
(1984) 01 P&H CK 0082
In the Punjab And Haryana At Chandigarh

J.R. Gupta

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 24-01-1984

Acts Referred:

Constitution of India, 1950 — Article 22
Essential Commodities Act, 1955 — Section 7
General Clauses Act, 1897 — Section 21, 3
National Security Act, 1980 — Section 12, 13, 14, 3, 8
Penal Code, 1860 (IPC) — Section 295A, 307, 411, 414
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3

Citation : (1984) CriLJ 694

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Judgement

D.S. Tewatia, J

1. The petitioners Shri J.R. Gupta in Criminal Writs Nos. 451 and 450 of 1983 and Shri Prem Chand Bansal in Criminal Writ No. 474 of 1983. near relations of the three detenus, namely. Shri Dwarka Dass Mittal and his two sons. Raiinder Mittal and Vinod Mittal, Chairman, Managing Director and Director respectively of. the Bhatinda Chemicals and Banaspati Mills (Private) Limited. Bhatinda. hereinafter referred to as "the Bhatinda Chemicals". have impugned the detention orders dated 13-9-1983, annexures P. 11, P. 12 and P. 13 to the writ petitions, passed by the District Magistrate, Bhatinda. u/s 3(2) read with Section 3(3) of the National Security Act. 1980. hereinafter referred to as the Act. and sought their release from what they have termed as illegal detention,

2. All the three writ petitions involve common questions of law and facts and, therefore, a common judgment is proposed for all of them. Reference shall. however, be made to Civil Writ No. 451 of 1983 wherever it becomes necessary to take note of the relevant facts.

3. Besides the Bhatinda Chemicals, with which the connection of the detenus has

already been referred to, there is also a sister concern of the said Bhatinda Chemicals known as Manoj Containers and Chemicals (Private) Limited, Bhatinda, hereinafter referred to as "Manoj Containers" of which Shri Dwarka Dass Mittal and his son Raj-inder Mittal are the Directors. While "Bhatinda Chemicals" was established, inter alia. for the purpose of manufacturing processing and refining oil of all varieties-vegetable oils. butter. Ghee. Solvent extraction plant for extracting oil from rice bran. copra, soyabean. cotton seed. linseed, castor-seed. sal-seed. groundnut etc. the Manoj Containers, registered only on 18-1-1983. was started as a small-scale unit for the manufacture of laundry soap and to function as stockists. importers and exporters of sodium silicate, chemicals, chemical compounds, soap, perfumery and cosmetic of all kinds and nature.

4. In pursuance of the detention order. detenus Rajinder Mittal and Vinod Mittal were arrested on the very day. that is. 13-9-1983. while other detenu, namely. Bwarka Dass Mittal was arrested on 12-10-1983. The grounds of detention, annexure P-12. and the supporting material. as listed in annexure P-13. were made available to the detenus.

5. The circumstances that led to the passing of the detention order can be stated thus: Local people discovered the presence of number of tankers full of beef-tallow standing outside and inside the Bhatinda Chemicals, They also entertained the belief that the "Bhatinda Chemicals" was using beef-tallow clandestinely in manufacturing Vanaspati, which was being marketed as palm oil. The news of the said discovery and the belief soon got wings. The local population of the town got highly exercised over the same. On 12-6-1983 some of the public-spirited persons, namely, Shri Mohan Lal Sharma. Municipal Commissioner. Bhatinda: Megh Nath son of Lachhmandass: Sat Pal Bharti son of Milkhi Ram all residents of Bhatinda, made a complaint in writing to the Chief Minister. Punjab, who happened to be present on that day at Bhatinda In that complaint. they alleged that they had noticed 20 tankers containing animal fat (beef-tallow) in front of the Bhatinda Chemicals which were meant for mixing in the raw material used for the manufacture of Vanaspati Ghee and it was further alleged that the Bhatinda Chemicals had been preparing vegetable-ghee without licence and was mixing animal fat and then marketing the same as RBD Palm Oil.

6. Hindus and Sikhs alike rever cow as they do their own mother and. in fact. call it "Gau Mata," that is. mother cow. The news that the Bhatinda Chemicals was feeding the public with beef-tallow in the form of Vanaspati Ghee marketed as palm oil put aflame the local population and when the news through the media became public, then virtually the entire Hindu and Sikh population, not only of the Punjab State but of the whole country. felt resentment and the same assumed proportion which threatened the maintenance of public order. Realising the potential for public mischief of the kind of the activity indulged in by the Bhatinda Chemicals as suggested in the complaint, the Sub-Divisional Magistrate. Bhatinda, Shri Joginder Pal Singh puri. was deputed to look into the truth of the

allegations. He submitted his report to the District Magistrate on 15-6-1983, annexure-P-15. and on the basis of the said report, the District Magistrate ordered a regular magisterial enquiry, which too was marked to Shri Joginder Pal Singh Puri. During the enquiry, and even later on samples from tankers containing beef-tallow standing in front and inside the Bhatinda Chemicals. the tanks Nos. 5 and 10 inside the premises which were admittedly full of beef-tallow. and from Filling and Weighing Plant were taken through Shri K.C. Gupta. Research Chemist. Directorate of Vanaspati. Edible Fats and Oils Ministry of Civil Supplies. New Delhi; Shri Harish Chancier, Quality Control In-charge, Markfed Vanaspati and Allied Industries. Khanna: Dr. Sita Ram and Kishan Chandel. G.F.I. Bhatinda: and Dr. G.S. Bhatti. Chief Chemist, Mark-fed Vanaspati and Allied Industries. Khanna. on different dates. The S. D.M./Bhatinda. as an emergency measure, sealed the tankers and the tanks containing the beef-tallow. and also ordered the sealing of the Bhatinda Chemicals and directed the management to abstain from working the Mills for two months. He also suspended the licence of Manor Containers. which, it was mentioned at the bar. was finally cancelled and the concern was ordered to be deregistered,

7. The District Magistrate. hereinafter referred to as the detaining authority. on receiving the enquiry report Dated the order of detention dated 4-8-1983, hereinafter referred to as the first detention order. The said order is said to have lapsed and the detaining authority passed a fresh detention order on 13-9-1983, hereinafter referred to as the impugned order.

8. This order. that is. the order of 13-9-1983. and the detention in pursuance thereof. has been impugned, inter alia, on the grounds -

(1) that the relevant provisions of the Act envisage preventive detention, but in the circumstances of the case the detention has assumed the character of punitive detention which is permissible only after a trial of the offences.

(2) that the detaining authority in reaching its subjective satisfaction of the kind had taken into consideration irrelevant facts and circumstances; and also it had not applied its mind to certain facts which were relevant;

(3) that the detaining authority failed to supply all the material which it had taken into consideration before reaching its satisfaction of the kind in passing the impugned order: and

(4) that Ground No. 3 was vague and. in any case, regarding the same the detenus were not furnished any material showing that the persons who gave beating to Jagan Nath Sharma had been hired by them and in the absence of such material the detenus were deprived of making an effective representation. as also the beating of Jagan Nath Sharma could not be considered to be an act which could lead to the disturbance of public order.

The petition seeking release of Dwarka Dass Mittal detenu raises two additional grounds of attack against the validity of the detention: (i) that the grounds of

detention that were furnished to him were in a language which the detenu did not understand. and (ii) that the detention order had become stale and the same could not have been enforced against the detenu by effecting his arrest thereunder. So the detention in pursuance thereof was clearly illegal.

9. Regarding the third detenu Vinod Mittal. the additional challenge that requires notice is that he was Direc-for of the Bhatinda Chemicals only in name. He has been a student of the Bangalore Engineering College for the last four years and had taken no part in the running of the Bhatinda Chemicals and its affairs and, therefore, the detaining authority could not have reached the conclusion that unless he was preventively detained he would indulge in activities prejudicial to the maintenance of public order.

10. One more ground of attack, which is common to the case of all the three detenus, against the validity of the detention order dated 13-8-1983 is grounded upon the provisions of Section 13(2) of the Act and is to the effect that the first order of detention having expired, the second order, that is. the impugned order could not have been passed on the same facts and on the same grounds on which the first order was passed. The said impugned order. so alleged the petitioners, could have been passed only on the basis of fresh facts and fresh grounds.

