
(1977) 07 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Appeal No. 19 of 1977

Mahabir Prasad

APPELLANT

Vs

V.K. Duggal and Others

RESPONDENT

Date of Decision : 21-07-1977

Acts Referred:

Citation : (1977) ILR Delhi 605

Hon'ble Judges : Prakash Narain, J;P.S. Safeer, J

Bench : Division Bench

Advocate : V.M. Tarkunde, D.C. Mathur and K.N. Kataria, for the Appellant;

Judgement

Prakash Narain, J.

(1) By this petition under Article 226 of the Constitution of India. Mahabir Parshad, the petitioner, challenges the validity of his detention in the Central Jail, New Delhi, under the provisions of the Maintenance of Internal Security Act, 1971, hereinafter referred to as the Act. We have already allowed the petition and now record our reasons.

(2) According to the petitioner he is a citizen of India and is a Central Government employee. At the time of his arrest on January 27, 1977 he was working "in the office of the Minister of External Affairs, New Delhi, as Additional Private Secretary to the then Minister of External Affairs." On January 26, 1977 a First Information Report bearing No. 26 was lodged in Police Station, Srinivaspuri, against the petitioner for alleged offences under Sections 3, 4, 5, 6, 9 and 10 of the Official Secrets Act read with Section 120B. Indian Penal Code. On January 27, 1977 the petitioner's house was searched but it is said nothing incriminating was found. He was, however, arrested in connection with the aforesaid F.I.R. and was arraigned as an accused along with some other persons. On February 3, 1977 the petitioner was produced before a Metropolitan Magistrate and was remanded to judicial custody. It is alleged by him that in the meantime he was mercilessly beaten and was "constantly pestered" to make a

confessional statement about his complicity in the perpetration of the alleged crime. Ultimately, the petitioner contends, he was coerced and induced to make a confessional statement which he did on February 8, 1977 before Shri Kuldeep Singh, Metropolitan Magistrate, New Delhi. It is contended that this confessional statement was not even validly recorded inasmuch as the police gave a typed statement which was got signed by the petitioner. He was not asked whether he would like to make any statement nor was he administered any warning, as required by law. Thereafter the petitioner was remanded to judicial custody till February 22, 1977. Immediately after his having made the confessional statement on February 8, 1977 the petitioner was served with an order passed by the first respondent Shri V. K. Duggal, Additional District Magistrate, New Delhi, to the effect that as the said Shri Duggal was satisfied that with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order, it was necessary to make an order directing that the petitioner, be detained in the Central Jail, Tihar, New Delhi. This order was made by Shri Duggal in exercise of the powers conferred on him by sub-clause (ii) of Clause (a) of subsection (1) of Section 3 of the Act. On the same day Shri Duggal also made a declaration u/s 16A of the Act to the effect that it was necessary to detain the petitioner for effectively dealing with the emergency. In consequence, no grounds of detention were required to be given to the petitioner nor was he required to be given any opportunity of making a representation against his detention. On March 5, 1977 an order was passed by Shri K. P. Balakrishna, Deputy Secretary to the Government of India in the Ministry of External Affairs regarding that as the case against the petitioner in respect of a criminal offence was under investigation and as the petitioner was detained in custody on January 27, 1977 for a period exceeding 48 hours, Therefore he would be deemed to have been suspended with effect from the date of detention, i.e. 27th January, 1977; in terms of sub-rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and shall remain under suspension until further orders. It is common ground that the said case is still under investigation and no prosecution has yet been commenced in any court nor has any chargesheet been filed. The detention order dated February 8, 1977 was revoked by Shri Duggal on March 21, 1977. He also revoked the declaration that he had made u/s 16A of the Act. On the same date, however, Shri Duggal made another order in exercise of the powers conferred by sub-clause (ii) of clause (a) of sub-section (1) of Section 3 of the Act directing that the petitioner be detained with a view "to preventing him from acting in any manner prejudicial to the security of the State." This detention order was served on the petitioner on the same date in jail along with the order dated March 21, 1977 revoking the order of detention dated February 8, 1977. By this time the emergency declared by the President had been revoked and so, Section 16A of the Act had ceased to have any effect or operation. Consequently, it was incumbent on the detaining authority to furnish the grounds of detention to the petitioner, as postulated by Section 8 of the Act. The grounds for making the detention order dated March 21, 1977 though dated March 21, 1977, were actually served on the petitioner

on March 28, 1977. On March 29, 1977 the period of sixty days since the petitioner was arrested in connection with the aforesaid F.I.R. 26 of 1977 was completed. On April 6, 1977 the order of detention dated March 21, 1977 was again revoked by Shri Duggal. On April 6, 1977 Shri Duggal passed yet another order of detention in exercise of the powers conferred by sub-clause (i) of clause (a) of sub-section (1) of Section 3 of the Act directing that the petitioner be detained "with a view to preventing him from acting in any manner prejudicial to the security of the State" and the grounds of detention dated April 6, 1977 along with the detention order were served on the petitioner in jail along with the revocation order adverted to earlier on April 7, 1977. In the meantime an application for grant of bail by invoking the provisions of Section 167 of the Code of Criminal Procedure, 1973 was moved on behalf of the petitioner in the court of a Metropolitan Magistrate, New Delhi. On this application Shri P. K. Dham, Metropolitan Magistrate, New. Delhi, passed the following order :

"It has been prayed on behalf of the applicant that he be ordered to be released on bail in this case. At the very outset it be mentioned here that applicant Mahabir Prasad is not in custody in this case. His further judicial remand, as prayed by the prosecution, was not granted by this Court vide order dated 22-2-1977. When the accused was not produced and further remand was refused u/s 167(b) Criminal Procedure Code. it virtually amounts to discharge of the accused. The accused is no longer in custody in this case and as such there is no question of his bail. The bail" application is Therefore premature and is dismissed.

