

(1965) 10 BOM CK 0003

In the Bombay High Court

Case No : Criminal Application No. 1140 of 1965

Madhusudan Tukaram Kulkarni

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 05-10-1965

Acts Referred:

Defence of India Rules, 1962 — Rule 30(1)

Citation : AIR 1967 Bom 65 : (1966) 68 BOMLR 246 : (1966) ILR (Bom) 1092

Hon'ble Judges : Tarkunde, J; Bal, J

Bench : Division Bench

Advocate : M.D. Pathak, for the Appellant; V.M. Gumaste, Addl. Govt. Pleader, for the Respondent

Judgement

Tarkunde, J. (1) This petition has been filed u/s 491 of the Criminal Procedure code and Article 226 of the Constitution to challenge an order of detention passed against the petitioner on 25th November 1964, under Rule 30 (1) 9b) of the Defence of India Rules. The order was passed by the District Magistrate of Poona, who stated therein that he was satisfied that it was necessary to detain the petitioner with a view to preventing him from acting in a manner prejudicial to the defence of India, public safety and the maintenance of public order. The detention order was confirmed by the Government of Maharashtra on the recommendation of the reviewing authority.

(2) In his petition the petitioner stated that he had participated in the movement for India's freedom, that he was sentenced for a term of two and half years for taking part in the Satyagraha movement in 1932, that he was for some days an active member of the Hindu Maha Sabha in Poona city, and that he is at present an ordinary member and a sympathiser of that body. The petitioner further stated that he has been conducting Hindi language classes for more than 25 years and has written and published several books in Hindi. According to him, the reason why he was detained was that he attended two functions which were held in Poona on 12th & 15th Nov. 1964. The functions which was held on 12th

November 1964, was a Satyanarayan Puja performed for religious thank-giving on the occasions of the release of Gopal Godse and Karkare, who were convicts in the "Gandhi murder trail", the function which was held on 15th November 1964, was a sharadha ceremony performed on the occasion of the death anniversary of Nathuram Godse who was sentenced to death in the said trial and was executed. The petitioner stated that he merely attended these functions and did not take part therein in any other way. The petitioner affirmed that he was not engaged in any prejudicial activity. He referred in the petition to three criminal applications filed by persons who had participated in the Satyanarayan puja and whose detention orders were set aside by this Court. The petitioner claimed that on the same grounds the detention order passed against him should also be set aside. According to the petitioner, the order passed against him was mala fide, that it was punitive and not preventive and that the District Magistrate "had no material before him which could indicate, much less satisfy him, that it was necessary that the petitioner should be arrested and be detained with a view to preventing him from acting in a manner prejudicial to the defence of India, public safety and the maintenance of public order."

(3) The main affidavit in reply to the petition was filed by the District Magistrate of Poona. He denied that the petitioner merely attended the two functions mentioned above, and stated that the petitioner was "one of the active participants" in both the functions. The District Magistrate, however, did not say in what manner according to his information, the petitioner actively participated in the two functions. In denying the petitioner's claim that he was not involved in any prejudicial activity the District Magistrate stated that the functions of 12th and 15th November 1964, evoked considerable wrath among all sections of people in the State of Maharashtra and outside, as speeches were made in the said functions eulogising Nathuram Godse and Apte, the assassin of Mahatma Gandhi. It was further stated in this affidavit "Indignant articles appeared in many of the leading newspapers condemning the actions and the speeches of these who had arranged and who delivered speeches at the said functions of November 12th and 15th. Several public meetings were held to condemn the attempts to glorify Nathuram Godse and Apte, the assassins of Mahatma Gandhi, as martyrs. The whole atmosphere of Poona was surcharged with public wrath and a situation of extreme public tension was created. There was a grave danger of a repetition of the disturbances and riots that followed the assassination of Mahatma Gandhi in 1948. I received reports and other material relating to these and other activities of the petitioner and others and on a careful examination of the whole material that was thus placed before me, I was satisfied that it was necessary to detain the petitioner". The District Magistrate denied that there was no material which could satisfy him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner.

