
(1995) 08 GUJ CK 0008
In the Gujarat High Court

Jeevan G. Tandel

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-08-1995

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3, 3(1), 3(1), 6, 7(1)(b)
Constitution of India, 1950 — Article 22(5), 226
Customs Act, 1962 — Section 108
Preventive Detention Act, 1950 — Section 5

Citation : (1996) 3 GLR 713

Hon'ble Judges : J.M. Panchal, J

Bench : Single Bench

Judgement

J.M. Panchal, J.—The order of detention dated April 5, 1993, which is passed by the Additional Chief Secretary to Government of Gujarat, Home Department, in exercise of powers conferred on him by Sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ("the Act" for short) against the petitioner with a view to preventing him from smuggling the goods, is subject-matter of challenge in the present petition which is filed under Article 226 of the Constitution.

2. Though the order of detention was passed on April 5, 1993, it could be executed on November 24, 1993. The competent authority issued Declaration No. 19 of 1993 u/s 9(1) of the Act, as it was satisfied that the detenu was likely to smuggle goods into Indian Customs Waters contiguous to the State of Gujarat. Before that, the State Government had forwarded report in respect of detention order to the Central Government on April 6, 1993 as required by Section 3(2) of the Act. The State Government, within five weeks from the date of detention of the detenu, made reference to the Advisory Board as required by Section 8(b) of the Act. The Advisory Board, after considering the materials placed before it, prepared its report specifying its opinion that there was sufficient cause for detention of the detenu. After receipt of the report from the Advisory Board,

State Government confirmed the detention order on May 18, 1993 and has continued the detention of the detenu.

3. From the grounds of detention, it is apparent that on the basis of information, Sea Patrolling was arranged by the Customs Officers of Bulsar Division. They noticed one Vessel moving suspiciously between Daman and Kalai. Officers of the Customs chased the said Vessel and Vessel was given signal to stop, but it did not stop. The officers, therefore, resorted to firing and finally intercepted the Vessel. On interrogation of crew members on the Vessel, it was revealed that Vessel had started from Khorfkhan on March 1, 1992 with silver and gold which were to be unloaded at Daman. It was also revealed that they had given delivery of the said goods to the persons who came in a boat bearing No. MFV-Labh-Sawai-UMR-1106. The intercepted Vessel Parvati Devi was then brought to Valsad Jetty for thorough rummaging, but nothing incriminating was found. The crew members who were found on board the Vessel were: (1) Bachla Lallu, (2) Mahesh Kalan, (3) Chhanu Hari, (4) Amrit Daji, and (5) Ramji Kalan.

4. The grounds of detention reveal that the Vessel valued at Rs. 3 lacs was seized on 8-3-1992 under proper panchnama in the reasonable belief that the same was used for transporting contraband goods from Khorfkhan to Daman. As per grounds of detention on 8-3-1992, in pursuance of another information that silver slabs were dumped in the sea opposite Daman, officers rushed and combed the suspected area and were able to retrieve 149 silver slabs totally weighing 5,353.169 kgs. valued at Rs. 4.25 crores, which was seized under Customs Act. The grounds show that in the follow-up action the Vessel Labh-Sawai was found in an abandoned condition near Daman and it was seized under a panchnama in the reasonable belief that the same was used for transporting silver from the Vessel "Parvati Devi".

5. In the grounds of detention, role attributed to the petitioner is as under:

one On inquiry, one of the crew members, namely, Chhanu Hari stated that Jeevan Govan Tandel, i.e., the petitioner had alighted from the Vessel "Paravti Devi" at Daman. On interrogation in presence of panch witnesses, the crew admitted to have brought gold and silver from Khorfkhan and to have transhipped the same off Daman, Opp. Hotel Mira Mar, Devka. The statements of crew members indicate that the detenu secured Vessel Parvati Devi-BLS-3033 and the detenu as Tandel as well as Chhanu Hari as driver and Mahesh Kalan, Bachla Lallu, Ramji Kalan and Amrit Daji, all started on February 16, 1992 for Khorfkhan, Dubai in order to smuggle silver and gold and reached there on February 29, 1992. The statements of crew members show that the detenu had arranged trip and fixed the pay of other persons, i.e., driver and Khalasis. After reaching Khorfkhan, the detenu on February 29, 1992 brought silver slabs and gold biscuits and loaded in the Vessel, which left for India on March 1, 1992. The Vessel reached Opp. Mira Mar Hotel on March 7, 1992 at about 10-00 p.m. and Naran Kanji and two other persons went in a small boat Labh-Sawai-UMR-1106 and silver slabs and bundles containing gold biscuits were transhipped from

