

(2006) 03 AHC CK 0012

In the Allahabad High Court

Case No : Habeas Corpus W.P. No. 63751 of 2005

Kamlesh Verma

APPELLANT

Vs

Superintendent, District Jail and Others

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 22, 22(1), 22(3), 22(5)

National Security Act, 1980 — Section 10, 11, 11(4), 3(2), 8

Penal Code, 1860 (IPC) — Section 201, 302, 34, 364, 364A

Citation : (2006) 2 ACR 1842

Hon'ble Judges : Vinod Prasad, J;M.C. Jain, J

Bench : Division Bench

**Advocate : Daya Shanker Mishra and Chandra Kesh Mishra, for the Appellant;
Arvind Tripathi and R.N. Shukla, A.G.A., for the Respondent**

Judgement

M.C. Jain and Vinod Prasad, JJ.—Non-placement of the representation sent by an advocate Sri Daya Shankar Misra under his name and signatures, alleged to be on behalf of the detenu, before the Advisory Board by the State Government-Respondent No. 3 and non-consideration of the same by the Advisory Board rendering the detention order dated 2.7.2005 (Annexure-1 to the writ petition) passed by the District Magistrate--Respondent No. 2 against the Petitioner (detenu), u/s 3(2) of National Security Act, 1980 to be illegal and deserving to be quashed, is the point mooted for our consideration through the present habeas corpus petition along with ancillary grounds.

2. But before adverting to the controversy, we relate the factual matrix of the petition. The dossier dated 27.6.2005 by the police of Police Station Kotwali, district Banda and recommendation dated 28.6.2005 by Superintendent of Police, Banda resulted in the passing of detention order u/s 3(2) of the National Security Act, 1980 (hereinafter referred to as "the Act"), against the Petitioner on 2.7.2005 (Annexure-1 to the writ petition) by the District Magistrate, Banda-Respondent No. 2. On that day itself, the grounds of detention were served on the Petitioner which revealed that on 20.1.2005 at 9 a.m. in the down town

Banda, the detenu along with his associate Dasrath Yadav abducted a young infant student Ishu Nigam of Class V, aged about nine years, for the purpose of ransom of Rs. 15 Lacs and thereafter murdered him. throwing his corpse tied with stone in Brahmanand barrage over Burma river under circle of Police Station Rath, district Hamirpur. The detenu burnt his school bag near the field of Pappu son of Jugul Babu in village Evjhi. situated near Muskara Basaura way, P.S. Muskara, district Hamirpur. The aforesaid activity engulfed the area with terror and insecurity, as a result of which public order was shattered and the parents stopped sending their children to schools, Shiv Shankar Nigam, father of the infant boy lodged a report at Police Station Kotwali, Banda on 21.1.2005 at 2.40 p.m., regarding the disappearance of his son. On 22.1.2005 at 20.50 hours he received anonymous telephone call demanding a ransom of Rs. 15 lacs, resulting in the conversion of the registered Crime No. 23 of 2005 into an offence u/s 364 of I.P.C. Anguished and deterred parents and the social organizations dispatched various representations and letters to the authorities. During investigation, the complicity of the detenu surfaced resulting in his arrest on 27.1.2005. The dead body of the infant boy along with his half burnt pieces of his books, pant and shirt along with stone and gunny bag (in which the dead body was concealed) were recovered at the pointing out of the Petitioner detenu. The investigation culminated into charge-sheet against the Petitioner detenu under Sections 364A, 302, 201 and 34, I.P.C. The Petitioner was endeavouring to get himself bailed out and the news of his efforts further intensified the sense of insecurity amongst the public. This was so reported by constable Mahesh Chandra and Ram Pal and was entered vide entry No. 30 dated 27.5.2005. Two other constables Ram Singh and Sant Ram Pal also reported the same air of insecurity on 31.5.2005, vide entry No. 32. The aired news of the Petitioner being enlarged on bail deterred the parents and they stopped sending their children to school. Consequently, to stop the Petitioner from acting in the manner prejudicial to the maintenance of public order in future by indulging in such activity, the District Magistrate-Respondent No. 2 detained him under the Act as mentioned above which is under challenge before us.