(4) After hearing the learned Additional Government Pleader, and after perusing a further affidavit of the District Magistrate to which we will presently refer, we are satisfied that this petition must be allowed as in our view the District

Magistrate was not, and could not have been, satisfied that the petitioner was likely to act in a prejudicial manner, and that it was necessary to detain him with a view to preventing him from so acting. There are two reasons why we have come to the conclusion that the District Magistrate was not genuinely satisfied about the necessity of detaining the petitioner. In the first place, the activity of the petitioner which consisted of merely attending the two functions could not be regarded as prejudicial to the defence of India, public safety or the maintenance of public order and no inference could possibly be drawn from such activity that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner. Secondly, supposing the conduct of the petitioner in attending the two functions amounted to prejudicial activity, there was no likelihood of similar functions being held in the near future, and the District Magistrate could not therefore have been genuinely satisfied that it was necessary to subject the petitioner to preventive detention.

(5) Before dealing more fully with the grounds on which the impugned order of detention is required to be set aside it is necessary to mention that the learned Additional Government Pleader advanced two contentions in order to dissuade us from interfering with the order of detention. He contended that an order of detention made under Rule 30 sub-rule (1) (b) of the Defence of India Rules, can be validly challenged only on the ground of mala fides in the restricted sense of its having been issued for some ulterior purpose, and that the order cannot be quashed if the petitioner fails to show that the detaining authority was actuated by some ulterior purpose in making the order. The learned Additional Government Pleader further argued that it is not permissible to the Court in such cases to ask for the particulars of the material which led to the satisfaction of the detaining authority about the necessity of detention, and that in the absence of particulars the statement of the detaining authority that he was so satisfied must be taken as correct. We do not find it possible to accept either of these contentions. We will deal with these contentions after considering the two grounds which led us to the conclusion that in the present case the District Magistrate was not genuinely satisfied that it was necessary to detain the petitioner in order to prevent him from acting in a prejudicial manner.

(6) The first ground, as stated above, is that the conduct of the petitioner is merely at tending the two functions cannot be regarded as a prejudicial activity, and that no inference could possibly be drawn from such conduct that the petitioner was likely to act in a prejudicial manner. Orders of detention were passed against several persons who participated in various degrees in the two functions of Satyanarayan Pooja and Sharadha ceremony, and petitions filed by them have been heard and disposed of by this Court. The first batch of these petitions came for hearing before a bench consisting of Justice V. S. Desai and my learned brother Justice Bal. One of these, being Criminal Application No. 367 of 1965, was filed by Gopal Godse. the court rejected the main contention of the petitioner in that case that the order of detention was issued out of malice. The Court observed that the acts of the petitioner on 12th and 15th November 1964,

gave rise to consequences which disturbed the public peace and order, and that the detaining authority was satisfied, "that in order to prevent further indulgence in such activities by the petitioner it was necessary to detain him." In the affidavit of the District Magistrate in that case it had been alleged that the petitioner Gopal Godse was one of the speakers at the function held on 15th November 1964, and that in the course of his speech he praised his deceased brother Nathuram Godse for the assassination of Mahatma Gandhi. Another petition filed by one Vaidya, being Criminal Application No. 531 of 1965, was similarly dismissed by the same Bench. The petitioner in that case had attended the Satyanarayan Puja on 12th November 1964, and no question appears to have been raised in that case regarding the extent of the petitioner's participation in that function.