The petitioner states that despite the above order of the Metropolitan Magistrate he moved the Sessions Judge for grant of bail and he was enlarged on bail by the order dated April 22, 1977 passed by the Additional Sessions Judge, New Delhi. In between the passing of the order by the Metropolitan Magistrate and the Additional Sessions Judge, Shri Duggal had made the order dated April 18, 1977 revoking the order of detention dated April 6, 1977. That order was, however, not served on the petitioner till a few days later. Shri Duggal also passed the impugned order of detention on April 18, 1977 which reads as under:

"OFFICE OF The Additional District MAGISTRATE(S), DELHI. No. FM(M-1)/PA(S)/77/633 Dated 18-4-1977 Whereas, I, V. K. Duggal, Additional District Magistrate (South) Delhi, am satisfied with respect to Shri Mahabir Prashad son of Shri Jawala Prashad Mathur r/o A-23/191, Lodi Colony, New Delhi, that with a view to preventing him from acting in any manner prejudicial to the security of India, it is necessary to make an order directing that he be detained; Now, Therefore, in exercise of the powers conferred by sub-clause (i) of clause "(a) of sub-section (1) of Section 3 of the Maintenance of Internal Act, 1971 (26 of 1971), I, hereby direct that the said Shri Mahabir Prashad be detained and kept in the Central Jail, Tehar, New Delhi. Dated the 18th April, 1977. sd/- V. K. DUGGAL. Additional District Magistrate (South)- Delhi."

On the same date the grounds of detention were also signed by Shri Duggal which read as under .-

"OFFICEOF The Additional District MAGISTRATE(S) Delhi No. FM(M-1)./PA/ADM(S)/77/647 dated 18-4-1977 Grounds Of Detention Shri Mahabir Prashad son of Shri Jawala Prashad Mathur r/o A-23/191, Lodhi Colony, New Delhi is an anti-national "and has extra territorial loyalties. Considering him from acting in a manner prejudicial to the Security of India it is necessary to detain him u/s (I)(a) (i) of the Maintenance of Internal Security Act 1971 (26 of 1971). Following are the grounds of his detention : 1. That Shri Mahabir Prashad, employed in the office of the Minister for External Affairs, New Delhi was in collaboration with the agent of a foreign power and used to supply sensitive secret documents to him against payment. On receipt of this information the accused was arrested on 27-1-1977 in case Fir No. 26 dated 26-1-1977 u/Ss 3, 4, 5, & 9 Ics Act read with 120-B, Ps Srinivasपुरi, New Delhi. 2. That he made a confessional statement before Shri Kuldeep Singh, Mm, New Delhi on 8-2-1977 u/s 164 Criminal Procedure Code. 3. That according to his confessional statement, he was introduced to the agent of the foreign power in early 1972, when he was in the Ministry of Finance. The foreign agent allured him into passing on secret and sensitive documents to him against handsome payment. The accused acceded to the allurements and supplied confidential documents after removing them from his office to the foreign agent at short intervals against adequate payment. He continued to supply sensitive documents to the foreign agent even after his transfer to the Ministry of External Affairs in 1974. In all he received more than Rs. 4000.00 for this. 4. Since the accused has caused a considerable damage to the Security of India by supplying sensitive policy documents to the foreign agent, his detention is necessary in order to prevent him from acting in a manner prejudicial to the Security of India and India's relations with foreign powers. "In view of the above, it is considered essential to detain the said Shri Mahabir Prashad u/s 3(I)(a)(i) of the Maintenance of Internal Security Act, 1971. sd/- V. K. Duggal, 18-4-77 Additional District Magistrate (South) Delhi."

Curiously enough the revocation order dated April 6, 1977 and the impugned order of detention and the grounds both dated April 18, 1977 were served on the petitioner in jail on April 19, 1977. It will also be pertinent to note here that the opening paragraph of grounds of detention does not say in any intelligible language that the first respondent considers that the detention of the petitioner is necessary in order to prevent him from acting in any manner prejudicial to the security of India on the ground stated. Furthermore whereas the order of detention dated April 18, 1977 was made by the first respondent according to him on being satisfied that with a view to preventing the petitioner from acting in any manner prejudicial to the Security of India the grounds of detention state that it was necessary to detain the petitioner in order to prevent him from acting in a manner prejudicial to (a) the security of India and (b) India's relations with foreign powers.

(3) The petitioner contended that his arrest and detention was illegal, arbitrary and a capricious exercise of power. He also submitted that his continued detention was mala fide and violative of his fundamental right guaranteed by

Article 21 of the Constitution of India and denial of the statutory right of the proviso to Section 167(2) of the Code of Criminal Procedure. He, Therefore, prayed that the impugned order of detention dated April 18, 1977 be quashed, a writ of habeas corpus be issued to the respondents and he be ordered to be set at liberty.

(4) The contentions put forth by way of challenge to the impugned order of detention dated April 18, 1977 and the grounds of detention were as follows :

1.While the impugned order says that the reason of detention was that the petitioner was likely to act in a manner prejudicial to "the security of India", the grounds of detention as well as the affidavit of the detaining authority show that the petitioner was also detained in order to prevent him from acting prejudicially to "the relations of India with foreign powers". The detention order is invalid because: (a) The order itself makes no reference to "the relations of India with foreign powers", although that is one of the objectives mentioned in Section 3(a) (i) of the MISA; (b) no particulars at all have been furnished in the grounds of detention about the foreign powers relation with whom were likely to be prejudiced or about the documents which might have had the tendency to prejudice such relations. The ground is too vague for any effective representation.