11. Before examining the grounds of attack against the validity of the impugned order and the detention of the detenus thereunder. it may be mentioned at the outset that though in the petitions a specific ground had been taken that the detaining authority could not, in the circumstances of the case, reach a conclusion that the given activity of the detenus was such which could lead to the disturbance of the public order. yet Mr. Sibal frankly conceded that once it is assumed to be correct that the detenus were indulging in the activity attributed to them of clandestinely manufacturing Vanaspati Ghee by using be off allow as raw material therein. it would lead to the disturbance of the public order. The learned Counsel rightly did not press this point. In the. present case. the acts of detenus, if presumed to be correct, are much more heinous than the inadvertent act of the erstwhile British Government of India of making the soldiers use the cartridges which were rightly or wrongly believed by them to have been greased by beef and pig fat and led to the first war of rebellion for freedom In 1857. In the. present case. the detenus must be taken to have injured the religious feelings of Hindus and Sikhs of the Punjab particularly. and of the country as a whole, by allegedly making them actually eat beef fat. Such an activity cannot be visualised to be less potential for burst of anger and in the grounds of detention reference is made to the manner in which the citizens had started giving vent to their anger.

12. Let us now examine the merits of the points raised on behalf of the petitioners in seriatim :-

(1) There is no gainsaying the fact that preventive detention is distinct from

punitive "detention. While punitive detention is by way of punishment for an offence of which the person punished is found guilty the preventive detention is on the other hand intended to prevent the detenu from. inter alia, indulging in the commission of the very offences for which. if he was found guilty. he could be punished if the said acts of commission or omission were of a character on account of which order of preventive detention under a given statute providing for preventive detention could be passed.

13. It has been urged on behalf of the petitioners that their detention is punitive because the detaining authority. and for that matter no reasonable person. could reach the satisfaction that the detenus were likely to indulge in the given activity in future and thereby endanger the public order. It has been canvassed that the activity. which is to be considered prejudicial to the maintenance of public order by the detaining authority. was the alleged manufacture of Vanaspati Ghee without licence by using beef-tallow as raw material and marketing the same as R. B. D. Palm oil and the knowledge of the said fact having the tendency of exciting indignation in Hindus and Sikhs and create violent commotion and threaten the maintenance of public Order.

14. Since the Sub-Divisional Magistrate sealed all the tankers containing beef-tallow and also sealed the Bhatinda Chemicals for two months by order dated 18-6-1983 and also cancelled the licence of Manoj Containers and the import of beef-tallow and for that matter any tallow having been stopped by the Government of India, the question of the detenus adulterating any oil product with beef-tallow or passing of beef-tallow as palm oil or as Vanaspati Ghee could not. arise and, consequently. the question of their endangering the maintenance of public order would be utterly a far-fetched idea. Hence, the detaining authority. when it passed the order of detention. had no occasion whatsoever to apprehend that the detenus were in future likely to indulge in activities of the kind prejudicial to the maintenance of public order. If it still passed the impugned order of detention. it did so in order to punish the detenus for the alleged past activity by way of a punitive measure which. in law it would not be entitled to do so.

15. In support of his submission. Mr. H.L. Sibal, learned Counsel for the petitioner, referred me to a Division Bench decision of the Delhi High Court rendered in Criminal Writ No. 97 of 1983 Vinod Kumar Jain v. Commissioner of Police decided on 26-9-1983. in which the detention of the petitioner had been quashed by the Delhi High Court on the ground that the further import. of beef-tallow having been banned by the Government there was no question of the detenu indulging in the given activity considered prejudicial to the maintenance of public order. The learned Counsel drew my pointed attention in this regard to the following observations of the Bench:-

In view of the fact that future import of beef-tallow has been prohibited and there being no evidence that the petitioner has any stocks of beef-tallow with him the question of any danger of breach of public order in future does not arise.

The power of detention is clearly a preventive power. It does not partake in any manner of the nature of punishment. See *Khudiram Das v. State of West Bengal* MB 1975 SC 550 : 1975 Cri LJ 446.

For the reasons stated we hold that the detention order is not legal.

In my opinion, the petitioners counsel Cannot draw any comfort from Vinod Kumar Jain's case (supra). The decision of the Delhi High Court in that case rested on facts peculiar to that case. In that case, the allegations against the detenu Vinod Kumar Jain were that, "he was a major accomplice in the use of beef-tallow in the manufacture of Vanaspati Ghee, which had hurt the religious feelings of the Hindu community and posed a serious threat to public order and further that secret information revealed that the petitioner was holding large stocks of beef-tallow clandestinely and was negotiating for the sale of those stocks with one Hari Darshan Singh of Garhwal Paneer Bhandari, Fatehpuri, Delhi and Shri Madan Lal Nayyar, Hoshiarpur Dairies, Gowshala Bazar, Hoshiarpur, for the supply of beef-tallow which was likely to be used in the manufacture of vegetable ghee." The respondents in their counter-affidavit asserted that "beef-tallow supplied by the petitioner to Manoj Containers was used by M/s. Bhatinda Chemicals and Banaspati Mills Pvt. Ltd. in the manufacture of vegetable ghee and the petitioner was major accomplice in that sordid affair: another averment repeatedly made is that there is secret information that the petitioner was clandestinely holding large quantity of beef-tallow and was negotiating for the sale of the said beef-tallow through Hari Darshan Singh and Madan Lal Nayyar ...that he was also holding large quantity of beef-tallow which he had imported by irregular and illegal means and was negotiating for the sale of the said beef-tallow with persons named in the grounds of detention.

16. The Delhi High Court found as a fact that in the grounds of detention there was no allegation that the petitioner had imported any beef-tallow by irregular and illegal means. The Bench observed that "the main allegation against the petitioner seemed to be that the beef-tallow supplied by him to "Manoj Containers" was used in the manufacture of vegetable ghee and the petitioner was a major accomplice in it ...we find no material to support the conclusion that the petitioner was a "major accomplice" in utilisation of beeftallow in the manufacture of vanaspati by M/s. Bhatinda Chemicals and Vanaspati Pvt. Ltd...we find that the ground that the petitioner was an accomplice in using the beef-tallow for adulteration in vanaspati ghee is nonexistent and has no nexus to the detention...there is no material to support the ground that the petitioner was an accomplice in using beef-tallow in the manufacture of vanaspati ghee and, therefore, the said ground could not be taken into consideration in making the order of detention against the petitioner...the detaining authority has not given any particulars regarding the clandestine holding of beef-tallow by the petitioner. We have earlier stated that the petitioner was permitted to clear about 7000 metric tonnes of beef-tallow on payment of fine and all of it was sold by the petitioner to various parties including Manoj Containers. The petitioner was not

left with any beef-tallow. The petitioner has in the petition categorically stated that he had not taken even a single kilo of beef-tallow to his factory at Ghaziabad. This assertion of the petitioner has not been controverted by the respondents. It is not possible to believe that the police could not find out as to where the petitioner was keeping the beef-tallow clandestinely. The allegation regarding the petitioner negotiating for the sale of the clandestinely held beef-tallow through Hari Darshan Singh and Madan Lal Nayyar also in our opinion, is vague and lacks particulars. The allegation is that the petitioner had approached Hari Darshan Singh of Garhwal Paneer Bhandar, Fatehpur, Delhi for the sale of 500 quintals of beef-tallow. No other particulars were given. It is not mentioned where and when Hari Darshan Singh was approached by the petitioner for the sale of beef-tallow. Similarly, no details were given where and when and for how much quantity the alleged negotiations with Madan Lal Nayyar for the sale of beef-tallow took place. Further, there is no material showing that Hari Darshan Singh and Madan Lal Nayyar manufactured or sold vanaspati. The apprehensions expressed in the grounds that the petitioner is likely to use the clandestine stock of beef-tallow held by him in the manufacture of vanaspati and, which was likely to hurt the feelings and sentiments of Hindu community and which may result in disturbance of public order appear to be unfounded and farfetched. The respondents in the counter-affidavit have stated that by a public notice dated 22nd Aug. 1983 the import of beef-tallow has been completely banned and further by another public notice dated 1st Sept. 1983 the clearance of beef, pig and buffalo tallow already imported into India also has been prohibited and further by the same order the parties who had imported beef-tallow have been permitted to request for re-shipment or re-export. The petitioner in para 13 of the petition had stated that the balance of quantity of 10500 metric tonnes of beef-tallow imported by him was detained by the customs and that he has made an application to the Collector of Customs that he may be permitted to reexport the same to minimise the loss of foreign exchange already spent on the imports.

17, From the above observations, it would be clear that the court found as a fact that admittedly no beef-tallow had reached the factory of the detenu, that whatever beef-tallow had been imported had either already been disposed of to the other parties or stood impounded by the customs authorities, and that no particulars of the existing stock with the detenu were disclosed nor were disclosed the particulars that he was negotiating to dispose of the existing stock to the named persons. In the circumstances, therefore, the Court held that neither the ground that the detenu was a major accomplice of Manoj Containers and the Bhatinda Chemicals in manufacturing Vanaspati Ghee nor that he was possessed of a huge quantities of beef-tallow, sale whereof he was trying to negotiate with the named persons, were found to exist as a fact. Since the detaining authority took into account such non-existent facts in reaching its satisfaction and further import of beef-tallow having been banned by the Government, its satisfaction and consequently the detention order stood vitiated. There was thus no question of the detenu securing fresh possession of beef-

tallow for the impermissible use in question.