Parvati Devi into Labh-Sawai in two trips. Thus, role attributed to the petitioner indicates that the petitioner and others had brought contraband silver from Dubai in the Vessel "Parvati Devi" and had given delivery of the same to persons who came in a boat "Labh-Sawai".

6. The Assistant Collector of Customs, Valsad sent progress of the investigation into the matter by his letters dated June 10, 1992, June 22, 1992, July 16, 1992, September 14, 1992, November 13, 1992, December 4, 1992 and January 15, 1993 to the Collector of Customs (Preventive), Ahmedabad. The Collector of Customs (Preventive), Ahmedabad sent proposal on January 27, 1993 to the Additional Chief Secretary, Home Department (Spl.), Schivalaya, Gandhinagar for passing appropriate order of detention against the persons involved in the incident. The Additional Chief Secretary, Home Department called for certain documents and information which were necessary for forming subjective satisfaction. On receipt of documents and information, the detaining authority was satisfied that the petitioner had engaged himself in smuggling of goods and, therefore, the detaining authority passed the detention order on April 5, 1993 with a view to preventing the petitioner from smuggling the goods.

7. Several grounds are raised in the petition for challenging order of detention. However, it is not necessary to refer to all of them except those which are advanced by the learned Counsel for the petitioner, at the time of hearing of the petition.

8. Mr. A.K. Sinha, Under Secretary to Government of India, Ministry of Finance, Department of Revenue, New Delhi has filed Affidavit in opposition on behalf of Union of India controverting statements made in the petition. Similarly, Mr. P.P. Jadeja, Superintendent of Customs (COFEPOSA), Ahmedabad has filed affidavit-in-reply disputing statements made in the petition. Miss G.K. Mehta, Under Secretary to Government of Gujarat, Home Department (Spl.), Sachivalaya, Gandhinagar has filed affidavit in opposition on behalf of respondent Nos. 3 and 4 disputing the claims advanced in the petition. The petitioner has filed affidavit-in-rejoinder controverting the averments made in the affidavits-in-reply filed on behalf of the respondents, and reiterated what is stated in the petition. However, it is not necessary at this stage to refer to in detail the averments and contentions raised either in the affidavits-in-reply filed on behalf of the respondents or affidavit-in-rejoinder filed by the petitioner.

9. Mr. N.R. Mehta, learned Counsel for the petitioner submitted that there is unexplained delay in passing the detention order and, therefore, detention order deserves to be quashed. It was submitted that the Vessel was intercepted on March 8, 1992; whereas the detention order was passed on April 5, 1993 and as there is delay of about one year and 27 days in passing the detention order, it cannot be said that the detaining authority was genuinely satisfied about the need to detain the detenu with a view to preventing him from smuggling goods and, therefore, the relief claimed in the petition should be granted. The plea regarding delay in passing the detention order has been raised by the detenu in

Para 7(1) of the petition.

In support of this submission, learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court rendered in the case of Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others, .

10. Mr. P.P. Jadeja, Superintendent of Customs (COFEPOSA), Ahmedabad in reply-affidavit has pointed out that after recording statements of the detenu and others u/s 108 of the Customs Act their residential as well as business premises were also searched. The reply further indicates that Nathu Mangal Tandel @ Nathu Puna, who is owner of the Vessel, was apprehended and his statement under the provisions of the Customs Act was recorded on June 8, 1992. The reply indicates that on the basis of preliminary investigation, proposal for detention of the detenu and others was made by the Assistant Collector of Customs, Valsad. It also shows that progress in investigation as communicated to the Collector of Customs (Preventive), Ahmedabad vide letters dated June 10, 1992, June 22, 1992, July 16, 1992, September 14, 1992, November 13, 1992, December 4, 1992 and January 15, 1993. Affidavit of Mr. Jadeja indicates that after careful consideration of the material received from the Assistant Collector of Customs (Preventive), Valsad, the Collector of Customs (Preventive), Ahmedabad sent proposal to the Additional Chief Secretary, Home Department (Spl.), Sachivalaya, Gandhinagar for passing appropriate orders of detention on January 27, 1993, Mr. Jadeja's affidavit also makes it abundantly clear that after sending the proposal, several documents were received which were also sent to the detaining authority through proper channel.