2. It is said in the grounds of detention that the petitioner "is an anti-national and has extra-territorial loyalties"". This ground is (a) vague, as no particulars are given, (b) irrelevant to the object of detention, and (c) contradictory to the several statements in the grounds to the effect that the petitioner was induced by offer of money to pass secret documents to a foreign agent.

3.All the grounds are irrelevant because they do not show that any document which is alleged to have been passed to a foreign agent had a bearing on the security of India. It is wrongly assumed that every document which is claimed to be secret or sensitive has a bearing on India's security. Moreover, even if one such document which is alleged, to have been passed by the petitioner to a foreign agent had no bearing to the security of India, the impugned order would be unlawful. That being so, the non-mention of the nature of the documents and their relation to the security of India renders the detention order unlawful.

4.Each of the grounds mentioned in the order of detention is either vague or irrelevant or both, for reasons given below: Ground (1) No mention is made of the name of the agent, the name of the foreign power, specification of the documents, dates of passing the documents, amounts received, relevance of the document to India's security, etc. The arrest of the accused mentioned in this ground is irrelevant. Ground (2) The whole of this ground is irrelevant. Ground (3) This ground is irrelevant for the same reasons which are mentioned in dealing with Ground (1). Ground (4) The ground is most vague as it does not indicate "what policy documents were supplied, to the agent of which power they were supplied, when they were supplied, what damage was actually caused, what is meant by "policy documents" the supply of which had preiudiced India's

relations with foreign power, etc.

5.The impugned order was made carelessly and without application of mind, as is evident from the facts that (a) three previous orders were palpably defective ; (b) a part of the grounds of the last impugned order supplied to the petitioner is incomprehensible ; (c) no distinction is made by the detaining authority between a secret document and a document the disclosure of which may prejudice India's security etc.; and (d) no distinction is made by the detaining authority between " India's security" and "India's relations with foreign powers". (e) legal mala fides or had faith is evident on record.

6.The right of the petitioner u/s 10 of the Mesa of having his case referred to the Advisory Board within 30 days of his detention has been defeated by the impugned order and Therefore, the impugned order is invalid.

7.The fact that the petitioner has been suspended from 27-1-1977 and was no longer in a position to have access to official secret documents was totally ignored by the detaining authority in deciding that it was necessary to subject the petitioner to preventive detention. The order of detention was thus passed carelessly and is mala fide in law."

(5) The first respondent as already noticed is Shri V. K. Duggal, Additional District Magistrate (South), Delhi, the detaining authority. The second respondent is the Union of India, the third respondent is the Administrator of the Union Territory of Delhi and the fourth respondent is the Superintendent of the Central Jail, Tihar, New Delhi. Although the impugned order of detention and the grounds of detention were issued by the first respondent the other three respondents were arraigned as necessary parties because in the scheme of the Act the order of detention made by the first respondent would have to be confirmed by the third respondent and then reported to the second respondent who in its turn had to refer the matter to the Advisory Board. The fourth respondent is the person who had the custody of the petitioner by virtue of the impugned order of detention.

(6) Rule nisi was obtained by the petitioner and by way of return the respondents filed the affidavit of Shri V. K. Duggal and an affidavit of Shri Raghbir Singh, Inspector, C.I.D.(S.B.), Delhi. We were informed that Shri Raghbir Singh is the Investigating Officer in respect of F.I.R. 26 of 1977 which was lodged in Police Station, Srinivaspuri.

(7) Shri Duggal in his affidavit admitted that he made the various orders adverted to earlier and affirmed that the petitioner was detained by virtue of the impugned order dated April 18, 1977 which was passed by him on his personal bona fide satisfaction or) the material placed before him. He further admitted that the case of the petitioner was not referred to the Advisory Board as postulated by the various provisions of the Act as it was not required to be referred to the Advisory Board. He denied allegations of mala fides. Regarding the grounds of detention dated March 21, 1977, which were served on the

petitioner on March 28, 1977, he stated :

"ON21-3-1977, I had signed the order of detention but was not able to sign the grounds of detention dictated by me to the typist when I had to leave Delhi on an urgent casual leave. I did not wait for signing the communication conveying the grounds of detention because of the view that the same can be signed by the Additional District Magistrate (North) who had been assigned provisional charge of my post during my absence on leave. I could not return back to Delhi before the morning of 28th March, 1977 as I was obliged to be with my ailing wife. On my return to Delhi on 28-3-77, I was informed that the grounds of detention had to be signed by me as I was the detaining authority and could not be signed by the officer who was given temporary charge of my post as ADM(S). I then rushed to sign the grounds of detention and to have them delivered immediately thereafter to the petitioner.. . . "