18. In the case in hand. (i) it stands established from the material on the record and from the report of the public Analyst regarding the sample taken by Dr. Sita Ram from Filling and Weighing Plant that beef-tallow was present in the substance which appeared to be hydrogenated ghee. (ii) that beeftallow was present in two tanks Nos. 5 and 10 and in as many as 38 tankers standing in front of Bhatinda Chemicals, (ii) that Bhatinda Chemicals had complete infrastructure for manufacturing of Vanaspati Ghee. (iv) that Manoj Containers had no place to store any beef-tallow at all. (v) that Manoj Containers had no separate existence. it was located within the premises of Bhatinda Chemicals. (vi) that no mechanical means existed for taking out beef-tallow from tanks to Manoj Containers. (vii) and that Manoj Containers' capacity for using beef-tallow in the manufacture of laundry soap or other products that it was engaged in was very limited. as was clear from the fact that from the date of its establishment till June 1983. it had made use of only 141 quintals of beef-tallow. whereas it had purchased 9916 quintals of beef-tallow from various sources. which obviously involved a huge investment and it was beyond its capacity for number of years to exhaust the said supply.

19. From the above. the detaining authority had drawn the inference. and rightly, that the Bhatinda Chemicals was engaged in manufacturing of Vanaspati Ghee by using beef-tallow as raw material and the stocks of beef-tallow available with it within and outside its premises were likely to be put to a similar use and the leakage of the said facts to the public would lead to the causing of the disturbances of the public order if preventive measures were not taken. Hence. unlike Vinod Kumar Jain's case (supra). in the present case the detenus are possessed of large stocks of beef-tallow which is owned and possessed by them. according to them, legally. The S. D. M., no doubt. as a "kind fire fighting measure". sealed the beef-tallow in tankers and tanks outside and inside the Bhatinda Chemicals and also sealed its premises to put a stop to the immediate possible use of beef-tallow for the manufacture of Vanaspati Ghee and thereby cool down the inflamed public feelings against the detenus and dissuade the public from taking any rash action, the citizens were clearly crying for their blood. The said measures may still be challenged by the detenus in the Court of law as being illegal and he may succeed. for ought we know. The detaining authority, therefore, could not have felt reassured that the danger to the public order stood taken care of by the interim measures of the kind already taken by the S. D. M. In the circumstances, therefore. in my opinion. the detaining authority may have felt satisfied that unless preventive action by way of detaining the detenus is taken, the future danger to the public order would not abate.

20. Elaborating his second submission, Mr. Sibal, learned Counsel for the petitioners, pointed out that in ground 3(ii) reference is made to F. I. R, No. 344 registered at Police Station Kotwali, Bhatinda. on 25-7-1983 u/s 7 of the

Essential Commodities Act. 1955. for contravention of Clause 2(b) of the licence. The facts mentioned in the F. I. R. even when taken at its face value allegedly do not disclose an offence of the kind and. therefore, the circumstance Of the filing of F. I. R. 344 was utterly irrelevant and to the extent the said irrelevant circumstance had been taken into consideration, the satisfaction of the detaining authority was clearly vitiated and consequently the detention order too suffered from the. same vice.

21. In my opinion, there is no merit in this submission. Clause 2(b) of the licence is in the following terms :

2. (b) Edible oilseed/edible oils in which the aforesaid business is to be carried on shall not be stored at any place other than any of the places/ godowns mentioned below: In Factory premises-Tank No. 5.

According to the learned Counsel, the offence of violation of Clause 2(b) was made out only if the edible seed/edible oils had been stored in a place other than Tank No. 5. Since in the P. I. R. there was no allegation that the given stuff had been stored at a place other than Tank No. 5. so no offence of the kind was made out. Reading of Clause 2(b) of the licence would show that Tank No. 5 was meant to contain edible Oil Tank No. 5. admittedly, was full with beef-tallow. Tank No. 5 could contain either beef-tallow or the edible seeds/edible oil which the Bhatinda Chemicals was primarily, according to its licence, engaged in producing, That means the Bhatinda Chemicals must have been storing edible oil at a place other than Tank No. 5. which they were not entitled to without prior sanction. So it cannot be said that, prima facie, the allegations contained in the P. I. R. did not disclose any offence and. therefore, the circumstance of the lodging of the F. I. R. No. 344 against the detenus was an irrelevant circumstance.

22. The learned Counsel for the petitioners at this stage raised a novel submission that the edible oil is one of the commodity, which is dealt with by the provisions of the prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, hereinafter referred to as the Prevention of Black Marketing Act; that an offence committed regarding the said commodity could be taken into consideration if preventive detention order was to be issued under the Prevention of Black Marketing Act and not under the Act. in view of explanation of Section 3(2) of the Act. The said explanation is in the following terms :

Explanation. - For the purposes of this Sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community as defined in the Explanation to Sub-section (1) of Section 3 of the Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act. 1980. (7 of 1980). and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.

Here again, in my opinion, there is no merit whatsoever in the contention of the learned Counsel. The Prevention of Black Marketing Act must be applicable if a person was indulging in black marketing of the commodities dealt with by the said Act. In the present case, preventive action is taken in order to prevent the detenus from indulging in activities prejudicial to the maintenance of public order and not regarding the maintenance of supplies and services essential to the community. The detaining authority believed that the detenus were preparing Vanaspati Ghee by using beef-tallow as a raw material, that is, the detenus were adulterating clandestinely Vanaspati Ghee with beef-tallow! That activity in no manner was concerned with the black marketing of either the Vanaspati Ghee as edible oil or the beef-tallow and, therefore, the action taken by the detaining authority against the detenus by no stretch of imagination could be said to be an action which could have been taken under the Prevention of Black Marketing Act. So it cannot be said that in view of the explanation to Clause 3(2) of the Act the detention order in question could not have been issued under the Act.

23. While dwelling upon his third submission, the learned Counsel for the petitioners pointed out that Clause (iii) of Ground No. 4 of Grounds of Detention showed that Dr. Sita Ram had taken a sample of beef-tallow from Tank No. 10 from within the premises of the Bhatinda Chemicals. The Public Analyst report showed that it was beef-tallow and on the basis of the said report and the statements of Sukhdev Singh and Narinder Kumar, a criminal case vide F. I. R. No. 343 was registered against the detenus on 25-7-1983 at police Station Kotwali, Bhatinda. The learned Counsel for the petitioners also made reference to annex. P. 15, the report of the Sub-Divisional Magistrate dated 25-7-1983, in which it was mentioned that the statements of Sukhdev Singh and Narinder Kumar and the report of the Public Analyst, Chandigarh, and that of the Chief Chemist, Markfed, Khanna, made it clear that the Bhatinda Chemicals manufactured imitation Vanaspati Ghee out of beef-tallow.

24. From the above, the learned Counsel for the petitioners urged the Court to draw an inference that the statements of Sukhdev Singh and Narinder Kumar and the report of the Chief Chemist Markfed, had been relied upon by the detaining authority for passing the impugned detention order. The learned Counsel canvassed that if that being the case then it was incumbent upon the detaining authority to supply to the detenus the statements of Sukhdev Singh and Narinder Kumar, as also the report of the Chief Chemist, Markfed, which in this case was not done.

25. The learned Counsel for the petitioners drew my attention to a number of Supreme Court decisions, wherein it has been held that it is the duty of the detaining authority to supply to a detenu all basic facts and material particulars that had been relied upon by the detaining authority for passing the detention order. These judgments are *Fogla and Another Vs. The State of West Bengal*, : *Ganga Ramchand Bharvani Vs. Under-Secretary to The Government of Maharashtra and Others*, : *Smt. Icchu Devi Choraria Vs. Union of India (UOI)* and

Others, : Taramati Chandulal v. State of Maharashtra, 1981 CriLJ 445 : and AIR 1981 1620 (SC) .

26. There is no gainsaying the fact that the statements of Sukhdev Singh and Narinder Kumar are material state-ments and have been relied upon by the detaining authority, because the central theme of the allegations against the detenus which have led to the passing of the impugned detention order is that the detenus were clandestinely manufacturing Vanaspati Ghee without a licence¹, that beef-tallow which was ostensibly purchased by the Manoj containers for manufacturing soap was being diverted to Bhatinda Chemicals for being used as raw material in the manufacture of Vanaspati Ghee. and that the said Vanaspati Ghee was being passed off as R. B. D. palm oil.