The affidavit filed by Miss G.K. Mehta, Under Secretary to Government of Gujarat, Home Department avers that after receiving the proposal from the Customs Collector, vital documents and information were called for from the Customs Collector vide letter dated March 1, 1993. The affidavit also asserts that the Customs Collector forwarded necessary data along with letters dated March 22, 1993 and March 29, 1993. The affidavit of Miss Mehta further indicates that in the light of information received from Custom Collector, a note was prepared by the COFEPOSA section and put up before the Under Secretary on March 30, 1993 with relevant materials. The file was cleared by the Under Secretary on the same day and was put up before the detaining authority on March 31, 1993. The affidavit filed on behalf of the State Government indicates that another document was received by the detaining authority on April 2, 1993. The detaining authority thereafter considered the material on record and after being satisfied about the prejudicial activities of the detenu, passed the detention order on April 6, 1993 with a view to preventing the petitioner from smuggling goods. In reply-affidavit which is filed on behalf of the State Government it is claimed that 7th, 13th, 14th, 19th, 21st, 27th and 28th February, 1993, 7th, 8th, 13th, 24th, 25th, 27th and 28th March, 1993 as well as 1st and 4th April, 1993 were public holidays.

10(A). In view of the above facts, the question which arises for consideration of the Court is as to whether delay in passing the detention order can be said to have vitiated subjective satisfaction of the detaining authority, namely, that it was necessary to detain the petitioner with a view to preventing him from smuggling goods? In the case of *Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others*, , the Supreme Court has emphasised and made it clear for the guidance of different High Courts that a distinction must be drawn between the delay in making of detention order under a law relating to preventive detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution. The Supreme Court has highlighted the principle that in the cases of mere delay in making of an order of detention under a law like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering, who owing to their resources and influence, have been posing a serious threat to the economy and thereby to the security of the Nation, the Courts should not merely on account of delay in making of an order of detention assume that such delay if not satisfactorily explained must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached. The Supreme Court has further cautioned that taking of such view would not be warranted unless the Court finds that the grounds are stale or illusory or that there is no real nexus between the grounds and the impugned order of detention. The pertinent observations which have been made by the Supreme Court are to be found in Para 9 of the reported judgment of the Supreme Court which are as under:

In the enforcement of a law relating to preventive detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 there is apt to be some delay between the prejudicial activities complained of u/s 3(1) of the Act and the making of an order of detention. When a person is detected in the act of smuggling or foreign exchange racketeering, the Directorate of Enforcement has to make a thorough investigation into all the facts with a view to determine the identity of the persons engaged in these operations which have a deleterious effect on the national economy. Quite often these activities are carried on by person forming a syndicate or having a wide network and therefore, this includes recording of statements of persons involved, examination of their books of accounts and other related documents. Effective administration and realisation of the purposes of the Act is often rendered difficult by reason of the clandestine manner in which the persons engaged in such operations carry on their activities and the consequent difficulties in securing sufficient evidence to comply with the rigid standards, insisted upon by the Courts. Sometimes such investigation has to be carried on for months together due to the magnitude of the operations. Apart from taking various other measures, i.e., launching of prosecution of the persons involved for contravention

of the various provisions of the Acts in question and initiation of the adjudication proceedings, the Directorate has also to consider whether there was necessity in the public interest to direct the detention of such person or persons u/s 3(1) of the Act with a view to preventing them from acting in any manner prejudicial to the conservation and augmentation of foreign exchange or with a view to preventing them from engaging in smuggling of goods etc. The proposal has to be cleared at the highest quarter and is then placed before a Screening Committee. For ought we know, the Screening Committee may meet once or twice a month. If the Screening Committee approves of the proposal, it would place the same before the detaining authority. Being conscious that the requirements of Article 22(5) would not be satisfied unless the basic facts and materials which weighed with him in reaching his subjective satisfaction, are communicated to the detenu and the likelihood that the Court would examine the grounds specified in the order of detention to see whether they were relevant to the circumstances under the impugned order was passed, the detaining authority would necessarily insist upon sufficiency of the grounds which would justify the taking of the drastic measure of preventively detaining the persons.