(7) The next batch of petitions came before a Bench consisting of Naik and Palekar, JJ. Criminal Application No. 588 of 1965 was filed by one Thatte who, according to the District Magistrate, was an organiser of the Satyanarayan Puja held on 12th November 1964 and was also an "active participant" in the shraddha ceremony which took place on 15th November 1964. Criminal Application No. 675 of 1965, was filed by one Ghaisas in whose name printed incitation had been issued for the function arranged on 12th November 1964, and who, according to the District Magistrate, was the main organiser of the function. The Court held that the conduct of these petitioners (Thatte and Ghaisas) could not be regarded as prejudicial activity. they had not made any speeches commending the assassination of Mahatma Gandhi or eulogising the perpetrators of that crime. They could not have anticipated the nature of the speeches which were delivered at the functions and had no control over those speeches. The Court accordingly held that their conduct could not be considered as in any way prejudicial either to the defence of India or to public order. The orders of detention passed against them were accordingly set aside. The same was the result of Criminal Application No. 870 of 1965 which was filed by one Bapat. According to the District Magistrate, Bapat had taken active part in organising the two functions and had delivered a short speech in the course of the first function. It was, however, not suggested by the District Magistrate that there was anything objectionable in that speech. On the other hand the same bench dismissed Criminal Application No. 614 of 1965 which had been filed by one Abhyankar who, according to the District Magistrate, had not only actively participated in the two functions but had made a speech paying tributes to Nathuram Godse and eulogising him for assassinating Mahatma Gandhi.

(8) In the present case the petitioner expressly stated that he merely attended the two functions and did not participate in those functions in any other way. The District Magistrate denied this averment in the course of his affidavit and vaguely alleged that the petitioner was "one of the active participants in both the functions." Previous orders of this Court in the petitions filed by Thatte, Ghaisas and Bapat (Criminal Applications Nos. 588, 675 and 870 of 1965) were specifically referred to in petition, and yet the District Magistrate refrained from

stating in his affidavit the manner in which the petitioner "actively" participated in the two functions. Hence, the failure of the District Magistrate to indicate the nature of the petitioner's alleged participation in the two functions cannot be regarded as merely accidental. Moreover, we asked the learned Additional Government Pleader whether he could give us any idea about the nature of the petitioner's alleged participation in the functions and the learned Additional Government Pleader told us that he had no information in the manner. Under circumstances, which will be presently explained, we asked the learned Additional Government Pleader whether he wanted a further opportunity to file an additional affidavit of the District Magistrate to clarify the vague statements which were found in this and a subsequent affidavit filed by the District Magistrate, and the learned Additional Government Pleader told us that no such opportunity was required. For these reasons, we must hold that the statement of the District Magistrate that the petitioner was an active participant in the two functions was not intended to be taken seriously and that the petitioner was one of the persons who merely attended the two functions. This being prejudicial to the defence of India, public safety and the maintenance of public order, and it cannot possibly be inferred from such conduct that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner.

(9) In the above discussion we have assumed that the only conduct of the petitioner from which the District Magistrate was satisfied about the necessity of detaining him consisted of his alleged participation in the two functions. We must, however, take notice of another vague statement which was made by the District Magistrate in this connection. The District Magistrate stated in paragraph 7 of his first affidavit, "I received reports and other material relating to these and other activities of the petitioner and others and on a careful examination of the whole material that was thus placed before me, I was satisfied that it was necessary to detain the petitioner". Here again there is no indication what "other activities" of the petitioner were taken into consideration, and why activities of persons other than the petitioner were found to be relevant in deciding whether it was necessary to detain him. On this question also, the learned Additional Government Pleader had no information and did not want any opportunity to furnish any information. We are of the view that where a detenu has made out a prima facie case that his detention was ordered by an authority who was not genuinely satisfied about its necessity, any reluctance or refusal on the part of the detaining authority to show to the Court that he was genuinely satisfied about the necessity of detention must result, in the absence of claim of privilege, in an adverse inference being drawn against him. We must, therefore, conclude that the impugned order of detention in the present case was passed merely because the petitioner was one of the persons who attended the two functions. No inference could have been reasonably drawn from that conduct that it was necessary to subject the petitioner to preventive detention.