27. I required the State counsel to make available to the Court statements of both the witnesses, namely. Sukhdev Singh and Narinder Kumar. Sukhdev Singh's statement is to the following effect and is received on the record as marked "A" :

I have a licence for driving heavy vehicles, I used to drive the truck of Hardam Singh Patwari. I served Hardam Singh Patwari for one year. I left the service as the salary was not sufficient. Thereafter, I took up the job of driver in about March. 1982 with Bhatinda Chemicals and Banaspati Mills Pvt Ltd. Harcharan Dass Supervisor got me the job in Bhatinda Chemical and Banaspati Mills and I was interviewed by Shri Rajinder Mittal. I served in the aforesaid Mills from March 1982 to June 1983.

Whenever I took "Khul". cotton seed, sarson oil and cotton seed oil to Delhi Calcutta or some other city. I used to fill up the log-book. I have passed 4th class examination and can read and write panjabi, whenever I. took Ghee. I did not fill up the log-book. Vanaspati Ghee is manufactured in Bhatinda Chemicals and Banaspati Mills Pvt. Ltd. out of beef-tallow and cotton seed oils. Bhatinda Chemicals and Banaspati Mills has no licence to manufacture Vanaspati Ghee. I have been delivering about 20 times tins of Ghee at different places in Haryana including Narwana. Iklana. Asandh and in a go-down near liquor vend about 6 Km. from Narwana. Besides this. I have been delivering Ghee in Amritsar (short of Octroi post), Zirakpur. Ganga Nagar (Rajasthan) and Biawar (Rajasthan). in every trip I carried about 400-600 tins. Whenever I carried tins of Ghee to different places, the Mill people gave floods receipt, bills etc. of palm-oil. The tins of Ghee delivered at different places did not bear any label. The tins were without label. The gate-pass was kept not by the gate-man but by Harcharan Das Supervisor or Dharam Pal Supervisor. In transit passes, palm-oil was mentioned though the truck contained Ghee. Generally, the Ghee was unloaded in godowns outside the octroi-post. Only in Narwana. the Ghee was unloaded in the house of a trader in the town. Once the truck of Ghee was caught and penalty of Rs. 11,000/- was imposed. The transit passes were made of palm-oil in Kot Kapura. Zira. Faridkot.

I have seen the manufacture of the Ghee in the Mill. The Ghee after preparation was kept in the cold-room. I have seen Ghee coming out of Ammonia and Hydrogenation Plant. I have been taking the trucks of Mill PBI 2795 PUB 9707. I lived in the Mill and could move anywhere in the premises. I left the Mill at night though loading of Ghee was done in the truck in the afternoon or in the evening.

In the first week of June, I delivered Ghee for the last time in Amritsar to one Sikh gentleman outside the octroi-post. Prior to this, I have been delivering Ghee to this party. Due to summer heat and uneven road, some tins of Ghee were damaged. These were in all 20. I brought back these tins which annoyed the proprietors. When I delivered 600 tins of Ghee to the Sikh party in Amritsar my truck was caught in Moga as I had not obtained a transit pass. I gave a bribe of Rs. 800/- to octroi officials and got the transit pass made. When I returned after delivering Ghee I demanded Rs. 300/- from the proprietors. The proprietors were annoyed as I had brought back 20 tins of Ghee and also gave a bribe of Rs. 800/-. I have yet to recover Rs. 1808/- from the proprietors and when they refused to give me the above amount, I left their job.

Statement of Narinder Kumar is to the following effect and received on the record as marked "B":

I state on oath that, my sons and myself are proprietors of the shop "Bania Di Hatti" situated near Chowk Prag Dass close to Sarai Guru Ram Dass, Qurs is a provision store and we sell Ghee in, retail. Normally, we have 10-12 tins of Ghee for retail sale in our shop. We sell Desi Ghee, in sealed tins. We have no licence for soiling Ghee as the same is not required. My two sons do not manage the shop and they look after "Bania Soap Factory". We take Ghee from local wholesale dealers for sale. We purchased 20 tins of Vanaspati Ghee (5 tins 4 times each) from Rattan Singh Harpinder Singh of Dhab Basti against bills. These 20 tins bore the label Pipal Bran Jain Shudh Vannspati Coy. Ghaziabad (U. P.) Rattan Singh Harpinder Singh Dhab Basti have floated a number of firms on different names. Firm by the name of Lakhbir Singh & Co. belongs to Rattan Singh Harpinder Singh Dhab Basti. This fact I learnt from people.

On 17-6-1983 there were 5 tins of Vanaspati Ghee bearing label pipal Brand Jain Shudh Vanaspati Coy. Gaziabad. A team of doctors took one sample out of a sealed tin. On 18-6-1983 I learnt from the market that labels on 5 tins of Vanaspati Ghee in my possession were fake. In fact, Rattan Singh Harpinder Singh Dhab Basti had purchased these tins under the name of Lakhbir Singh & Co. from Bhatinda Chemicals and Banaspati Mills Pvt. Ltd. Bhatinda, and pasted fake labels on them. On 18-6-1983 I met Rattan Sinsh Harpinder Singh in their shop. Harpinder Singh is also known by the name of Wahe-guru Singh and we know him all by this name. I told him about taking of a sample. But Rattan Singh Harpinder Singh assured me not to worry as the Ghee was alright and the sample on test and analysis will be positive come what may.

On 18-6-1983 when people created panic that Ghee was adulterated with beef-

tallow. I again met Rattan Singh Harpinder Singh and enquired about the quality of the Ghee. Rattan Singh Harpinder Singh told me that Shri Mit-tal (whose name was later made known as Shri Dwarka Dass Mittal) had come with his younger son to Mohan International Hotel on their invitation. Shri Mittal had assured them (Rattan Singh Harpinder Singh) that there was no adulteration in the Ghee and sample on test and analysis will be positive under all circumstances. Sarvshri Rattan Singh Harpinder Singh also told him that they had posed a question to Shri Dwarka Dass Mittal that in case the sample failed, they will lose money in the market as they had supplied Ghee manufactured by Shri Dwarka Dass Mittal with and without bills. After 18-6-1983 I came to Bhatinda and stayed in Badshah Hotel for the night as there was much talk about my sample of Ghee and I was quite nervous. I met Shri Mittal at Bhatinda and he assured me that my sample on test and analysis will come out positive under all circumstances. I was also advised to keep quiet and was threatened that in case I opened my mouth, the sample could go wrong. I came back to Amritsar. Five tins of Ghee out of which the sample was taken from one are in my possession and I have not sold any Ghee out of it.

I have read in the newspapers about beef-tallow. Scandal Sangharsh Samiti Bhatinda who have taken upon them the task of exposing those persons making Ghee out of beef-tallow especially Shri Dwarka Dass Mittal. I came back to Bhatinda and met Shri Mohan Lal Sharma. Municipal Commr, Convenor Beef-Tallow Sangharsh Samiti and told him the above statement. Shri Mohan Lal Sharma brought me to S. D.M. where I made the above statement.

Annexure p-13 lists the documents that had been supplied by the detaining authority to the detenus along with the grounds of detention, annex. P. 12. The S. D. M's report dated 15-6-1983, annexure-P-15, is one of such documents. The material facts, which Sukhdev Singh and Narinder Kumar have deposed to in their statements, find mention in annexure p, 15, as would be evident from the following extracts from this document :-

Shri Sukhdev Singh Driver of private carrier of M/s Bhatinda Chemicals and Banaspati Pvt Ltd. stated on oath during the course of enquiry that where he transported oil cakes cotton seeds and Sarson Oil and Cotton seed oil log-books in private carriers were duly filled and when he carried manufactured Vanaspati Ghee in private carriers No. PB-2795 and PUB-9707 log-books were never filled. The gate passes issued for taking out trucks of Ghee were retained by Shri Harcharan Dass Supervisor and not by gateman. This goes to show that manufacture and sale of Vanaspati Ghee by M/s Bhatinda Chemicals and Banaspati Mills Pvt. Ltd. was carried on in a clandestine manner. This was confirmed by the statement of Shri Raiinder Mittal, Managing Director of the concern who stated that they were not maintaining log-books of their private carriers.

Shri Sukhdev Singh who served M/s Bhatinda Chemicals and Banaspati Mills Pvt. Ltd. from 3/82 to G/83 as a driver to their private truck carriers PBI-2795 and

PUB 9707 has stated that he lived in the premises of factory and had access to every part of it. He had seen manufacturing of vegetable Ghee in the factory and it was kept in the cold room after completing all the manufacturing processes. He had also seen tins of vegetable Ghee coming out of Hydrogenation Plant and Ammonia Plant. The above statement of Shri Sukhdev Singh goes to show that vegetable Ghee was manufactured by M/s Bhatinda Chemicals and Banaspati Mills Pvt. Ltd. as Shri Sukhdev Singh had full knowledge of all the activities going on in the factory.

