
(1965) 02 GUJ CK 0005

In the Gujarat High Court

Case No : Special Criminal Application No. 33 of 1964

Mohmad Allabux

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 03-02-1965

Acts Referred:

Constitution of India, 1950 — Article 21, 22(5)

Preventive Detention Act, 1950 — Section 10, 11, 3, 3(1), 3(2)

Citation : AIR 1966 Guj 126 : (1966) CriLJ 652 : (1966) GLR 562

Hon'ble Judges : J.M. Shelat, C.J.; J.B. Mehta, J

Bench : Division Bench

Advocate : C.T. Daru, for the Appellant; B.R. Sompura, Asst. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Shelat, C.J.—This petition is under Article 226 of the Constitution against an order of detention passed against the petitioner. That order was passed on August 3, 1964 by the District Magistrate Ahmedabad, u/s 3(2) read with Section 3(i)(a)(ii) of the Preventive Detention Act, IV of 1950. On the same day, the District Magistrate passed another order directing that the petitioner should be detained in the Ahmedabad Central Prison and should be treated as a Class II prisoner. The petitioner was furnished with the grounds of detention by its communication of the District Magistrate dated August 6, 1964. As required in Sub-section (3) of Section 3 of the Act, the Government of Gujarat gave its approval to the said order on August 11, 1964. On August 17, 1964, the District Magistrate gave the name of the petitioner's alleged associate referred to in para 4(11) of the said grounds, and the names of eight of his other alleged associates referred to in para 4(13) of the said grounds it would seem that the State Government thereafter referred the matter to the Advisory Board and presumably upon the Advisory Board reporting that there was in its opinion sufficient cause for the detention of the petitioner, the State Government by its order dated September 28, 1964, continued the said order of the District

Magistrate. It is the validity of this order which has been challenged in this petition.

2. Mr Daru for the petitioner has urged three contentions before us.

(1) that the grounds on which the order of detention is based have no rational connection with the maintenance of public order and therefore falls outside the scope of Section 8 read with Section 7 of the Act;

(2) that the grounds furnished to the petitioner are vague and do not indicate the time and place of the alleged incidents and also the names of the victims and therefore, they are not such as would enable the petitioner to effectively exercise his constitutional right of representation. Consequently, the continued detention of the petitioner is not in accordance with the procedure established by law and is violative of Article 21; and

(3) that the communication of the names of the alleged associates of the petitioner by the third respondent's letter dated August 17, 1964, is a belated one and does not comply with the provisions of Article 22(5) and Section 7(1) of the Act which provide that the grounds should be furnished as soon as may be and not later than five days from the date of detention

3. We had had occasion to consider Section 3 of the Act, its scope and also the meaning and content of the expression "maintenance of public order" as used in Section 3(1) (a) (ii) of the Act in Special Criminal Appeals Nos. 10 and 32 of 1964 (Guj) which we decided on January 29 and 30, 1965 respectively. What we said in those decisions was that Section 3 provided for detention as a preventive and not a punitive measure and that the section was not intended to provide punishment for something which was done by the person concerned, but to prevent him or intercept him from doing something which would endanger any one of the objects set out in the section. We also there laid down that the preventive detention so provided for by the section was dependent, not on a conviction based on legal evidence, but on suspicion or reasonable probability and that that being so, action taken under the section was based on the satisfaction of the detaining authority and the standard of conduct, the failure to conform which would result in detention, was not objective but subjective. Therefore, it is the subjective satisfaction of the detaining authority that is the condition precedent for the exercise of power and not any objective test by a Court. Therefore, the question regarding satisfaction of the detaining authority is not justiciable, nor the sufficiency of the materials placed before it, nor the question as to their truth or otherwise. But we also said that though the Court cannot go into the question as to the satisfaction of the detaining authority or as to the sufficiency or the truth of the materials placed before it, the grounds furnished to the detenu u/s 7 and on which presumably the satisfaction of the appropriate authority is formed must have proximate or rational connection with any one of the objects set out in the section. Therefore, the question whether the grounds have such rational connection or not with the objective in reference to

