
(2012) 08 BOM CK 0147
In the Bombay High Court
Case No : Writ Petition No.1409 of 2012

Maya Ajit Satam

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 24-08-2012

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 14, 3, 3(1), 3(1)(i), 5(A)
Constitution of India, 1950 — Article 14, 19(1), 21, 22, 22(4)(b)
Customs Act, 1962 — Section 104, 108, 113(d), 2(39)

Citation : (2012) 114 BOMLR 2969

Hon'ble Judges : A.R. Joshi, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : Vikram Chaudhary assisted with D.S. Mhaispurkar, Sanjay Agarwal and Yogesh Rohira, for the Appellant; Rafiq Dada a/w Ms. A.S. Pai D.R.I. Mr. D.J. Khambatta, Advocate General, a/w Ms. M.H. Mhatre, APP, Mr. J.P. Yagnik, APP, for the Respondent - State, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This Petition, under Article 226 of the Constitution of India has been filed by the wife of the detenu Ajit Babu Satam, who has been detained pursuant to the detention order passed by the Principal Secretary (Appeals and Security), Home Department, Government of Maharashtra, and Detaining Authority, dated 14th March, 2012, in exercise of powers u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "the COFEPOSA Act" for short), with a view to prevent the detenu in future from smuggling goods. The detenu was served with the grounds of detention, which advert to the continual criminal activities of the detenu necessitating issuance of detention order, with a view to prevent him from indulging into the smuggling activities in future. It is stated that on the basis of specific intelligence that a syndicate headed by the detenu along with Deepak Jare was engaged in smuggling of red sanders to Dubai, the offices of

DRI intercepted three containers namely CLHU-8757522, BAXU-2594270 and BAXU-2643415 at Punjab Conware CFS, Nhava Sheva on 2nd September, 2011. The Containers were declared to contain 1883 Nos. of "Plastic Moulded Crates - Model No. 2001", "White Guava Pulp" respectively, but, were found to contain huge quantity of red sanders. The red sanders recovered from the three containers, totally valued `5.03 crores, was seized under the provisions of the Customs Act, 1962.

2. It is further stated that simultaneous search operations were carried out at the stated places, allegedly used as residence and also office premises of the detenu and his companions including the permanent room booked at Hotel Taj Lands end at Room No. 1902, Bandstand, Bandra (W) 400050. The searches led to seizure of unaccounted cash amount of aggregate `2,65,70,000/-, Skoda Fabia Car, five high end cars i.e. two Bentley and three Mercedes, laptops, computer CPU, 14 mobile phones and other incriminating items such as plain bottle seals without any markings, broken bottle seals, metal dies containing insignia of various Customs and Central Excise Officers, packets of metal fonts, stamping foils, numeric dies, etc.

3. The Detaining Authority then referred to the gist of the statements recorded u/s 108 of the Customs Act of detenu and his companions Deepak Jare, Prakash Shewale, proprietor of Govind Enterprise, Bhaskar Tate, Pradeep Kanur, Director of M/s. Excel Industries, Vijay Jayawant Kowley, Managind Director of M/s. Kowley Polymers Pvt. Ltd., Nitin Choughle, Alex Thomas Fernandes @ Anand, Pramod Kumar Singh, Sushyant singh, Suresh Singh, Shivanand Singh, the Petitioner Maya Ajit Satam etc. and other 10 persons i.e. Jayesh Natwarlal Panchal, Lalchand Choudhury, Ram Singh, Jairaj @ Saleem, Mehabub Allauddin Shaikh, Parshram Ambhi, Rajkumar Bbasappa Kumbhar, Rajesh Bhupal Rajput, Mohammed Jalaudin and Aadil abid Tapia, indicating complicity of the persons involved in the smuggling activities including the detenu himself.

4. On the basis of the material placed before the Detaining Authority, subjective satisfaction was formed by the Detaining Authority. We deem it apposite to reproduce the relevant extract of the grounds of detention, which reads thus:

21. You are the kingpin of the organized syndicate which indulges in smuggling of red sanders by using forged bottles seals of various Central Excise offices and Shipping Lines used for sealing the export containers. Red sanders is an endangered species and the same is covered under convention of International trade of endangered species of wild fauna and flora (CITES). Export of red sanders is prohibited under EXIM policy. You entered in to a conspiracy with Deepak Jare for smuggling red sanders to Dubai based buyers by replacing the original export consignments with red sanders and sealing the export containers with duplicate seals. You are the financier of the whole operation and used to procure red sanders from Chennai as admitted by you. The red sanders were stored in a godown located at Jainapur (a village near Kolhapur) with help of your associate Ravi Waikar. You used to arrange for the export containers

through Deepak Jare and other associates for stuffing red sanders. The associates of Deepak Jare viz. Prakash Shewale and Santosh Shinde @ Ravi used to place export orders with genuine Indian exporters with the condition that the inland transportation would be arranged by them. The export containers were stuffed with cover export goods on paper, such as Mango Pulp, Guava Pulp, Plastic crates etc, and sealed with Central Excise and Shipping Line bottle seals after due examination. However, enroute i.e. the journey from exporters' factory to Nhava Sheva, the containers were diverted to a godown in Talegaon or Jainapur, original seals were broken and consignment replaced with red sanders. After that the containers were sealed with duplicate seals having same serial numbers and markings. Thereafter, the containers were transported to Nhava Sheva. Since the containers were pre-examined and had same seal number, they were allowed to be exported after verification of the seal.

22. You had rented the godowns at Talegaon and Jainapur through your associate Ravi Waikar and had arranged the trailers and drivers for transporting the said containers through your other associate. You used to arrange remittances to the Indian exporter through your Dubai based buyers for the original export consignments so as to avoid any suspicion. You admitted to have exported around 40 containers of red sanders to Dubai in the past and had earned about Rs.40 Crores by such smuggling activity. The said earnings were laundered and invested in your construction business run in the name of Chetan Builders and had also procured eight high end cars.

Deepak Jare for arranging infrastructure and man power for smooth clearance of these containers.

23. You are a regular offender and in the past were involved in smuggling cases. You were earlier arrested in the year 2003 for fraudulent export of betel nut powder. You were again arrested in the year 2004 for your involvement in smuggling of red sanders and subsequently a detention order under COFEPOSA Act, 1974 was also issued in the year 2004 against you. You are detained under COFEPOSA Act, 1974 in the year 2008. You are a kingpin of the syndicate indulging in smuggling of red sanders to Dubai, thereby depriving the country of its natural wealth. You had entered in to a conspiracy with Deepak Jare for carrying out the smuggling activities. You used to finance the whole operation and used to procure red sanders from Bilal and Venkat based in Chennai. You were smuggling red sanders to Dubai based buyers. You hired the services of Ravi Waikar to take godowns on rent as well as to oversee the loading and unloading operations. You hired the services to arrange transportation of containers. You engaged Deepak Jare and his associates to book cover export consignments as well as to arrange duplicate seals. The modus operandi of your syndicate was to book export consignments with genuine Indian exporters. These consignments were cleared from the factory of the exporter after sealing under Central Excise supervision. However enroute to Nhava Sheva the seals were broken and original cargo was replaced with red sanders and resealed with

duplicate bottle seals by the syndicate. Apart from the smuggling of red sanders an environmentally endangered species and prohibited item for export, your syndicate had been tampering with bottle seals. The sanctity of sealed containers rests with the integrity of one time bottle seal, hence tampering with the same poses a serious threat not only to the security of the supply chain but also the country as this can be used to smuggle dangerous contraband in or out of the country.

24. You were arrested on 03.09.2011 and released on bail on 27.09.2011.

25. I have considered your retraction dated 03.09.2011 and 14.09.2011 and rebuttal filed by the Department on 19.09.2011 before passing the Detention order.

26. I have considered your representations dated 10.01.2012 and 10.02.2012 before passing the Detention Order.

27. I have also considered the Show Cause Notice dated 29.02.2012 before passing the Detention Order.

28. Considering the nature and gravity of the offence and the well organized manner in which you have engaged in such prejudicial activities, it is imperative that you should be detained under the provisions of COFEPOSA Act, 1974, with a view to prevent you from indulging in smuggling activities in future.

29. Your smuggling activities fall u/s 113(d) & (h) of the Customs Act, 1962.

30. While passing the detention order under COFEPOSA Act, 1974, I have referred to and relied upon the documents mentioned in the enclosed list which are also being served on you.

31. Whatever time was required for scanning the proposal containing about 2965 pages, and formulating the grounds for issuing the detention order, after receipt of the proposal, was for the purposes of better verification of the material placed before me and applying my mind and arriving at subjective satisfaction. Therefore, I am satisfied that the nexus between the date of incident and passing of the detention order as well as the object of your detention has been maintained.

5. The detenu's wife has approached this Court by way of this Writ Petition under Article 226 of the Constitution of India, praying for quashing of the detention order and for issuance of Writ against the Respondents to release her husband Ajit Bapu Satam forthwith and to be set at liberty. The grounds pressed into service to buttress the relief claimed in this Petition can be itemised as follows:

(A) The detenu has been denied right to make effective and equal representation in the proceedings before the Advisory Board, despite his specific written request, while allowing the officers to present their case, in support of the detention order. This was discriminatory, unreasonable and violative of Articles

14, 21 and 22 of the Constitution of India.

(B) The subjective satisfaction of the Detaining Authority is vitiated on account of lapses, callousness, casual approach, typographical error, unexplained omissions, and non application of mind. The detention order, therefore, is rendered, illegal, null and void and is hit by Articles 14, 21 and 22(5) of the Constitution of India. The side arguments with regard to this broad plea are:

(i) There is variance in the numbers mentioned in the detention order and in the grounds of detention served on the detenu. This reflects on the casual approach of the Detaining Authority in preparing and issuing the grounds of detention. Besides, this has led to confusion in the mind of the detenu, affecting his right to make effective representation at the earliest opportunity.

(ii) The subjective satisfaction is based on past events of arrest of the detenu in 2003, 2004 and preventive detention order in 2008 to indicate that the detenu was a habitual offender. This, however is without looking into the entire proceedings of the said arrest and more particularly the fact that the detention order passed against the detenu was already quashed.

(iii) Although the detenu made four representations to the Additional Chief Secretary, Home Department, prior to the issuance of detention order, i.e, on 10.01.2012, 10.02.2012, 18.02.2012 and 06.03.2012, only the first two representations have been considered by the Detaining Authority, as can be discerned from Paragraph 26 of the grounds of detention. The latter two representations have not been considered by the Detaining Authority at all, before passing or issuance of the detention order, though vital documents and would have had bearing on the subjective satisfaction.

(iv) The latter two representations, made by the detenu, dated 18.02.2012 and 06.03.2012 were not placed before the Detaining Authority for her consideration, though vital documents.

(v) Further, the latter two representations dated 18.02.2012 and 06.03.2012 were received in the office of the Detaining Authority on 26th March, 2012, after passing of the impugned detention order on 14th March, 2012. The Detaining Authority considered the said representations after about 24 days on 19th April, 2012. Thus, there was unexplained delay in deciding the said representations at the hands of the Detaining Authority.

(vi) Furthermore, although the Detaining Authority dealt with the latter two representations dated 18.02.2012 and 06.03.2012 on 19th April, 2012, the decision taken thereon was communicated at the detenu's residence only on 13th June, 2012.

The communication was dispatched after 51 days from the date of the decision on the said representations, i.e. on 9th June, 2012. The decision was not communicated to the detenu though available in Jail for service thereof. The continued detention, therefore, is vitiated.

(vii) The Detaining Authority has considered the proposal in piecemeal manner on different dates, whereas, the Detaining Authority was under obligation to formulate the grounds and pass the detention order after considering all the material together and at a time.

(viii) The Detaining Authority could not have formulated the grounds in short span of time of two days, considering the voluminous record of about 2965 pages.

(ix) There is strong reason to believe that the Detaining Authority has simply signed the Index forwarded to her. In that, in Paragraph No. 30 of the grounds of detention, the Detaining Authority claims to have referred to and relied upon the documents mentioned in the enclosed list. Moreover, the Index states as "list of documents relied upon in the proposal for detention of Shri. Ajit Bapu Satam under the COFEPOSA Act. 1974". While in other cases, the Detaining Authority has described the list of documents as "Accompaniments to the Detaining Authority"s letter No. and date "

(x) The documents mentioned at Page 1079 to 1202 of the compilation served on the detenu are totally blank. Page Nos. 1213 to 1216, 1220 and 1222 to 1325 are copies of the blank pages of the register. Even these pages have been stamped by the Authorities as legible. That presupposes that the Detaining Authority has not sifted the irrelevant blank pages from the other material, while recording her subjective satisfaction. That is indicative of the subjective satisfaction being sham and not genuine.

(xi) The copy of the same Judgment of Supreme Court has been included at six different places, i.e. at Page Nos. 2149, 2156, 2369, 2381, 2392 and 2439. That reflects about the casualness of and non application of mind by the Detaining Authority.

(xii) The grounds of detention do not reveal as to whether the Detaining Authority was alive to the fact as to whether any prosecution has been launched or contemplated to be launched against the detenu.

(xiii) Further, the Detaining Authority has not considered the crucial aspect, as to whether the ordinary law of the land was sufficient and recourse to preventive detention was not the only option available qua the detenu.

(C) The Respondents have not claimed protection of Section 5(A) of the Act, in the affidavits filed to oppose this Petition. In any case, the detention order in the present case is based on solitary ground, in which case, Section 5(A) will be of no avail.

(D) The impugned detention order cannot be supported by the Respondents on the argument of no prejudice caused to the detenu. Instead, the Court should lean in favour of the detenu, if it is demonstrated that the omissions or commissions of the Authorities concerned are unexplained. (E) It is not open to the Respondents to deprive the detenu of a ground otherwise available to the

detenu merely on the technical argument of imperfect pleadings or no such ground has been specifically urged in the Petition, while dealing with the Habeas Corpus Petition.

6. The Respondents have filed reply affidavits to counter the allegations made about the acts and omissions of the Authorities and the grounds urged by the Petitioner. The Learned Advocate General appearing for the Detaining Authority and Counsel for the Respondents, during the arguments, have attempted to demonstrate that each of the abovesaid ground urged by the Petitioner is devoid of merits. Both sides have relied upon number of decisions of the High Courts and of the Supreme Courts. We would advert to the arguments and said decisions while separately dealing with each of the grounds referred to above.

7. We shall now revert to the first ground urged before us. For considering the said contention, we would deem it apposite to reproduce amended ground (P) of the Writ Petition. The same reads thus:

(P) That, the detenu was informed in the Grounds of Detention, that he can seek assistance of any friend who is not a legal practitioner during the course of hearing of the Advisory Board. Thereafter vide letter dated 4.5.2012, he was again informed by the Secretary, Advisory Board that he can take the assistance of a friend at the time of interview before the Advisory Board. A copy of the said letter dated 4.5.2012 is hereto annexed and marked as EXHIBIT-J. This letter was received by the detenu in the evening of 7.5.2012. On 15.5.2012, the detenu when produced before the Advisory Board, submitted a representation dated 15.5.2012, wherein he informed that being in custody he could not contact any friend for the said purpose. He further informed that he had learnt that the Advisory Board also permits representation through Advocate instead of a friend, however it was not possible for him to arrange for any advocate to represent him on that day itself. Therefore, a specific request was made by him in para 4 thereof, for granting adjournment of hearing to any other date as may be convenient to the Hon'ble Advisory Board to enable the detenu to have proper and effective hearing. Hereto annexed and marked as EXHIBIT-K is a copy of the said representation dated 15.5.2012. The officers of Revenue were present on that date, one of them being Senior Intelligence Officer Shri Hattangadi, who represented case of the Sponsoring Authority before the Advisory Board. Two other detenus were also represented on the said date by their Advocates. There was sufficient time left in completion of 11 weeks as prescribed in section 8(c) of the COFEPOSA Act, 1974. There are several instances where the Advisory Board has adjourned the hearing. The Advisory Board however failed to consider this genuine request of the detenu for adjournment of hearing for the said purpose of having effective opportunity, and without assigning any justifiable reason proceeded to give a report against the detenu, without affording him an effective opportunity of hearing and without properly dealing with his representation. Consequently, the petitioner received on 1.6.2012, order dated 28.5.2012 communicating him the confirmation by the State Government of the impugned

detention order u/s 8(f) of the COFEPOSA Act, 1974. A copy of the said Confirmation Order dated 28.5.2012 is hereto annexed and marked as EXHIBIT-L. The petitioner submits that failure of the Advisory Board in properly considering the request of the detenu made in the above peculiar circumstances, has rendered the detention illegal, null and void on the vice of Article 14 and 21 of the Constitution of India.