Shri Sukhdev Singh also stated that Bhatinda Chemicals and Banaspati Mills Pvt. Ltd. made vegetable Ghee out Of beef-tallow and cotton seeds oil. He had transported about 20 times of Ghee made out of beef-tallow to places in Haryana State (Narwana. Uklana. Asand) Punjab State (Amritsar, Zirakpur), and Rajasthan (Shri Ganganagar, Biawar). In every trip, he carried 400 to 600 tins of vegetable Ghee. The documents which were given to him always pertained to palm oil. The tins of Ghee however had no labels on them when he obtained transit passes, he always showed the commodity as palm oil in compliance with the direction of the proprietors of the Mill. It is clear from the statement of Shri Sukhdev Singh a person intimately connected with the transportation of beef-tallow and cotton seeds oil was manufactured by M/s. Bhatinda Chemicals and Banaspati Mills Pvt. Bhatinda.

Shri Narindet Kumar Proprietor "Banian Di Hatti". Amritsar. who runs a provision store in Chowk Parag Dass near Sarai Guru Ram Dass. also sells vegetables Ghee in retail. He purchased Venaspati Ghee for retail sale in his shop from local wholesale dealers, one of which is Rattan Singh Harpinder Singh (5 tins each four times against Bills and these tins carried the label "Pipal Brand Jain Shudh Vanaspati Co. Ghaziabad". He also stated that above-said firm was also running another firm by the name Lakhbir Singh and Co. M/s. Bhatinda Chemicals and Banaspati Mills Pvt. Ltd. supplied 1205 tins of Pubo Palm Oil to aforesaid M/s. Lakhbir Singh and Co. on 25-5-1983 and 10-6-1983 respectively. These were carried by Trucks Nos. PUB 9707 and PBI-2795. This goes to show that M/s. Bhatinda Chemical and Banaspati Mills Pvt. Ltd. sold Vanaspati Ghee under the cover of Palm Oil which was later on passed of after labelling it under the name of Pipal Brand Jam Shudh Vanaspati Co. Ghziabad".

Shri Narinder Kumar has also stated that on 17-6-1983 there were 5 tins of Vanaspati Ghee available in his shop Banal "Banian Di Harri" bearing the label "Pipal Brand Jain Shudh Vanaspati Co. Ghaziabad". One sample was taken after opening one tin on 18-6-1983 by a team of doctors. This caused nervousness in the mind of Shri Narinder Kumar in view of the alarming reports in the newspapers that Ghee made out of beef-tallow was being sold in the market. Shri Narinder Kumar met the wholesale dealer Rattan Singh Har-pinder Singh (Also carrying on another firm under the name of Lakhbir Singh and. Co.) on 18-6-1983 in order to get re-assurance that tins of Ghee supplied to him were not adulterated. He was re-assured by Rattan Singh Harpinder Singh that sample

of Ghee taken from the tins supplied by them (Rattan Singh - Harpinder Singh) would come out on chemical analysis as unadulterated. People in the market made Shri Narinder Kumar more nervousness which prompted him to meet his wholesale dealer once again. The wholesale dealer Rattan Singh Harpinder Singh told Shri Narinder Kumar that proprietor of Ghee factory and Shri Dwarka Dass Mittal had come with his younger son and was staying in Mohan International Hotel Shri Dwarka Dass Mittal had assured the aforesaid wholesale dealer that there was no adulteration in Ghee and sample will be cleared under all circumstances. Rattan Singh Harpinder Singh had supplied Vanaspati Ghee manufactured by Shri Dwarka Dass Mittal with and without bills in Amritsar market and wholesale dealer was worried that in case the sample was found adulterated the money of wholesale dealer was likely to get blocked. This goes to show that wholesale dealer Rattan Singh Harpinder Singh had purchased huge quantity of Vanaspati Ghee from M/s. Bhatinda Chemicals and Banaspati Mills Pvt. Ltd.: Bhatinda and supplied the same to various dealers in Amritsar.

Shri Narinder Kumar to get personal assurance visited Bhatinda and met Shri Dwarka Dass Mittal in the town. He was fully re-assured by Shri Mittal that come what may, the sample of Ghee will be cleared. Shri Mittal also threatened him to keep quiet failing which he (Narinder Kumar) will come to harm....

Mr. Sibal learned Counsel for the petitioners, however, strongly contended that what the detenus were entitled to was not the gist of the statements of Sukhdev Singh and Narinder Kumar, but copies of their entire statements as such.

28. Judged in the light of the latest pronouncement of their Lordships of the Supreme Court in the State of Punjab and Others Vs. Jagdev Singh Talwandi, . Mr. Sibal. in my opinion, appears to be pegging his claim rather too high. In that case, their Lordships while explaining the following observation occurring in Khudiram's case (1975 Cri LJ 446) (supra) - "grounds" mean all the basic facts and materials which have been taken into account by the detaining authority in making the order of detention and on which the order of detention is based - pointed out that what was meant was that the basic facts and the material particulars, which formed the foundation of the order of detention must be furnished to the detenu, since in the true sense they formed part of the grounds of detention and without being apprised of the same, the detenu could not possibly make an effective representation and that the said observation would not be construed as meaning that the evidence which was collected by the detaining authority may also be furnished to the detenu. In view of this latest pronouncement of the constitutional Bench of the Supreme Court in Jagdev Singh Talwandi's case (supra). therefore, what a detenu is entitled to be supplied is all the basic facts and the material particulars and not the copies of entire evidence collected by the detaining authority.

29. So far as the non-supply of the report of the Chief Chemist. Markfed, is concerned, it may be observed that in ground No. (2) of the Grounds of Detention reference is made to the lodging of criminal case F. I. R. 285 dated

26-6-1983 u/s 295A, Indian Penal Code, in Police Station Kotwali. Bhatinda, at the instance of Shri Jagan Nath Sharma. Editor Nag Phani. a local newspaper, and Shri Sat Pal Yadav. Besides that it is mentioned that the authorities took samples of Vanaspati Ghee allegedly adulterated with beef-tallow through (1) Dr. K.C. Gupta, Research Chemist. Directorate of Vanaspati Oil Fat and Oils, Ministry of Civil Supplies. New Delhi, on 27-6-1983. (2) through Harish Chander. Quality Control Incharge, Vanaspati & Allied Industries. Khanna, on 6-7-1983. (3) Dr. G. S. Bhatti. Chief Chemist. Vanaspati & Allied Industries. Khanna. on 8-7-1983, (4) through Dr. Sita Ram and Kishan Chand. G. F. I. Bhatinda. on 8-7-1983; and then it is mentioned that "the samples taken on 8-7-1983 by the aforesaid Dr. Sita Ram and Kishan Chand from Filling and Weighing plant and Tanks Nos. 5 and 10 from yours aforesaid Mill were sent to Analyst who has opined that the said samples of Vanaspati Ghee contained beef-fat (beef-tallow)". The above narration would show that in the earlier part only history of taking of various samples was recapitulated. From the aforesaid, it is clear that the detaining authority is not saving that the samples taken by all the aforesaid persons were either before it or these showed existence of beef-tallow in Vanaspati Ghee, The detaining authority. in the later part which is underlined, has singled out the sample taken by Dr. Sita Ram and Kishan Chand from Filling and Weighing Plant and those taken from Tanks Nos. 5 and 10. the Public Analyst's report regarding which revealed that the Vanaspati Ghee samples so taken contained beef-fat, that is, beef-tallow. This means that the report of the Chief Chemist of, the Markfed, which had been mentioned by way of history, had not been taken into consideration by the detaining authority and. therefore, the said report was not required to be supplied to the detenus, In any case. F.I.R. No. 344 dated 25-7-1983 had already been lodged against the detenus and therein reference was made to the report of the chief chemist, Markfed. As an accused in that case the detenus were entitled to receive and also copy out all the documents, if they so desired. The F. I. R. was lodged in July 1983, that is more than 11/2 months before the order of detention was pass-ed against them and more thus 21/2 months before they were to make their representations.

30. For the reasons aforementioned, it cannot be said that the detenus were not supplied all the basic facts and material particulars which had been relied upon by the detaining authority in making the impugned detention order,

31. Regarding the fifth ground of detention relating to the beating of Jagan Nath Sharma on 29-7-1983. by three persons hired by the detenus, it has been contended by Mr. Sibal. learned Counsel for the petitioners, that the detaining authority had failed to supply any material for its conclusion that the three persons who gave beating to Jagan Nath Sharma on 29-7-1983 at about 5.45 p.m. were hired by the detenus and. therefore the detenus were not in a position to make effective representation in regard to the said ground and that if there was no material with the detaining authority in that regard then the ground was based on no material and the detention order was therefore. vitiated.