He further stated that this fact was recorded on the file and would constitute sufficient reasons or exceptional circumstances within the meaning of Section 8 of the Act for not communicating the grounds of detention within five days. With regard to the change of object to be achieved in the various detention orders from "public order" to "Security of State" and again to "Security of India", Shri Duggal stated in his affidavit that on a consideration of the matter he was of the view that the activity sought to be prevented "more appropriately fell under the phrase security of India as "used in Section 3(1) (a) (ii)" and, Therefore, in the impugned detention order or in the earlier detention order he made the appropriate changes. Shri Duggal gave no Explanation as to why the revocation order dated April 16, 1977 was not served on the petitioner till April 19, 1977 and was served only along with the impugned detention order dated April 18, 1977. He asserted about the impugned detention order and the grounds Therefore that "the material information and particulars relating to the activities of the petitioner were carefully perused by me again and I was satisfied that it was necessary to detain the petitioner to prevent him from acting in any manner prejudicial to the security of India and India's relations with foreign powers". Shri Duggal did not explain why in the impugned order dated April 18, 1977 the only phrase used was "security of India" while in the grounds of detention dated April 18, 1977 the phrases, viz., "security of India" and "India's relations with foreign powers" were used. Shri Duggal also did not meet the contention of the petitioner in paragraph 15 of the writ petitioner vis-a-vis the effect of the order of the Metropolitan Magistrate dated April 7, 1977 to the effect that the petitioner stood virtually discharged. He also did not comment upon the effect of the grant of bail by the Additional Sessions Judge. In paragraph 18 of his affidavit Shri Duggal stated that he was given to understand that the petitioner has been placed under suspension from service. It is worth noting that the first respondent who is himself a government servant seems to be obvious of the existence and operation of sub-rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and must have known that the petitioner would be under deemed suspension after the expiry of 48 hours from

the time of his arrest on January 27, 1977. With regard to the petitioner's contention that the grounds of detention do not disclose the nature of the sensitive documents alleged to have been supplied by the petitioner to the agent of a foreign power and whether those sensitive documents were relevant to the security of India, Shri Duggal stated that the petitioner could not complain that the grounds of detention were vague inasmuch as "the petitioner who is himself aware of all other details which had not been set out in the grounds could not possibly find the grounds to be vague and was in no way denied an opportunity to make a representation against his detention." With regard to the petitioner's contention that since he had been arrested and had been suspended from Government service, he could not possibly in future act in a manner in which it is alleged he acted earlier, Shri Duggal in his affidavit stated as follows :

"IT is denied that a person against whom an Fir has been registered and who has been placed under suspension from Government service cannot at the same time be detained under MISA. The order of detention under Misa is not by way of punishment but only because if the petitioner remained at large, able to establish normal contacts with people, he was likely to indulge in the activities which he had been indulging in for some time and, Therefore, it was necessary that he be detained to prevent him from acting in such a manner."

(8) The affidavit of Shri Raghbir Singh, which it is not understood why it had been filed, brings out a curious fact. Shri Raghbir Singh, inter alia. deposed vis-a-vis the alleged confessional statement made by the petitioner as follows :

"the petitioner was produced before Shri Kuldeep Singh on 3-2-1977 itself. Shri Kuldeep Singh gave the petitioner the necessary warning and explained to him that he was not bound to make the confession. He was then gave further time to think over the matter and was sent to judicial custody in Tihar Jail. The petitioner was then produced before Shri Kuldeep Singh from the judicial custody on 8-2-1977. On 8-2-1977 again the M.M. warned him about the consequences of making a confession and after ascertaining that the confession was being made voluntarily and on the request of the petitioner after repeated opportunities of re-thinking had been given to him, the confessional statement of the petitioner was recorded. No typed copy of any statement was given to him as alleged by him and the confessional statement was recorded by way of questions put to the petitioner and answers given by him both of which were typed out by the typist of the court in the presence of the petitioner..."

The above deposition has been sworn to be and verified by Shri Raghbir Singh, as set out on facts true to his knowledge. It could be said if the verification is true that Shri Raghbir Singh was present in the court room of Shri Kuldeep Singh, Metropolitan Magistrate or at least could see and hear what was transpiring in the court room when the alleged confessional statement was recorded by the Magistrate. In these proceedings we are not required to comment upon the validity of the confessional statement but in the context of the allegations made by the petitioner such a deposition assumes some relevance. Section 3 of the Act

reads as under :

"3.Power to make orders detaining certain persons.- (1) The Central Government or the State Government may- (a) if satisfied with respect of any person (including a foreigner) that with a view to preventing him from acting in any manner prejudicial to- (i) the defense of India, the relations of India with foreign powers, or the security of India, or (ii) the security of the State or the maintenance of public order, or (iii) the maintenance of supplies and services essential to the community, or (b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to make arrangements for his expulsion from India, it is necessary so to do, make an order directing that such person be detained. (2) Any of the following officers, namely- (a) district magistrates, (b) additional district magistrates specially empowered in this behalf by the State Government, (c) Commissioner of Police, for Bombay, Calcutta. Madras or Hyderabad, (3) When any order is made under this section by an officer mentioned in sub-section (2), 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 authority making the order after five days but not later than fifteen days from the date of detention, this sub-section shall apply subject to the modification that for the words "twelve days" the words "twenty-two days" shall be substituted. (4) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as in the opinion of the State Government have a bearing on the necessity for the order."

This section empowers the Central Government or a State Government or District Magistrates or Additional District Magistrates specially empowered in this behalf by the State Government or the Commissioners of Police for Bombay, Calcutta, Madras and Hyderabad to pass orders of detention in respect of any person including foreigner provided certain conditions are fulfilled. These orders are to be passed on the subjective satisfaction of the named authorities and the subjective satisfaction must be that in order to prevent a person from acting in any manner prejudicial to (1) the defense of India, or (2) the relations of India with foreign powers, or (3) the security of India, or (4) the Security of the State, or (5) the maintenance of public order, or (6) the maintenance of supplies and services essential to the community, or (7) in the case of a foreigner with a view to regulating his continued presence in India or with a view to make arrangements for his expulsion from India, it is necessary to detain that particular person. If an order of detention has been made by any of the officers mentioned in sub-section (2) of Section 3 of the Act it is imperative that 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 of detention shall remain in force for more than 12 days after the making thereof unless in the meantime it has been approved by the State Government. The State Government is then obliged by virtue of sub-section (4) of section 3 to look into the matter and if it approves the order of detention made by the named officer or even when the State Government itself makes an order of detention to communicate to the Central Government within seven days a report of the fact with the grounds on which the order of detention has been made and such other particulars as in the opinion of the State Government have a bearing on the necessity for making the order. Thus, we find that the Parliament has provided checks and counter-checks to ensure that the provisions of the Act are strictly complied with. It may also be noticed that specific heads have been indicated by the Act which alone are relevant to be taken into consideration by a detaining authority and each head, e.g. security of India or the relations of India with foreign power is & distinct head and the impugned activity of a person who is to be detained must have relevance to the head mentioned in Section 3 (1) (a) and the material or grounds must relate to and be relevant for preventing the mischief to any one of the heads mentioned in the said provision. The detaining authority is thus required to apply his or its mind as to whether the impugned activity of a person sought to be detained is prejudicial to defense of India or the relations of India with foreign powers or security of India or any of the other stated heads.