(emphasis supplied)

8. In the context of this ground, reliance was placed on the notice received from the Secretary, Advisory Board, dated 4th May, 2012. The same reads thus:-

GOVERNMENT OF MAHARASHTRA

Speed Post No.PSA-1012/05/COFEPOSA Board/SPL-10 Advisory Board constituted under the COFEPOSA ACT 1974 C/o Home Department (Special) New Administrative Building, 12th floor, Mantralaya, Mumbai 400 032. Dated the 4th May, 2012.

To

Shri Ajit Bapu Satam,

(Through the Superintendent, Nashik Road Central Prison, Nashik.)

I am directed to state that your case has been referred to the Advisory Board by Government in the Home Department (Special), for review and the date of hearing before the Advisory Board is fixed on 15th May, 2012 in room No.47, Second Floor, High Court Building, Mumbai. In the meantime, if you wish to make a representation against your detention under the COFEPOSA Act, 1974, you may please to do so and address it to the Chairman of the Advisory Board immediately. Such representation may please be forwarded to quadruplicate to the Secretary, Advisory Board on his address mentioned above and should be submitted through the Superintendent of the Jail where you have been detained. If you wish, you can also take the assistance of your friend and examine witness if any and keep him/them present at the time of your interview before the Advisory Board.

(Deepak Kharat) Secretary, Advisory Board, COFEPOSA Act, 1974, Home Department (Special).

(emphasis supplied)

9. In the context of this ground, it may be useful to now reproduce the relevant portion of the written representation given by the Petitioner, when he appeared before the Advisory Board on 4th May, 2012. The same reads thus:

4. The detenu submits that in the grounds of detention it was informed that I can seek assistance of any friend who is not a legal practitioner during the course of hearing of the Advisory Board. Thereafter, vide letter dated 4-5-2012 I was again informed by the Secretary, Advisory Board that I can take the assistance of a

friend at the time of my interview before the Advisory Board. However, being in custody I could not contact any friend for the said purpose. Now, I have learnt that the Advisory Board also permits representation through Advocate instead of a friend, however it was not possible for me to arrange for any Advocate to represent me today itself. I therefore seek adjournment of this hearing to any other date as may be convenient to Your Honours to enable me to have proper and effective hearing.

5. I say that grave prejudice have been caused to me due to denial of earliest opportunity to make effective representation against the impugned detention order, for various reasons as stated hereinabove.

6. It is submitted that the detention order is thus vitiated for being violative of Article 14, 21 and 22(5) of the Constitution of India.

PRAYERS

7. It is therefore prayed that -

(i) Suitable report may please be forwarded to the State Government for revocation of the impugned detention order No.PSA-1211/CR-88/SPL-3(A) dated 14-03-2012,

(ii) Any other direction as deemed fit in the interest of justice.

(emphasis supplied)

10. We shall now refer to the reply filed by the Secretary to the Advisory Board. He has stated that he was personally present at the meeting of the Advisory Board which was held on 15.5.2012, when the detenu personally handed over the representation dated 15.5.2012 addressed to the Chairman of the Advisory Board. The Advisory Board thereafter heard the detenu himself and went through the representation of the detenu. The Advisory Board then submitted its report/opinion which was forwarded to the Home Department on 23.5.2012. It is further stated that the detenu was informed vide letter dated 4.5.2012, which was received by the detenu on 7.5.2012 whilst in Nashik Prison. In other words, the detenu was informed well within the stipulated period, that is, before 9 days of the meeting of the Advisory Board. The detenu was personally present through jail alongwith the typed representation dated 15.5.2012 and was heard in person by the Advisory Board. His request as well as the representation were duly considered by the Advisory Board and only thereafter the report/opinion of the Advisory Board was prepared and forwarded to the State Government.

11. We shall now revert to the grievance of the petitioner as articulated in the amended ground (P). The petitioner asserts that the detenu submitted his written representation dated 15.5.2012 to the Advisory Board in which the detenu had mentioned about his inability to contact any friend after receipt of the grounds of detention or the communication dated 4.5.2012 about the date of hearing before the Advisory Board. He has then mentioned that he has learnt

that the Advisory Board permits detenus to be represented through advocate instead of a friend. However, he was not able to arrange for any advocate to represent him on the date of hearing. For that reason, in the said representation, in para 4, it is clearly stated that the hearing be adjourned to any other date as may be convenient to the Advisory Board to enable him to have proper and effective hearing.

12. Notably, the petitioner has stopped at that - without asserting further that the detenu, in fact, had made oral request to the Advisory Board for adjournment on that or any other ground; and that the Advisory Board erroneously rejected the request so made. This omission, in our opinion, cannot be said to be unintentional one. For, no such oral request was made before the Advisory Board on the date of hearing. Instead, the detenu chose to argue himself. Further, the prayer clause articulated in the written representation, which has been extracted above, was not for adjourning the hearing. From the reply filed by the Secretary of the Advisory Board, it is obvious that the detenu personally appeared before the Advisory Board and after handing over the written representation chose to argue himself. This fact is also reinforced from the noting made in the original file / report of the Advisory Board. Thus, there is nothing to indicate in any contemporaneous record that the detenu, in fact, orally requested the Advisory Board to adjourn the hearing as such, except his statement in para 4 of the written representation. In other words, the detenu having chosen to consciously and unconditionally proceed with the hearing before the Advisory Board on 15.5.2012 in spite of the point made in para 4 of the written representation, it is not open to him or any person to make grievance that the Advisory Board could not have proceeded with the hearing on 15.5.2012. Thus, there is no substance in the plea articulated in the amended ground (P) making grievance about Advisory Board not adjourning the hearing on 15.5.2012.

13. Be that as it may, the other grievance which can be discerned from the amended ground (P), is that, the Sponsoring Authority was represented by the Senior Intelligence Officer before the Advisory Board to defend the detention order. It is then stated that two other detenus on the same day were represented by their advocates before the Advisory Board. Once again, the petitioner has stopped at that without asserting further that the detenu had requested the Advisory Board to give him opportunity to engage advocate to espouse his cause. On the other hand, as is noticed from the reply affidavit filed by the Secretary of the Advisory Board and the noting made in the original file of the Advisory Board, it appears that the detenu presented the written representation and consciously and unconditionally proceeded with the arguments himself without asking for adjournment. We have already dealt with this aspect hitherto. For the same reason, it would follow that it is not open to the petitioner to now argue that the Advisory Board ought to have adjourned the hearing or has hastened the hearing by not allowing the detenu to engage advocate even though the Sponsoring Authority was represented by Senior Intelligence Officer.

14. To get over this position, it was argued that notices sent to other detenues clearly informed them that in the event the Sponsoring Authority is represented by officers of revenue, in that case, the detenu would be free to engage advocate to represent him during the hearing before the Advisory Board. Notably, copy of the stated notice has not been placed on record but was tendered across the Bar. The Counsel for the respondents have rightly pointed out that the said notice has been issued by the office of the Government of India and not the present Advisory Board. Suffice it to observe that variance in the two sets of notices issued by different Offices/Authorities cannot be the basis to hold that there was any procedural non-compliance during the hearing before the Advisory Board which was so fatal as to vitiate the entire action. Moreover, we find force in the argument of the respondents that the petitioner concedes that the detenu had noticed that the Advisory Board had permitted other two detenues to be represented by their advocates during the hearing on the same day. If so, there was no reason as to why the same Advisory Board would not have permitted the present detenu to engage advocate, if such request were to be made by him. Instead, the present detenu after handing over the written representation consciously and unconditionally elected to argue himself and did not make any request for adjournment. It would have been a different matter if the Advisory Board was to reject the request for adjournment and/or permission sought by the present detenu to engage advocate to represent him before the Advisory Board. That is not what is pleaded or has happened in the present case. In the peculiar facts of the present case, therefore, if anyone is to be blamed, it is the detenu himself for not exercising option of praying for adjournment and to seek permission from the Advisory Board to engage advocate to represent him during the hearing.

15. The argument of the petitioner, however, is that, it is not as if there was no sufficient time with the Advisory Board to submit its report to the State Government. The three months period for submission of its report was to end on 18.6.2012. Moreover, it was the bounden duty of the Advisory Board to inform or apprise the detenu who was appearing in person that he may consider of engaging advocate as the Department / Sponsoring Authority was represented by Senior Intelligence Officer. This argument, if we may say so, is, begging the question. We say so because the detenu was aware of the fact that the other detenues were allowed to engage advocate to represent them before the Advisory Board. In spite of that, having chosen to hand over written representation and argue his case personally, now, he or any one espousing his cause cannot turn around and find fault with the procedure adopted by the Advisory Board. We may observe that we are dealing with a detenu, who was detained pursuant to preventive detention order even in the past and was fully familiar with the procedural aspects. That is reinforced from the fact that he had sent four successive well articulated representations - raising all possible legal issues - even before passing of the detention order directly to the Authority competent to consider representation after passing of the detention order by the Detaining

Authority. What is intriguing to note is that each of these letters sent by the detenu pointedly deal with the drawbacks in the proposal for preventive detention submitted by the Sponsoring Authority. On what basis the detenu became aware about the contents of the proposal of the Sponsoring Authority is a million dollar question? In fact, in the companion writ petition of the co-detenu (Deepak Jare), being WP (Cri.) No.1884 of 2012, who was detained alongwith the present detenu, it has been explicitly pleaded that he was given copy of the proposal of the Sponsoring Authority by the present detenu who is the kingpin of the gang, on the basis of which even he had made similar representations on the same dates to the Authority competent to consider representation after passing of the detention order by the Detaining Authority, before issuance of the preventive detention order against him. Photocopy of the proposal of the Sponsoring Authority was produced before us by the co-detenu in the abovesaid companion Writ Petition, during the hearing. In that Petition, he has further asserted that the copy of the said proposal submitted by the Sponsoring Authority was given to the present detenu (Ajit Bapu Satam) by a Senior Officer in the office of the Sponsoring Authority. This, if true, is a serious matter unravelling the leakage of the detention proposal by the officials, which, must be thoroughly enquired into and taken to its logical end by the Department. Suffice it to note that the contents of the letters sent by the detenu even before the issuance of detention order by the Detaining Authority were rich in contents, which details, ordinarily would not be known to any one other than the Sponsoring Authority or the Detaining Authority, unless leaked by the insider in their office. This is indicative of the resourcefulness of the detenu and his reach; and his attempt to deflate the proposal of preventive detention to render it still born. To put it differently, such resourceful detenu cannot be allowed to find fault with the procedural matters under consideration, especially having failed to make oral request for adjournment or permission to engage Advocate and instead misleading the Advisory Board in believing that he intends to proceed with the hearing in person.

16. Be that as it may, when the detenu appeared before the Advisory Board on 15.5.2012, pursuant to the notice of hearing dated 4.5.2012, received by him on 7.5.2012, he already had a detailed, well articulated, typed representation dated 15.5.2012 running into around 5 pages, which was obviously prepared under legal advice. Most of the grounds now urged in this petition were already taken in the four letters sent by the detenu before issuance of the detention order as also included in the representation made to the Advisory Board on 15.5.2012. With this background of the detenu, coupled with the fact that the detenu having consciously and unconditionally chosen to forego his option of engaging advocate or to ask for adjournment on 15.5.2012, cannot take advantage of that to question the procedure followed by the Advisory Board - which is headed by a sitting Judge of the High Court and two former High Court Judges. It is one thing to say that the detenu had insisted for adjournment and the Advisory Board rejected that request unreasonably. But in a case, where a well informed detenu

consciously and unconditionally proceeds with the hearing before the Advisory Board, cannot be permitted to find fault with the procedure adopted by the Advisory Board.

17. The learned Advocate General has relied on the decision in the case of State of Tamil Nadu and Anr. vs. R. Sasikumar (2008) 13 SCC 751, in which, the Apex Court noticed that the High Court order was proceeded on presumption. In that case, two addressees had received the representation, which in no way showed that the Director General of Police had received the representation. The State additionally contended that before the order of detention was passed, there was no question of sending the representation to the Advisory Board. It was argued by the State that this was a clever ruse to create evidence to contend non-application of mind. This is a classic case (such cases are increasing by leaps and bounds), where red herrings are intentionally drawn to deflect the course of justice. That observation was made on the basis of the opinion in the case of Anant Hanumanthsa Katare vs. Addl. District Magistrate (2006) 10 SCC 725, which in turn reproduces the exposition in the case of Union of India vs. Paul Manickam (2003) 8 SCC 342. The Apex Court noted that the unscrupulous detenu cannot be allowed to create a smokescreen and to take the authorities by surprise, acting surreptitiously or with ulterior motives. The Court then proceeded to hold that question of making representation arises only after the order of detention had been passed and served on the detenu. The Apex Court, therefore, overturned the decision of the High Court, which proceeded to answer the issue by accepting the argument of the detenu that the Advisory Board had failed to consider representation sent by him. The principle expounded in this decision applies on all fours to the present case.

18. Learned Senior Counsel Mr. R. A. Dada has relied on the decision in the case of Prakash Chandra Mehta vs. Commissioner and Secretary, Government of Kerala and Ors., AIR 1986 SC 687. In Paragraph 62 of this decision, the Court has noted that the Constitution requires that the grounds must be communicated in language understood by the person concerned, so that he can make effective representation. The case of the detenu's father was that he did not understand English or Hindi or Malayalam and does understand only Gujarati language. In this background, the Court opined that there is no Rule of law that commonsense should be put in cold storage while considering constitutional provisions for safeguards against misuse of powers by authorities though these constitutional provisions should be strictly construed. The Court noted that the Court is not the place where one can sell all tales. In Paragraph No. 73 of the same decision, the Court adverted to the quote of Benjamin Cardozo, "a Constitution states or ought to state not rules for the passing hour, but principles for an expanding future". It went on to observe that "the concept of grounds", therefore, has to receive an interpretation which will keep it meaningfully in tune with the contemporary notions of the realities of the society and the purpose of the Act in question in the light of concepts of liberty and fundamental freedoms guaranteed by Articles 19(1), 21 and 22 of the Constitution. It held that the expression "grounds" for

that matters includes not only conclusion of fact but also all the "basic facts" on which those conclusions were founded, they are different from subsidiary facts or further particulars or the basis facts. In this Judgment quote of Thomas Jefferson is also reproduced in paragraph 82, namely, "To lose our country by a scrupulous adherence to written law would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means". The Court, thus, noticed that the purpose of empowering the Statutory Authority to issue preventive detention order is to protect the society by preventing wrong being done.