10(B). In the facts of the present case, the grounds of detention indicate that the detaining authority was aware about some lapse of time between the date of incident and the date of passing of the detention order and yet it is indicated in the grounds that the detaining authority formed subjective satisfaction that having regard to the prejudicial activities attributed to the detenu it was necessary to detain him with a view to preventing him from smuggling goods. Para 20 of the grounds of detention reads as under:

20. I am also satisfied that there is no delay in initiating action under the COFEPOSA Act, 1974 and that nexus between the date of incident and passing of this detention order as well as the object of your detention has been maintained.

In my opinion, time-lag between the date of alleged incident and the date of making of detention order cannot be treated as so large that it can be said that no reasonable person could possibly arrive at the satisfaction which the detaining authority did on the basis of the material. It must be remembered that some time is bound to elapse before the investigation into the alleged incident is completed and the matter is brought to the notice of the detaining authority and the detaining authority applies his mind and arrive at requisite satisfaction culminating into the order of detention. Having regard to the explanation offered by the sponsoring authority as well as on behalf of the detaining authority, it cannot be said that the period of about one year which lapsed between the date of alleged incident and the date of making of detention order, has in any manner vitiated the satisfaction of the detaining authority or indicates that the satisfaction was colourable or no satisfaction at all was formed as required by the statute. The satisfaction which the detaining authority is required to reach in order to support the detention order is that it is necessary to detain the petitioner with a view to preventing him from smuggling goods and that the

satisfaction can obviously be founded only on reasonably anticipated prognosis of future behaviour of the petitioner made on the basis of past incidents referred to in the grounds of detention. The manner in which the petitioner and others had brought large quantity of contraband silver from Dubai in Vessel "Parvati Devi" and had given delivery of the same to the persons who came in a boat Labh-Sawai indicating deep rooted conspiracy to smuggle goods would be sufficient to satisfy the detaining authority about need to detain the petitioner. It is not possible to say that the incidents referred to in the grounds of detention were such that they would not reasonably lead to the satisfaction which the detaining authority reached when he made the detention order. In my view, passage of time between the date of incident and the date of making of the order of detention is result of full and detailed consideration of facts and circumstances of the case after thorough examination at various levels and, therefore, it cannot be said that the detention was in any way illegal when the detaining authority had fully and satisfactorily applied its mind to the question of detention order. The detention order, therefore, in my opinion, is not liable to be set aside and quashed on the ground that there is delay in passing the detention order.

11. In the case of *Mustakmiya Jabbarmiya Shaikh (supra)*, the order of detention was passed against the detenu under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985, as the detaining authority was satisfied that the activities of the detenu as a dangerous person disturbed the maintenance of public order and it was necessary to detain him with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. It was found that there was delay of 16 months in passing the detention order after the alleged prejudicial conduct. The Supreme Court in such circumstances has taken the view that this long lapse of time between the alleged prejudicial activities and the detention order lost its significance because the said prejudicial conduct was not approximate in point of time and had no rational connection with the conclusion that the detention order was necessary for maintenance of public order. The Supreme Court on the facts of the case, held that such a stale incident could not have been construed as justifiable ground for passing detention order. In my view, the scheme of the Gujarat Prevention of Anti-Social Activities Act, 1985 is quite different from that of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. As emphasised by the Supreme Court in the case of *Rajendrakumar N. Shah (supra)* in the cases of more delay in making order of detention under a law like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 enacted for the purpose of dealing effectively with the persons engaged in smuggling or foreign exchange racketeering, who owing to their large resources and influence, have been posing a serious threat to the economy and thereby to the security of the Nation, the Courts should not merely on account of delay in making of detention order assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for subjective satisfaction of the detaining authority or that such subjective satisfaction was not

genuinely reached. Having regard to the facts and circumstances of the case, in my opinion, the judgment rendered by the Supreme Court in the case of Mustakmiya Jabbarmiya Shaikh (supra) is of no assistance to the petitioner.