(10) The second ground why the impugned order of detention is required to be quashed, is that there was no likelihood of the functions like those of

Satyanarayan Puja and Shradha ceremony being repeated in the near future, and that the detaining authority could not therefore have been satisfied that the petitioner was likely to resort to prejudicial activity and had to be subjected to preventive detention. In considering this ground we will assume that the conduct of the petitioner in attending the two functions could some-how be regarded as being prejudicial to "the defence of India, public safety and the maintenance of public order." Even on that basis, a valid order of detention could have been passed against the petitioner only in order to prevent him from indulging in such activities in the future and not merely on account of his past conduct. The Satyanarayan Puja was held for the purpose of religious thank-giving on the occasion of the release of Gopal Godse and Karkare from imprisonment. In the normal course, such a puja was not likely to be performed for the same purpose a second time. A sharadha ceremony can take place only once a year and not more often. It is, therefore very difficult to believe that detaining authority had a genuine apprehension that the petitioner would resort to attending such functions in the future and that it was necessary to detain him in order to prevent him from doing so. Moreover, the political affiliations of the petitioner are not such as to lead to nay apprehension that he was likely to behave in a manner prejudicial to the defence of India, public safety and the maintenance of public order. The affidavit filed by the District Magistrate suggests that orders of detention were passed against the petitioner and others because "there was a grave danger of a repetition of the disturbances and riots that followed the assassination of Mahatma Gandhi in 1948" A detention order, however, can be passed in order to prevent the detenu from acting in a prejudicial manner, and not in order that other persons may not indulge in disturbances and riots. When the present petition came for hearing before us for the first time, we explained the above difficulties to learned Additional Government Pleader and told him that we did not find it easy to understand how the detaining authority could have felt any apprehension in the circumstances of the case that the petitioner was likely to behave in a prejudicial manner in the future and that his detention was therefore necessary. We asked the learned Additional Government Pleader whether he could say on behalf of the detaining authority that the authority had apprehended a particular type of prejudicial activity on the part of the petitioner, for the prevention of which his detention was felt to be necessary. At the request of the learned Additional Government Pleader we adjourned the further hearing of the petition in order that this question may be considered by the appropriate authorities, and, if necessary, a further affidavit of the District Magistrate may be filed. A further affidavit of the District Magistrate was accordingly filed, and when the petition came up for hearing before us again we were surprised to find that this affidavit was even more vague than the earlier one, and gave no indication whatever of the type of activity which the District Magistrate had expected the petitioner to resort to, and for the prevention of which the impugned order of detention was passed. In this second affidavit, the District Magistrate merely stated "I was satisfied that the petitioner was likely to act in a prejudicial manner and after carefully considering the fact relating to the case of the detenu, I was

fully satisfied that he was in all probability likely in future also, to act in a manner prejudicial to the Defence of India, public safety and the maintenance of public order. I was also satisfied that in order to prevent him from so acting, it was necessary to detain him" As this affidavit did not disclose whether the detaining authority had apprehended that the petitioner would participate in other functions like the two mentioned above or whether it was felt by the detaining authority that the petitioner was likely to resort to prejudicial conduct of some other type, we asked the learned Additional Government Pleader again whether he could give any such information on behalf of the detaining authority, and whether he wanted a further adjournment to file an additional affidavit. The learned Additional Government Pleader, however, did not have any information on the question, and he also did not want an opportunity to file a further affidavit. Under the circumstances, the only way in which we can discharge our responsibility of deciding this question is by holding that the detaining authority had no material on the basis of which he could have held that the petitioner was likely to resort to prejudicial activity, that the detaining authority was not genuinely satisfied that the detention of the petitioner was necessary in order to prevent him from acting in a prejudicial manner, and that the impugned order is therefore invalid and must be set aside.

(11) We will now turn to the two legal sub-missions which were made by the learned Additional Government Pleader to dissuade us from interfering with the impugned order of detention.