19. The Learned Advocate General has relied on the decision of the Apex Court in the case of *Kavita vs. the State of Maharashtra and Ors.*, AIR 1981 SC 1641. In this case, the Court noticed that in the representation to the Government, the detenu did not make a request to be permitted to be represented by a lawyer. The Court found that the importance of legal assistance can never be over-stated and as often than not adequate legal assistance may be essential for the protection of the Fundamental Right to life and personal liberty guaranteed by Article 21 of the Constitution and the right to be heard given to a detenu by Sec. 8(e), COFEPOSA Act. The Court, however, noted that the detenu has to "make request" for legal assistance and only thereafter his request would have to be considered on its merits, in each individual case. In that case, the Government had clearly informed the detenu that he has no statutory right to be represented by a lawyer, before the Advisory Board. Since it was for the Advisory Board and not for the Government to afford legal assistance to the detenu the latter, when he was produced before the Advisory Board, could have, if he was so minded, made a request to the Advisory Board for permission to be represented by a lawyer. He preferred not to do so. On that basis, the Court opined that in the special circumstances of the present case, the Court was not prepared to hold that the detenu was wrongfully denied the assistance of counsel so as to lead to the conclusion that procedural fairness, a part of the Fundamental Right guaranteed by Article 21 of the Constitution of India was denied to him. This exposition applies on all fours to the fact situation of the present case.

20. For the reasons mentioned hitherto, we fail to understand as to how the challenge to the impugned detention order can be sustained on the ground under consideration. In the facts of the present case, therefore, it is not possible to countenance the challenge to the grounds of the detention or the detention order being violative of Articles 14, 21 or 22 of the Constitution of India, as is pressed into service by the Counsel for the Petitioner.

21. The Counsel for the Petitioner was at pains to rely on the decision of the Constitution Bench of the Apex Court in the case of *A.K. Roy vs. Union of India*, (1982) 1 SCC 270. Emphasis was placed on paragraphs 93 and 94 of the reported decision which reads thus:

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

It is, however, necessary to add an important caveat. The reason behind the provisions contained in Article 22(4) (b) of the Constitution slate is that a legal practitioner should not be permitted to appear before the Advisory Board for any party. The Constitution does not contemplate that the detaining authority or the Government should have the facility of appearing before the Advisory Board with the aid of a legal practitioner but that the said facility should be denied to the detenu. In any case, that is not what the Constitution says and it would be wholly inappropriate to read any such meaning into the provisions of Article 22. Permitting the detaining authority or the Government to appear before the Advisory Board with the aid of a legal practitioner or a legal adviser would be in breach of Article 14, if a similar facility is denied to the detenu. We must therefore make it clear that if the detaining authority or the Government takes the aid of a legal practitioner or a legal adviser before the Advisory Board, the detenu must be allowed the facility of appearing before the Board through a legal practitioner. We are informed that officers of the Government in the concerned departments often appear before the Board and assist it with a view to justifying the detention orders. If that be so, we must clarify that the Boards should not permit the authorities to do indirectly what they cannot do directly; and no one should be enabled to take shelter behind the excuse that such officers are not "legal practitioner" or legal advisers, Regard must be had to the substance and not the form since, especially, in matters like the proceedings of Advisory Boards, whosoever assist or advises on facts or law must be deemed to be in the position of a legal adviser. We do hope that Advisory Boards will take care to ensure that the provisions of Article 14 are not violated in any manner in the proceedings before them. Serving or retired Judges of the High Court will have no difficulty in understanding this position. Those who are merely "qualified to be appointed" as High Court Judges may have to do a little homework in order to appreciate it.

94. Another aspect of this matter which needs to be mentioned is that the embargo on the appearance of legal practitioner should not be extended so as to prevent the detenu from being aided or assisted by a friend who, in truth and substance, is not a legal practitioner. Every person whose interests are adversely affected as a result of the proceedings which have a serious import, is entitled to be heard in those proceedings and be assisted by a friend. A detenu, taken straight from his cell to the Board's room, may lack the ease and composure to present his point of view. He may be "tongue-tied, nervous, confused or wanting in intelligence", (see *Pett v. Greyhound Racing Association Ltd.*)(1), and if justice to be done, he must at least have the help of a friend who can assist him to give coherence to his stray and wandering ideas. Incarceration makes a man and his thoughts disheveled. Just as a person who is dumb is entitled, as he must, to be represented by a person who has speech, even so, a person who finds himself unable to present his own case is entitled to take the aid and advice of a person who is better situated to appreciate the facts of the case and the language of the law. It may be that denial of legal representation is not denial of natural justice per se, and therefore, if a statute excludes that facility expressly, it would not be

open to the tribunal to allow it. Fairness, as said by Lord Denning M.R., in *Maynard v. Osmond* can be obtained without legal representation. But, it is not fair, and the statute does not exclude that right, that the detenu should not even be allowed to take the aid of a friend. Whenever demanded, the Advisory Boards must grant that facility.

(emphasis supplied)

22. No doubt, the Apex Court has expounded that if the Detaining Authority or the Government takes the aid of a legal practitioner or a legal advisor before the Advisory Board, the detenu must be allowed the facility of appearing before the Board through a legal practitioner. However, the question of allowing the detenu to avail of the facility of appearing through a legal practitioner would arise, only "if the detenu demands that facility before the Advisory Board". The last sentence in paragraph 94 of the decision quoted above says it all. If the detenu is a well informed detenu and, as in this case, consciously and unconditionally proceeds with the hearing himself before the Advisory Board, without requesting for adjournment or permission to allow him to engage an advocate to represent him, later on, cannot find fault with the procedure adopted by the Advisory Board. It is for the detenu to "demand" the facility of being represented by a legal practitioner. The detenu cannot be compelled to engage legal practitioner during the hearing before the Advisory Board.

23. The next decision pressed into service is the case of *Zubair Haji Qasim vs. The State of Maharashtra* (Division Bench), Writ Petition No.2312 of 2005 decided on 30.6.2006 (Bombay High Court). This judgement is rendered by the Division Bench of this Court on the basis of the legal exposition in the case of *Kekelwa Samuele Kongwa vs. Union of India & Ors.*, 1985 Cr.L.J. 840. The Petitioner has also relied on an unreported decision of this Court in the case of *Sheetal Manoj Gore vs. State of Maharashtra*, decided on 9.1.2007. The exposition in these decisions is on the fact situation of the respective cases. It was held that the detenu "demanded" the facility but was wrongly rejected by the Board. The decision in *Zubair Haji Qasim* (supra) of the High Court has been confirmed by the Apex Court vide judgement in *State of Maharashtra & Ors. vs. Zubair Haji Qasim* reported in (2008) 12 SCC 792. In this decision, the Apex Court has noticed the decision in the case of *Kavita vs. State of Maharashtra*, (1981) 3 SCC 558 adverted to hitherto.

24. Reliance is then placed on the case of *State of Punjab vs. Sukhpal Singh*, (1990) 1 SCC 35. In that case, the detenu had prayed for adjournment on the date of hearing before the Advisory Board because of his ill-health. The High Court opined that there was communication gap. The Court found as of fact that the detenu desired to be heard and wanted to produce his witness. The Advisory Board proceeded with the hearing. In the backdrop of those facts, the Apex Court went on to observe that whenever there is a doubt between liberty and bondage, the decision must be in favour of liberty and on that principle, upheld the opinion of the High Court that the Advisory Board could not have proceeded

with the hearing without giving opportunity to the detenu who desired to be heard. The exposition in this case is in the context of the fact situation of that case. As aforesaid, in the present case, the detenu made no attempt to ask for adjournment or requested the Advisory Board to allow him to engage a lawyer. None of this happened before the Advisory Board. Instead, the detenu consciously and unconditionally proceeded with the hearing on merits on his own after presenting the written representation. There can be no presumption of a fact that the detenu had requested the Advisory Board to adjourn the case or for that matter, allow him to engage a lawyer. That fact must be clearly pleaded and also established, which is lacking in the preset case.

25. Reliance was then placed on the unreported order of the Apex Court in the case of *Surinder Kumar Arora vs. Union of India*, Criminal Appeal No.55 of 1986 decided on 14.1.1986, which is reproduced in its entirety by the Division bench of this Court in the case of *Vijay Changdeo Patil vs. Satish Sahney, & Ors.*, 1997 Cr.L.J. 185. Even in that case, the Court proceeded on the finding that the detenu during the hearing before the Advisory Board had requested to be assisted by his friend who was waiting outside the office where hearing was fixed and also permit him to examine witnesses who were also waiting outside. This request was not considered by the Advisory Board. Therefore, the Court found that the written request of the detenu was never considered by the Advisory Board. However, in the case on hand, it is not open to the petitioner to make such grievance when the detenu himself chose to proceed with the hearing after presenting the written representation and did not ask for adjournment. The Counsel for the Petitioner, however, submits that the facts of the present case are similar to the case of *Vijay Changdeo Patil's* case (supra) decided by the Division Bench of this Court. Even in that case, the respondents urged that the detenu did not make any written / specific request for the purpose of production or permission to examine witnesses before the Advisory Board. The reply affidavit filed stated that the representation submitted by the detenu was duly considered by the Advisory Board after giving him opportunity of hearing. However, the Division Bench relied on the dictum of the Apex Court in the case of *Surender Kumar Arora's* case (supra) and found as of fact that the detenu had "specifically made request orally", in addition to the request made in writing, that he wanted to examine his witnesses, who were kept present outside. On that basis the principle stated in the case of *Surender Kumar Arora's* case (supra) was applied. In the present case, the petitioner has not approached this Court with assertion that the detenu had made oral request to the Advisory Board to adjourn the case or allow him to engage a lawyer. Accordingly, even this decision will be of no avail to the petitioner.

26. In the unreported decision of the Division Bench of this Court, in the case of *Mandar Ajit Borkar vs. Commissioner of Police, Brihan Mumbai*, Writ Petition no.3508 of 2011 dated 23.1.2012, the issue was founded on the exposition of the Apex Court in *State of Maharashtra vs. Zubeir Haji Kasam* (supra). In that, the appraisal that the detenu cannot be represented by legal practitioner before

the Advisory Board had misrepresented the detenu from making effective representation before the Advisory Board. The Court held that there was nothing in the intimation that the petitioner was not entitled to request the Advisory Board to allow him to be represented by a lawyer. The Court further held that the detenu did not make any request to the Advisory Board for permitting him to take the assistance of the legal practitioner. The Court, therefore, distinguished the decision of the Apex Court in the case of Zubeir Haji Kasam (*supra*) and negated the ground urged by the petitioner therein.

27. Reliance is then placed on the Delhi High Court decision in the case of Kapil Kumar vs. Union of India, 2001 Cr.L.J. 1154. The question considered in that case was whether the Advisory Board could reject the detenu's representation seeking permission to examine his witness, who was waiting outside, without assigning any reason. Even this decision will be of no avail to the petitioner as it was a case where the detenu made request to the Advisory Board and that was rejected without any reason.

28. The petitioner would then rely on the decisions where the issue regarding adjournment granted in the proceedings before the Advisory Board came up for consideration. Reliance is placed on Harbans Lal vs. M.L. Wadhwan & Ors., 31 (1987) Delhi Law Times 229 (SC). Even in that case, when the Advisory Board met to consider the propriety of the detention order, the detenu asked for permission to prove that the premises in which the alleged contraband goods were found, were not in his possession and that he in fact lived at some other place. The detenu made application to the Advisory Board requesting for permission to examine witnesses to rebut the evidence against him on the next date of hearing. The detenu's case was that the witnesses were present both on the day when he made that request as also on the adjourned date. In the reply affidavit of the respondents, it was stated that no request for any adjournment was made. Instead, time was sought by the detenu to file affidavits for which the matter was adjourned to next date. The Court found as of fact that the detenu had requested to allow him to examine witnesses but that request was unreasonably rejected. It is on that finding the controversy was answered.

29. Reliance is also placed on the dictum in the case of Shahista Sayyed Haji Baitullah vs. Union of India, 1997 (0) BCI 39. In that case, the question considered was about non-placement of representation made by the detenu before the Advisory Board and non-consideration of a separate representation made by the detenu, addressed to the Advisory Board as also to the Central Government. Both these authorities were required to consider the representations independently. In the present case, the Advisory Board has considered written representation made by the petitioner dated 15.5.2012 as also gave opportunity of hearing to the petitioner before sending its report to the State Government.

30. The next decision relied upon is of another Division Bench of this Court in Haripal Hiralal Lahot vs. D. Sivanandhan & Ors., 2006 (2) B.C.R. (Cri.) 856. The

challenge in this case was that the detenu was not made aware of his right to produce witnesses and examine them before the Advisory Board. As a result of which, that valuable right could not be exercised by the detenu. In the present case, the detenu was aware about the option available to him of engaging a lawyer. He adverted to that option explicitly in his written representation, paragraph 4 thereof. Besides, he had noticed that on the same day, the Advisory Board permitted two other detenus to be represented by their lawyers. Notwithstanding this, when his case was taken up for hearing by the Advisory Board, he did not make any oral request for adjournment nor to allow him to engage a lawyer, but himself consciously and unconditionally proceeded with the hearing, as can be discerned from the notings in the original file of the Advisory Board. The petitioner has advisedly not asserted that inspite of oral request made by the detenu, the Advisory Board unreasonably rejected the request in that behalf. Accordingly, we find no merits in the ground under consideration. We are of the opinion that there is no infirmity in the procedure followed by the Advisory Board. Neither any subsisting nor any enured right of the detenu has been violated in the process.

31. We shall now turn to the next ground urged by the Petitioner. The argument proceeds that due to variance in the grounds of detention, relating to the details of the detention order, the subjective satisfaction of the Detaining Authority is vitiated. The ground urged in this behalf is reproduced thus:

(C)(i) The Petitioner says and submits that detenu has been detained by executing the impugned detention order issued u/s 3(1) of COFEPOSA Act, 1974 by detaining authority with a view to preventing him in future from smuggling goods. The said detention order dated 14 MAR 2012 bears No.PSA-1211/CR-88/SPL-3(A) in the first para. The grounds of detention dated 14 MAR 2012 served along with the said detention order also bears No.PSA-1211/CR?88/SPL-3(A) on the top right hand corner below Government of Maharashtra. However, the first paragraphs of the said grounds of detention reads as follows:

With reference to the Detention Order bearing No.PSA-1210/CR-96/SPL-3(A) dated 14 MAR 2012 made against you by me u/s 3(1) of the COFEPOSA Act, 1974....

(emphasis supplied)

The afore-mentioned variance in numbers on "detention order" executed on detenu and in the first paragraph of the "grounds of detention" served on the detenu, reveals that the detenu has been detained pursuant to the execution of detention order bearing No.PSA-1211/CR-88/SPL-3(A) dated 14 MAR 2012 whereas he has been served the grounds of detention pertaining to the detention order bearing No.PSA?1210/CR-96/SPL-3(A). The personal liberty of detenu has been curtailed on the basis of illegal grounds of detention and thus his continuous detention is rendered illegal.

32. The grievance of the Petitioner is that the detenu was misled by the different

serial number given in the detention order and the grounds of detention, in relation to which, the detenu was placed under preventive detention. This point was specifically stated by the Petitioner in the representation dated 15th May, 2012 submitted to the Advisory Board. According to the detenu, such variance caused confusion to the detenu resulting in deprivation of his right to make effective representation at the earliest opportunity and also reflecting on the casual, callous approach of the Detaining Authority bordering on non application of mind, while forming subjective satisfaction.

33. The response of the Respondents, in particular the Detaining Authority, is essentially that the variation was the outcome of typographical error. In any case, the correct detention number has been mentioned in the grounds of detention at the outset in the opening part itself. The detention order number given in first paragraph was only a deficiency in the form and not of substance. The substance and the basis on which the preventive detention action was taken against the detenu is noticed from the various circumstances and material referred to in the grounds of detention, which pertain to the detenu and none else. It is not as if the detenu has been served with grounds of detention pertaining to some other detention order concerning some other person. In this context, the argument of the Petitioner is that the theory of no prejudice caused to the detenu is untenable, while considering the challenge to preventive detention order dealing with the liberty of a person.