(9) Section 8 makes statutorily imperative and lays down the time within which the constitutional requirement of Article 22(5) must be complied with. It lays down that when a person is detained in pursuance of a detention order envisaged by Section 3 the authority making the order shall as soon as may be but ordinarily not later than five days and in exceptional circumstances for reasons to be recorded in writing not later than 15 days from the date of detention communicate to the person detained the grounds on which the order of detention has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government. Sub-section (2) of section 8 lays down that the detaining authority may not disclose facts to the detenu which it considers to be against public interest to disclose. It may be noted that in the present case no such privilege had been claimed either in the impugned detention order or the grounds communicated to the petitioner or in the affidavit filed by way of return to the rule nisi.

(10) Mr. K. N. Kataria, learned counsel appearing for the respondents, very fairly placed before us the record of the detaining authority, Shri Duggal. We shall be adverting to this record so far as is necessary for the disposal of this case. Indeed, " once we have seen the record of the detaining authority it becomes wholly unnecessary for us to deal with all the points urged on behalf of the petitioner for, in our opinion, the impugned order of detention and the grounds of detention had to be quashed even on the points which we will deal with.

(11) Article 21 of the Constitution of India enshrines that salutary right without which there can be civilised society. It lays down that no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law. This article, Therefore, enshrines the concept of rule of law which is the basis of any democratic social structure. Article 22(1) is complimentary to Article 21 and envisages that in a society governed by the rule of law persons may be deprived of personal liberty but if they are so deprived they are not deprived on him or fancy but have to be given cogent grounds disclosing why they have been so detained or arrested and have the right to consult and be defended by a legal practitioner of their choice. Article 22(2) makes it imperative on the executive that if it arrests a person, that person is produced before at Magistrate in the shortest possible time. Article 22, clauses (3), (4), (5) and (6) deal with deprivation of personal liberty not in normal circumstances or under normal penal laws but otherwise under laws which have come to be known as preventive detention laws. These clauses also provide for certain safeguards and rights and obligations qua the personal detaining and the person detained. Section 8 of the Act, as observed earlier, makes statutory provision for complying with the requirements of clause (5) of Article 22 of the Constitution and that the grounds of detention in the case of a preventive detention under the preventive detention Law like the Act must be communicated to the detenu within the specified time and he be afforded a right and opportunity of representation.

(12) The law regarding preventive detention is now well-settled. It is not necessary to dilate on it to any great extent. All the same, a few salient features may be noticed by us.. First of all, the order of detention must be bona fide and should not suffer from * the vice of mala fides or bad faith. Secondly, the order must be made on the subjective satisfaction of the authority which makes the order and not on the dictate of a superior authority or any other person. Thirdly, it must be shown that there was necessity for making the order in the circumstances of the case. Fourthly, the person detained must be given all the material facts and particulars which constitute the grounds of detention. Fifthly, the grounds of detention must have relation to the purpose for which the detention has been ordered.

(13) In *Shearer and another v. Shields*, 1914 A C 808, the House of Lords clearly brought out the distinction between malice in fact and malice in law. Viscount Haldane L. C. in his speech spoke thus :

"BETWEEN malice in fact and malice in law there is a broad distinction which is not peculiar to any particular system of jurisprudence. A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, Therefore, be guilty of malice in law, although, so far as the state of his mind is concerned, he acts ignorantly and in that sense innocently. Malice in fact is quite a different thing; it means an actual malicious intention on the part of the person who has done the wrongful act, and it may

be, in proceedings based on wrongs independent of contract, a very material ingredient in the question of whether a valid cause of act can be stated,"

V. R. Krishna Iyer, J. in *Bhut Nath Mete Vs. The State of West Bengal*, notices with approval the above observations of Viscount Haldene L. C. Dealing with the preventive detention laws his Lordship observed :

"We are concerned, as earlier stated, only with some aspects of the preventive detention jurisprudence, in the present case, and we confine ourselves to them. The District Magistrate should be bona fide satisfied about the prejudicial activities of the detainee. Absence of bona fides in this context does not mean proof of malice, for an order can be mala fide although the officer is innocent. The important point is that the satisfaction of the public functionary, though subjective, must be real and rational, not colourable, fanciful, mechanical or unrelated to the objects enumerated in Section 3 (1) of the Act."