which the detention order is made is a justiciable issue. If it is found that they have no such connection, the order of detention would be invalid, for it would be de hors the section and therefore beyond its scope. Therefore, if the order in question is made u/s 3(1)(a)(ii), the detaining authority has to be satisfied that the activities of the concerned person are prejudicial to the maintenance of public order and to prevent him from acting prejudicially to that objective it is necessary to detain him. The expression "public order" is of wide amplitude, and since it is nowhere defined its content has to be gathered from the context in which it is used in Section 3 and the object of the Act. "Public order" has in several decisions been equated with public safety and tranquillity. All and every breach of tranquillity in a sense would involve breach of public order. But it is not each and every such breach of public order which justifies the exercise of so extraordinary a power as contained in this section, nor is the section intended for punishing a person guilty of every such breach of public order. At the same time, as observed in *The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia*, , though the expression "maintenance of public order" is placed in the section in juxtaposition with the expression "security of the State" and though the two objectives might, to a certain extent, overlap, they are mutually exclusive and therefore whereas the expression "security of the State" concerns itself with the security of the State as such, involving such happenings as upheavals on a national scale, the expression "maintenance of public order" concerns itself with the problem of public order of a local significance. The test, therefore, in every case would be, are the activities of the person concerned, as disclosed in the grounds, such that if left free and unfettered he is likely to act prejudicially to the maintenance of public order? The object of the section, no doubt, is to safeguard public order and to prevent it from being undermined or jeopardised. But the mere fact that the person concerned has indulged in criminal activities is by itself not a justification for the exercise of such an extraordinary power, unless his activities are of such a nature that they would undermine the maintenance of public order in the locality or the community in which he is residing or operating. Either his activities are such that there would arise a situation in which the maintenance of public order is undermined or jeopardised, or there already exists a situation in which even an isolated act would prove dangerous and would render maintenance of public order difficult or place public order in jeopardy. Section 3 however is not intended to override the ordinary penal laws or the jurisdiction of the ordinary courts administering criminal laws and therefore, the mere fact that the person concerned is a bully or a habitual criminal and the local police authorities are unable to successfully prosecute him are no grounds for the exercise of power u/s 3. At the same time, a gunda or a habitual criminal is not exempt from the operation of the Act and the mere fact that he can be amenable to the ordinary laws does not preclude the exercise of the power u/s 3. The exercise of power u/s 3 would be justifiable provided his activities are such as would, if left free, hamper or undo mine the maintenance of public order. Therefore, the grounds communicated to the person detained and on which the satisfaction of the detaining authority was

founded must be such as have rational nexus with the maintenance of public order

4. The question, therefore, is whether the grounds in the instant case can be said to have such rational nexus with the maintenance of public order in the locality in which the detenu is said to have been operating, in order to come to our conclusion on this question, we must proceed on the footing (1) that the facts stated in the grounds are true, and (2) that they were sufficient for the satisfaction of the detaining authority.

5. The grounds furnished to the petitioner on August 6, 1964 fall into three parts, (1) the first para thereof is the preamble, the second and the third paras contain the grounds proper, i.e., conclusions of fact, and para 4 consisting of Sub-paras (1) to (13) contains the particulars. In paras 2 and 3, the allegations are that the petitioner had spread an atmosphere of fear in Shahpur-Nagoriwad area and constituted himself by his activities a danger to the members of the public; that in 1958-1959, as a result of his activities he had to be detained under an order dated August 5, 1959; that as soon as the period of his detention was over, he had continued his aforesaid activities in Sarkhej and other surrounding areas, putting the members of the public in fear in those areas; that he had brought about an atmosphere of fear by being a constant danger in Sarkhej, the other surrounding villages and in Shahpur-Nagoriwad in the city of Ahmedabad, and lastly, that he was maintaining himself by his unsocial activities and that by moving about armed with a lethal weapon had created such an atmosphere of fright amongst the law-abiding members of the public that no one ventured to give evidence against him. In the sub paras of para 4 are cited particulars on which the conclusions of fact narrated in the foregoing paras 2 and 3 were based. These particulars are:

(1) that some time in the first week of February, 1964 at about 10-00 at night the petitioner held a meeting in which he incited the Muslims of Sarkhiwad Nagoriwad to attack the Vagharies of Shahpur Nagoriwad. thereby endangering the peace of Nagoriwad area:

(2) that in March or April 1964, he gave threats to a person near the bus stand at Sarkhej when he demanded a sum of money due by him to that person:

(3) that in March or April 1964, he gave threats to kill a person near the tank at Sarkhej:

(4) that on March 11, 1964 at 2-00 P.M.. he assaulted a person by slapping him near the Roza at Sarkhej and robbed him of the amount of Rs. 6;

(5) that on April 11, 1964 he gave threats to yet another person because that person had informed the authorities of his unsocial activities:

(6) that on June 20, 1964 he assaulted someone's buffaloes as a result of which one of them died, and threatened the owner that her life would be in danger so that the owner withdrew the complaint filed by her against the petitioner;

(7) that on or about May 12, 1904 at about noon-time, he assaulted a person near Sarkhej Roza, robbing him of his silver buttons:

(8) that on May 30, 1964 and again in June 1964, he threatened to kill witnesses in certain cases filed in April 1964, asking them to turn round, i.e. not to give evidence which they were to give;

(9) that on June 8, 1964 near Delhi Dar waza in the city of Ahmedabad, the petitioner and his associates threatened a social worker of one community to kill him if he did not behave in a manner the petitioner wanted him to;

(10) that on July 15, 1964 at about 10-00 P.M., he threatened another social worker to kill him if he did not exercise his influence to induce a witness, in a murder case to turn hostile:

(11) that he threatened to kill another person with a Farsi (an axe) as that person had tried to induce one of the petitioner's associates not to beat a girl whom he had kept forcibly:

(12) that he threatened a leading person of one community asking him to use his influence to turn a witness in another murder case hostile: and

(13) that the victims of his aforesaid activities had informed the authorities that they were not willing to lodge complaints against the petitioner on account of the fear of the petitioner and his associates who were of bad character and whom the petitioner kept. Paragraph 4 ends up with a statement that the petitioner was likely to continue to carry on activities similar to the ones stated in that paragraph.

6. As already stated, on August 17, 1964 the detaining authority communicated to the petitioner the name of his associate referred to in para 4(11) as also the names of other eight associates referred to in para 4(13).

7. These particulars show that the activities of the petitioner had continued throughout the year 1964, that they had been carried on at Sarkhej and other surrounding areas, that the petitioner had been carrying on those activities with a band of associates and these activities consisted of incitement of Muslims against the Vagharies of Sarkiwad Nagoriwad, threats to kill unless the victims carried out his wishes, attempts to turn witnesses hostile in murder and other cases and assaults coupled with robberies, thereby creating an atmosphere of flight, fullness and fear amongst those who lived in those areas. It is clear that the grounds and the particulars furnished to the petitioner amount not merely to acts of violence against individual persons but created, as stated in paras 2 and 3 of the grounds, a general atmosphere of insecurity in the localities in which the petitioner with his band of associates had been perpetrating their criminal activities leading to the conclusions of fact stated in paras 2 and 3 of the grounds that a situation of fear and frightfulness had been created in those localities affecting public safety and tranquility of those residing there. That a situation of public disorder of local significance, as observed in The Superintendent, Central

Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia, , as contra distinguished from mere offences against individuals had arisen is obvious from the nature and the number of activities alleged against him coupled with the fact of the petitioner having acted throughout as a bully working in concert with his associates. Considering these circumstances, the present case would in our view fall within the test we laid down in Special Criminal Applns. Nos. 30 and 32 of 1964 (Guj). It is, therefore, not possible to say, as urged by Mr. Dam, that the impugned order was based on grounds extraneous or irrelevant to the objects set out in Section 8, or that it was based on grounds beyond the scope of that section. In fact, though Mr. Daru argued that there was nothing in the grounds to show any rational nexus between them and the maintenance of public order and that the activities alleged against the petitioner did not show any connection, with any threat to public order, the only contention that Mr. Daru could raise was with reference to Sub-para CD of para 4 of the grounds. Conceding that the incidents alleged in Sub-para (1) of para 4 might be said to have some connection with the maintenance of public order, he urged that the allegation therein contained merely amounted to the petitioner having held a meeting for the purpose of inciting the Muslims living in Shahpur-Nagoriwad to beat the Vaghari living in Shahpur-Nagoriwad, but there was no allegation in that Sub-para to the effect that though such a meeting was held by the petitioner, he in fact had incited the Muslims to beat the Vaghari. The argument was that the purpose of calling the meeting may have been to incite the Muslims, but there was nothing in that Sub-para indicating that the petitioner had been actually guilty of incitement. It is not possible to agree with the construction of Sub-para (1) of para 4 suggested by Mr. Daru. Though the Sub-para is not expressed in very happy language, if read as a whole, it is clear that the petitioner had called the meeting and had thereby incited the Muslims to beat the Vaghari living in Shahpur-Nagoriwad, thereby putting public tranquility and peace in that area into danger. If read with Sub-para (13), it is further made clear that in all the activities alleged against him, including the meeting held by the petitioner in the first week of February 1964, the petitioner was acting in concert with his associates. There is, therefore, no substance in the contention that this ground was in any way extraneous or irrelevant to the objectives set out in Section 3 of the Act. On the contrary, the incident set out in Sub-para (1) together with the particulars set out in the rest of the Sub-paras would show that the petitioner acting in concert with his several associates had, as stated in paras 2 and 8 of the grounds, created such a situation of fear and fright in the localities mentioned therein that such situation must necessarily undermine the maintenance of public order and affect public safety and tranquility of those localities. The first contention urged by Mr. Daru, therefore, must be rejected.

8. As regards the second contention regarding the alleged vagueness of the grounds and the particulars, Mr. Daru, with his characteristic frankness, readily conceded that inasmuch as the detaining authority had exercised privilege u/s 7(2) of the Act, he would not be in a position to sustain that contention. But, he

urged that the further particulars furnished by the detaining authority by his letter dated August 17, 1964 disclosing therein the names of the persons alleged to be the petitioner's associates, were given beyond the time prescribed by Section 7(1) and therefore those particulars could not be taken into account for the purpose of deciding whether the grounds and the particulars furnished to the petitioner were vague or not. The contention urged by Mr. Daru was a two-fold one: (1) that both the grounds and the particulars have to be furnished to the petitioner as soon as may be, but not later than five days from the date of detention, as provided by Section 7(1) and, in the alternative, that in any event the particulars, even where they are furnished by a communication separate from the one giving the grounds, have to be furnished to the petitioner before the expiry of twelve days within which time the State Government has to give its approval in the case of an order passed by a District Magistrate and without which such an order cannot remain alive. In support of this contention, Mr. Daru took us through the provisions of Ss. 3, 7, 9, 10 and 11 of the Act. Section 3 empowers the Central Government and the State Government to make orders of detention in respect of matters set out in Sub-clauses (i), (ii) and (iii) of clause (a) of Sub-section (1). Sub-section (2) empowers, amongst other officials, District Magistrates to make orders of detention but only in respect of matters provided for in Sub-clauses (ii) and (iii) of clause (a) of Sub-section (1). Under Sub-section (3), when an order is made by a District Magistrate, he has forthwith to report the fact to the State Government with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter. It also provides that such an order shall not remain in force for more than twelve days after the making thereof, unless within that period it is approved by the State Government. Therefore, an order of detention passed by a District Magistrate cannot continue to be in force for more than twelve days unless in the meantime the State Government has approved it. Section 7(i) lays down that the detaining authority has, as soon as may be but not later than live days from the date of detention, to communicate to the person concerned the grounds on which the order had been made and has also to afford him the earliest opportunity of making a representation against the order to the appropriate Government. As required by Section 9, the appropriate Government has, within thirty days from the date of detention under the order, to place before the Advisory Board constituted u/s 8, the grounds on which the order has been made and the representation, if any, made by the detenu and, in a case where the order has been made by an officer subordinate to it, also the report by such officer made under Sub-section (8) of Section 3. Section 10 inter alia provides that the Advisory Board has to submit its report to the appropriate Government within ten weeks from the date of detention, and such report must specify its opinion as to whether or not there is sufficient cause for the detention of the person concerned.