34. In the representation made by the detenu, to the Advisory Board, dated 15th May, 2012 as well as the ground articulated in the Writ Petition, no doubt, highlights the variance in the grounds of detention served on the detenu. However, how that by itself would render the detention order invalid or illegal, is not elaborated in the ground articulated in the Writ Petition. On the other hand, we find that the explanation offered by the Detaining Authority that the mistake in mentioning the serial number is a typographical error, is plausible one. The fact remains that all other contents of the grounds of detention, refer to the circumstances and material concerning the detenu and none else. The detenu was expected to make representation on the basis of that material and grounds. Thus understood, the incorrect detention order number mentioned in Paragraph 1 of the grounds of detention does not and cannot affect the right to make effective representation available to the detenu in any manner. In any case, the ground articulated makes no such grievance at all. What is alleged is that the detenu has been detained on the basis of illegal grounds of detention. That plea, however, is devoid of merits. For, as the order of detention gives correct detention order number, as also even the opening part of the grounds of detention gives the same number coupled with the fact that the circumstances and material referred to in the grounds of detention and the documents accompanying thereto pertain to the present detenu and none else.

35. Learned Advocate General placed reliance on the decision in the case of Kirti Kumar Nirula vs. State of Maharashtra and Ors. (2005) 9 SCC 65. In Paragraph

12 of this decision, the Court dealt with the argument of subjective satisfaction is vitiated on account of typographical error. The Court relied on the reply filed by the Department, specifically adverted to the error being a typographical error which deserves to be ignored and that the error did not have any bearing on the subjective satisfaction formed by the Detaining Authority, in any manner. Even in the present case, the error adverted to by the Petitioner is only in respect of the form and not in relation to the substance of the material relied upon by the Detaining Authority to formulate subjective satisfaction.

36. The reliance is then placed by the Learned Advocate General on the exposition in the case of *Izaz Rashid Baig @ Ajju vs. R. H. Mendonca and Ors.* 1999 ALL MR (Cri) 1568. The Division Bench of this Court, in Paragraph 10, has noted that the detention order would be vitiated if there is absence of translation of a vital document or a part of it, which would impair the right of the detenu to make an effective representation. Counsel for the Petitioner had argued that this exposition is contrary to the decision of the Apex Court, which takes the view that the theory of prejudice caused to the detenu cannot be used by the Statutory Authority. It is one thing to say that the variation in the translation was in respect of irrelevant matter. However, it would be a different matter if the State Authorities were to admit that there was variance in the copy furnished to the detenu, which was relevant document but yet contend that the same be overlooked as no prejudice was likely to be caused to the detenu. No such argument has been canvassed before us.

37. Learned Advocate General placed reliance on another decision in the case of *D. Anuradha vs. Joint Secretary and Anr.* (2006) 5 SCC 142. Reliance was placed on the dictum in Paragraph 22 of this decision, which deals with the argument that the statement of two persons, which were relevant and vital documents, were not considered by the Detaining Authority. The Court opined that the said statements were withheld as were found to be irrelevant. Moreover, the Court opined that the detention order was passed on various grounds and even if some materials are not placed before the Detaining Authority, it would only affect one of the ground stated in the detention order and the detention order by itself is sufficient to stand on its own, on the basis of the other grounds. The Court invoked the principle of severability of the grounds u/s 5A of the Act.

38. The Petitioner has relied upon another variance in the grounds of detention, in support of the argument that the subjective satisfaction of the Detaining Authority is vitiated. According to the petitioner, in the first paragraph of the detention order, it is stated that "with a view to prevent him (detenu) in future from smuggling goods, it is necessary to make the following order", whereas, in paragraph 28 of the grounds of detention, it is stated that "it is imperative to detain the detenu with a view to prevent him from indulging in smuggling activities in future". This, according to the Petitioner, reflects on the improper and/or non application of mind on the part of the Detaining Authority and that the detention order was passed in casual and mechanical manner. Besides, it

clearly prejudiced the detenu in making effective representation affecting his right guaranteed under Article 22(5) of the Constitution of India, thereby vitiating the detention order itself.

39. As regards the first grievance, we fail to understand, as to how the variation in the expression contained in the first paragraph of the detention order is any way different than the expression in paragraph 28 of the grounds of detention. In our opinion, there is no qualitative distinction between the two. In both places, the Detaining Authority has made a point that it is imperative to detain the detenu with a view to preventing him in future from smuggling goods. Indeed, in the detention order, reference is made to smuggling goods, while in the grounds of detention, it is referred to as smuggling activities. That makes no difference much less of such a nature as to indicate improper or non application of mind or for that matter, casual and mechanical approach of the Detaining Authority.

40. It is not the case of the Petitioner that the ground specified under the Act is not made out in the detention order or the grounds of detention as such. The variation, if at all, is only of the expression while maintaining the content and substance necessitating issuance of order of preventive detention. The side argument of the Petitioner that such variation has impacted the detenu's right to make effective representation, in our opinion, deserves to be negated for the same reason and being misplaced and imaginary.

41. Another shade of the same grievance is that in the detention order, it is stated that the detention order is issued with a view to prevent the detenu in future from smuggling goods, which falls under clause (i) of sub Section (1) of Section 3 of COFEPOSA Act, 1974. However, in Paragraph 28 of the grounds of detention, it is mentioned that it is imperative to detain the detenu under the provisions of COFEPOSA Act, 1974, with a view to prevent him from indulging in smuggling activities in future. In either case, the emphasis is on issuing detention order against the detenu to prevent him from smuggling goods. The fact that the grounds of detention do not refer to specific provision of the COFEPOSA Act, i.e. Section 3(1)(i) does not mean that the contents of the grounds of detention are not ascribable to the said provision. The Detaining Authority is not expected to merely refer to the provision of the Act but, advert to the circumstances and material which would justify exercise of powers invested in it under the provisions of the Act, which, in the present case, is amply demonstrated from the grounds of detention, when read as a whole. As a matter of fact, in the opening part of the grounds of detention, it is clearly stated that the detention order was intended and is issued in exercise of powers u/s 3(1) of the COFEPOSA Act, 1974.

42. In the Writ Petition, other variations have been adverted to in ground (C). However, during the argument, only variation with regard to the typographical error of mentioning the correct detention order number in the first paragraph of grounds of detention was pursued. As regards that variation, we have already adverted to the stand of the Respondents and answered the issue in favour of

the Respondents.

43. We would now turn to the decisions relied upon by the Petitioner, in support of the argument that the variation was good enough to vitiate the impugned order of detention. The first decision is the unreported judgment in the case of Abdul Majid Taramohammed Memon, in Cri. Writ Petition No. 97 of 1991, decided on 19th August, 1991. In that case, the discrepancy or variation was in respect of the date, on which the statement of detenu was actually recorded. The Respondents, on affidavit, had explained that discrepancy, by saying that it was a typographical error. The Court answered the issue on the basis of dictum in the case of Mackie Francis Pareira vs. State of Maharashtra. In that case, the variation was about the date, on which the Police Authority had raided the premises where the detenu was found in possession of illicit liquor. The Court rejected the explanation that it was a typographical error to be ignored and that it would not cause any prejudice to the detenu. The Court noted that if the Commissioner had failed to notice the typographical error, then the subjective satisfaction, recorded by the Detaining Authority, suffers from non application of mind. In both these cases, the error was with regard to the vital material, on the basis of which, subjective satisfaction was required to be formed. Inasmuch as, in the case of Abdul Majid, the variation was with regard to the date, on which, statement of the detenu was recorded, which ought to have been verified by the Detaining Authority, before forming subjective satisfaction and in the later case, the variation was with regard to the date on which the raid was conducted. Even that fact was vital for forming the subjective satisfaction.

44. In the present case, however, no variation has been pointed out with regard to any "vital fact", which is required to be considered for "forming subjective satisfaction". The discrepancy is only in respect of the detention order number in Paragraph 1 of the grounds of detention. That is not a relevant fact for forming subjective satisfaction at all. Further, for understanding the significance of the letters mentioned in the detention order number, we called upon the Counsel for the Respondents to explain the same. The detention order bears number PSA-1211/CR-88/SPL?3(A). This very number has been mentioned in the opening part of the grounds of detention but, in the body of the grounds of detention, in Paragraph 1, number mentioned is PSA-1210/CR?96/SPL-3(A). There is no variation in the date of the order. The letter "PSA" in the number represents "proposal by Sponsoring Authority"; following that the number mentioned represents the month and year of the proposal. For example, 1211 represents 12th Month and year 2011 and 1210 represents 12th Month and year 2010. The term CR represents Case Register, which is maintained in the office of the Detaining Authority. The number following CR is the Case Register number. The number appearing at the end as 3(A) represents Desk Number of COFEPOSA. Suffice it to observe that discrepancy of this nature cannot be the basis to hold that it has affected the subjective satisfaction of the Detaining Authority. Nor would such discrepancy affect the right of the detenu to make effective representation at the earliest opportunity.

45. The Petitioner has relied upon the decision of the Division Bench of the Madras High Court in the case of Kamala vs. Secretary to Government, 2006 INDLAW MAD 223. In that case, the grievance was that the "incident" had taken place on 12th September, 2005 but the Detaining Authority proceeded on the basis that it has taken place on 13th September, 2005. This date was vital for forming subjective satisfaction. Further, the Detaining Authority offered no explanation as to why it has mentioned the date as 13th September, 2005 instead of 12th September, 2005. Thus, the dictum in the said case will be of no avail to the Petitioner.

46. The Petitioner then relies on another decision of the Madras High Court in the case of Anthony vs. State in HCP No. 995/2005, decided on 20th January, 2006. In that case, typographical error was in respect of the figure, when the incident took place, which was a vital fact for forming subjective satisfaction, as held in the case of Kamala (supra). Therefore, even this decision will be of no avail to the Petitioner.

47. The Petitioner has then placed reliance on the decision of Madras High Court in the case of Veera @ Veeramuthu vs. The Commissioner of Police, decided on 27th October, 2003. Even in this case, it was found that there was typographical error in respect of figure about the time when the incident had occurred. In the grounds, it was stated that the incident took place on 24th October, 2002 at 18.00 hours, when, in fact, the incident had occurred at 6.00 a.m. That variation was very vital affecting the subjective satisfaction, as in the earlier two cases of the same High Court, referred to above.

48. Reliance is then placed on the decision of Delhi High Court in the case of Bharti Arora vs. Union of India, decided on 24th December, 2011 in WP (Cri.) No. 1672/2011. In this case, the grievance of the Petitioner was that the documents supplied to the detenu had caused confusion in his mind. Inasmuch as the grounds of detention gave impression that the Detaining Authority is Respondent No.3, by mentioning that the representation was to be made to him, whereas, the Detention order was passed by Respondent No. 2. The Court, therefore, proceeded to hold that this affected the right of detenu to make representation at the earliest opportunity. The exposition in that case, therefore, was in the fact situation of that case. The fact as to whom the representation should be made by the detenu is a vital fact and affecting the right of the detenu to make effective representation, unlike in the present case, in respect of incorrect detention order number mentioned in the first paragraph of the grounds of detention. Notably, the correct detention order number has been mentioned in the opening part on the same page of the grounds of detention. This variance was not likely to result in creating any confusion which would impact the right of the detenu to make effective representation at the earliest opportunity.

49. The next decision relied upon by the Petitioner is of the Apex Court in the case of Vijay Kumar Dharna vs. Union of India, AIR 1990 SC 1184. The variation was in respect of the "ground for issuing preventive detention order" itself.

Inasmuch as, the detenu in that case only knew Gurumukhi script. The detention order and the grounds of detention supplied to the detenu in Gurumukhi script along with detention order and grounds of detention in English were at variance. That variance was held to be substantial and in respect of vital fact which was bound to mislead and confuse the detenu as to the exact reason for which preventive action is taken against him and resultantly affecting his right to make effective representation at the earliest opportunity.

50. The next decision is of the Apex court in the case of State of Tamil Nadu vs. Senthil Kumar and Anr. AIR 1999 (SC) 971. Even in that case, the variation was in the documents supplied to the detenu. The documents in question given to the detenu were not supplemental but, additional material in support of the grounds already conveyed to the detenu. In the facts of that case, the Apex Court found that the documents were vital documents and affected the opportunity of the detenu to make effective representation. Further, the variation was of such a nature that it reflected on the casual manner in which the Authority had acted without a covering letter and without saying as to for what purpose the supplemental or additional material in respect of the grounds was forwarded. Therefore, even this decision will be of no avail to the Petitioner.

51. That takes us to the next judgment of the Division Bench of this Court, relied upon by the Petitioner in the case of Shekhar Pawaskar vs. V. K. Saral and Ors., 1990 CRI. L. J. 138. In that case, discrepancy noticed by the Court was in the document supplied in Marathi version. It was wholly incorrect and incomplete translation of the medical certificate, the original of which was in English. That variation obviously could have affected the formation of subjective satisfaction of the Detaining Authority and was in respect of a vital document. Similarly, it was bound to confuse the detenu and affect his right to make effective representation at the earliest opportunity.

52. The petitioner has then relied on para 17 of the decision of the Apex Court in the case of Additional Secretary vs. Alka Subhash Gadia, 1991 (53) ELT 481 (SC), which has taken the view that every unexplained error of omission or commission would make the detention order or its further operation illegal. We have already dealt with each of the so called omissions or commissions of the Sponsoring Authority or the Detaining Authority adverted to by the petitioner. Having held that it was not a case of error of omission or commission by the Sponsoring Authority or the Detaining Authority, as the case may be, on each of the counts urged before us, the exposition in this decision will be of no avail to the petitioner.

53. The petitioner had also relied on the decision of the Apex Court in the case of Hem Lall Bhandari vs. State of Sikkim, (1987) 2 SCC 9, which takes the view that it is not permissible to take either a liberal or a generous view of the lapses on the part of the officers in the matters of preventive detention. For the reasons already mentioned hitherto, we fail to understand as to how the dictum in this decision will be of any avail to the petitioner unless it is established that the

concerned statutory authority has committed some lapses which are fatal and would impinge upon the right of the detenu to make effective representation at the earliest opportunity.

54. Considering the above, there is no substance in the grievance that the subjective satisfaction is vitiated because of such variation in the grounds of detention or for that matter affecting the right of detenu to make effective representation, in any manner.

55. The next point urged, is that, the subjective satisfaction, that the detenu is a habitual offender, is founded on past events regarding the arrest of the detenu in the years 2003 and 2004 and his detention in the year 2008. Further, the fact that the detention order under COFEPOSA Act passed against the detenu was quashed by the High Court, has not been reckoned while forming subjective satisfaction which resultantly vitiates the detention order itself. In para 23 of the grounds of detention, no reference is made to the fact that the detention order was in fact quashed and set aside.

56. This argument, on a careful consideration and reading of the grounds of detention, as a whole, will have to be stated to be rejected. The fact that the detention order was passed against the detenu in the year 2008 and that the detenu was detained in that connection and further that the detention order was quashed by the Bombay High Court is explicitly mentioned in para 8 of the grounds of the detention. Non-mentioning of that fact in para 23, therefore, by itself will not vitiate the subjective satisfaction reached by the detaining authority. The grounds of detention will have to be read as a whole. Thus read, it necessarily follows that the Detaining Authority was aware of the fact that the detention order issued against the detenu in the year 2008 was eventually quashed and set aside on the ground of delay in execution.