(12) The learned Additional government Pleader argued in the first place, that an order of detention made under Rule 30 (1) (b) of the Defence of India Rules, can be lawfully challenged only if it is made mala fide (that is for some ulterior purpose), that it is for the petitioner to prove that the order was so made, and that the petition must be dismissed on the petitioner's failure to discharge that burden. If this view were correct, there can be no occasion for the Court to consider whether there was any material available to the detaining authority on the basis of which the authority could have been satisfied that it was necessary to detain the petitioner in order to prevent him from acting in a prejudicial manner. That was the view which the learned Additional Government Pleader wanted us to accept.

(13) Considering the question without the aid of any authority, it is clear from the terms of Rule 30 (1) (b) of the Defence of India Rules 1962, that an order of detention can be validly made if one pre-condition is fulfilled, and the pre-condition is that the authority concerned must be satisfied that it was necessary to make the order of detention with a view to preventing the proposed detenu from acting in a prejudicial manner. The satisfaction of the detaining authority which is the pre-condition of a valid order of detention, is a subjective satisfaction and the Court cannot therefore examine whether the satisfaction was justified, that is to say, whether the material available to the detaining authority was sufficient for his subjective satisfaction. It is clear at the same time that the

Court has to consider and decide whether in fact the pre-condition was fulfilled, i.e. whether the alleged satisfaction of the detaining authority was a genuine satisfaction, and whether the detaining authority was satisfied both on the likelihood of prejudicial activity on the part of the proposed detenu and on the necessity of detaining him for the purpose of preventing him from resorting to such activity. When an order of detention is made for an ulterior purpose, the alleged satisfaction of the detaining authority is a mere pretence and not a fact, and the order of detention is liable to be set, aside on that ground. There are, however, other types of cases where the Court can and must come to the conclusion that the alleged satisfaction of the detaining authority was not genuine. In making a detention order, the detaining authority may act carelessly and without applying his mind to the relevant material. In that case his satisfaction cannot be said to be genuine. Again the detaining authority may have no material before him on the basis of which it is rationally possible to reach the alleged satisfaction. In that case also the court must hold that the alleged satisfaction was not genuine, because the satisfaction must be of a rational individual. In such case the Court will consider not whether the material available to the detaining authority was sufficient for his satisfaction, but whether there was material on the basis of which the satisfaction was rationally possible.

(14) Turning to the cases cited before us, the learned Additional Government Pleader placed reliance on certain observations of the Supreme Court in *Makhan Singh Vs. State of Punjab* (and connected appeals), . The Supreme Court pointed out in that case that even after the issue of the Presidential Order under Article 359(1) of the constitution, it was still open to the citizens to take certain pleas to challenge the legality or the propriety of orders of detention u/s 491 of the Criminal Procedure Code or Article 226 of the Constitution. In that context the Supreme Court pointed out that a detenu may move the Court for a writ of habeas corpus on the ground that his detention has been ordered mala fide, and proceeded to observe:

"It is true that a mere allegation that the detention is mala fide, would not be enough; the detenu will have to prove the mala fides. But if the mala fides are alleged, the detenu cannot be precluded from substantiating his plea on the ground of the bar created by Art. 359(1) and the Presidential Order."

It is obvious that these observations do not imply, and were not intended to imply, that the ground of mala fides is the only ground on which an order of detention can be challenged by a detenu.