3. In accordance with Section 8 of the Act, the detenu made a representation to the Respondents and to the Advisory Board on 13.7.2005, which has been appended as R.A.-1 to the rejoinder-affidavit filed in the writ petition. On the said representation, the detaining authority-Respondent No. 2 called for a report from police which was furnished to it on 20.7.2005 by Superintendent of Police, Banda. Respondent No. 2 sent the said representation along with his comments to the State Government--Respondent No. 3 on 21.7.2005 which was received to it on 22.7.2005. The case of the detenu was submitted before the Advisory Board for its opinion. 26.7.2005 was the date fixed for the consideration of the case of the detenu by the Advisory Board. On 26.7.2005, the detenu was produced before the Advisory Board, which sealed its opinion on the very day that there was sufficient ground for detaining the Petitioner on the facts and grounds mentioned therein (for this fact we have called for the original record and have

perused ourselves). The State Government--Respondent No. 3 confirmed the detention order of the Petitioner on 23.8.2005. Union Government --Respondent No. 4 also rejected the representation made to it by the Petitioner on 1.8.2005.

4. It was on 26.7.2005, when the case of the detenu was being considered by the Advisory Board and the detenu was personally present before the Board that day, that a second representation was sent from Allahabad through speed post, by the detenu's counsel Sri Daya Shankar Misra under his name and signatures alleged to be on the instructions of the detenu, his relatives and pairokars, addressed to the Home Secretary, Government of India, New Delhi, and to the Principal Secretary. Home, Lucknow. The said representation and photo copy of speed post receipts are appended as Annexure-5 to the writ petition. This was received to the Respondent No. 3 on 28.7.2005 (two days after the case of the Petitioner was considered by the Advisory Board on 26.7.2005 on which day itself the Board had signed and sealed its opinion). Respondent No. 3 called for report from Respondent No. 2 on this representation on 1.8.2005 which communication was received to Respondent No. 2 on 4.8.2005. Respondent No. 2 furnished his comments on 19.9.2005 to the Respondent No. 3 who received it on 22.9.2005 and ultimately rejected the said representation on 26.9.2005.

5. On the above facts, the detention order is under challenge before us.

6. We have heard Sri Daya Shankar Misra. advocate on behalf of the Petitioner detenu, Sri Arvind Tripathi, learned A.G.A. on behalf of Respondents No. 1, 2 and 3 and Sri R. N. Shukla. learned standing counsel for the Union of India for Respondent No. 4 at great length.

7. It should be prefaced before proceeding further that as is clear from the grounds of detention, the detention order in question was based on an incident of the kidnapping of an infant boy aged about 9 years from the heart of the town while he was on his way to school. Kidnapping for ransom, including of innocent children, has, of late, disturbingly developed as an industry with deleterious effect, not only on the victims of such grave offence and on their family members, but also on the society at large. The incident in question was impregnant of the potentialities of disturbing public order, dislocating the even tempo of life and generating a sense of terror and insecurity all around. The incident was, therefore, clearly relatable to public order.

8. Now, we address ourselves to the arguments raised at the Bar. The first submission of the counsel for the Petitioner, which is his sheet anchor, is that the representation dated 26.7.2005, sent by the counsel (Annexure-5 to the writ petition) on the instruction of detenu, his relatives and pairokars has not been placed before the Advisory Board by the State Government--Respondent No. 3 and, therefore, the Advisory Board had no occasion to consider it and this renders further detention of the Petitioner illegal. Therefore, the detention order deserves to be set aside. He, for this submission, relied on various rulings of this Court as well as Apex Court which we will deal later on while dealing with this