32. It was also further argued by Mr. Sibal that even if it is assumed that the said three persons were hired by the detenus to put Jagan Nath Sharma under a threat by beating him, the said circumstance of beating could not lead to the disturbance of public order.

33. A perusal of this ground reveals (1) that the car which was being used by the said three persons, belonged to the detenus, (2) that the said three persons had warned Jagan Nath Sharma that he should desist from sending reports on beef-tallow scandal, and (3) that the said audacious and criminal behaviour infused fear in the mind of Jagan Nath Sharma.

34. The detaining authority was, in my opinion, -justified in inferring detenus' hand behind the criminal assault upon Jagan Nath Sharma. The three persons in question had used car belonging to the detenus, and they had warned Jagan Nath Sharma from reporting about beef-tallow scandal. Jagan Nath Sharma again is the person who had lodged criminal complaint F. I. R. No. 285 dated 26-6-1983 u/s 295A. I. P. C against the detenus. The detenus alone were concerned in suppressing the beef-tallow scandal and in warning the person who was taking active interest from continuing to do so any further the three persons in question could not have acted independently on their own. They must have done so at the behest of the detenus. The detaining authority therefore could draw a legitimate inference of the fact that the said three persons had been hired by the detenus to beat Jagan Nath Sharma and put him under threat.

35. As to whether such an action on the part of the detenus could result in mere endangering of law and order or could lead to the disturbance of public order, it may be observed that the citizens were already incensed against the detenus on their having injured the former's religious sentiments by making them eat beef-tallow and also on account of the fact that the detenus were making the citizens eat injurious substance, for the beef-tallow stood rendered inedible by mixing chemicals. The resentment and public outcry against the detenus which had already led to the disturbance of the public order, as a result of the knowledge that the detenus had started beating the person who had done social service by exposing their nefarious most immoral, irreligious and harmful activities, was likely to assume uncontrollable and menacing proportion carrying great potential for disturbing the public order and tranquillity.

36. Now coming to the additional point raised on behalf of detenus Dwarka Dass Mittal that the grounds of detention were supplied to him in a language and script which he did not understand, it may be observed that the grounds of detention and the supporting material were supplied to him in punjabi and in English. A certificate, annexure Rule 5. has been filed showing that the grounds were explained to the detenu in the language, which he understood as well.

37. It is not necessary to refer to any decided cases either of the High Court or of the apex Court in support of the proposition that the grounds of detention have to be supplied to the detenu in the language and script which he

understands. The judicial consensus assumes that it is the bounden duty of the detaining authority to put the detenu in a position to understand the circumstances against him in order to enable him to make an effective representation against his detention. If the grounds are made available to a detenu in a language which he neither can read nor can understand, then one can say without a moment's hesitation that the detaining authority had not discharged its obligation envisaged by Sub-clause (5) of Article 22 of the Constitution and Section 8 of the Act.

38. The case set up on behalf of detenu Dwarka Dass Mittal is that he was an illiterate person, that he could understand only Hindi or Urdu and not Punjabi or English. On behalf of the respondent State, it has been urged by Mr. Gurmukh Singh, Assistant Advocate-General, Punjab, that for one thing Panjabi language is only an offshoot of Hindi and that anybody who can understand Hindi can easily understand Punjabi and vice-versa. It is maintained by the learned Counsel for the respondent State that in the case of detenu Dwarka Dass Mittal, such a statement does not carry even a superficial merit, because a businessman living in Punjab for a number of years and who has to deal with Punjabi speaking persons cannot be heard to complain that he could not understand Punjabi.

39. In my opinion, the submission advanced on behalf the State is correct. It appears to me that the ground of the non-supply of grounds of detention in the language and script understood by the detenu is made with the tongue in cheek without being seriously intended to be taken at its face value, I cannot believe that a businessman living in Punjab, who can understand Hindi and Urdu, and dealing day and night with the people speaking in Punjabi, would not understand Punjabi.

40. The second submission advanced on behalf of detenu Dwarka Dass Mittal that the detention order had become stale, because despite being informed by the detenu himself that he was prepared to surrender and be taken in detention, the detaining authority did not secure his custody under the detention order, was sought to be sustained from the ratio of *Harnek Singh Vs. State of Punjab and Others*, .

41. In my opinion, the ratio of the aforesaid judgment is not applicable to the facts of the present case, That was a case in which a case under Sections 307, 411. 414. Indian Penal Code, was registered against the detenu at Police Station Lopoke in Amritsar district on 27-2-1980 and those offences were the only facts which formed the basis of the impugned detention order in that case. Those facts were also the subject-matter of prosecution launched against the detenu. During those proceedings the detenu was on bail and was appearing in Court on every hearing right from June 1980 till he was put behind the bars in July 1981. in pursuance of the impugned detention order. Their Lordships, besides observing that the offences which was said to have been committed by the detenu as far back as 27-2-1980 could hardly form a ground for his detention on a date as late as July 10. 1981. the gap between the two being well-nigh a year and a half.

additionally observed that no reason was put forward for the detenu not being taken into custody in pursuance of the impugned detention order right from January 1980 till July 10, 1981. although the detenu appeared in Court on all the dates of hearing fixed by the Magistrate during that period. According to their Lordships, the detention in those circumstances took the character of punitive rather than preventive action and. therefore, the same was vitiated.

42. In the present case, the detenu Dwarka Dass Mittal on coming to know through the newspapers that warrants had been issued against him under the Act had allegedly informed the Superintendent of Police. Bhatinda. telegraphically on 13-9-1983 expressing a desire to surrender after the recovery from his illness for which he had been admitted in the National Hospital, Madras: and that he was arrested in Madras on 16-9-1983 itself by the C. B. I. and not in pursuance of the detention order. He was brought to Delhi on 26-9-1983. On 28-9-1983, he made an application before the Magistrate at Delhi that he wanted to surrender to the detention order under the Act. The Delhi Magistrate by his order dated 28-9-1983 ordered the transfer of the detenu to Bhatinda with the observation that the application of surrender be also forwarded to the District Magistrate. Bhatinda. for disposal. That in spite of the direction of the Delhi Magistrate, the District Magistrate did not dispose of that application for surrender of the detenu under the Act. That even a telegram was given to the District Magistrate, Bhatinda on 29-9-1983 on behalf of the detenu for the disposal of his surrender application. That the detenu remained under the custody of the police right from 16-9-1983 to 12-10-1983. during which interval he was produced a number of times before the Judicial Magistrate and yet he was not taken into custody under the detention order. It was ultimately on 12-10-1983 that he was, for the first time, detained under the detention order dated 13-9-1983.

43. The stand taken on behalf of the respondent State in this regard is that since the detenu was already in police custody and thus effectively prevented from carrying on any activity prejudicial to the maintenance of public order and the police required his presence for investigation of various offences which were pending against him, so. in order to facilitate the police investigation, the detenu was not taken into custody under the detention order, for once he had been taken into custody under the detention order, then he was bound to be lodged in judicial lock-up which would have greatly hampered the police investigation in the offences with which the detenu stood already charged.

44. In my opinion, there is no parallel between the case in hand and the case with which their Lordships in Harnek Singh Vs. State of Punjab and Others, were concerned. In that case, the detenu was a free bird and the detaining authority could not assume that he would not indulge in the prejudicial activity and. therefore, there was no valid reason for not taking into custody the detenu under the detention order, whereas in the present case, as already observed, the detenu was not a free man-he was already in police custody and, secondly, the detaining authority was justified in not securing his custody under the detention

order before it actually did, for had it done so. the said fact would have greatly prejudiced the smooth investigation of the criminal cases against the detenu. and lastly it may be observed that in Harnek Singh's case (supra) the detaining authority had allowed to lapse a long period of year and a half before taking into custody the detenu under the detention order, whereas in the present case the detention order was passed on 13-9-1983 and the detenu was taken into custody in pursuance of the said detention order on 12-10-1983 barely within a month of the making of the detention order.

45. In regard to Vinod Mittal detenu it has been contended that the impugned detention order against him is illegal, as the circumstances peculiar to him were not present to the mind of the detaining authority and there has been non-application of mind on the part of the detaining authority in the matter of the passing of the detention order qua him. It is asserted in the petition that the detenu is a student of engineering and had been studying for the last four years in the Engineering College at Bangalore: that he had been appointed Director of the Bhatinda Chemicals only on 28-9-1982: that he had not attended any meeting of the Board of Directors: that his case was identical with that of his mother, Smt. Ved Kumar Mittal who too was the Director of the Bhatinda Chemicals and in a like manner had not been actively associated with the management of Bhatinda Chemicals; and that since she had not been ordered to be preventively detained, the detaining authority if it had applied its mind could not have taken a different view of the circumstances of the detenu Vinod Mittal as well.