(15) Observations more germane to the question under discussion are found in the decision of the Privy Council in *Ross Clunis v. Papadopoulos* 1958 2 All ER 23. In that case the Privy Council were concerned with certain regulations validly issued by the Governor of Cyprus which had authorised the commissioner to impose collective fines on the inhabitants of certain areas. The regulations required that before issuing an order of collective fine the commissioner should make an enquiry, and that in holding such an enquiry the commissioner must

"satisfy himself" that the inhabitants of the area were given adequate opportunity of understanding the subject matter of the enquiry and making representations thereon. It was urged before the Privy Council that the commissioner had failed to discharge the duty cast upon him of satisfying himself that the inhabitants of the area concerned were given adequate opportunity of understanding the subject matter of the enquiry and making representations thereon. In considering this argument the Privy Council stated (page 32):

"Council for the appellant (the commissioner) submitted that the only duty cast on the appellant was to satisfy himself of these facts; that the test was a subjective one, and the statement in para 12 of the appellant's affidavit of December 4, 1956 (in which the commissioner had stated that he had satisfied himself), was a complete answer to the argument of counsel for the respondents, unless it could be shown that the statement in the affidavit was not made in good faith, and bad faith was not alleged. Their Lordships feel the force of this argument, but they think that if it could be shown that there were no grounds on which the appellant could be so satisfied, a court might infer either that he did not honestly form that view or that, in forming it, he could not have applied his mind to the relevant facts."

These observations clearly show that where an authority is empowered to make an order after satisfying himself of certain facts, the order can be challenged, even in the absence of allegation of bad faith, on the ground that there was no material on the basis of which the authority could have been so satisfied. It is pertinent to add that the regulations with which their Lordships were dealing were in the nature of emergency legislation.

(16) A reference may be made in this connection to certain observations made by Lord Wright in his speech in *Liversidge v. Sir John Anderson* 1942 AC 206. In that case the majority of the House of Lords held that the expression "If the Secretary of State has reasonable cause to believe" which occurred in certain Wartime regulations had, in the context in which that expression was used, the same meaning as "if the Secretary of State is satisfied". On the question of what was meant by "satisfied", Lord Wright said:

"Satisfied must mean 'reasonably satisfied.' It cannot import an arbitrary or irrational state of being satisfied."

This statement must lead to the conclusion that the authority cannot be said to be "satisfied" as to any fact unless there is a rational connection between the material available to the authority and the nature of satisfaction alleged to have been reached by him.

(17) A reference may then be made to the decision of a Full Bench of this Court in *Keshav Gokhale Vs. Emperor*, . The court in that case set aside, by issuing, a writ u/s 491 of the Criminal Procedure Code, an order of detention made under Rule 25 of the Defence of India Rules, 1939, the terms of which were similar in all essential particulars with terms of Rule 30 (1) (b) of the Defence of India

rules, 1962. The order of detention in that case was made in relation to a single person, although the cyclostyled form on which the order was made related to a plurality of persons. The court held that the document raised the inference *ex facie* that it was signed as a matter of mechanical routine, and set aside the order contained therein on the ground that the authority concerned with the making of the order had not applied his mind to the material before him so as to reach the satisfaction which was required by the rule under which it was made.

(18) We are accordingly of the view that the challenge to an order of detention made under Rule 30 (1) (b) of the Defence of India Rules, 1962, need not be confined to the plea that the order was made for an ulterior purpose, and that the order can be challenged on other pleas such as that the detaining authority did not apply his mind to the material available to him or that there was no material available to the detaining authority on which his subjective satisfaction was rationally possible.