contention exhaustively. Rest of the submissions were raised half-heartedly, only to be rejected, but we note them as well. Secondly, he contended that this representation of the detenu (Annexure-5) has been dealt with casually by the Respondents and it also makes the detention order illegal. Thirdly, he submitted that there was no material before the detaining authority to come to subjective satisfaction that the detenu was trying to come out on bail and. thus, his subjective satisfaction was vitiated by absence of the said fact rendering the detention order illegal. In this respect, he also submitted that the detaining authority has not mentioned in the grounds of detention that the detenu was trying to get himself bailed out and, therefore, also the detention of the Petitioner is illegal as he was in jail at the time of passing of the detention order and there was no possibility of his coming out on bail. Lastly, he submitted that relevant material (some telegrams) were not placed before the detaining authority which could have affected his subjective satisfaction for passing the detention order and for this reason also the detention of the Petitioner is bad in law and deserves to be set aside.

9. We take the submissions of the counsel for the Petitioner in seriatim. So, it was first contended by the counsel that the representation made by the counsel on 26.7.2005, the date when the matter was being considered by the Advisory Board was not placed before the Advisory Board and. therefore, the detention order is bad in law. The learned A.G.A., on the other hand, contended that there was no necessity for the State Government to place the said representation before the Advisory Board, because it was not the representation of the detenu, nor it was sent on his instructions nor the detenu had any knowledge of the same and, therefore, any representation which is not of the detenu, cannot be placed before the Advisory Board because it is only the representation of the detenu that is to be considered by the Board, and not every other representation. He submitted that had it been the representation of the detenu, the detenu would have made a request to the Advisory Board that his another representation at his instructions was being sent to it by his advocate and the same should also be considered by it before forming a final opinion. That having not been requested by the detenu before the Advisory Board, the representation cannot be said to be of the detenu. He submitted that, in fact, it is a device to get the detenu out of the clutches of the Act by surreptitious way. He urged that the detenu's counsel is not permitted to be heard before the Board unless the other side is also permitted the facility of the counsel. Therefore, the representation of an advocate under his name and signatures, not even in the knowledge of the detenu, cannot be permitted to be considered by the Board as it will amount to allowing something which is specifically prohibited by the Act. He further pleaded that something which cannot be done directly cannot be allowed to be done indirectly. The learned A.G.A. further submitted that if this clandestine method, that a representation made on the day when the case is being considered by the Advisory Board from another city by an advocate without the knowledge of the detenu is allowed to be adopted, it will open a flood

gate of release for those whose activities are hazardous to the society and who are prevented from disturbing public order and this will frustrate the very purpose of the Act. Thus, he submitted that non-placement of the representation of the advocate before the Advisory Board is of no consequence and detention order cannot be quashed on that ground.

10. To counter the argument of learned A.G.A. Sri Misra, counsel for the Petitioner urged that the State Government did not aver in its counter-affidavit that the second representation dated 26.7.2005, was not on behalf of the Petitioner and as such he cannot raise said controversy through argument. It is not possible to accept the contention of Sri Misra. We should point out that an action of law is not to be equated to a game of chess. Beneath the words of a provision of law, there lies a juristic principle. It is the duty of the Court to ascertain the principle and implement it. The counsel for the Petitioner cannot insist the Court to adopt a superfluous approach to shut out the argument of the other side with the underlying idea to avoid in-depth analysis to surface the reality and to judge the same in the light of the legal provisions on the point.

11. It is, therefore, the prime question of inquiry whether the alleged second representation dated 26.7.2005 was really on behalf of the detenu.

12. To effectively decide the controversy, it is necessary to ponder over the statute relating to preventive detention and appearance of the counsel in these matters. Article 22 of the Constitution of India, under Part III relating to fundamental rights, deals with the protection against the arrest and detention in certain cases. It provides as under :

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

(3) Nothing in Clauses (1) and (2) shall apply--

(a) To any person who for the time being is an enemy alien ; or (b) To any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless:

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the

expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under Sub-clause (b) of Clause (7) ; or (b) such person is detained in accordance with the provisions of any law made by Parliament under Sub-clauses (a) and (b) of Clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in Clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe:

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of Sub-clause (a) of Clause (4) ;

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention ; and (c) the procedure to be followed by an Advisory Board in an inquiry under Sub-clause (a) of Clause (4).