46. In my opinion, there is no merit in the contention advanced on behalf of the detenu Vinod Mittal. Bhatinda Chemicals and Manoj Containers are family concerns of the detenus. The detenus besides being the Directors of the said companies, obviously, in that capacity, shared the profits earned by the said concerns, with whatever means these are earned, dubious or otherwise. If Bhatinda Chemicals was engaged in manufacturing, in a clandestine manner of Vanaspati Ghee by using beef-tallow as the raw material, then the Directors of the said companies particularly belonging to the family. cannot escape the responsibility for what had been happening in the companies. Further the detention is not punitive - it is preventive in character. Preventive detention of the Chairman and the Managing Director of the Bhatinda Chemicals may not have been considered sufficient by the detaining authority to prevent the company from carrying on the given activity without detaining Vinod Mittal detenu, for if the other family Directors particularly the male ones were to remain out of the net of preventive detention, then he could assume the active responsibility of running the concern and see to it that the family concern continues to earn as much profits as it was doing so earlier and in doing so make use of all the available material resources at the disposal of the company for manufacturing various products, including Vanaspati Ghee from the available beef-tallow.

47. To appreciate the penultimate contention advanced on behalf of the petitioners that the detention order dated 13-9-1983 was bad. as the same was based on the grounds and circumstances, on which the earlier order dated 4-8-1983 had been passed, the relevant provisions of Sections 3, 8, 13 and 14 of the Act deserve noticing:

3(1). The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do. make an order directing that such person be detained;

* * * * * (3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in Sub-section (2). exercise the powers conferred by the said Sub-section;

* * * * * (4) When any order is made under this section by an officer mentioned in Sub-section (3). he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government.

Provided that where u/s 8 the grounds of detention are communicated by the officer making the order after five days but not later than ten days from the date of detention, this Sub-section shall apply subject to the modification that, for the words "twelve days", the words "fifteen days" shall be substituted.

* * * * * 8. (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(2) Nothing in Sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose,

* * * * * 13. The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed u/s 12 shall be

twelve months from the date of detention :

Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time.

14. Without prejudice to the provisions of Section 21. of the General Clauses Act. 1897(10 of 1897), a detention order may, at any time, be revoked or modified.

(a) notwithstanding that the order has been made by an officer mentioned in Sub-section (3) of Section 3. by the State Government to which that officer is subordinate or by the Central Government.

(b) notwithstanding that the order has been made by a State Government, or by the Central Government.

(2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order u/s 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer mentioned in Sub-section (3) of Section 3, as the case may be, is satisfied that such an order should be made.

It is not in dispute that the order dated 13-9-1983 has been passed on the same facts and the grounds on which the earlier order dated 4-8-1983 was made.

48. The contention advanced on behalf of the petitioners is primarily based on the implication of Sub-section (2)" of Section 14 of the Act. as interpreted by their Lordships in Hadibandhu Das Vs. District Magistrate and Another, and Masood Alam etc. Vs. Union of India (UOI) and Others, .

49. Sub-section (2) of Section 14 of the Act is an enabling provision put in a negative form it enables the detaining authority to pass a fresh detention order u/s 3 of the Act on the revocation or expiry of the existing detention order against the very detenu. The said provision, however limits the exercise of the said power when it says that such an order could be issued only where fresh facts had arisen after the date of revocation or expiry of the existing detention order, necessitating the passing of a fresh detention order u/s 3 of the Act against the given detenu was necessary. Their Lordships of the Supreme Court, as would be presently shown, have taken the view that for whatever reasons the detention order may have been revoked or expired, the fresh detention order could be passed by the detaining/competent authority envisaged in the statute only on the basis of fresh facts and not on the basis of facts on which the existing detention order which had been revoked or had expired was passed.

50. In Hadibandhu Das's case (1969) Cri LJ 273(supra), the facts were that in pursuance of the detention order passed on 15-12-1967 in exercise of power u/s 3(1)(a)(ii) of the Preventive Detention Act. 1950 the detenu was taken into custody on the ground that he was acting in a manner prejudicial to the maintenance of public order by committing breaches of public peace, indulging in

illicit business in opium. Gania. Bhang, country liquor, riotous conduct, criminal intimidation and assault either by himself or through his relations, agents and associates. On December 19. 1967. the detenu filed a petition in the High Court on the ground, inter alia. that the order and the grounds in support thereof served upon him were written in the English language which he did not understand. On January 18. 1968. the District Magistrate Cuttack, supplied to the appellant an Oriya translation of the order and the grounds. On January 28. 1968. the State of Orissa revoked the order and issued fresh order which read:--

Whereas the order of detention dated the 15th December. 1967. made by the District Magistrate, Cuttack. against Shri Hadibandhu Das son of Late Ramchandra Das of Manlabag. town Cuttack. has been revoked by the State Government on account of defects of formal nature by their order No. 396C dated the 28th January. 1968.

And whereas the State Government are satisfied with respect to the said Hadibandhu Das that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order it is necessary to detain him. Now. therefore in exercise of the powers conferred by Section 3(1)(a)(ii) read with Section 3(a) of the Preventive Detention Act. 1950. the State Government do hereby direct that the said Hadibandhu Das be detained in the District Jail at Cuttack until further orders.

On February 8. 1968. the detenu submitted a supplementary petition challenging the validity of the order dated 28-1-1968. on the ground that it violated the express provision of Section 13(2) of the Preventive Detention Act (this provision is identical with Sub-section (2) of Sec 14 of the Act), as the fresh order had been passed on the same grounds on which earlier order dated 15-12-1967. which had been revoked, was passed. It was, however, contended on behalf of the detaining authority that the detaining authority was prevented by the said provision from making a fresh order on the same grounds on which the original order, which had been revoked, was made, provided the order revoked was a valid order initially and had not become illegal on account of failure to comply with the statutory provisions of Section 7 or Section 9 of the Preventive Detention Act. It was further canvassed on behalf of the detaining authority that the order which was illegal or had become illegal was not required to be revoked, for it had no legal existence and a formal order of revocation of such a previous order did not fall within the terms of Section 13(2). Their Lordships, after explaining the judicial precedents relied upon on behalf of the State Government, namely, AIR 1945 18 (Federal Court) Naranjan Singh Nathawan Vs. The State of Punjab, and Shibban Lal Saksena Vs. The State of Uttar Pradesh and Others, repelled the contention with the following observations:

There is, in our judgment. nothing in the language used by the Parliament which supports that contention. The power of the detaining authority must be determined by reference to the language used in the statute and not by reference to any predilections about the legislative intent. There is nothing in

Section 13(2) which indicates that the expression "revocation" means only revocation of an order which is otherwise valid and operative; apparently it includes cancellation of all orders invalid as well as valid. The Act authorises the executive to put severe restrictions upon the personal liberty of citizens without even the semblance of a trial and makes the subjective satisfaction of an executive authority in the first instance the sole test of competent exercise of power. We are not concerned with the wisdom of the Parliament in enacting the Act or to determine whether circumstances exist which necessitate the retention on the statute book of the Act which confers upon the executive extraordinary power of detention for long period without trial. But we would be loath to attribute to the plain words used by the Parliament a restricted meaning so as to make the power more harsh and its operation more stringent. The word "revocation," is not, in our judgment, capable of a restrictive interpretation without any indication by the Parliament of such an intention.

Negligence or inaptitude of the detaining authority in making a defective Order or in failing to comply with the mandatory provisions of the Act may in some cases enure for the benefit of the detenu to which he is not entitled. But it must be remembered that the Act confers power to make a serious invasion upon the liberty of the citizen by the subjective determination of facts by an executive authority and the Parliament has provided several safeguards against misuse of the power. The very fact that a defective order has been passed, or that an order has become invalid because of default in strictly complying with the mandatory provisions of the law bespeaks negligence on the part of the detaining authority, and the principle underlying Section 13(2) is, in our view, the outcome of insistence by the Parliament that the detaining authority shall fully apply its mind to and comply with the requirements of the statute and of insistence upon refusal to countenance slipshod exercise of power.