9. The contention was that by Section 7(1) of the Act, the Legislature has not only laid down the principle that the grounds on which the order of detention is

made should be furnished as soon as may be, but has also fixed the outside limit of five days from the date of detention. A similar limit of twelve days has also been laid down in Section 3(3) within which an order, where it is passed by an appropriate officer, has to be approved by the appropriate Government. On the basis of these time-limits it was urged (1) that the communication of grounds and the communication of particulars have to be made within five days from the date of detention, and (2) in the alternative within twelve days at least when the Government has to give its approval. The argument was that if this is not done then a communication containing particulars cannot be taken into account while considering the question, as to the vagueness or otherwise of the grounds furnished to the detenu

10. A point similar to the first point raised by Mr. Daru was sought to be made before the Supreme Court in *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, where the respondent was detained on April 21, 1950 and the grounds of detention were furnished to him on April 29, 1960. The respondent thereafter filed a habeas corpus petition and it was while that petition was pending that a communication was sent to the respondent by the Commissioner of Police, Bombay, who was the detaining authority. The matter arose before Section 7(1) was amended and when the outside limit of five days was not there in the section. But that fact does not make any difference to the principle laid down by the Supreme Court. The question which arose was whether such a communication could be taken into account while considering whether the constitutional right of the person detained under Article 22(6) of the Constitution had been complied with. The Supreme Court held that a subsequent communication might fall into two categories. If it contained further grounds it could not be taken into account, but on the other hand, if the grounds were furnished to the detenu and later on a communication was made to him giving particulars or details of the grounds already furnished, such a communication could be taken into account. At p. 161 of the report the Supreme Court observed that the first part of Article 22(5) gave a right to the detained person to be furnished with the grounds on which the order had been made and that had to be done "as soon as may be." The second right given to such a person was of being afforded "the earliest opportunity of making a representation against the order". It was observed that the grounds for making the order as mentioned above would be the grounds on which the detaining authority was satisfied that it was necessary to make the order. These grounds, therefore, must be in existence when the order was made. By their very nature, the grounds would be conclusions of fact and not a complete detailed history of all the facts. The conclusions drawn from the available facts would show in which of the three categories of prejudicial acts the suspected activity of the particular person was considered to fall. These conclusions would be the grounds and they must be supplied. No part of such grounds can be held back, nor can any more grounds be added thereto. What must be supplied are the grounds on which the order has been made and nothing less. The second right of being afforded the earliest

opportunity of making a representation against the order was not confined to only a physical opportunity by supplying paper and pen only. In order that a representation can be made, the person detained must first have knowledge of the grounds on which the authorities conveyed that they were satisfied about the necessity of making the detention order. It is, therefore, clear that if the representation has to be intelligible to meet the charges contained in the grounds, the information conveyed to the detained person must be sufficient to attain that object. Ordinarily, the grounds in the sense of conclusions by the authorities, would indicate the kind of prejudicial act the detenu was suspected of being engaged in, and that would be sufficient to enable him to make a representation setting out his innocent activities to dispel the suspicion against him. Of course, if the detenu was told about the details of facts besides the grounds, he would certainly be in a better position to deal with the same. But it was significant that the clause did not say that the grounds as well as the details of facts, on which they were based, must be furnished, or furnished at one time. The law did not prescribe within what time after the grounds were furnished the representation could be made. At p. 162, the Supreme Court again observed:

"This, however, does not mean that all facts leading to the conclusion mentioned in the grounds must be conveyed to the detained person at the same time the grounds are conveyed to him. The facts on which the conclusion mentioned in the grounds are based must be available to the Government, but there may be cases where there is delay or difficulty in collecting the exact date or it may not be convenient to set out all the facts in the first communication. If the second communication contains no further conclusion of fact from facts, but only furnishes all or some of the facts on which the first mentioned conclusion was founded it is obvious that no fresh ground for which the order of detention was made is being furnished to the detained person by the second communication which follows some time after the first communication. As regards the contents of that communication, therefore, the test appears to be whether what is conveyed in the second communication is a statement of facts or events, which facts or events were already taken into consideration in arriving at the conclusion included in the ground already supplied. If the later communication contains facts leading to a conclusion which is outside the ground first supplied, the same cannot be looked into as supporting the order of detention and therefore those grounds are "new" grounds. In our opinion that is the more appropriate expression to be used."

This decision is a clear authority for the propositions (1) that the detaining authority can address a second communication containing details or particulars of the grounds, i.e. the conclusions of fact already furnished earlier and (2) that such details or particulars need not be furnished at the same time when the grounds are furnished. As to the time within which such details or particulars have to be furnished in relation to the right of the detenu to make his representation, the Supreme Court at p. 164 of the report stated:

"while the first mentioned type of "additional" grounds cannot be given after the grounds are furnished in the first instance. The other types even if furnished after the grounds are furnished as soon as may be, but provided they are furnished so as not to come in conflict with giving the earliest opportunity to the detained person to make a representation, will not be considered an infringement of either of the rights mentioned in Article 22(5) of the Constitution."

The Supreme Court thus has made it clear that where such particulars or details are furnished subsequently, they must be furnished so as not to come in conflict with the obligation of giving the earliest opportunity to the detained person to make his representation

11. Though this derision clearly negatives the first contention of Mr. Daru and lays down that the second communication need not be at the same time as the first communication containing the grounds, his second contention would still remain to be considered, namely, that the second communication containing particulars also should be so made as to comply with the requirement of Section 7(1) and Article 22(5), that is, that an earliest opportunity should be given to the detained person to make his representation to the appropriate Government and therefore such a communication must be made to him at least before twelve days before the Government approves the order of the detaining officer u/s 3(3) of the Act. In *Tarapada De and Others Vs. The State of West Bengal*, , the order of detention was made on February 26, 1960 and the grounds of detention were served upon the detenus about the middle of March. The particulars of the supplementary grounds were later served on the detenus on or about July 22, 1950 and that was a day after Rules had been issued in the applications filed by the detenus before the High Court of Calcutta. It was there contended on behalf of the detained persons that the original grounds served upon them were too vague and that the particulars delivered in July could not be taken into account as they were not supplied in time and therefore it could not be said that the earliest opportunity had been given to the detenus to make their representations. The Supreme Court, however, hold that the requirements of Article 22(5) had been substantially met by serving a copy of the grounds of the order in the middle of March and by service of further particulars on or about July 22, 1950. Similarly, in *Ananda Sankar and Others Vs. Chief Secretary to the Government of West Bengal and Others*, , the detenus were detained in February 1950 and did not receive the particulars of the grounds served in the middle of March until towards the end of July 1950. The particulars did not state any new grounds for the order of detention, but were in the nature of details of the rather general grounds given earlier, amplifying those grounds by giving specific instances to support the general statements made earlier. It was contended before the High Court that the delivery of particulars either in one document or two documents towards the end of the month of July was far too late and that those particulars could not be taken into consideration to justify the continued detention. It was further urged that particulars delivered a fortnight or so after the grounds of the order of detention had been served would be too late because