13. Thus, what this Article lays down is that the right conferred on an arrested person under Clause (1) will not apply to any person arrested or detained under any law providing for preventive detention. Thus, there is no right to consult and to be defended by an advocate to a person arrested under the preventive detention laws. The person who has been detained under the preventive detention laws has been clubbed in the same sub-clause along with enemy alien. This projects the intention of the Legislature, and we say no more.

14. However, the rigour of this mandate has been diluted by Section 11 of the National Security Act, 1980. We quote Section 11 of the Act herein below :

11. Procedure of Advisory Boards.--(1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within seven weeks from the

date of detention of the person concerned.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) Nothing in this Section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board ; and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

15. The Apex Court while interpreting Article 22 of the Constitution of India and Section 11 of the Act in A.K. Roy and Others Vs. Union of India (UOI) and Others, has observed thus in paragraph 87:

On a combined reading of Clauses (1) and (3) (b) of Article 22, it is clear that the right to consult and to be defended by a legal practitioner of one's choice, which is conferred by Clause (1), is denied by Clause (3) (b) to a person who is detained under any law providing for preventive detention. Thus, according to the express intendment of the Constitution itself, no person who is detained under any law, which provides for preventive detention can claim the right to consult a legal practitioner of his choice or to be defended by him. In view of this, it seems to us difficult to hold, by the application of abstract general principles or on a priori considerations that the detenu has the right of being represented by a legal practitioner in the proceedings before the Advisory Board. Since the Constitution as originally enacted, itself contemplates that such a right should not be made available to the detenu, it cannot be said that the denial of the said right is unfair, unjust or unreasonable..... However, much we would like to hold otherwise, we experience serious difficulty in taking the view that the procedure of the Advisory Board in which the detenu is denied the right of legal representation is unfair, unjust or unreasonable. If Article 22 were silent on the question of right of legal representation it would have been possible, indeed right and proper, to hold that the detenu cannot be denied the right of legal representation in the proceedings before the Advisory Board. It is unfortunate that the Courts are deprived of that choice by the express language of Article 22(3)(b) read with Article 22(1).

16. Thus, a detenu has no right to consult or to be defended by a practitioner of his choice.

17. However, the question for determination before us is as to whether the prohibition contained in Sub-section (4) of Section 11 of the Act can be allowed to be obliterated by a surreptitious methodology of a representation by an

advocate alleged to be on behalf of detenu but which in fact, is not of the detenu should also be placed before the Advisory Board. Sri A. K. Tripathi, learned A.G.A. seriously disputed the alleged representation (Annexure-5) to be that of detenu.

18. We also find that there is no material in the writ petition as to when the detenu authorized his alleged counsel Sri Daya Shankar Misra, advocate ; when did he meet him and how he had been authorized. We should also point out that had the detenu authorized Sri Daya Shankar Misra to send a representation on his behalf, he would certainly have made a request for the consideration of the same by the Board when he was produced before it on 26.7.2005. From the perusal of the original record, we found that the Advisory Board considered the representation of the detenu on 26.7.2005, itself and on that very day it opined that there was sufficient material for his detention. The opinion was signed and sealed on that day itself. The alleged representation sent by Sri Daya Shankar Misra was of even date-26.7.2005. The same was received to the State Government on 28.7.2005, two days after the Advisory Board had concluded the hearing and signed and sealed its opinion. It is not disputed that before the Advisory Board no prayer was made by the detenu that his another representation or any other representation at his behest by his counsel was on its way to be forwarded which also should be considered. The detenu never made any prayer before the Advisory Board to hear his counsel also. It has been argued by the learned Counsel for the Petitioner himself that in the given circumstances, the prayer of the detenu to be represented through counsel can also be considered by the Advisory Board but in the present case, no such prayer was, in fact, made by the detenu. The writ petition does not contain any details as to on what date and under what circumstances the detenu or someone else on his behalf instructed Sri Daya Shankar Misra, an advocate of this Court to send the representation to the Advisory Board. Thus, the submission of the learned A.G.A. is not without force that it is not the representation of the detenu but is that of his counsel for the purpose of making out an artificial ground for the success of this petition only after he had gained information that the proceedings before the Advisory Board had been concluded. No affidavit etc. has been filed by the counsel for the Petitioner to show that he had no knowledge of the conclusion of proceedings before he had sent the representation. It is also pertinent to mention here that the representation was sent, not to the Advisory Board directly but to the Principal Secretary, Home, Lucknow and Home Secretary, Central Government, New Delhi. Sri Daya Shankar Misra has been sending such representations in the past as well, as has been contended by him during the course of arguments. Therefore, he was well aware that the representation was to be considered by the Advisory Board, but even then he did not send it to the Advisory Board. Instead, he sent it to the Principal Secretary, Home, Lucknow and Home Secretary, Central Government, New Delhi. The photocopy of the two speed post receipts appended along with the writ petition do not indicate that any representation was sent to the Advisory Board. In this view of the matter, it