51. In Masood Alam's case (supra), the facts were that he was arrested on 15-6-1972. in pursuance of order of detention dated 14-6-1972 passed by the District Magistrate under S. 3(1)(a) (i and (ii) of the Maintenance of Internal Security Act, 1971. The grounds of detention signed by the District Magistrate were served upon the detenu on 17-6-1972. The Government did not accord its approval of the detenu's detention as required by Section 3(3) of the Act within the requisite time and a fresh order was passed, this time by the Governor, on 25-6-1972. which read :-

Whereas the Governor of Uttar Pradesh is satisfied with respect to Sri Masood Alam son of late Sri Baboo Ayoob resident of Mohalla Bari Israilan, Aligarh City, that with a view to preventing him from acting in any manner prejudicial to the security of the State and the maintenance of public order, it is necessary so to order;___

Now, therefore in exercise of the powers conferred by Sub-section (1) of Section 3 of the Maintenance of Internal Security Act, 1971(No. 26 of 1971). the Governor is hereby pleased to direct that the said Sri Masood Alam shall be

detained under Sub-clause (ii) of Clause (a) of Sub-section (1) of Section 3 of the said Act in the District Jail. Aligarh in the custody of the Superintendent of the said jail.

By order of the Governor, Sd/- (R. K. Kaul) Special Secretary.

It was urged before their Lordships on behalf of the detenu while assailing the legality of the second order dated 25-6-1972 that the earlier order of detention was either revoked or had expired, with the result that unless the present detention pursuant to the order dated 25-6-1972 was based on fresh facts arising after the expiry of revocation of the earlier order it must be held to be invalid and reliance in this respect was placed on the provisions of Section 14 of the said Act (This provision is identical with the provisions of Section 14 of the Act). Their Lordships, after referring to Hadibandhu Das's case 1969 Cri LJ 273(supra) delineated the principle underlying Section 14 in the following words:-

The principle underlying this sections has its roots in the vital importance attached to the fundamental right of personal liberty guaranteed by our Constitution. The Act fixes the maximum period of detention to be 12 months from the date of the detention with the proviso that the appropriate Government can revoke or modify the detention order at any earlier time: Sec 13 It is to effectuate this restriction on the maximum period and to ensure that it is not rendered nugatory or ineffective by resorting to the camouflage of making a fresh order operative soon after the expiry of the period of detention,, as also to minimise resort to detention orders that Section 14 restricts the detention of a person on given set of facts to the original order and does not permit a fresh order to be made on the same grounds which were in existence when the original order was made. The power of preventive detention being an extraordinary power intended to be exercised only in extraordinary emergent circumstances the legislative scheme of Sees. 13 and 14 of the Act suggests that the detaining authority is expected to know and to take into account all the existing grounds and make one order of detention which must not go beyond the maximum period fixed. In the present case it is not urged and indeed it is not possible to urge that after the actual expiry of the original order of detention made by the District Magistrate which could only last for 12 days in the absence of its approval by the State Government, any fresh facts could arise for sustaining the fresh order of detention. The submission on behalf of the State that the petitioner's activities are so highly communal and prone to encourage violent communal activities that it was considered absolutely necessary to detain him in the interest or security of the State and maintenance of public order cannot prevail and face of the statutory restrictions and the guaranteed constitutional right which is available to all persons. The rule of law reigns supreme in this republic and no person on the soil of free India can be deprived of his personal liberty without the authority of law." Their Lordships also approvingly quoted the following observations from Manu Bhusan Roy Prodhan Vs. State of West Bengal and Others, . which commend liberal interpretation of the limited right of redress which a detenu has

been given by the Act.

The Act encroaches on the highly cherished right of personal liberty by conferring on the executive extraordinary power to detain persons without trial by coming to subjective decisions. The detaining authority in exercising this power must act strictly within the limitations this Act places on its power so that the guarantee of personal liberty is not imperilled beyond what the Constitution and the law strictly provide. The limited right of redress conferred on the detenu under the law deserves to be construed with permissible liberality with the provisions of the Act and the constitutional guarantee." As to whether the contention of the learned Counsel carries or does not carry any merit depends on the interpretation of the expression "expiry of detention order" and whether in order which is said to have lapsed as depicted in the written statement filed on behalf of the detaining authority could be considered to have expired.

52. When one talks of the expiry of the detention order it implies that the detention order carried a limit of time, either fixed by the authority which passed it or as fixed expressly or by necessary implication by the statute. Sub-section (4) of Section 3 and Section 13 of the Act make reference to the duration of time. While Sub-section (4) refers to the duration of time for which the detention order was to remain in force, Section 13 refers to the maximum duration of the period of detention. Where a detenu had been under detention for a maximum period envisaged u/s 13 of the Act, then in his case the detention order would expire on the expiry of the said period of maximum duration of detention, because the period for which a detention order is to remain in force after the detenu is detained in pursuance thereof has to be co-extensive with the maximum period of duration, so prescribed, unless prematurely revoked. In the present case, we are obviously not considering such an expiry of detention order. The contention advanced on behalf of the detenus is that the detention order made by a District Magistrate by virtue of the provisions of Section 3(4) of the Act could remain in force for a maximum period of 12 days and with the attraction of proviso for a maximum period of 15 days from the date of its making, unless, in the meantime, the said order had been approved by the State Govt. In the present case, admittedly the order had not been approved by the State Government within the given duration. In fact, the counsel appearing for the State, when required to make the position clear as to whether the detention order had or had not been approved by the State Government within the given period, made a statement at the bar that, in fact, the District Magistrate had not forwarded the order dated 4-8-1983 for the approval of the State Government. In fact, the stand taken on behalf of the State Government is that since the detenus were concealing their presence and were absconding and were not detained before the expiry of period of 12 days and before that the District Magistrate had also not forwarded the detention order and the other material to the State Government for its approval and, therefore, the detention order having not received the approval, of the State Government within the given period, the same had lapsed.

53. If one could think of a case, to which the expression "expiry of detention order" would be aptly applicable, that would be to a case which comes within the ambit of Sub-section (4) of Section 3 of the Act which provides that a detention order cannot remain in force" beyond 12th day or 15 days as the case may be. from the date of its passing, unless, in the meantime, the State Govt, had approved the same. What has, however, been argued on behalf of the State is that Sub-section (4) of Section 3 of the Act has to be read in the light of" the proviso and when so read. it would mean that the detention under the detention order would not last and" not the detention order itself, for more than 12 days, or 15 days as the case may be, unless the detention order had been approved by the State Government in the meantime. In my view, neither the literal nor the contextual interpretation of Sub-section (4) warrants the interpretation sought to be put on behalf of the State on it. The expression used by the legislature in Sub-section (4) that "no such order shall remain in force for more than 12 days after the making thereof leaves no scope for any doubt in regard to the starting point of the period in question. The period for which the order is required to remain in force starts from the date of its making and not from the date the same is executed by detaining the detenu in pursuance thereof. The detention order is made on the date it is passed by the detaining authority in accordance with law. which inter alia, would be the date on which the detaining authority after completing the requisite statutory formalities puts its signatures thereto.

54. Proviso to Sub-section (4) would only mean this that if in pursuance of the detention order when it was validly in force, that is, the period of 12 days had not expired, the detenu is taken into custody thereunder and the grounds of detention are communicated to him by the detaining authority between the 5th day and 10th day of his detention, the said order shall remain in force for 15 days instead of 12 days. The proviso thus was enacted to give three more days to the Government for giving its approval if the detaining authority mentioned in Sub-section (3) of the Act. which had passed the order, had taken the detenu into custody and had served upon him the grounds of detention between the 5th day and 10th day of his detention and not earlier, because delivery of grounds of detention to the detenu after the 5th day of his detention would show that the grounds of detention had not been formulated by the detaining authority till then and that if the grounds of detention had not been formulated by the detaining authority obviously the same could not be sent to the State Government also, that is, the State Government also would be getting the grounds of detention belatedly and so it must have been considered necessary that in such a situation the State Government should have a little more time for giving its approval and. therefore, the life of the detention order was, in such circumstances, was lengthened from 12 days to 15 days. From this, however, it cannot be construed that the period of 12 days or 15 days, as the case may be. as the duration of the life of the detention order was to be counted from the date on which the detenu had been taken into custody, for. as already observed, the parliament fixes the starting point of the life of the detention order as from the date on which the

same is made by its author.

55. Thus. in view of the lapse on the part of the District Magistrate, Bhatinda. who failed to report the foctum of the order of detention to the State Government together with the grounds on which the order had been made and such other particulars as, in his opinion, had a bearing on the matter, as mandatorily required by Sub-section (4), thus allowing the detention order to expire and the second order having been passed, admittedly, on the basis of the same grounds and facts on which the earlier order dated 4-8-1983 had been passed, which, in view of the decision of their Lordships already referred to, could not have been validly passed in the light of the provisions of Section 13(2) of the Act on the same grounds and facts, on which the earlier order was passed, there is no option but to hold that the detention order dated 13-9-1983 was illegally passed and is clearly illegal and the detention of the detenus thereunder too is illegal.

56. For the reasons aforesaid, the impugned order having been declared as illegal, the writ petitions are allowed, the impugned detention orders are quashed and it is directed that the detenus be released forthwith if not required in any other case.