(14) It is obvious on a reading of Section 3 of the Act that there are several authorities who are empowered to make the order of detention. It is implicit, Therefore, that the order must be made on the personal bona fide satisfaction of the authority making it and no one else. An authority entrusted with power or discretion must not in the purported exercise of that power act under the dictation of another body or person. It may be true that sometimes authorities entrusted with statutory discretion or power may be obliged to take considerations of public policy and in some context the policy of a Minister or of the Government as a relevant factor in weighing those considerations but this does not absolve them from their duty to exercise their personal judgment in individual cases. An authority invested with power must exercise it for the purpose for which it has been conferred and not for any collateral purpose. One may only refer in this connection to the decision of the Court of Appeal in the *Queen v. Lord Leigh and others*, 1897 (1) Q.B.D. 132 and *Earl Fitzwilliam's Wentworth Estates Co. Ltd- v. Minister of Town Country Planning* and another, 1951 (2) KBD 284. It will be worth repeating the words of Lord Denning M. R. in *Regina v. Governor of Brixton Prison*, 1963 (2) Q.B.D. 243. To quote: ".....The court must investigate whether the Home Secretary has exercised his discretion without pressure by the United States authorities. If the exercise of his discretion has been subject to pressure the deportation order is a sham. On the facts of this case (of) the cause of the deportation order was the pressure of the United States authorities. Reliance is placed on the following facts : there was no denial of the truth of what "The Times" said in its report of August 8, 1962; the Home Secretary repeatedly gave directions under article 8 to 21 at to remove the applicant to the United States although he knew that the "airline would not comply with them, thereafter he did not exhaust his powers under article 8 and direct the airlines to remove the applicant to another destination. Had it been the Home Secretary's policy simply to expel the applicant he could have deported him to Czechoslovakia which was willing to receive him or he could have sent him back to Israel where the airlines was willing to transport him. Throughout the

Home Secretary has insisted on removing the applicant to the United States. The only rational Explanation of the Home Secretary's conduct is that he was seeking to appease American pressure for the surrender of the applicant. That is further borne out by the press statement of August 11, 1962, when the order was made, and by the other events of that day. The Home Secretary has been motivated by a desire to surrender the applicant to the United States Government. He has resorted to the expedient of a deportation order to achieve that illegal purpose. On the evidence the detention of the applicant is prima facie unlawful. Hence, the deportation order is a sham."

(15) The necessity of invoking the drastic provisions of preventive detention is something which a detaining authority must always keep in mind. It has to be borne in mind that but for clauses (3) to (6) of Article 22 of the Constitution and item 9 in List I or Item 3 in List III of the Seventh Schedule, preventive detention would be in derogation of the fundamental rights guaranteed by Article 21. It is, Therefore, absolutely necessary for a retaining authority to satisfy itself that it is necessary to invoke the provision of preventive detention law in a particular case. This hardly needs emphasising. The courts in India have repeatedly stressed that if preventive detention has to be resorted to the constitutional imperatives and the statutory requirements must be fulfilled. Therefore, in answer to a rule nisi it is obligatory on the detaining authority to show that the circumstances of the case made it necessary to detain a particular person under the preventive detention laws rather than proceed against him under the ordinary laws of the land. We are reminded of what V. R. Krishna Iyer, J. has said in Bhut Nath Mate's case, above referred to :

"BEFORE getting to grips with the contentions we may indicate the constitutional dimensions of the freedom of which the Judges are, in part, sentinels on the quiver. Civil liberty a constitutional guarantee, is a strange bed-fellow with detention without trial, a British bequest. Begun from the days of the East India Company, our freedom fighters, including the Father of the Nation, have endured its repressive impact and so when the sombre, colonial story came to a close, our founding fathers enshrined freedom of the person as a fundamental right. But as realists they knew that we became free amidst blood bath and chaos and the environs of belligerency. The delicate balance between security and liberty had to be kept, conscious that, in the contemporary world, war is to peace near allied and "thin partition do their bounds divide" and the defenses of a nation can be destroyed and the morale of its people broken not only by external aggression but also by internal disruption. The sensitive underside of the nation can be wounded by those who break up public order, breach State security, blow up essential supplies and services; and so. as an unhappy necessity, preventive detention, apart from punitive prison term, was recognised and provided for. Being committed to the rule of law, a primary article of faith, the framers of the Constitution mistrusted uncanalised power in the Executive and wrote into the paramount law provisions regulating preventive detention and proclamations of emergencies. After all, Lord Acton's dictum that absolute power corrupts

absolutely was for them no new knowledge, and Lord Atkin's great words in *Liversidge v. Anderson*, 1942 AC 206 that amid the clash of arms the laws are not silent, that they may be changed, but they speak the same language in war and peace, reverberated in their ears. Therefore, where freedom is in peril and justice is threatened the citizen shall receive the fullest protection from the Court within the four corners of Art. 22, benignantly stretched, and the safeguards of the Act, liberally interpreted-within legitimate limits. The worth of the human person is a cherished value carefully watched over by the Court. Such is the judicial perspective in the application of Article 22 of the M.I.S.A., which it contains, controls and animates."

(16) Thus, the grounds supplied to the detenu under section 5 of the Act and the affidavit filed by way of return to the rule nisi must clearly show the necessity in terms of the circumstances which made it necessary to invoke the provisions of Section 3 of the Act. We may also refer to the observations of Beg, J. (as the Hon'ble the Chief Justice of India then was) in *Krishna Lal Dutta Vs. The State of West Bengal*, . It was laid down that:---

"DEPRIVATION of a citizen's personal liberty is a serious matter. Those exercising drastic powers of preventive detention, which are entrusted to them for protecting valuable social and public interest, should at least take care to ascertain whether a detention is being ordered in a manner and on materials, which disclose that it is really "necessary" to order a detention with a view to preventing the person to be detained from acting in any manner prejudicial to the objects for which preventive detention may be lawfully ordered. If they misuse these powers, by acting unreasonably, capriciously, arbitrarily, or in a mala fide manner, public confidence in them is shaken."