is difficult for us to conclude that the alleged representation sent on 26.7.2005, was by the detenu or on his behalf.

19. There is yet another difficulty which cannot be alleviated by the counsel for the Petitioner in accepting his submission and that is as to why the said representation which was ready on or before 26.7.2005, was not handed over to the alleged relative or pairokar of the detenu to carry it to Lucknow on 26.7.2005, personally to be handed over to the detenu to be placed before the Advisory Board. If counsel was making representation with the inclination and purpose that it should be considered by the Advisory Board, it would have been well advised to be carried to Lucknow (only at a distance of 200 km. from Allahabad). It is also significant to note that during the course of arguments, Sri Misra himself informed the Court that normally, the Advisory Board holds its meeting in post-noon period. On anxious consideration of all circumstances as submitted by learned Counsel for the Petitioner himself, we are inclined to accept the argument of the learned A.G.A. that, in fact, it was not a representation of the detenu and he had never instructed his counsel to make any such representation. Therefore, we are of the clear view that there was no obligation on the part of the State Government to place the aforesaid representation before the Advisory Board for consideration. So, the first submission of the learned Counsel for the Petitioner is rejected. We are fortified in our view by the judgment of A.K. Roy and Others Vs. Union of India (UOI) and Others, In paragraph 89 thereof the Supreme Court has held as under :

To read the right of legal representation in Article 22(5) is straining the language of that Article. Clause (5) confers upon the detenu the right to be informed of the grounds of detention and the right to be afforded the earliest opportunity of making a representation against the order of detention. That right has undoubtedly to be effective, but it does not carry with it the right to be presented by a legal practitioner before the Advisory Board merely because, by Section 10 of the National Security Act, the representation made by the detenu is required to be forwarded to the Advisory Board for its consideration. If anything, the effect of Section 11(4) of the Act, which conforms to Article 22(3)(b), is that the detenu cannot appear before the Advisory Board through a legal practitioner. The written representation of the detenu does not have to be expatiated upon by a legal practitioner.

(Emphasis in italics by us)

20. Further, in paragraph 92 of the said judgment while relying upon judgment in Hussainara Khatoon's case it was observed :

These observations were made in the context of the rights available to an accused in a criminal trial and cannot be extended to the proceedings of the Advisory Board in order to determine the rights of detenu in relation to those proceedings. The question as regards the kind and nature of rights available in those proceedings has to be decided on the basis of the provisions contained in

Article 22 of the Constitution and Sections 10 and 11 of the National Security Act.
(Emphasis in italics by us)

21. In paragraph 94 of the aforesaid judgment, the Apex Court has held :

We must, therefore, hold regretfully though, that the detenu has no right to appear through legal practitioner in the proceedings before the Advisory Board.