12. It was next contended that there is delay between making of detention order and execution thereof and, therefore, the detention order should be voided. This ground of challenge is raised in Para 7(k) of the petition.

13. The affidavit filed on behalf of the State Government indicates that after making of detention order, it was sent to the Additional D.G.P., C.I.D. (Crimes and Railways), Gujarat State, Ahmedabad on April 5, 1993 for execution. The reply further indicates that the serving authority, i.e., office of Addl. D.G.P., C.I.D. (Crimes and Railways), Ahmedabad, reported that the detenu was absconding and concealing so that the detention order could not be executed. The affidavit clearly indicates that in view of the report received from the office of Addl. D.G.P., C.I.D. (Crimes and Railways), Ahmedabad, necessary steps were taken to declare the detenu as an absconder as required by Clause (b) of Sub-section (1) of Section 7 of the Act. The learned Counsel for the State Government has produced a copy of notification dated July 28, 1993 as published in Gujarat Government Gazette, Extraordinary, on July 31, 1993 Part IV-A, which indicate that pursuant to the report received from the Addl. D.G.P., C.I.D. (Crimes and Railways), Ahmedabad, the Government of Gujarat believed that the detenu absconded and concealed himself so that detention order could not be executed. By issuing the said notification, the detenu was called upon to appear before the Addl. D.G.P., C.I.D. (Crimes and Railways), Ahmedabad within a period of 30 days from the date of its publication in the Official Gazette.

14. The averments made on behalf of the State Government in Para 8 of the reply-affidavit make it abundantly clear that the petitioner had made himself scarce and was not available. In my view, not only delay is adequately explained, but on the facts it is evident that delay, if any, is the result of the recalcitrant or refractory conduct of the detenu in evading arrest. Under the circumstances, there is warrant to consider the link not snapped, but strengthened and this is so in view of the judgment of the Supreme Court rendered in the case of Bhawarlal Ganeshmalji v. State of Tamil Nadu and Ors. . On the facts and in the circumstances of the case, I am of the view that order of detention is not liable to be set aside on the ground that there is unreasonable and unexplained delay in Bhawarlal Ganeshmalji Vs. State of Tamil Nadu and Another, ution thereof.

15. It was next contended that the petitioner is resident of Moti Daman, which is part of Union Territory and as the petitioner is residing outside the limits of territorial jurisdiction of Additional Chief Secretary to Government, Home Department (Spl.) Sachivalaya, Gandhinagar, who has made the detention order, the detention order is invalid as well as inoperative and, therefore, the prayers made in the petition should be granted. In support of this submission, the learned Counsel for the petitioner has placed reliance on the decision rendered, In Re: S.V. Ghatge, .

Relying on the averments made in reply-affidavit of Miss G.K. Mehta, learned Counsel for the respondents have contended that the detaining authority has jurisdiction to pass detention order and it cannot be invalidated on the ground that the petitioner is residing outside the limits of territorial jurisdiction of the detaining authority.

16. Miss G.K. Mehta, Under Secretary to Government of Gujarat, Home Department (Spl.), Sachivalaya, Gandhinagar, who has filed affidavit-in-reply on behalf of the respondent Nos. 2 and 3, has asserted that the Additional Chief Secretary who has made the detention order, has jurisdiction to pass the impugned detention order. It is emphasised in the reply-affidavit that on specific information received by Customs Officers, Valsad, Sea Patrolling was arranged and during such continuous patrolling, officers noticed a Vessel moving suspiciously between Daman Coast and Kalai, which was ultimately brought to Valsad Jetty for carrying out search. It is also pointed out in the reply-affidavit that on receipt of necessary reports from the Assistant Collector of Customs, Valsad, the Collector of Customs (Preventive), Gujarat made necessary proposal to the detaining authority and thus, the proposal for detention of the detenu having originated from Gujarat, it cannot be said that the order of detention is either invalid or inoperative because the detenu is residing outside the limits of territorial jurisdiction of the officer making detention order. The deponent of the reply-affidavit has claimed that search and seizure panchnama was prepared at Valsad and statements of crew members were also recorded by the officers u/s 108 of the Customs Act, 1962 at Valsad and, therefore, the detention order cannot be termed as without jurisdiction.