the detenu has to be given the earliest opportunity of making his representation and that delay in providing the particulars, if they are necessary, would only allow the detenu to make a belated representation. In answering this contention, Harries C. J., who spoke for the Bench, held that the decision in *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, was a clear authority for the proposition that if the grounds have been furnished within the limit of time provided by Section 7(1) and later on a subsequent communication as to the details of those grounds was served, even though there was a time gap of as much as about four months, the requirement of Article 22(5) was substantially complied. At p. 133, the learned Chief Justice, after citing the decisions in *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, and the case of *Tarapada De and Others Vs. The State of West Bengal*, observed that from those decisions it was clear that the Supreme Court was of the opinion that where the orders were made on or about February 26, 1950 and the grounds served in the middle of March and supplementary grounds (i.e. particulars) served towards the end of July, the detenus had been given the grounds of detention "as soon as may be" and had been given the earliest opportunity of making representation. As regards the other cases of detenus before them where the details of grounds were served either when the order of detention was served or served shortly thereafter, he held that there could be no question that the grounds of the orders were served as soon as may be and that the detenus were given the earliest opportunity of making their representation. These are clearly authorities which lay down that where the grounds are furnished within the time provided by the provisions of Article 22(5) and Section 7(1) of the Act but the communication containing the particulars of those grounds is conveyed subsequently, i.e. within such time so as not to conflict with the detenu's right to make a representation to the Government, there would be no infringement of the right either under Article 22(5) or u/s 7 of the Act. It is true that the decision in *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, was given before the outside limit of five days was provided in Section 7(1) and when the Act did not contain a provision for the approval of the State Government where the order was made by an appropriate officer. But this fact does not make any difference to the distinction made in *Atma Ram's* case AIR 1051 SC 157 between a communication containing grounds and a communication containing particulars of the grounds already furnished within time. A communication made subsequently after the grounds are already furnished in time does not thus infringe the obligation of the detaining authority to afford the detenu the earliest opportunity of making a representation. No doubt, where an order has been made by an appropriate officer u/s 3(2), such an order remains alive only for twelve days unless it is approved by the appropriate Government. But at that stage, the only thing that such a Government has to decide is whether it should approve the order or not and keep the order in force until the matter is referred to the Advisory Board and thereafter the Government decides whether it should be confirmed or not on a consideration of the representation of the detenu if he has made one. At the stage of approval, the Government would have before it the impugned order, the

grounds on which it is made, the report of the officer and also particulars which have a bearing upon the matter. It is well settled that the particulars mentioned in Section 3(3) are not the same as those which may be furnished to the detenu under the provisions of Section 7(1) and Article 22(5). That distinction between the two types of particulars also shows that the expression "the earliest opportunity of making a representation" in Section 7(1) has nothing to do with the time limit of approval u/s 3(3). The approval of the appropriate Government is provided presumably as a safeguard against arbitrary exercise of power u/s 3(2) by an executive officer. That safeguard and the time limit within which the power to approve has to be exercised cannot be mixed up with the time limit provided in Section 7(1) of the Act. For these reasons, it is not possible to accept the contention that because the particulars regarding the names of the associate of the detained person were given thirteen days after the date of detention, (the detention being on August 4, 1964 and the communication giving those names having been made on August 17, 1964), i.e. one day after the time limit for approval, that communication was in infringement of Section 7(1) or Article 22(5) and cannot, therefore, be taken into account.

12. Even apart from this conclusion, even if that communication were not taken into account, looking to the contents of para 4(11) and the nature of the act alleged there and para 4(13) where the allegation is that the detenu was carrying on his activities set (ml earlier in details with a band of associates cannot be regarded as so vague as to defeat or hamper his right of representation.

13. Both the grounds urged by Mr. Dam therefore fail and the petition has consequently to be dismissed. Rule discharged. No order as to costs.