(19) The other submission of the learned Additional Government Pleader, and which appeared to be his main submission, was that where an order of detention passed under Rule 30 of the Defence of India Rules 1962, is challenged, the authority who made the order is under no obligation to disclose to the Court the grounds and particulars on which the order was made. It appears to us that the above statements are an over simplification and contains only a half-truth. The correct position appears to be that in such cases the Court acts on the presumption that official acts have been regularly performed and assume that the detention order was validly made after the detaining authority was satisfied about the necessity of making it. This initial presumption may, however, be rebutted by the petitioner by showing *prima facie* that the satisfaction of the detaining authority was not genuine. This petitioner may do by placing before the Court facts which show *prima facie* that the order was made for some ulterior purpose, or that it was made without the detaining authority applying his mind to the available material or that there could be no material before the detaining authority on the basis of which the requisite satisfaction was rationally possible. When such a case is made out by the petitioner, the burden shifts to the detaining authority, and he is required to discharge that burden by placing such facts before the Court as are necessary to show that his satisfaction was genuine. This responsibility of the detaining authority is obviously subject to two qualifications. He is not required to disclose facts in respect of which a privilege can be properly claimed under Sections 123 and 124 of the Indian Evidence Act. Secondly, it is sufficient for the detaining authority to disclose facts which show that his satisfaction was genuine, and he is not required to go further to make it out that his satisfaction was justified under the circumstances of the case. Lastly, where it is necessary for the detaining authority to disclose facts for the purpose of showing that his satisfaction was genuine and he fails to do so, an inference would legitimately arise that the order of detention was not validly made. In such cases, the Court may not accept the bare statement in the affidavit of the detaining authority that his satisfaction was genuine and was reached after a

careful consideration of the material available to him.

(20) In support of his contention that the detaining authority is under no obligation to disclose the grounds and particulars on which an order of detention was made, the learned Additional Government Pleader relied on 1942 AC 206, which has been referred to above. In that case the plaintiff, who was detained by an order of the Secretary of State made under certain wartime regulations, had filed a suit against the Secretary of State for damages for false imprisonment, and had applied that the defendant should be required to give particulars of the grounds on which he had reasonable cause to believe that the plaintiff was a person of hostile associations it was necessary to exercise control over him. It was held that the plaintiff was not entitled to such particulars, and this decision was upheld by the House of Lords. It should be noticed that the bona fides of the Secretary of State were not challenged in that suit, nor was it alleged that the Secretary of State was not of the opinion that he had reasonable cause to believe that the plaintiff was a person of hostile associations and that it was necessary to detain him. the House of Lords held that, according to the true interpretation of the regulation under which the order was made, the Secretary of State was himself to decide whether he had reasonable cause for making that order, and that a Court of law cannot enquire whether infact the Secretary of State had reasonable grounds for his belief. It is thus clear that the plaintiff in that case was held not to be entitled to the particulars which he had claimed, because those particulars related to an issue which did not arise in the suit. No general rule was laid down in that case that the Secretary of State will in no case be required to give particulars in support of the order of detention. This is clear from the following observation in the judgment of Viscount Maugham J. (page 224):

"The order on its face purports to be most under the regulation and it states that the Secretary of State had reasonable cause to believe the facts in question. In my opinion, the well known presumption *omnia esse rite acta* applies to this order, and, accordingly, assuming the order to be proved or admitted, it must be taken *prima facie*, that is until the contrary is proved, to have been properly made and the requisite as to the belief of the Secretary of State was complied with."

This observation indicates that if the initial presumption is successfully rebutted by the detenu, the burden might shift on the Secretary of State, who might then be required to show that the order was properly made and that the requisite as to his belief was complied with. Similar observations were also made by Lord Justice Macinnon in *Rex v. Secretary of State for Home Affairs*; *Ex parte, Greene* 1942 (1) KB 87, in which a similar order of detention made by the Secretary of State was challenged. The learned Judge stated in the course of his judgment (page 109):

"Evidence of the applicant that he does not know that there are many reasons for the Home Secretary's belief, or denial that there are or can be any reasons for it, is not a sufficient discharge of the onus so as to call on the Home

Secretary to explain and justify the assertion of his order. In the present case, the appellant does rather more than make those general assertions or denials, and an affidavit in reply has been filed by the Home secretary."