17. In view of the rival submissions, it is necessary for the Court to decide as to whether the detention order is invalid or inoperative because the petitioner is residing outside the limits of territorial jurisdiction of the detaining authority?

18. At this stage, it would be relevant to notice the provisions of Section 6 of the Act which are as under:

6. Detention orders not to be invalid or inoperative on certain grounds: No detention order shall be invalid or inoperative merely by reasons - (a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or the officer making detention order, or

(b) that the place of detention of such person is outside the said limits.

This section is identical to Section 6 of the National Security Act and Section 5 of the Preventive Detention Act, 1950. The section is expressed in plain language. Since the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 is applicable to whole of India, it is obvious that the detention order can be operative on any person staying in the remotest corner of the country. By virtue of Section 6 of the Act, detention orders can be passed u/s 3 of the Act. A bare reading of the section makes it abundantly clear that detention orders are not invalid or inoperative merely by reason that the person

to be detained is outside the territorial jurisdiction of the Authority passing detention orders. This provision clearly shows that the authority passing detention order u/s 3 of the Act can pass detention order in respect of person outside its limits and the place of detention can also be outside such limits.

19. In *Re: S.V. Ghate*, Commissioner of Police, Bombay passed an order of detention in respect of a person who was outside the State of Bombay. The detention order was challenged as being outside the competence of the Commissioner of Police. The Bombay High Court held that because of Section 5 of the Preventive Detention Act, 1950, a limitation has necessarily to be imposed upon the powers of the Commissioner of Police and that, therefore, he cannot exercise the powers of detention in respect of persons beyond his jurisdiction. In *Ram Nagina Rai Vs. District Magistrate*, a person was detained under the U.P. Maintenance of Public Order (Temporary) Act, 1947 by an order issued by the District Magistrate while the person sought to be detained was not within his jurisdiction. It was held by the Court that the order was illegal. In *Mohan Kumar Mangalam*, In re., 1951-1 Madras Law Journal 174, a Division Bench of Madras High Court cited with approval the above decision of the Bombay High Court and held that the State of Bombay cannot for the purpose of Preventive Detention Act, 1950 pass order detaining persons found within its territory for their activities in Madras State, which is outside the Bombay State.

20. All the above decisions limiting powers of detaining authority to pass orders against the persons within its jurisdiction are based on the provisions contained in the respective Acts. Section 5 of the Preventive Detention Act, 1950 as it originally stood was as under:

Sec. 5: Detention order not to be invalid by reason of place of detention: No detention order made by the officer mentioned in Sub-section (1) of Section 3 shall be deemed to be invalid merely by reason that place of detention specified in the order is situate outside the limits of territorial jurisdiction of such officer.

21. The above provision indicates that any order passed by an officer empowered u/s 3(2) of the Act cannot be invalidated merely by reason of the fact that place of detention is outside the limits of territorial jurisdiction of the officer. It is because of peculiar language occurring in the said Section 5 of the Preventive Detention Act, 1950 that the Courts in the above three decisions proceeded to hold that saving of orders being only in relation to the place of detention and not in relation to the residence of the persons sought to be detained, the Officers empowered u/s 3 cannot pass orders of detention in respect of persons residing outside their territorial jurisdiction. To get over above three decisions, Section 5 of the Preventive Detention Act, 1950 was amended in 1951 as follows:

Sec. 5: Detention order not to be invalid or inoperative on certain grounds: No detention order shall be invalid or inoperative merely by reason:

(a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or officer making order, or

(b) that the place of detention of such person is outside the said limits.

22. Dealing with the scope and validity of the said amended section, it has been held in *Prahlad Keshav v. Commissioner of Police, Bombay* ILR (1956) Bom. 715 that the amended section confers power on the detaining authority referred to in Section 3 to detain a person outside the limits of its territorial jurisdiction and that amended Section 5 is not ultra vires Article 162 defining the extent of executive powers of the State, inasmuch as Article 245(1) of the Constitution read with Entry-III in the Concurrent List empowers the Parliament to enact law conferring powers on the State or any officer of the State or the State Government to make an order of detention in respect of a person outside the limits of their territorial jurisdiction. I am here concerned with Section 6 of the Act, which is in pari-materia with Section 5 of the Preventive Detention Act, 1950 as amended. Therefore, the decision rendered in *Prahlad Keshav* (supra) would be quite relevant for this case and not the earlier decision referred to above, which dealt with scope of unamended Section 5 of the Preventive Detention Act, 1950 which was very much limited in its operation.