57. Indeed, the Counsel for the petitioner argued that the noting made in para 8 of the grounds of detention that the detention order was quashed on the ground of delay in execution is incorrect. But, on reading the decision of the High Court, there is no manner of doubt that the said detention order passed against the detenu was quashed on the ground of delay in execution. The past events of arrest of the detenu in 2003 and 2004, therefore, would certainly be relevant and germane material for forming opinion that the detenu was habitual and regular offender. The Detaining Authority has considered the totality of the material placed before her "including the statement of the detenu" u/s 108 of the Customs Act evidencing the nature of and the gravity of the offence and well organised manner in which the detenu had engaged himself in prejudicial activities which necessitated issuance of preventive detention order against him to prevent him from indulging in smuggling activities in future. It is not open for this Court to sit over the said subjective satisfaction as a Court of Appeal. In that sense, it is not a case of taking into account only the past arrest and detention as sole basis for issuance of preventive detention order against the detenu but the preventive detention order is in the context of the latest events referred to in

the earlier part of the grounds of detention which had close proximity to the initiation of proposal for detention of the detenu to prevent him in indulging in prejudicial activities in future.

58. The Counsel for the Petitioner has relied on the decision in the case of Anil Damodhar Paunipagar vs. State of Maharashtra & Ors., 2000 (Supp) Bom. C.R. 154 and another decision in the case of Vijayraj Jivraj Solanki vs. Union of India, 1996 Cr.L.J. 3952 and the decision of the Apex Court in the case of Khudiram Das vs. State of West Bengal, 1975 Cr.L.J. 446(1).

59. Coming to the first judgement, the Detaining Authority had taken into account stale criminal cases which were registered against the detenu and the detention orders which were quashed by the High Court. In this backdrop, the Court proceeded to consider the question and found that the Detaining Authority ought to have examined the progress, stage and disposal of the fourteen odd criminal cases instituted against the detenu and the fact that three detention orders were passed against the detenu were already quashed by the High Court. If those matters were taken into account, the Detaining Authority may have arrived at some other conclusion. On that finding, the Court held that the detention order was vitiated.

60. In the case of Vijayraj (supra), the grievance of the detenu was that the subjective satisfaction recorded to the effect that it was necessary to detain the detenu under COFEPOSA Act with a view to prevent him from engaging in keeping smuggled goods as well as dealing with any smuggled goods other than by engaging in transportation or concealing the smuggled goods in future, is based upon the facts mentioned in para 10 of the grounds of detention that the detenu was habitually indulging in keeping smuggled goods as well as dealing with smuggled goods. The earlier detention order was set aside by the High Court against the same detenu. The earlier detention order was passed on 20.1.1992 which was set aside by the High Court on 25.8.1992 but in the impugned detention order passed on 25.8.1992, no reference was made to the fact that the High Court had set aside the previous detention order. On this finding, the Court answered the controversy and found that the subjective satisfaction was vitiated.

61. As aforesaid, in the present case, on reading the grounds of detention as a whole, it is noticed that the Detaining Authority has not only referred to the order of detention passed against the detenu under COFEPOSA Act in 2008 but has also shown her awareness to the fact that the said detention order was quashed on the ground of delay in execution. Further, the action of preventive detention was necessitated on account of the continual prejudicial criminal activities of the detenu, who was operating as the kingpin of the gang engaged in smuggling red sanders to Dubai as unraveled from the recent seizure of huge quantity of red sanders from the three truck trailers used for transporting the containers on 3.9.2011 and also huge unaccounted cash amount. The subjective satisfaction, therefore, was not based solely on the past arrest and detention of

the detenu. Moreover, in the present case, previous detention order was quashed not because the subjective satisfaction was vitiated but on the ground that there was unexplained delay in execution of the detention order. In our opinion, in the fact situation of the present case, the subjective satisfaction recorded by the Detaining Authority was on germane and tangible material and in proximity to the recent prejudicial activities adverted to.

62. In our opinion, in the facts of the present case, the exposition in the case of Khudiram Das (*supra*) would support the respondents rather than furthering the argument of the petitioner. In the context of the argument under consideration, the learned Advocate General contended that the fact that the previous detention order passed in the year 2008 against the detenu having been quashed by the High Court, assuming that it cannot be taken into account, even then, it would not affect the subjective satisfaction reached by the Detaining Authority in its entirety. That can be extricated from consideration keeping in mind the provisions of section 5A of the Act. We would consider the alternative argument of the Advocate General raised across the Bar regarding the scope and application of section 5A of the Act a little later. Suffice it to observe that the grounds of detention, if read as a whole, in the fact situation of the present case, it is not possible to countenance the argument that the subjective satisfaction formed by the Detaining Authority is vitiated because of reference to past arrests in 2003 and 2004 and detention order in 2008.

63. The next ground urged before us is that the detenu had made four representations prior to issuance of the detention order, addressed to the Additional Chief Secretary, Home Department, Government of Maharashtra, dated 10.01.2012, 10.02.2012, 18.02.2012 and 06.03.2012. However, the Detaining Authority, in the grounds of detention, has considered only the first two representations. The latter two representations were obviously not placed before the Detaining Authority and for which reason, the same have not been considered by the Detaining Authority, before passing of the detention order. Non placement of the latter two representations before the Detaining Authority, which were vital documents, would have bearing on the subjective satisfaction of the Detaining Authority. Thus, on the grounds of non placement and also non consideration of the latter two representations, the subjective satisfaction is vitiated. The Petitioner asserts that the latter two representations were duly delivered and received well ahead of passing of the detention order in the office of the Detaining Authority. No explanation is forthcoming, as to what prevented placement of those representations before the Detaining Authority.

64. With regard to the non placement and non consideration of the latter two communications submitted by the detenu, it is argued by the Counsel for the Respondents that the detenu cannot draw analogy of the requirement of dealing with the representations made to the concerned authority, after passing of the detention order, which right flows from Article 22(5) of the Constitution of India and also from the provisions of the COFEPOSA Act. As regards the so called

representations of the detenu, sent before passing of the detention order, that is, at best, only in the nature of favourable material which along with other material ought to be placed before the Detaining Authority by the Sponsoring Authority, and is required to be considered by the Detaining Authority. Further, the Petitioner has not made out any case in the Writ Petition that the latter two communications, sent by the Petitioner, contained any new material other than the material mentioned in the earlier two communications, which have been duly considered by the Detaining Authority, before passing of the impugned detention order.

65. Going by the provisions of the COFEPOSA Act and that of Article 22 of the Constitution of India, there is nothing to indicate that the detenu has any right to make representation before passing of the preventive detention order by the Detaining Authority, either to the Detaining Authority or to any other Authority. However, by interpretative process, the Apex Court has opined that the Detaining Authority must be provided with all the materials available against the individual concerned, both against him and in his favour, to enable it to reach at the just conclusion that the detention of such individual is necessary in the interest of the State and the general public. This legal principle is stated in the case of Ahmad Nasar vs. State of Tamil Nadu and Ors. 1999 (8) SCC 473 and reiterated in the case of Union of India vs. Ranu Bhandari, 2008 (17) SCC 348.

66. In the first place, there can be no occasion for the detenu to anticipate that preventive detention is likely to be passed against him. For, the proposal for initiation of preventive detention action is supposed to be highly confidential move, which is intended to prevent the detenu from indulging in prejudicial activities in future, which is necessary in the interest of the State and the general public. Assuming that the individual, taking clue from the actions of the Police Authorities or the Sponsoring Authority, anticipates well in advance that preventive detention action is likely to be taken against him and therefore writes to the State Authorities explaining his position, that will be only in the nature of material favourable to the detenu, also to be considered by the Detaining Authority, before forming its subjective satisfaction, lest the subjective satisfaction is challenged on the ground of non-consideration of the favourable material to the detenu.

67. Reverting back to the decision of the Apex Court in the case of Ahmad Nasar (Supra), it is noticed that the detenu had sent letter to the "Detaining Authority", through Jail, before passing of the detention order. His advocate had also sent a letter to the Customs Authority, before passing of the Detention order. The detenu had contended that the said letters were vital documents and would have had bearing on the subjective satisfaction of the Detaining Authority. However, the same were not placed before the Detaining Authority. Notably, in that case, the letter sent by the detenu, through Jail, was addressed to the Detaining Authority and that letter was received by the Secretary concerned, who had signed the proposal for detention, before it was sent to the Minister concerned,

being the Detaining Authority. The Secretary, on receipt of the said letter, from the detenu, through Jail, found that the detenu's retraction of confession, was only repetition of what was contended in the detenu's bail application, which was already placed before the Detaining Authority and was considered by him. The Court, however, found as of fact that the letter received by the Sponsoring Authority well within time for being placed before the Detaining Authority contained new material and there was an obligation casted on the Sponsoring Authority to place it before the Detaining Authority. For, the Apex Court noticed that the said letters refer to the stand of the detenu that the seized goods were not prohibited goods, which passed through the road, for which the detenu had offered to pay the duty to the concerned Authority, but the Authority, without listening him, proceeded to arrest the detenu. This additional matter was considered to be vital and was required to be brought to the notice of the Detaining Authority, before the Detaining Authority formed its subjective satisfaction.

68. Suffice it to observe that the communications sent by the detenu before passing of the detention order cannot be equated with the representation ascribable to Article 22(5) of the Constitution of India or the representation to be made to the Appropriate Authority specified as per the provisions of the COFEPOSA Act. It is only a communication or a letter of the detenu containing stand of the detenu, which may be in the nature of a favourable material to him; and therefore, is required to be considered by the Detaining Authority, if brought to his notice by the Sponsoring Authority, before forming the subjective satisfaction.

69. Even in the case of Ranu Bhandari (supra), the detenu had sent letter dated 12th December, 2012 to the show cause notice dated 22nd July, 2004, received by him. That material disclosed his stand that he was not involved in any criminal activities. However, this material, though received by the Sponsoring Authority, well in time, before passing of the detention order by the Detaining Authority, was not placed before the Detaining Authority for consideration.

70. In the present case, however, the four letters pressed into service by the Petitioner, were sent by the detenu, addressed to Additional Secretary, Home Department, State of Maharashtra and not to the Sponsoring Authority or to the Detaining Authority as such. The Additional Chief Secretary, Home Department, State of Maharashtra is the notified authority, to consider the representation post detention order, under the provisions of the COFEPOSA Act and Article 22(5) of the Constitution of India. This Authority has no role whatsoever at the pre-issuance of detention order stage. The Detaining Authority is independent and has to form subjective satisfaction on its own on the basis of material placed before it. The Additional Chief Secretary can neither dictate to the Detaining Authority nor any provision in the Act or the Constitution has been brought to our notice, which authorises him to interdict the process of consideration of proposal for passing preventive detention order against an individual. Notably,

the provisions of the COFEPOSA Act and the Constitution of India permit revocation or modification of detention order, "once it is passed".

71. Be that as it may, the four communications were admittedly sent to the Additional Chief Secretary and not to the Sponsoring Authority or the Detaining Authority, before passing of the detention order by the Detaining Authority. Indeed, it is possible for the Petitioner to contend that the office of the Additional Chief Secretary, having received the latter two communications, sent by the detenu, could have forwarded the same to the Detaining Authority. No such plea has been specifically taken in the Writ Petition. As a result, the Additional Chief Secretary has not filed any reply. Notably, in the present case, the office of the Additional Chief Secretary as well as the Detaining Authority has expressed inability in producing the original file in the respective offices, as the same have been completely destroyed due to the recent fire accident in Mantralaya.

72. Be that as it may, it is noticed from the grounds of detention itself that the Detaining Authority had considered the first two letters received from the detenu dated 10.1.2012 and 10.2.2012 before issuance of the detention order on 14.3.2012. If the latter two communications dated 18.2.2012 and 6.3.2012 were to be placed before the Detaining Authority in time, there is no reason why the Detaining Authority would have overlooked the same. The reply filed by the Detaining Authority reveals that the latter two communications were received in her office only on 26.3.2012 much after passing of the detention order on 14.3.2012. The Petitioner, however, is relying on the endorsement regarding delivery of the envelope containing the said two letters. Considering the fact that these letters were not placed before the Detaining Authority before the detention order was passed, the Detaining Authority cannot be faulted for non-consideration thereof. Moreover, the Sponsoring Authority cannot be blamed for non-placement of the said two letters before the Detaining Authority in time as the said letters were not addressed to the Sponsoring Authority. It is not the case of the petitioner that the same were forwarded to the Sponsoring Authority contemporaneously. In both the decisions of the Apex Court, the letters were sent by the detenu, pre-issuance the detention order, to the Sponsoring Authority, well in advance; but the Sponsoring Authority did not place it before the Detaining Authority. That is not the case on hand. In the present case, the detenu had sent the said letters to Authority other than the Sponsoring Authority and the Detaining Authority and that authority had no role to play prior to issuance of preventive detention order by the Detaining Authority.

73. The Counsel for the Respondents have rightly pointed out that in the petition, no case has been made out that the latter two communications sent by the detenu dated 18.2.2012 and 6.3.2012 were qualitatively different and contained new material. In absence thereof, assuming that the detenu had sent two letters well in advance before the passing of detention order, it would make no difference as the Detaining Authority has already considered the first two letters of the detenu which indisputably contained elaborate stand of the detenu running

into several pages. Further, the Respondents have justly relied on the decision which expounds that merely because the detenu makes successive representations, that would be of no avail and the detention order cannot be lightly interfered with on the basis of such grievance. The Learned Advocate General has relied on the decision of the Constitution Bench of the Apex Court in the case of *Makhan Lal Gokul Chand vs. Administrator, Union Territory of Delhi and Anr.* AIR 2000 SC 158. It is held that if fresh material was not brought on record nor any subsequent events were pointed out, which may have warranted a fresh consideration of the representation made by the detenu, successive representations made by the detenu will be of no avail. The Petitioner in that case had successively challenged the detention order by filing four Writ Petitions. The fourth Writ Petition was filed in respect of dismissal of the first Writ Petition. The Petitioner also filed representation but the representation did not contain any fresh material nor any subsequent event was brought on record, which warranted fresh consideration. Even in the present case, the third representation sent, as is clearly accepted by the Counsel for the Petitioner, did not specify any new or fresh material nor brought on record any subsequent event. In any case, having opined that the communication sent by the Petitioner was not a representation within the meaning of Section 8 or Article 22(5) of the Constitution of India, but only a communication pointing out favourable material, which could be taken into account by the Detaining Authority, coupled with the fact that the fourth letter dated 6th March, 2012, sent by the detenu, from the Jail, was received by the Detaining Authority after the passing of the detention order, the Detaining Authority was not obliged to consider the same. Nothing more was required to be done in the matter by the Detaining Authority.

74. In the light of this submission, the Counsel for the petitioner, in rejoinder argument, for the first time, has attempted to demonstrate that the contents of communication sent by the detenu dated 6.3.2012 was certainly different than the earlier three communications sent by him. He fairly accepted that contents of the communication dated 18.2.2012 were similar to the contents of the two elaborate communications sent by the detenu dated 10.1.2012 and 10.2.2012. According to him, therefore, it was obligatory to place at least the letter sent by the detenu dated 6.3.2012 before the Detaining Authority for consideration alongwith other material. Inasmuch as, in this letter, the detenu has mentioned that the show-cause notice dated 29.2.2012 has been given to him on 5.3.2012 which is over and above six months after the seizure of goods from petitioner. Further, the goods which are proposed to be confiscated are not liable for confiscation u/s 2(39) of the Customs Act and thus, the detention order cannot be passed against him.