22. However, in the said paragraph Supreme Court added an important caveat that if the detaining authority or the Government takes the aid of a legal practitioner or legal advisor before the Advisory Board, then the detenu cannot be denied that right and he must also be allowed the facility of appearing before the Board through a legal practitioner. Fairness in action should be maintained at both levels and Article 14 of the Constitution should not be violated. It held that the authorities cannot be permitted to do indirectly what they cannot do directly and "no one should be enabled to take shelter behind the excuse that such officers are not "legal practitioners" or "legal advisors". In paragraph 95, the Supreme Court granted the liberty to the detenu to be "aided and assisted by a friend, who, in truth and substance, is not a legal practitioner".

23. Since the judgment in A. K. Roy's case (supra) is by five Hon''ble Judges of the Apex Court, it is not necessary to consider in detail the other judgments cited at the Bar which are contrary to it or which were rendered before it. Still, we make below a reference of them :

(1) Bal Chand Choraria 1978 SCC 77 ;

(2) Smt. Shalini Soni and Ors. v. Union of India 1981 SCC 38;

(3) Fransis Coralie Mullin v. Administrator, Union Territory of Delhi and Ors. 1981 SCC 212;

(4) Ram Bali Raj Bhar v. State of West Bengal and Ors. 1975 SCC 321 ;

(5) Durga Pada Ghosh v. State of West Bengal 1973 SCC 76; and

(6) Smt. Kavita v. State of Maharashtra and Ors. 1981 SCC 743.

24. All these judgments were delivered before the judgment in A. K. Roy's case (supra) and are of less than five Hon''ble Judges.

25. Further, in the case of Awadhesh Kumar Shukla v. Adhikshak Kendriya Karagar, Naini, Allahabad and Ors. 1983 ALJ 545, after considering Bal Chand Choraria's case, it was held by this Court in para 13 thereof that "These observations in our opinion clearly indicate that the Supreme Court recognized the fact that if the said representation had not been made under instructions from the detenu the detention of the Petitioner would not have been vitiated merely for the reason that there had been delay in its disposal." Moreover in that case the representations had been made by the detenu's wife and brother (para 12) and hence that case is distinguishable on facts also. So is the case with

Satya Priya Sonkar v. Adhikshak Kendriya Karagar, Naini, Allahabad and Ors. 1999 (3) ACR 2297: 2000 ACC 402. In that case, the representation was made by the father of the detenu, and not by an advocate (paras 10, 14 and 18). The case of Madan Bhaiya alias Madan Gopal v. Superintendent, Central Jail, Tihar Delhi and Ors. 2000 (2) ACR 1320: 2000 ACC 397 ; Mohinuddin alias Moin Master v. District Magistrate, Beed 1987 SCC 674; Kundanbhai Dula Bhai Shaikh v. District Magistrate, Ahmedabad 1996 SCC 470; Vikki alias Vikrant Tyagi v. Adhikshak, District Jail Muzaffar Nagar and Ors. 2004 CBC 219 and Govind Singh v. State of U. P. and Ors. 2000 (2) ACR 1365: 2000 (2) JIC 423, also do not help the Petitioner as in all these cases the representations were made by the Petitioner himself, and not by an advocate.

26. So to repeat, the contention of the Petitioner's learned Counsel being contrary to law laid down by the Apex Court in A. K. Roy's case (supra) does not hold good and is rejected. Since the representation dated 26.7.2005 was not by or on behalf of the detenu, there was no obligation on the part of the State Government to place the same before the Advisory Board and non-consideration of the same does not render the detention order to be illegal.