(17) We have already noticed that Section 5 of the Act complementing Article 22(5) of the Constitution makes it obligatory that the grounds of detention be communicated to the detenu. This means? We need not search very far for in *Khudiram Das Vs. The State of West Bengal and Others*, , the Supreme Court has laid down what is the meaning of the term "grounds". Bhagwati, J., who spoke for the Court said:

"THE constitutional imperatives enacted in this article are twofold : (1) the detaining authority must, as soon as may be, that is, as soon as practicable after the detention, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making a representation against the order of detention. These are the barest minimum safeguards which must be observed before an executive authority can be permitted to preventively detain a person and thereby deprive his right of personal liberty in the name of public good and social security. But, what is the content of these safeguards? What does the word "grounds" mean? Does it mean only the final conclusions reached by the detaining authority on which alone the order of detention can be made, or does it include the basic facts and materials from which the conclusions justifying the order of detention are drawn by the detaining authority? What is the inter-

relation between the requirements of the first and the second safeguards? Is the efficacy of the second safeguard violated by non-observance of the requirements of the first safeguard? If all the grounds which weighed with the detaining authority are not communicated to the detenu, does it constitute merely a breach of the first safeguard or does it also involve the violation of the second?

(18) Lastly, the grounds supplied to the detenu must be relevant to the purpose sought to be achieved. In other words, if the purpose of detention is, for example, to prevent a person from acting in any manner prejudicial to the security of India then the grounds must show that the past activity was such which endangered the security of India. If the grounds show and we again take an example that the alleged activity was detrimental to the maintenance of supplies and services essential to the community, then it cannot be said that the said grounds would be relevant for detaining a person to prevent him from acting in any manner prejudicial to the security of India.

(19) Applying the above tests we find that the impugned order and the grounds of detention cannot be sustained. Here, we may refer first to some of the papers on the record of the detaining authority which was shown to us. It may be remembered that the alleged confessional statement was made by the petitioner before a Metropolitan Magistrate on February 8, 1977, and the first detention order u/s 3 of the Act as well as the declaration u/s 16A of the Act was made by respondent No. 1 on that date. Looking through the file of that detention order we found that a communication was sent by the Special Secretary (Home), Delhi Administration to Shri B. K. Goswami, District Magistrate, Delhi, on February 8, 1977, forwarding therewith copy of a letter dated February 7, 1977, from Shri S. C. Vaish, Director, Government of India, Ministry of Home Affairs regarding the detention of the petitioner under the Act. The communication of the Special Secretary (Home), inter alia, read :

"I am desired to send herewith a copy of d.o. letter.....dated 7th February, 1977 from Shri S. C. Vaish, Director, Govt. of India, Ministry of Home Affairs regarding detention of Shri Mahabir Prasad under MISA, 1951. It is requested that immediate action may kindly be taken for the issue of detention order in respect of the aforesaid individual along with the necessary declaration u/s 16-A of the Act *ibid*. You may also kindly ensure that the detention order and the declaration are served on the detenu and he is apprehended on 9th February, 1977 positively. An intimation after doing the needful may kindly be sent to this Administration for transmission to the Govt. of India. Kindly treat this as most urgent."

(20) The communication dated February 7, 1977 sent with the above letter, inter alia, read: ".....He is scheduled to make a confessional statement before the Magistrate on February 8, 1977..... For obvious reasons it will not be possible to disclose the grounds of detention and hence Section 16-A of the Act will have to be invoked. We may be informed after this action is taken."

(21) On the above reference being received by the first respondent the file showed Shri Duggal made the following order on February 8, 1977 :

"OFFICEOF The Additional District Magistrate (S) Delhi Order Whereas, I, V. K. Duggal, Additional District Magistrate, Delhi, am satisfied with respect to Shri Mahabir Prashad son of Shri Jwala Prasad Mathur r/o A-23/191, Lodhi Colony, New Delhi, "that with a view to preventing him from acting in any manner prejudicial to the Maintenance NOW. Therefore, in exercise of the powers conferred by sub-clause (ii) of clause (a) of sub-scelion (1) of Section 3 of the Maintenance of Internal Security Act, 1971 (26 of 1971) as amended, I, hereby direct that the said Sliri Mahabir Prasad be detained and kept in the Central Jail. Tihar, New Delhi. Dated the 8th February, 1977. sd/- V. K. Duggai, 8-2-1977 Additional District Magistrate (South) Delhi."

The order was then prepared and put up and issued and served. It shows that the order of February 8, 1977 was issued under the dictate of superior authorities without any personal satisfaction of "the detaining authority. It also shows that there were no grounds or material before the detaining authority to have passed the impugned order. Section 16A of the Act may have dispensed with the necessity to comply with the provisions of Section 8 of the Act but in certainly did not dispense with the necessity for the existence of the material or the formulation of the grounds prior to the issue of a detention order u/s 3 of the Act. The very initiation of action under the Act was, Therefore, mala fide and an abuse of the powers conferred by the statute.

(22) With the revocation of the emergency the order dated February 8, 1977 was revoked by Shri Duggal vide his note dated March 21,1971. He had recorded:

"WITHthe lifting of emergency, 16A of the Mainternance of Internal Security Act has lapsed. Orders of detention in respect of Shri Mahabir Pershad is revoked and fresh detention order detaining him u/s 3(1) (a) (ii) be issued and put up for signatures Along with the grounds of detention received from Superintendent of Police, C.I.D. (SB), Delhi."