75. As aforesaid, even the said letter dated 6.3.2012 is addressed to the Additional Chief Secretary, Home Department, State of Maharashtra and not to the Detaining Authority or the Sponsoring Authority. Nor it is the case of the petitioner that it was forwarded to the Sponsoring Authority or the Detaining Authority before 14.3.2012. The petitioner asserts that the said letter was

delivered in the inward of the Home Department. That does not mean that it was delivered in the office of the Sponsoring Authority or the Detaining Authority before 14.3.2012. After receipt in the inward department, it was bound to be processed through proper channel and must have reached the Additional Chief Secretary, Home Department in due course. The Detaining Authority in the reply affidavit, asserts that copy of the said letter was received in her office only on 26.3.2012. Thus, the Sponsoring Authority could not be blamed for having failed to place the document before the Detaining Authority much less before the passing of the detention order. In other words, if the petitioner wanted the said letter to be considered by the Detaining Authority, should have ensured that it is delivered in the office of the Sponsoring Authority or the Detaining Authority well in advance and cannot be allowed to take advantage of his own wrong of having addressed the letter to the Additional Chief Secretary, Home Department and delivering it in the inward of the Home Department - which receives the correspondence addressed to all the Officials/Authorities of that Department.

76. The next argument is that at any rate, the Detaining Authority has failed to consider the said letter with promptitude after its receipt on 26.3.2012. Instead, the Detaining Authority considered the same and rejected it on 19.4.2012 i.e., after 24 days. Moreover, the decision of the Detaining Authority of rejecting the letter was communicated to the detenu at his residence only on 9.6.2012 i.e. after 51 days, which was received at the detenu's residence on 13.6.2012. This was notwithstanding that the detenu was available for communicating the decision in jail itself since 2.4.2012. No communication was received by the detenu in jail.

77. In substance, the grievance is about delay in consideration of the said communication dated 6.3.2012 and also of delay in communicating the decision taken thereon. The argument though attractive, at the first blush, will have to be stated to be rejected. It is advanced on the premise that the Detaining Authority was obliged to consider that letter as representation ascribable to Article 22(5) of the Constitution of India and the provisions of the COFEPOSA Act. In the first place, such communication sent by the detenu pre-issuance stage cannot be equated with representation sent by him post-issuance of preventive detention order. Secondly, the Detaining Authority cannot be blamed for delay in consideration thereof as it was addressed to the Additional Chief Secretary, Home Department, State of Maharashtra. If at all it is to be treated as representation, it could be considered only by that Authority and not by the Detaining Authority. The grievance in the petition is about delay in consideration by the Detaining Authority which submission will have to be, therefore, stated to be rejected. No precedent has been brought to our notice which has taken the view that the Appropriate Authority is obliged to consider such communication received prior to the issuance of the preventive detention order being in the nature of representation post-detention order. The fact that the Detaining Authority has stated on affidavit that it considered the said communication and rejected it on 19.4.2012 does not and will not enure in favour of the detenu, unless it is

established that it obligates the Authority to treat such communication as a representation post-detention order. In that case, the argument of delay in consideration of the representation by the Detaining Authority or for that matter, delay in communicating the decision of the Authority of rejecting the letter dated 6.3.2012 does not take the matter any further.

78. The plain language of section 8 of the COFEPOSA Act is suggestive of making a representation against the preventive detention order to the State Government on the basis of the grounds of detention communicated to the detenu. Even the provision in Article 22(5) indicates that after the grounds on which the preventive detention order has been made and is communicated to the person, he is entitled to make representation at the earliest opportunity against the order and not representation in anticipation of the order. Considering the legislative scheme, there is neither any right bestowed on the detenu to make representation before passing of the detention order nor a duty is cast on the Detaining Authority to consider the communication sent by the proposed detenu on the touchstone of the principles governing representations made post-detention order under Article 22(5) of the Constitution of India. It is one thing to say that the said communication should be brought to the notice of the Detaining Authority as it may contain favourable material to the detenu and may have bearing on the subjective satisfaction to be recorded by the Detaining Authority. But it does not follow that the detention order can be quashed due to non-placement of the material before the Detaining Authority or delay in consideration thereof after its receipt or on his own must treat it as representation against the order of detention and grounds of detention served on the detenu after passing of the detention order. If it is not a matter of duty of the Detaining Authority or the Appropriate Authority to consider such communication in lieu of representation post order of detention, the concomitant is that the argument of delay in consideration or delay in communicating the decision of the Authority to the detenu taken thereon, would not come into play.

79. Although the defence of the Authorities founded on technicalities is always frowned upon by the Courts in matters of personal liberty of the citizens, it does not mean that a smart and well advised detenu can raise grounds or create circumstances to question the preventive detention order passed against him on the basis of his actions in anticipation of issuance of the preventive detention order against him, which are anterior to the passing of the detention order itself. Significantly, the detenu, after service of the detention order and the grounds of detention, is explicitly informed that he is free to make representation to the Appropriate Authority against the same. In case, in a given case the detenu wants to rely on the communication already sent by him pre-issuance of detention order as his representation ascribable to Article 22(5), he must inform the Authority that he has already sent communication pre-issuance of detention order and that must be treated as his representation post-issuance and execution of the detention order on him. The detenu cannot take benefit of his own inaction sans the express provisions in law requiring the Authority to treat

any letter, received from the individual pre-issuance of detention order, as deemed to be representation post-issuance of the detention order for the purpose of section 8 or any other enabling provision of the COFEPOSA Act for revocation or modification of the detention order, after its issuance.

80. Accordingly, we hold that non-placement or non-consideration of the communication sent by the detenu dated 6.3.2012 by the "Detaining Authority" immediately upon its receipt would be of any avail to the detenu. Similarly, the grievance of delay in consideration of the said letter by the "Detaining Authority" and delay in communication of the decision taken by the Detaining Authority to the detenu, also cannot be countenanced. Further, the fact that the Detaining Authority has considered the said communication, will not create any right in favour of the detenu if, in law, the Detaining Authority was not obliged to consider the same after passing of the order of detention. The representation u/s 8 of the Act can be made only to the State Government and the power u/s 14 of revocation or modification of the detention order has to be exercised by the State Government.

81. The grievance of the Petitioner is that the Detaining Authority, in the first reply affidavit, dated 4th June, 2012, simply mentioned the factum of rejection of representation, without specifying the date of rejection or the date of communication thereof to the detenu. In the second affidavit dated 13th July, 2012, the Detaining Authority has stated that the decision regarding rejection of the representation in question was sent to the detenu vide letter dated 19th April, 2012 but, no rebuttal is found regarding the date on the communication received at the detenu's residence on 13th June, 2012, which was dispatched on 9th June, 2012. The Detaining Authority has further stated that the complete record in her office has been burnt due to fire incident occurred on 21st June, 2012. Considering the view taken by us that it was not obligatory for the Detaining Authority to consider the communication sent by the detenu after passing of the detention order on 14th March, 2012, the incidental issues raised by the Petitioner cannot take the matter any further.

82. The Counsel for the Petitioner placed reliance on the decision of the Apex Court in the case of *Soloman vs. State of Kerala*, 2000 9 SCC 561. In that case, however, the detention order was passed on 1st March, 1999 and the representation was submitted by the detenu, through Jail on 20th March, 1999. Thus, it was a case of representation made post issuance of preventive detention order. Certainly, in such cases, unexplained delay in consideration and delay by the Appropriate Authority in communication of the decision is fatal but, that principle will be of no avail in the fact situation of the present case. Reliance is then placed in the case of *Rama Dhondur Borade vs. V. K. Saraf, Commissioner of Police*, (1989) 3 SCC, 173. Even, this is a case of representation made post issuance of preventive detention order; and the principle enunciated therein will have no application to the present case, where the grievance is in respect of delay in consideration of the communication, sent by the detenu, pre-issuance of

preventive detention order. The Petitioner has then relied upon the decisions in the cases of Smt. Rakha Kamlesh Shah vs. Union of India and Ors. 1999 Cri. L.J. 1036, Ranbeer Singh vs. T. George Joseph, District Magistrate, Meerut & anr., 1990 (Supp.) SCC 54 and Niranjansingh vs. State of Madhya Pradesh, (1972) 2 SCC 542. Even in these cases, the representation in question was post issuance of preventive detention order. For the same reason, even these decisions will be of no avail to the Petitioner.

83. Reliance is then placed by the Learned Advocate General on the case of Rajendrakumar Natvarlal Shah vs. State of Gujarat and Ors. (1988) 3 SCC 153. The Court considered the argument of unexplained delay indicative of subjective satisfaction arrived at by the Detaining Authority was not genuine or that the grounds were stale or illusory or there was no rational connection between the grounds of impugned order of detention. In the present case, the grievance is about the unexplained delay in considering the letter dated 6th March, 2012, sent by the detenu anterior to the issuance of detention order against him and delay in communicating the decision of the "Detaining Authority" to the detenu. As is noted by us earlier, the letter sent by the detenu cannot take the form of representation sent under Article 22(5) of the Constitution of India or any enabling provision in the COFEPOSA Act, permitting revocation or modification of the order by the concerned Authority. Besides, the letter was addressed to the Additional Chief Secretary (Home) and not to the Detaining Authority. Therefore, there was no obligation on the Detaining Authority to consider the same as representation much less post issuance of detention order by the Detaining Authority. Thus, the argument of delay in consideration of the said communication by the Detaining Authority or delay in communication of the decision of the Detaining Authority to the detenu is of no avail.

84. The next ground urged before us is that the Detaining Authority claims to have considered the proposal along with its annexures of 2965 pages and formulated the grounds of detention. From the averments in the reply affidavit of the Detaining Authority, it is noticed that the initial proposal was dated 10th October, 2011, which was received on 11th October, 2011 qua the detenu and five others. Thereafter, the Detaining Authority continued to receive further generated documents until 12th March, 2012. In the additional affidavit, the Detaining Authority has improved upon her stand by asserting that she directed to include further generated documents in the list of relied upon documents whenever it was submitted and considered by her.

85. On the basis of the stand taken by the Detaining Authority, the Petitioner argues that the Detaining Authority has failed to fulfill the obligation to formulate the grounds of detention and to pass the detention order only after considering all the material together and at a time. Having considered the proposal on piecemeal basis, the subjective satisfaction recorded by the Detaining Authority is vitiated. The Detaining Authority has made mere pretense of having formulated the grounds within a short span of less than two days, which was a

herculean task considering the voluminous record. Further, the Detaining Authority claims that she directed inclusion of further generated documents in relied upon documents on various occasions, which presupposes that the documents were not part of the proposal pending before the Detaining Authority and the grounds of detention could not have been formulated unless those documents were received and considered by the Detaining Authority.

86. In our opinion, however, there is nothing wrong if the Detaining Authority insisted for further generated documents. After receipt of the final proposal and only after being fully satisfied that it was imminent to issue order of preventive detention against the detenu, the Detaining Authority is expected to exercise powers conferred under the COFEPOSA Act to prevent the detenu from indulging in smuggling in future. That is the process of consideration and merely because the file was handled on different dates / occasions does not mean that the subjective satisfaction has been recorded on piecemeal basis. The subjective satisfaction is recorded only when the Detaining Authority is fully satisfied about the necessity of issuance of preventive detention order against the detenu. There is nothing to even remotely suggest that there was possibility of the grounds of detention having been formulated by the Detaining Authority in piecemeal manner. On the other hand, the Detaining Authority, on affidavit, has stated that the grounds were formulated by her contemporaneously while recording her subjective satisfaction about the necessity to issue the preventive detention order against the detenu, upon considering all the materials placed before her, including all the further generated documents. The fact that the proposal consisted of large number of documents about 2965 or that the grounds of detention were formulated in two days' time, by itself, cannot be the basis to hold that the subjective satisfaction recorded by the Detaining Authority is questionable. The grounds of detention, as served on the detenu, is of 18 pages. It is not as if it was impossible to formulate those grounds of detention in two days time. Once the Detaining Authority has scrutinised the documents, which were placed before her along with the proposal including the further generated documents and was completely abreast of the contents thereof, it is incomprehensible that such grounds of detention could not have been formulated in two days. We, therefore, do not find any merits in the ground under consideration.

87. The Counsel for the Petitioner, however relies on the decision in unreported decision of the Apex Court in the case of Umeshchandra Varma vs. Union of India, dated 20th December, 1985 in Criminal Appeal No.878/1985. We would reproduce the said decision in its entirety.

Special leave granted.

The Appellant was intercepted by the Officers of the Directorate of Revenue Intelligence on the evening of 12/6/1985 and a large quantity of alleged contraband gold was recovered from him. He was interrogated on 13/6/1995, almost the whole day, and thereafter at 6 p.m. He was formally arrested u/s 104

of the Customs Act. The same night a detention order was made by the Joint Secretary to the Government of India, Finance Department. Shri. Jethmalani's contention before us is that the Detaining Authority could not have possibly applied his mind to the facts and circumstances of the case having regard to the fact that the documents on which the Detaining Authority purported to rely in making the order of detention run to about 234 pages and the documents included the arrest memo which was prepared at 6.00 p.m. On 13/6/1985. The reference to the arrest memo which was prepared at 6.00 p.m. is one of the documents which was relied upon by the Detaining Authority indicates that the documents and the proposal for detention must have been placed before the Detaining Authority sometime after 6 p.m. in which case it would certainly be difficult if not impossible for the Detaining Authority to make the order the same night. We think that in the fact and circumstances of the case the Detaining Authority could not have possibly applied his mind to the voluminous documentary evidence which was placed before him and/or the reason along the order of detention has to be quashed. The detenu is directed to be set at liberty forthwith.

The appeal is disposed of accordingly.

Sd/-

88. On bare reading of this decision, there is no manner of doubt that the observations are in the context of the facts of that case. In that case, large quantity of contraband was seized. On the next day, the accused was interrogated almost the whole day and came to be formally arrested in the evening. On the same night, the detention order was made against him by the Authority. In that context, it was argued that the Detaining Authority could not have possibly applied his mind in the facts and circumstances of the case, as the documents purportedly relied in making the subjective satisfaction ran into about 234 pages and the documents included the arrest memo prepared on the same evening. In the present case, however, the final proposal was received on 11th October, 2011 by the Detaining Authority and after scrutiny thereof, the Detaining Authority asked for further generated documents from time to time and finally recorded her subjective satisfaction on 14th March, 2012. It is not a case of action taken in undue haste but, a well considered and well informed decision of the Detaining Authority.

89. The next decision pressed into service is the case of Kirti Sujit Satam vs. State of Maharashtra, 2008 ALL MR Cri. 774. The argument in that case was similar to the case of Umesh Varma (supra). In that case, it was not physically possible for the Detaining Authority to peruse the documents of about 1712 pages of 154 documents, in shortest possible time of less than 12 hours. The Court, having recorded that finding, proceeded to answer the issue. In the present case, however, it is unfathomable that such finding can be recorded. Instead, it is a case of well considered decision taken by the Detaining Authority and not in haste at all.

90. The next decision relied upon is of the Bombay High Court in the case of Ashwinkumar B. Halari vs. State of Maharashtra, 1987 Cri. L.J. 1798. The argument under consideration is presumably raised taking clue from the observations contained in this decision. In this decision, the Court opined that the grounds of detention have to be formulated and the order has to be passed only after considering all the material together and at a time. In that case, the matter proceeded on the basis of undisputed position that the order was passed and in support of the said decision, subjective satisfaction was already formulated on the basis of documents which were before the Authority on 1st July, 1986. Those documents were at Sr. Nos. 1 to 18 in the list of documents supplied to the detenu. The further documents from Sr. Nos. 19 to 31 were received later on and on each occasion, the Detaining Authority came to the conclusion that there was no need to alter the order passed and the grounds already formulated by him. The Detaining Authority, therefore, proceeded to issue the detention order. In the backdrop of this undisputed facts, the Court had occasion to answer that the Detaining Authority ought to have considered all the material together and at a time. In the present case, no such grievance has been made. On the other hand, the reply affidavit filed by the Detaining Authority makes it amply clear that the Detaining Authority considered all the materials placed before her, including the further generated documents together and thereafter recorded subjective satisfaction and contemporaneously formulated the grounds of detention.