27. Now we take up another argument of learned Counsel for the Petitioner that there was no material before the detaining authority to come to a subjective satisfaction that the detenu was trying to come out on bail. We have carefully examined the grounds of detention. In the grounds of detention, the detaining authority Respondent No. 2 has specifically mentioned that the Petitioner detenu was endeavouring to get him bailed out and the very news of his getting bail had further deteriorated the public order regarding which on different dates informations were recorded at the Police Station. The first information in this respect was recorded on 27.5.2005. vide G.D. entry No. 30 given by constable Mahesh Chandra and Ram Kripal. The second information was recorded on 31.5.2005 vide G.D. entry No. 32, given by constable Ram Singh and Sant Ram Pal. Respondent No. 2 has further mentioned that these informations were inquired into and were found to be correct. In this respect, the Inspector-in-charge of the Police Station found that there was terror prevailing amongst the public at large by the very news of the Petitioner going to be released on bail. This fact is mentioned in the report of the Inspector-in-charge dated 31.1.2005 vide G.D. entry No. 22. Consequently, this contention of learned Counsel for the Petitioner that there was no material before the detaining authority that the detenu was trying to get him bailed out is against the factual matrix of the case. The knowledge of the detaining authority about the Petitioner endeavouring to be released on bail is material and not the exact words. It is the substance flowing from the phraseology of the grounds of detention that matters, and not the use of particular words. The argument suggesting to adopt a pedantic approach to interpret the grounds of detention cannot be accepted. We may remind that the present case is a case of preventive detention and not a criminal trial. Subjective satisfaction of the detaining authority cannot be adjudicated upon in a habeas corpus petition. If subjective satisfaction of the detaining authority is based on

some material, then it has to be upheld. In this respect, we are fortified by the following judgment of the Supreme Court :

N. Meera Rani Vs. Government of Tamil Nadu and Another,

28. In para 22 of the aforesaid judgment, the Apex Court has summarised the position thus :

We may summarise and reiterate the settled principle. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case ; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. Ordinarily it is not needed when the detenu is already in custody ; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order ; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us to be the correct legal position.

29. Further, it is to be noted that preventive detention is an anticipatory measure and it does not relate to an offence. The object of preventive detention is preventive and not punitive. The exercise of power under the Act can be resorted to if there is some material justifying the same. In this view of the matter, the contention of the learned Counsel for the Petitioner that there was no material before the detaining authority indicating that the Petitioner detenu was trying to get him bailed out, does not hold the ground and is hereby rejected.

30. Coming to another argument of the learned Counsel for the Petitioner that the impugned order of detention has been passed on suppression of the relevant material, we do not find any merit in the said submission as well. In paras 17 and 18 of the writ petition, the Petitioner has pointed out certain telegrams alleged to have been sent by his father to various authorities. No such telegram has been appended along with the writ petition. That apart, we do not find any reason to hold that the alleged telegram was at all relevant. There is no pleading that the detaining authority was aware of any such telegram. Nor he has placed reliance on any telegram. The police which sent the dossier to the detaining authority, was also not seemingly aware of any alleged telegram. Learned A.G.A. has relied upon the judgment of the Supreme Court in District Magistrate and Another Vs. R. Kumara Vel, of the aforesaid judgment it has been observed by the Supreme Court that :

A telegram by itself is not an authentic document, It is like an unsigned / anonymous communication. Unless a telegram is confirmed by a subsequent signed application, representation or an affidavit, the contents of the telegrams have no authenticity at all and the same cannot be taken into consideration for

assessing the value of the other authentic documents on the record. The detention orders were passed by the District Magistrate on the basis of the material placed before him by the police authorities. We are, therefore, of the view that the order of detention could not be challenged on the ground that some material contained in a telegram simpliciter was not taken into consideration by the detaining authority.

31. In the above view of the matter, this contention of the learned Counsel for the Petitioner also does not hold good and is hereby rejected. The detention order of the Petitioner cannot be quashed on the basis of the contentions raised by the learned Counsel for the Petitioner. Learned Counsel for the Petitioner has relied upon Kamarunnissa and Others Vs. Union of India and another, The aforesaid judgment also does not help the Petitioner as the said judgment also reiterates the law laid down by Apex Court in case of N. Meera Rani quoted above.

32. No other argument was advanced by the Petitioner's counsel.

33. For the detailed discussion made hereinabove, we do not find any substance in the submissions advanced by the Petitioner's counsel in this writ petition. We see no reason whatsoever to quash the detention order in question.

34. The writ petition has no merit and it is hereby dismissed.