These orders were then put up as directed and the first respondent signed and issued the same. As is apparent from a reading of the order dated March 21, 1977 it was issued to prevent him from acting in a manner prejudicial to the security of "the State u/s 3C 1) (a) (ii) of the Act, The grounds supplied with this order were according to the record prepared by the superintendent og police and are based on an alleged confessional statement.The fact of the confessional statement possibly having been made in the presence of a police officer was not brought to the notice of the detaining authority. Bven the confessional statement was not placed before the detaining authority. A note was put up giving a gist of the alleged confession. From where the gist was obtained is not clear. It is not averred or shown that the gist of the confessional statement or the confessional statement was sent to or placed before the detaming authority. On the basis of the said confessional statement, as stated in the note adverted to earlier, the

order of detention was passed and the grounds of detention communicated. In the note shown to us or in the grounds it is not clear how the alleged activity was detrimental to the Security of the State. Be that as it may even this detention order was revoked and a fresh detention order dated April 6, 1977 was issued. According to the papers shown to us there was no material placed before Shri Duggal to either issue the revocation order or the fresh detention order of April 6, 1977. However, it was issued. This detention order again was for the purpose of preventing the petitioner from acting in any manner prejudicial to the security of State and was issued under the provisions of Section 3(1) (a) (i) of the Act. Inasmuch as the section quoted was wrong, the order was revoked and a fresh order was issued on April 18, 1977 substituting "security of India" for the phrase "security of State". The circumstances which led to so many orders being passed in succession were not explained.

(23) It is apparent on a reading of paragraphs 10, 11, 12, 17, 18 and 20 of the petition and the replies of the first respondent to the corresponding paragraphs that the approach of the first respondent was casual, and one can safely say that he was acting on the dictate of superior authorities. We cannot accept the affidavit of the first respondent that he issued the order on his personal bona fide satisfaction. This is apparent from the fact that whereas the impugned detention order of April 18, 1977 states that the petitioner be detained from acting in any manner prejudicial to the security of India, the grounds supplied to him state that his detention has been ordered to prevent him from acting in any manner prejudicial to the security of India as well as India's relations with foreign powers. We have already dilated on this aspect that it is incumbent upon a detaining authority to consider the material placed before it and satisfy itself that any or either or one or more of the heads are attracted in the circumstances of the case. The very fact that the detention order talks of security of India while the grounds talk of two objects to be fulfilled shows non-application of mind. Furthermore, we do not find from the grounds supplied any material which has been disclosed which could be said to be relevant to either security of India or India's relations with foreign powers. Supply of sensitive secret documents may be an offence under the Officials Secrets Act or under the Penal Code but it has to be shown that the nature of the documents were such which imperilled the security of India or imperilled its relations with foreign powers. If this is not shown the constitutional safeguards of Article 22(5) is jeopardised as also the statutory requirement of Section 8 of the Act. Furthermore, it was incumbent upon the detaining authority to give all material facts. As has been laid down in *Chaju Ram Vs. The State of Jammu and Kashmir*, and *Anal Chandra Banarjee Vs. The State of West Bengal*, full particulars have to be supplied while communicating the grounds of detention to a detenu. To quote the words of Hidayatullah, C. J. in *Chaju Rama's* case :

"WHERE the grounds of detention supplied to a detenu detailed under Jammu and Kashmir Preventive Detention Act, 1964, charged him with having conspired with some leaders of Democratic Conference and having incited landless people of Rs

pura Tehsil to forcibly occupy the land comprised in Nandpur Mechanised Farm and to have persuaded them to resist violently any attempt to evict them, but no details of the leaders of the Conference or of the persons incited or the dates on which he conspired or incited the squatters or the time when such Conference took place, were mentioned it would be impossible for anybody to make a representation against such grounds and "they must be held to be vague."

The ground "communicated in the present case thus suffer from serious defects, viz., lack of particulars and relevancy.

(24) It was urged that the nature of the documents was such that they could perhaps not be disclosed in greater detail. If that was so, then the provisions of sub-section (2) of section 8 should have been invoked which, as we have noticed earlier, have not been invoked either in the grounds supplied or in the affidavit filed in this court. We must, Therefore, hold that neither do the grounds contain the necessary particulars in terms of the dicta of the Supreme Court in the case of Khudi Ram nor are the grounds as supplied relevant and in conformity with the requirements of Article 22(5) of the Constitution.

(25) The case of respondent No. 1 was also that his satisfaction was based on the confessional statement made by the petitioner and he considered that to be sufficient to arrive at the satisfaction postulated by Section 3 of the Act. We have already commented upon this aspect earlier. The confessional statement was never placed before the detaining authority and the gist of the confessional statement in a note put up to the detaining authority was prepared from some document or from somewhere, the source of which is not disclosed. Indeed, it is apparent that the grounds of detention were prepared by the Police and have been repeated without application of mind by the first respondent. We are prompted to come to this conclusion by the note dated March 21, 1977 which we have already extracted above.

(26) We, accordingly, accept this petition and quash the impugned detention order dated April 18, 1977 issued by respondent No. 1 in respect of the petitioner u/s 3 of the Act as also the grounds communicated to the petitioner along with the aforesaid detention order also bearing the date April 18, 1977. We made the rule absolute and issue a writ in the nature of habeas corpus directing the respondents to set the petitioner at liberty.

(27) The learned counsel for the petitioner stated at the bar that in pursuance of the order made by the Additional Sessions Judge, Shri D. R. Khanna on April 22, 1977 the bail bond and surety has been given and accepted and, Therefore, there was no impediment to his being set at liberty in respect of the case, F.I.R. 26 of 1977, Police Station Srinivasपुरi, New Delhi. In that view of the matter, we direct that a writ be issued to the respondent to set the petitioner at liberty forthwith.