91. The learned Advocate General has placed reliance on the decision of this Court in the case of Kakkovayal Kuhbi Hamja vs. State of Maharashtra and Anr. (1993) CRI. L. J. 1078. The question whether the delay in making of any order of detention by itself vitiates the subjective satisfaction was considered. The Court opined that delay in passing of an order of detention is not ipso facto fatal to the detention of a person and the real test to judge whether an order of detention is vitiated by reason of delay in passing the same is whether the grounds are stale or illusory or that there is no real nexus between the grounds and the impugned order of detention, or in other words, the live-link between the same is snapped by reason of such delay.

92. Learned Advocate General has then relied on the decision in the case of Sheetal Manoj Gore vs. State of Maharashtra and Ors. (2006) 7 SCC 560. This decision restates the well established legal position that the unexplained delay in passing of detention order has bearing on the subjective satisfaction of the Detaining Authority. Even in that case, the Detaining Authority asserted that she considered the relevant material and only after being subjectively satisfied that it was necessary to issue order of detention, she issued the order of detention. She had also asserted that she herself formulated the grounds of detention and the grounds along with documents were furnished to the detenu.

93. The next ground urged was that in Paragraph 30 of the grounds of detention, the Detaining Authority claims to have referred to and relied upon the documents

mentioned in the enclosed list, however, the the Index states as "list of documents relied upon in the proposal for detention of Shri. Ajit Bapu Satam under COFEPOSA Act, 1974". The Detaining Authority has simply signed the Index forwarded to her. The Detaining Authority, in any case, however, has described the list of documents as "Accompaniments to the Detaining authority"s Letter number dated " This grievance is essentially in the nature of pointing out variation in the description of the documents. In the grounds of detention, the document is described as "enclosed list". That does not mean that the document should contain the same description as "enclosed list". The description of the document, however, is list of documents relied upon in the proposal for detention of Shri Ajit Bapu Satam under the provisions of COFEPOSA Act. The fact that similar document in other cases have been described differently does not mean that the subjective satisfaction reached by the Detaining Authority is affected in any manner, nor it can be a case of depriving the detenu of his rights to make effective representation, violating right guaranteed under Article 22(5) of the Constitution of India. One can understand the grievance that the list of documents itself was not made over to the detenu, though mentioned in Paragraph 30 of the grounds of detention, as "enclosed list". Accordingly, there is no substance in this grievance.

94. That takes us to the next ground urged before us. It was argued that the documents mentioned at Page Nos. 1079 to 1202 in the compilation of documents, served on the detenu, along with the grounds of detention were totally blank. Further, the page Nos. 1213 to 1216, 1220 and 1222 to 1325 were copies of blank pages of a Register. That presupposes that the Detaining Authority had not bothered to weed out irrelevant blank pages from the other material. Resultantly, the subjective satisfaction sham and not genuine. The argument deserves to be stated to be rejected. The blank pages were part of the Register, which was included in the proposal submitted to the Detaining Authority. The Detaining Authority could not have separated the blank pages of the Register. If the Detaining Authority were to separate those pages of the Register, there is no guarantee that the detenu would have approved the same and not make grievance that the removed pages from the Register were vital documents. Thus, non-supply thereof was fatal. The inclusion of blank pages, which were part of the Register, in our opinion, does not mean that the subjective satisfaction, recorded by the Detaining Authority, has affected or was a sham and not genuine, as suggested. It would have been a different matter, if the Detaining Authority was to refer to or rely upon any extraneous material unconnected to the detenu.

95. Counsel for the Petitioner relied upon the decision in the case of Shalini Soni vs. Union of India, 1980 CRI. L.J. 1487(1) SC. Emphasis was placed on dictum in Paragraph 7 of this decision, which reads thus:

7. The Article has two facets: (1) communication of the grounds on which the order of detention has been made (2) opportunity of making a representation

against the order of detention. Communication of the grounds pre-supposes the formulation of the grounds and formulation of the grounds requires and ensures the application of the mind of the detaining authority to the facts and materials before it, that is to say to pertinent and proximate matters in regard to each individual case and excludes the elements of arbitrariness and automatism (if one may be permitted to use the word to describe a mechanical reaction without a conscious application of the mind). It is an unwritten rule of the law, constitutional and administrative, that whenever a person making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. Where there is further an express statutory obligation to communicate not merely the decision that the grounds on which the decision is founded, it is a necessary corollary that the grounds communicated, that is, the grounds so made known, should be seen to pertain to pertinent and proximate matters and should comprise all the constituent facts and materials that when in to make up the mind of the statutory functionary and not merely the inferential conclusions. Now, the decision to detain a person depends on the subjective satisfaction of the detaining authority. The Constitution and the statute cast a duty on the detaining authority to communicate the grounds of detention to the detenu. From what we have said above, it follows that the grounds communicated to the detenu must reveal the whole of the factual material considered by the detaining authority and not merely the inferences of fact arrived at by the detaining authority. The matter may also be looked at from the point of view of the second facet of Art. 22(5). An opportunity to make a representation against the order of detention necessarily implies that the detenu is informed of all that has been taken into account against him in arriving at the decision to detain him. It means that the detenu is to be informed not merely, as we said, of the inferences of fact but of all the factual material which have led to the inferences of fact. If the detenu is not to be so informed the opportunity so solemnly guaranteed by the Constitution becomes reduced to an exercise in futility. Whatever angle from which the questions is looked at, it is clear that "grounds" in Art. 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The "grounds" must be self sufficient and self-explanatory. In our view copies of documents to which reference is made in the "grounds" must be supplied to the detenu as part of the "grounds"

96. The observations will have to be considered in the context in which the same are made. The Court has only opined that it is an unwritten rule of law, constitutional and administrative that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. This does not mean that the Authority, who receives the proposal, has to physically remove the documents, which, in its opinion, were not relevant and remote. There is nothing wrong if the compilation

of proposal is considered by the Statutory functionary in its entirety but the subjective satisfaction is recorded relying on only the relevant documents concerning the detenu. This decision is not an authority on the argument canvassed before us that the Detaining Authority was obliged to weed out the "blank pages" from the compilation of the documents received along with the proposal, before recording her subjective satisfaction. Having said this, it would make no difference if the blank pages have been stamped as legible pages, as has been done in respect of other pages. That is only a ministerial work done by the office of the Detaining Authority and not by the Detaining Authority personally, much less before recording of the subjective satisfaction. The stamping of documents included in the compilation served on the detenu, along with the grounds of detention is done by the office in the ordinary course of business, authenticating that the documents are not only legible but also true copies of the original, which is contained in the file that was placed before the Detaining Authority. Accordingly, we find no merits in this grievance as well.

97. The next argument is that the Detaining Authority has repeatedly annexed the same judgment of the Supreme Court at six places in the compilation of documents at pages 2149, 2156, 2369, 2381, 2392 and 2439. This shows the callousness and non application of mind of the Detaining Authority writ large. Even this argument deserves to be rejected for the reasons already mentioned hitherto. The Detaining Authority received proposal from the Sponsoring Authority of several documents. In a given case, the documents can be a part of some other documents being appended thereto. The Sponsoring Authority may have kept the documents as well as additional copy thereof, which is part of some other document, as annexure/Exhibit therewith. Be that as it may, as the Detaining Authority is not expected to weed out irrelevant documents but, examine all the documents placed before it as it is and record its subjective satisfaction on the basis of documents, which it finds to be relevant amongst the documents compiled and placed along with the proposal, the fact that the same document (same judgment of Supreme Court) appears at four different places does not mean that the subjective satisfaction of the Detaining Authority is affected in any manner. We are also not impressed by the criticism that the detenu was mislead because of the same judgment of the Supreme Court was placed at five different places in the compilation of documents served on him, along with the grounds of detention or that it affected his right to make effective representation in any manner. Accordingly, this argument of the Petitioner deserves to be stated to be rejected.

98. Learned Advocate General has also relied upon the exposition of the Apex Court in the case of Gurdev Singh vs. Union of India and Ors. (2002) 1 SCC 545. This decision has considered the line of Authorities including A. Shwkath Ali (supra), Arvind Shergill (2000) 7 SCC 601, Ahmed Nassar (supra), Sanjay Kumar Aggarwal vs. Union of India (1990) 3 SCC 309, Ashadevi vs. K. Shivraj, Addl. Chief Secretary to the Government of Gujarat (1979) 1 SCC 222 and Ayya vs. State of U.P. (1989) 1 SCC 374. The legal principle has been restated in all these

decisions that the subjective satisfaction will be vitiated if a piece of evidence, which was relevant though not binding had not been considered at all. If a piece of evidence which might reasonably have affected the decision whether or not to pass a order of detention excluded from consideration, there would be a failure of application of mind, which, vitiates the detention. In the present case, the Detaining Authority having adverted to all the relevant material placed before it and forming subjective satisfaction, the detention order issued on the basis of such satisfaction cannot be said to suffer from non application of mind.

99. The next argument of the petitioner is that the grounds of detention does not reflect that the Detaining Authority was alive to the fact or had considered in the grounds as to whether any prosecution has been launched or contemplated to be launched against the detenu. In other words, the Detaining Authority has not adverted to the question as to whether the ordinary law of the land was sufficient and recourse to preventive detention was the only option.

100. For examining this argument, we may have to read the grounds of detention as a whole. The Detaining Authority has considered all relevant aspects of the matter including that the detenu was arrested on 3.9.2011 and has been released on bail on 27.9.2011 in connection with his latest criminal activity of smuggling of red sanders to Dubai. The non-mention of the fact that criminal prosecution has been launched or contemplated to be launched against the detenu, by itself cannot be the basis to hold that the subjective satisfaction recorded by the Detaining Authority about the necessity of issuing preventive detention order against the detenu to prevent him from indulging in smuggling in future, is affected in any manner.

101. The petitioner has placed reliance on the decision of the Apex Court in the case of *Rekha vs. State of Tamil Nadu*, (2011) 5 SCC 244 and on *Yumman Ongbi Lembi Leima v. State of Manipur*, (2012) 2 SCC 176. Very recently, the Division bench of this Court had an occasion to consider these judgments while examining similar argument in the case of *Pramod Ashok Pujari vs. State of Maharashtra & anr.*, Writ Petition No.2081 of 2012 decided on 7th August, 2012. The argument was that the subjective satisfaction recorded by the Detaining Authority was vitiated as it is permitted only if the ordinary law of the land cannot deal with the situation. It has been held that these decisions are not an authority on the proposition that if the detenu can be punished for criminal activity under the ordinary law, in no case, preventive detention order can be passed against such person. It is well established position that the two regiments are completely different. The ordinary law would punish the criminal and provide for punitive action against him, whereas the preventive detention of the same criminal may be necessary in a given case with a view to prevent him from indulging in manner prejudicial to the maintenance of public order in future. It can be taken against any person irrespective of whether that person is already named as accused in a criminal case under the ordinary law or otherwise. In the present case, from the grounds of detention formulated by the Detaining Authority on the

basis of which subjective satisfaction has been reached about the necessity to issue preventive detention order against the detenu, it is not a simpliciter case of ordinary law of the land that would be sufficient to avert the future criminal activities of the detenu who is a member of a well organised syndicate operating and engaged in smuggling of red sanders.

102. Learned Advocate General has relied on the decision of the Apex Court in the case of Hemlata K. Shah vs. State of Maharashtra and Anr. AIR 1982 SC 8. The ground urged in that case was that the proper course for the Authority was to prosecute and convict the detenu for offence, if any, for violation of the provisions of the Customs Act. In support of that argument, reliance was placed in the case reported in AIR 1979 SC 1945. After extracting the dictum in the said decision, in Paragraph 9, in Hemlata's case, the Apex Court proceeded to hold that the rule laid down is that the prosecution or the absence of it is not an absolute bar to an order of preventive detention; the authority may prosecute the offender for an isolated act or acts of an offence for violation of any criminal law, but if it is satisfied that the offender has a tendency to go on violating such laws, then there will be no bar for the State to detain him under a Preventive Detention Act in order to disable him to repeat such offences. The Court went to observe that the Detaining Authority is to satisfy the Court that it had in mind the question whether prosecution of the offender was possible and sufficient in the circumstances of the case. As observed earlier, in the present case, the subjective satisfaction recorded by the Detaining Authority spells out the necessity of issuance of preventive detention order to prevent the detenu from engaging in prejudicial activities in future, being the kingpin of the organised syndicate.

103. Learned Advocate General has then placed reliance on the Constitution Bench of the Apex Court in the case of Haradhan Saha vs. The State of West Bengal and Ors. 1974 CRI.L.J. 1479. The Court has held that Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The Authorities are different. The nature of proceedings is different. In the prosecution, an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu. In Paragraph 34, after adverting to the earlier decision of the same Court, the Court deduced to brought principles thus:

34. The recent decisions of this Court on this subject are many. The decisions in Borjahan Gorey v. State of West Bengal, reported in AIR 1972 SC 2256, Ashim Kumar Ray v. State of West Bengal, reported in AIR 1972 SC 2561; Abdul Aziz v The Distt. Magistrate, Bardwan; reported in AIR 1973 SC 770 = (1973 Cri LJ 590) and Debu Mahto v. State of West Bengal, reported in AIR 1974 SC 816 = (1974 Cri. LJ 699) correctly lay down the principles to be followed as to whether a detention order is valid or not. The decision in Biram Chand v. State of Uttar Pradesh reported in AIR 1974 SC 1161 = (1974 Cri. LJ 817) which is a Division

Bench decision of two learned Judges is contrary to the other Bench decisions consisting in each case of three learned Judges. The principles which can be broadly stated are these. First, merely because a detenu is liable to be tried in a criminal Court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that the detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.

104. Learned Advocate General then relied upon the decision in the case of *G. Reddeiah vs. Government of Andhra Pradesh and Anr.* (2012) 2 SCC 389. In Paragraph 11 of this decision, the Court observed that the essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. This judgment distinguishes the exposition in the case of *Rekha vs. State of Tamil Nadu* (supra). In this case, the Court found that in view of enormous activities of the detenu violating various provisions of Indian Penal Code being continuous and habitually engaged in prejudicial activities, issuance of preventive detention order against such person was appropriate.

105. The Learned Advocate General has relied on the decision in the case of *D. M. Nagaraja vs. Government of Karnataka and Ors.* (2011) 10 SCC 215. The argument that ordinary law of the land was sufficient and it was unnecessary to issue order of detention, was considered. The Court rejected that argument on the basis of the subjective satisfaction recorded by the Detaining Authority, which clearly showed that the detenu was not amenable to ordinary law. It indicated that after his release on bail from the prison, on various occasions he started indulging into the same activities. The Court has distinguished the dictum in *Rekha's* case (supra), while rejecting the argument of the detenu. Even in the present case, the materials relied upon by the Detaining Authority to form subjective satisfaction, points out that it was imperative to issue detention order to prevent the detenu from indulging in smuggling, in future.