(21) We may add that some of the observations which are found in the judgments in the two cases mentioned would not properly apply to cases where orders of detention passed under Rule 30 of the Defence of India Rules 1962, are challenged. This is because the regulation with which the House of Lords and the Court of Appeal were concerned in the two cases mentioned above were considerably narrower in scope than Rule 30 (1) (b) of the Defence of India Rules, Under Those regulations the power of the Secretary of State to detain a person were confined for the most part to instances where the Secretary of State believed that a person was of hostile associations or of alien sympathies. That is why it was emphasized in the judgments in the above two cases that major part of the information on the basis of which the Secretary of State might have passed an order of detention must have been of a confidential nature and could not be disclosed in the public interest. the scope of Rule 30 of the Defence of India Rules 1962, is much wider, so that the same degree of difficulty is not likely to be experienced by the detaining authority in disclosing to the requisite extent the grounds on which he was satisfied about the necessity of making an order of detention.

(22) Reliance was placed by the learned Additional Government Pleader on certain observations in the judgment of Sir John Beaumont C. J. In Re: Manubhai Bhikabhai Patel, . That was a case where an order of detention passed under rule 26 of the Defence of India Rules, 1939 was challenged by the detenu in an application filed u/s 491 of the Criminal Procedure Code. The learned Judge stated (page 322 Bom LR); (at p. 195 of AIR):-

"We have now got an affidavit made by the detenu after consulting his legal advisers, and the whole affidavit really goes to showing that the detention is wrong, because nothing had occurred to justify his detention under Rule 26. As I have said , we cannot go into that. We have no power to require Government to tell us the reason which induced them to take action under the rule, and, without knowing those reasons, we are obviously not in a position to express any opinion as to whether their action was justified or not. We must assume such justification."

In our view, these observations must be understood in the context in which they were made. The detenu in that case had tried to show in his affidavit that nothing had occurred to justify his detention, and what was held by the Court was that the court cannot ask the government to give the reasons which induced them to pass the order of detention as the Court had no power to enquire into whether the order was justified or not. A reference may be made in this connection to what was stated by Chief Justice Stone in delivering the judgment of a Full Bench of this Court in Keshav Gokhale Vs. Emperor, which has already been referred to in another connection. It will be recalled that the Court in that

case quashed an order of detention which was passed by the District Magistrate of Belgaum under Rule 26 of the Defence of India Rules, 1939. The learned Chief Justice stated in the course of his judgment (page 53);

"There is no doubt that the initial onus is on the petitioner, but we are of the opinion that on an examination of the document itself and considering it in the light of admitted facts that the initial onus is discharged and that the onus is shifted on to Mr. Millard to show that he applied his mind to what he was doing, and that he did himself make a decision with regard to detaining Mr. Gokhale in preventive custody."

(23) It is thus clear that although the detaining authority is not required to justify to the Court the order of detention by stating the grounds and particulars on which the order was made, he may have in appropriate cases to disclose such facts as would satisfy the Court that he (the detaining authority) was genuinely satisfied about the necessity of making the order. In particular, where on the facts averred by the detenu, it appears to the Court *prima facie* that there was no material before the detaining authority on which his subjective satisfaction was rationally possible, it is necessary for the detaining authority to place before the Court sufficient facts to rebut that conclusion.

(24) We have pointed out above that some of the averments in the affidavits of the detaining authority in the present case were characterised by vagueness, that some material facts were omitted from these affidavits, and that these features did not appear to us to be accidental. The learned Additional Government Pleader told us that these affidavits were drafted under legal advice. We agree that that must have been so, and we regret that such advice was given to the detaining authority. The result was that from the deliberate vagueness of some of the averments in the affidavits and from the omission to state material facts which could not be regarded as of a confidential nature, we got the wrong impression that the detaining authority had little regard for the liberty of the subject and the administration of justice. It is to be hoped that affidavits which are filed on behalf of the detaining authorities in such cases are characterised by frankness and candour, so that the Court is not subjected to the unpleasant necessity of not relying on averments made by highly placed officials or of drawing adverse inferences against them.

(25) In the result the rule is made absolute, the impugned order of detentions quashed, and it is directed that the petitioner shall be set at liberty forthwith. The respondents will pay the petitioner's costs.

(26) Rule made absolute.