes void being violative of the provisions of Article 22 of the Constitution of India.

73. Thus, the petition succeeds and is allowed. The order of detention dated

8.4.2008 (Annex. 1) is hereby quashed. The detenu be set at liberty forthwith unless his detention is required in connection with any other case.

B.N. Mahapatra, J.

74. I. agree.