23. Having regard to the principle laid down by the Bombay High Court in the case of *Prahlad Keshav* (supra) as well as Section 6 of the Act, detention order cannot be held to be invalid or inoperative merely by reason that the petitioner is residing outside the limits of territorial jurisdiction of the officer making detention order. In view of the above discussion, I do not find any substance in the third submission which is advanced on behalf of the petitioner.

24. The last contention that the petitioner has not been supplied with copies of documents on consideration of which notification dated July 28, 1993 was issued by the Government directing the petitioner to appear before the Addl. D.G.P., C.I.D. (Crimes and Railways), Ahmedabad within 30 days from the date of publication of the order in the Official Gazette and, therefore, the right of the petitioner guaranteed under Article 22(5) of the Constitution to make effective representation is infringed, has no substance. This contention which is raised in Para 7(F) of the petition is dealt with by Miss G.K. Mehta, Under Secretary to the Government of Gujarat, in her affidavit-in-reply. It is stated in the reply-affidavit that the documents which are not considered by the detaining authority are not supplied to the detenu and those documents which have been considered are supplied to the detenu.

25. It is an admitted position that the grounds of detention and the documents relied on by the detaining authority have been supplied to the detenu. From the affidavit-in-reply, it is obvious that the detention order was sent to the Addl. D.G.P., C.I.D. (Crimes and Railways), Gujarat State, Ahmedabad on April 5, 1993 for execution. The Serving authority submitted report that the detenu was evading detention. Under the circumstances, the detenu was declared as an absconder under Clause (b) of Sub-section (1) of Section 7 of the Act vide Home Department notification dated July 28, 1993 and directed to appear before the Addl. D.G.P., C.I.D. (Crimes 6 Railways), Ahmedabad. It is apparent that report

of the Addl. D.G.P., C.I.D. (Crimes and Railways), Gujarat State, Ahmedabad or the notification declaring the detenu as an absconder under Clause (b) of Sub-section (1) of Section 7 of the Act were never taken into consideration by the detaining authority for the purpose of passing the detention order. Those documents were neither relied on nor referred to in the grounds of detention. The position of law is very clear. It is well settled that detaining authority is bound to supply documents which are relied on for the purpose of passing the detention order. It is also well settled that the detaining authority is bound to supply documents which have been referred to in the grounds of detention, but which are not relied on, if demanded by the detenu. However, there is no Constitutional obligation on the detaining authority to supply documents to the detenu which are neither relied on nor referred to in the grounds of detention. In the case of Abdul Sathar Ibrahim Manik Vs. Union of India and others, , the Supreme Court held as under:

It will, therefore, be seen that failure to supply each and every document merely referred to and not relied on, it will not amount to infringement of the rights guaranteed under Article 22(5) of the Constitution. We may, of course, add that where the document is casual or passingly referred to or where it has also formed the material for arriving at subjective satisfaction depends upon the facts and grounds in each case. In the instant case, we are satisfied that these two documents were never placed before the detaining authority nor they were referred to or relied on. Thus, on interpretation of Article 22 Sub-article (5) of the Constitution, we are not inclined to agree with the submission of the learned Counsel for the petitioner that the detaining authority is bound to supply the documents which are neither relied on for the purpose of passing the detention order nor have been referred to in the grounds of documents.

25.1. In view of the above settled legal position, I am of the view that it was not obligatory at all on the part of the detaining authority to supply documents culminating into declaration under Clause (b) of Sub-section (1) of Section 7 of the Act, as those documents were neither relied on for the purpose of passing detention order nor were referred to in the grounds of detention. Non-supply of such documents would not result into infringement of right guaranteed to the petitioner under Article 22(5) of the Constitution. Therefore, there is no merits in last contention also.

26. Except the above referred to contentions, no other contention has been advanced in support of the petition. For the foregoing reasons, I do not find any substance in the petition. The petition, therefore, fails. Rule is discharged with no order as to costs.