106. The detenu, in the perception of the Detaining Authority, is, the kingpin of

the organised syndicate; and indulges in smuggling of red sanders by using forged bottles, seals of various central excise offices and shipping lines used for sealing the export containers. The red sanders is an endangered species and is covered under the Convention of International Trade and Endangered Species of Wild Fauna and Flora. Export of red sanders is prohibited under the EXIM policy. The Detaining Authority was conscious of the fact that the detenu was arrested in connection with the latest seizure of huge quantity of red sanders as also unaccounted cash but was released on bail. In that case, the Detaining Authority was aware that the ordinary law of the land was insufficient to avert the criminal activities of the organised syndicate in future which was detrimental to the national interest. In our opinion, the grounds of detention sufficiently highlight the material on the basis of which the Detaining Authority was satisfied about the necessity of issuing preventive detention order against the detenu. It is not a case of justification given by the Detaining Authority for the first time in the reply affidavit or new material pointed out in the reply affidavit. In our opinion, the argument under consideration is devoid of merits.

107. We shall now revert to this argument of the learned Advocate General, made out of had out of abundant cautela. He argued that the non-mention of the fact that the previous detention order issued against the detenu under COFEPOSA Act in the year 2008 was quashed by the High Court was to be held as fatal, even then, the entire detention order need not be quashed, keeping in mind the mandate of section 5A of the Act. Section 5A of the Act postulates that where a person has been detained in pursuance of an order of detention u/s 3 which has been made upon two or more grounds, such order of detention shall be deemed to have been made separately on each such ground and accordingly, such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, not relevant, not connected or not proximately connected with such person, or invalid for any other reason whatsoever, and it is not, therefore, possible to hold that the Government or the officer making such order would have been satisfied as provided in sub-section (1) of Section 3 with reference to the remaining ground or grounds and made the order of detention. In the first place, his argument was that the said material was only referred to material. Assuming that it was to be considered as relied upon, in paragraph 8 of the grounds of detention itself, the Detaining Authority was aware that the said order has been quashed by the High Court on the ground of delay in execution thereof. Thus, non-mention of that fact in paragraph 23 which articulates the basis of subjective satisfaction reached by the Detaining Authority would make no difference and if it is to be considered as fatal, that material can be ignored and the order of detention must be considered as deemed to have been made separately on the basis of other activities of the detenu referred to in paragraph 23 of the grounds of detention.

108. The Counsel for the Petitioner, however, has countered this submission on the argument that the Detaining Authority has neither claimed protection of section 5A in her affidavit nor the said provision is applicable in the present case

where the ground of detention is only of smuggling goods ascribable to section 3(1)(i) and no other ground. In such a case, the Court must hold that the entire order is vitiated and cannot be saved u/s 5A.

109. Considering the fact that we have answered the grounds urged by the petitioner in the negative on each ground, for the reasons already recorded, it is not necessary for us to dilate on the efficacy of section 5A of the Act. That question will not arise in the present case. Nevertheless, if the alternative submission of the learned Advocate General is to be considered, we are inclined to answer the same against the petitioner. The fact that the reply affidavit does not specifically claim protection u/s 5A of the Act does not preclude the Detaining Authority to invoke section 5A of the Act on the basis of the admitted and proved facts to answer that issue. It would be a purely legal question to be answered on the basis of such admitted or proved facts. As a matter of fact, it is the mandate of the law that the detention order shall be deemed to have been made separately on each of such grounds referred to in the detention order. It is an exception to the ordinary rule that the entire subjective satisfaction is vitiated if one of the stated grounds is found to be vague, non-existent, not relevant, not connected or not proximately connected with such person or invalid for any other reason whatsoever. Section 5A is an exception to that Rule.

110. The next question is: what is the meaning of the expression "grounds of detention". Is it limited to the grounds mentioned in section 3(1) of the Act or each of the criminal or prejudicial activities sufficient to constitute the grounds referred to in section 3(1) is a ground by itself.

111. Counsel for the Petitioner had relied on the decision in the case of *Shekhar Suman Pawaskar vs. V.K. Saral & Ors.*, 1990 Cr.L.J. 138. On the basis of facts in that case, the Court went on to observe that if the detention itself is not according to the procedure prescribed by law, then the question of supporting the void order of detention by taking recourse to section 5A will not arise and the entire detention order would be vitiated on account of such defect which cannot be cured by section 5A. The Court opined that if the detention is void ab initio, then Section 5A has no application. Reliance is then placed on another decision in the case of *A.Sowkath Ali vs. Union of India*, AIR 2000 SC 2662. Indeed, in paragraph 27 of this decision, the Court observed that the question of severability u/s 5A has not been raised by the State in the counter affidavit. However, it went on to observe that even otherwise, the said provision was not applicable on the facts of that case. Accordingly, this is not an authority on the proposition that if the question of severability u/s 5A is not raised in the reply affidavit, the Detaining Authority is precluded from urging that or for that matter, the Court is not obliged to consider the same on its own if the situation so warrants. In that case, the Court found that the detention order was passed on a single ground, in the context of the arrest of the detenu on 2.6.1999 when intercepted by the officers of the Directorate of Revenue Intelligence at the airport when the detenu was about to board a flight to Singapore. In the present

case, however, on a bare reading of the grounds of detention and in particular, paragraph 23, the preventive detention order is not passed on one single prejudicial activity but a combination of prejudicial activities. In this context, the Counsel for the petitioner submits that whether the detention order is passed on different criminal activities or one single criminal activity is of no relevance inasmuch as the language of section 5A unmistakably points towards the grounds referred to section 3(1) of the Act. One ground can be invoked at a time in respect of more than one prejudicial activity of the same type. In a given case, on the basis of one prejudicial activity, more than two grounds referred to in section 3(1) of the Act can be attracted. It is in the latter case that section 5A would come to the aid of the Detaining Authority.

112. The learned Advocate General, however, submits to the contrary. According to him, every criminal activity in relation to which the detention order is issued would constitute a separate ground and must be considered as ground by itself. The Statement of Objects and Reasons for introducing section 5A predicates that some persons against whom orders of detention were made under the Act had to be released because the orders of detention were held to be void as some of the grounds of detention were considered by Courts to be vague, irrelevant or otherwise invalid. To remove that difficulty and to make the special provisions in respect of persons whose detention is necessary for dealing effectively with the exigency, section 5A came to be enacted. The learned Advocate General then relies on the decision of the Constitution Bench of the Apex Court in *Attorney General of India vs Amratlal Prajivandas & Ors.*, (1994) 5 SCC 54, which had occasion to consider the constitutional validity of section 5A of the Act. The discussion in paragraphs 44 to 48 of the judgment also interprets section 5A of the Act. The Apex Court opined that section 5A is in two parts. It noticed that the detention order can be based upon one single ground. The Apex Court has pointedly adverted to the decision in *Anil Dey vs. State of West Bengal*, (1974) 4 SCC 514, which was a case of theft of railway signal material. The Court opined that one act was sufficient to issue preventive detention order. Similarly, in the case of *Saraswati Seshgiri v. State of Kerala*, (1982) 2 SCC 310, an attempt to export a huge amount of Indian currency was involved. After having noticed a series of judgments on this aspect, the Court went on to observe as follows:

47. In short, the principle appears to be this: though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity. The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity. That is the reason why single acts of wagon breaking, theft of signal material, theft of telegraph copper wires in huge quantity and removal of railway fish plates were held sufficient. Similarly, where the person tried to export huge amount of Indian currency to a foreign currency in a planned and pre-mediated manner, it was held that such single act warrants an inference that he will repeat his activity in

future and, therefore, his detention is necessary to prevent him from indulging in such prejudicial activity. If one looks at the acts the COFEPOSA is designed to prevent, they are all either acts of smuggling or of foreign exchange manipulation. These acts are indulged in by persons, who act in concert with other persons and quite often such activity has international ramifications. These acts are preceded by a good amount of planning and organisation. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention.

48. Now, take a case, where three orders of detention are made against the same person under COFEPOSA. Each of the orders is based upon only one ground which is supplied to the detainee. It is found that the ground of detention in support of two of such orders is either vague or irrelevant. But the ground in support of the third order is relevant, definite and proximate. In such a case, while the first two orders would be quashed, the third order would stand. This is precisely what the first part (the main part) of Section 5A seeks to do. Where the order of detention is based on more than one ground, the Section creates a legal fiction, viz., it must be deemed that there are as many orders of detention as there are grounds which means that each of such orders is an independent order. The result is the same as the one in the illustration given by us hereinabove. The second part of it is merely clarificatory and explanatory, which is evident from the fact that it begins with the word "accordingly"-apart from the fact that it is joined to the first part by the word "and"

113. The learned Advocate General has also placed reliance on the decision in the case of *State of Gujarat v. Chamanlal Manjibhai Soni*, AIR 1981 SC 1480. In paragraph 2, the Court opined thus:

2. The High Court seems to think that Section 5(A) contemplates that there should be only one ground which relates to the violation of Section 3 of the Act and if that ground is irrelevant and the other grounds which relate to some other subject matter are clear and specific, the detention will not stand vitiated. In our opinion, the argument of the High Court with due respect amounts to begging the question because the detention u/s 3 of the Act is only for the purpose of preventing smuggling and all the grounds whether there are one or more, would be relatable only to various activities of smuggling and we cannot conceive of any other separate ground which could deal with matters other than smuggling because the act of smuggling covers several activities each forming a separate ground of detention and the Act deals with no other act except smuggling. Indeed, if the interpretation of the High Court in respect of Section 5(A) is accepted, then Section 5A will become otiose. While construing Section 5(A) the High Court observed thus :-

But in the present case the subjective satisfaction is based on one ground, that is, for preventing the present petitioner from smuggling goods and in support of that ground various statements have been relied upon and the totality of consideration of all these statements has resulted in the subjective satisfaction of the detaining authority when it passed the impugned order of detention. Now for these totality of circumstances considered by the detaining authority, if one irrelevant or unsustainable element has entered in the process of subjective satisfaction, the process of arriving at Subjective satisfaction being comprehensive, the said element would disturb the entire process of subjective satisfaction and consequently, even if one statement which could not have been relied upon appeared before the mind's eye of the detaining authority, it could easily be seen that its subjective satisfaction would be vitiated and its final decision would rest upon a part of the material which is irrelevant.

The process of reasoning adopted by the High Court is absolutely unintelligible to us. It is manifest that whenever the allegations of smuggling are made against a person who is sought to be detained By way of preventing further smuggling, there is bound to be one act or several acts with the common object of smuggling goods which is sought to be prevented by the Act. It would, therefore, not be correct to say that the object of the Act constitutes the ground for detention. If this is so, in no case there could be any other ground for detention, except the one which relates to smuggling. In our opinion, this is neither the object of the Act nor can such an object be spelt out from the language in which Section 5A is couched. What the Act provides is that where there are a number of grounds of detention covering various activities of the detenu spreading over a period or periods, each activity is a separate ground by itself and if one of the grounds is irrelevant, vague or unspecific, then that will not vitiate the order of detention. The reason for enacting Section 5(A) was the fact that several High Courts took the view that where several grounds are mentioned in an order of detention and one of them is found to be either vague or irrelevant then the entire order is vitiated because it cannot be predicted to what extent the subjective satisfaction of the authority could have been influenced by the Vague or irrelevant ground. It was to displace the basis of these decisions that the Parliament enacted Section 5(A) in order to make it clear that even if one of the grounds is irrelevant but the other grounds are clear and specific that by itself would not vitiate the order of detention. Mr. G.A. Shah appearing for the detenu frankly conceded that he is not in a position to support the view taken by the Gujarat High Court on the interpretation of Section 5(A). He also stated that he does not want to challenge the vires of Section 5(A) of the Act. Mr. Phadke has frankly stated that he only wants the law to be settled in the peculiar circumstances of this case and the order of the High Court quashing the detention need not be disturbed. We, therefore, hold that the view taken by the High Court on interpretation of Section 5(A) is legally erroneous and is hereby overruled. With these observations the appeal is disposed of without disturbing the order of the High Court quashing the order of detention.

114. Even this decision reiterates the principle that every activity of the detenu spreading over a period or periods, each activity is a separate ground by itself and if one of the grounds is irrelevant, vague or unspecific, then that will not vitiate the order of detention. Similar issue was considered by this Court in the case of Sangita Bala Jadhav Vs. State of Maharashtra, 2011 (113) BLR 3679. In paragraph 19 onwards upto paragraph 26, the efficacy of section 5A has been considered.

115. We have, therefore, no hesitation in accepting the argument of the learned Advocate General that since paragraph 23 of the grounds of detention refer to more than one prejudicial activity of the detenu, even if the non-mention of the fact of the previous detention order having been quashed by this Court on the ground of delay in execution thereof, is fatal, the impugned detention order shall be deemed to be valid and operative qua other activities referred to in para 23 of the grounds of detention which are ascribable to ground specified in section 3(1) (i), of smuggling of goods.

116. Reliance was placed on another decision in the case of P. Saravana vs. State of Tamil Nadu, 2001 Cr.L.J. 3281 (SC) as also in the case of Deepak Bajaj vs. State of Maharashtra, AIR 2001 SC 628 and Vashisth Narain Karwaria vs. State of Uttar Pradesh, AIR 1990 SC 1272. These decisions follow the dictum in the case of A.Sowkath Ali vs. Union of India (supra), which we have already dealt with hitherto.

117. We shall now turn to the next argument of the petitioner. According to the petitioner, in preventive detention matters, the test of no prejudice caused to the detenu is not permissible, but it is one of strict compliance with the provisions of the Act. Reliance is placed on the exposition in Tsering Dolkar vs. Administrator, U.T. Of Delhi (1987) 2 SCC 6. Indeed, this proposition is well established. However, the petitioner has not been able to demonstrate as to which obligation has not been discharged by the Detaining Authority resulting in continued detention of the detenu invalid in any manner.

118. The petitioner had also relied on the decision of the Apex Court in the case of Icchu Devi Choraria vs Union Of India, 1984 SCC 531 to contend that imperfect pleadings must not come in the way of the detenu to examine the challenge to the preventive detention order. Even in this decision, the Apex Court has noticed that if the Detaining Authority wants to preventively detain a smuggler, it can certainly do so, but only in accordance with provisions of law and if there is a breach of any such provision, the rule of law requires that the detenu must be set at liberty, howsoever wicked or mischievous, he may be. It then went on to observe that in matters of habeas corpus, the practice evolved by Court is not to follow the strict rules of pleadings nor place undue emphasis on the question as to on whom the burden of proof lies. Even a postcard written by a detenu from jail has been sufficient to activate the Court into examining the legality of detention. Further, it is incumbent on the Detaining Authority to satisfy the Court that the detention of the petitioner is legal and in conformity with the

mandatory provisions of law authorising such detention. It would be no argument on the part of the Detaining Authority to say that the particular ground is not taken in the petition. The dictum in this authority has no bearing on the facts of the present case. In the present case, we have examined each and every ground urged by the Counsel for the petitioner before us and are not non-suited the petitioner for want of pleadings or imperfect pleadings as such.

119. The Counsel for the petitioner had also placed reliance on the decisions in *Mohinuddin @ Moin Master vs District Magistrate, Beed & Ors.*, (1987) 4 SCC 58 and *Fehmida Iqbal Shaikh vs. The State Of Maharashtra & Others*, 2000 Cr.L.J. 3604. These decisions restate the principle expounded in *Ichhu Devi* (supra), which has already been adverted hitherto.

120. Counsel for the Petitioner has then relied on para 11 of the decision in the case of *Ram Manohar Lohiya vs. State of Bihar*, 1966 Cr.L.J. 608 that strict compliance is the essence of preventive detention matters and if there is any doubt the same must be resolved in favour of the detenu. Similar view has been expressed in the case of *State of Punjab vs. Sukhpal Singh* (supra). Once again, this issue does not arise in the present case having held that there is no infirmity in the procedure followed by the Sponsoring Authority or the Detaining Authority, in particular, in relation to the matters urged before us by the petitioner.

121. Taking overall view of the matter, therefore, the petition ought to fail as it is devoid of merits. Accordingly, the Petition is dismissed. Rule discharged.