
(1998) 04 AHC CK 0052

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No's. 27144 and 27146 of 1997

Murli Prasad

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 10-04-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 22, 22(5), 226
Criminal Procedure Code, 1973 (CrPC) — Section 161, 164
National Security Act, 1980 — Section 3, 3(2), 5

Citation : (1998) 3 AWC 1780 : (1999) CriLJ 1900

Hon'ble Judges : S.N. Gupta, J; G.S.N. Tripathi, J

Bench : Division Bench

Advocate : Viresh Misra, for the Appellant; A.G.A., for the Respondent

Judgement

G.S.N. Tripathi and N.S. Gupta, JJ.—Both these writ petitions have been consolidated as they arise out of the same incident. Hence they are being decided together by this judgment.

2. These petitions under Article 226 of the Constitution of India have been filed with a prayer that the Court may please to issue a writ, order or direction in the nature of habeas corpus commanding the respondents to release the petitioners at liberty forthwith and further be pleased to quash the detention order passed by the Distt. Magistrate, Ghaziabad on 6.5.97 (Annexure-I to the writ petitions).

3. The grounds supplied on the same day (Annexure-I to the petitions) contain the allegation that on 10.3.97 at about 12.30 p.m. (day time) on the Meerut Road, near the Tractor Agency where the traffic is always very congested and constant, Mohd. Tahir, who happened to be the Dy. Chairman of Food Corporation of India Ltd. Trade Union, was ill and was going with his wife Smt. Bala Devi on a rickshaw for hospital. Both the petitioners (Murli Prasad and Rajeshwar Paswan of the two writ petitions aforesaid) arrived there on a motorcycle. They compelled the rickshawala to stop the rickshaw and openly declared that they would teach a lesson for clashing with Sri Hardwari Prasad, the General Secretary

of Food Corporation of India Workers" Union, Delhi and fired at Mohd. Tahir, who died on the spot. Even a passerby Mahendra, s/o Mange Ram received pellet injury and fell injured. After this incident, an atmosphere of terror gripped the entire locality and people started running helter skelter leaving their shoes, chappal, etc. there. As this was a broad-daylight incident, all the passersby and the residents of the locality were so grief-stricken that the public order was totally disturbed and they were running away from the spot in a panicky.

4. Mohd. Zuber, brother of Mohd. Tahir lodged the F.I.R. The high officers of the police dept. after receipt of the information arrived there shortly thereafter, and the injured Mahendra was sent for medical examination. The police took the dead body of the deceased Mohd. Tahir in possession and after performing legal formalities, like panchayatnama, etc., got the dead body sealed and sent it for post-mortem examination. The shop-keepers near the spot ran away by putting their shutters down. Despite all persuasion, they were not prepared to open their shops and continue their daily normal business.

5. During the course of investigation, it was found that the deceased Mohd. Tahir was a follower of Sri Hardwari Prasad, General Secretary of F.C.I. Workers" Union, Delhi. Later on, difference developed and Mohd. Tahir stopped his connections with the New Delhi Union and constituted a separate union at Ghaziabad and himself became the Vice-President gradually. All the Workers" at Ghaziabad, who were with the Delhi Union, also joined the Union at Ghaziabad, as there were financial implications too Delhi Union lost accordingly financially as a result of this act of Mohd. Tahir, deceased. The accused (petitioners of both the petitions) surrendered before the C.J.M., Ghaziabad and were sent to Jail and after rejection of the bail applications by the C.J.M., Ghaziabad, they moved an application before the Sessions Judge, Ghaziabad on 21.4.97 and were trying to come out of the Jail. There was evidence available to the detaining authority that the accused were trying to come out of Jail and in case they succeeded, they will Indulge in similar activities and it will be difficult to maintain the public order on the spot. Under these compelling circumstances, an order u/s 3(2) of the National Security Act (N.S.A.), 1980 was essential and was accordingly passed. Other information to the petitioners were also provided in the same grounds, i.e., approach to the State Government, Advisory Board and also representation to the Government of India.

6. This order, passed on the same day against both the petitioners aforesaid, has been challenged by means of these two writ petitions, mainly on the ground that their valuable rights available under Articles 14, 21 and 22 of the Constitution, have been violated by the detaining authority without following the procedure established by law, and on this ground alone, the impugned order is liable to be quashed. There was no case launched earlier against these petitioners and they were not habitual offenders. Therefore, no order under the preventive laws, could not be passed against the petitioners. There was delay in disposal of the representations made by the petitioners both by the State Government as well as

the Central Government. These authorities passed the order after considerable delay, which goes unexplained. The procedural requirements of detention u/s 3/5, N.S.A. have also not been followed by the relevant authorities. At the worst, it could be a case of law and order only and not a public order. The detaining authority has not passed the impugned order after application of mind and perusing the entire material available before him. In the grounds, the names of the persons affected by this alleged crime committed by the petitioners, have not been given. Therefore, the petitioners are prejudiced as they are not in a position to meet the allegations made against them. There was no material available to the detaining authority to believe that in future, after release of these petitioners, they would repeat similar offences and a solitary incident of murder in a broad-daylight cannot be ipso facto termed as disturbance of public order. The criminal court concerned has ample powers to try and pass suitable orders against the petitioners. The petitioners' representations were considered except after considerable and unexplained delay. Not only this, relevant material was not available before the District Magistrate, i.e., statement of injured Mahendra Singh, u/s 164, Cr. P.C. in which he had not named the petitioners as accused. During the course of investigation, the I.O. had collected evidence, including the statements of relevant witnesses. But no witness of the locality has implicated the petitioners or on the allegations that immediately after the murder, the public order was totally disturbed. This way, no witness of the locality has supported the case of the State. Smt. Bala Devi, who was accompanying the deceased Mohd. Tahir, has left 3 or 4 husbands and all these persons were murdered and she was also sent to Jail. Mohd. Tahir happened to her 4th husband, although he was already married to a Muslim lady and had 7 children from his first Muslim wife. Smt. Bala Devi had also got employment in F.C.I, on compassionate grounds. The idea is that Mohd. Tahir had several enemies, who could have committed his murder. He had also antagonized his family members. Six real brothers of Mohd. Tahir were also not happy with him, who had recently developed illicit relations with Smt. Bala Devi, a Hindu lady. In this background, the absence of a copy of the statement u/s 164, Cr. P.C. by the injured Mahendra Singh was a very important piece of evidence, which was withheld by the sponsoring authority and the detaining authority was deprived of the opportunity to peruse this important document before passing the impugned order. Even this fact was not brought to the notice of the detaining authority that the bail application of the petitioners had already been dismissed by the learned Sessions Judge, Ghaziabad on 25.4.97. Under this circumstances, the continued detention of the petitioner is mala fide, illegal and unsustainable.

7. In the counter-affidavit, the Distt. Magistrate Sri Navtej Singh, the detaining authority, has alleged that there was some mistake in the order passed by him, which was of clerical nature and that is why it was corrected by him. It is wrong to say that there are relevant cuttings or overwriting in the impugned order. The impugned detention order dated 6.5.1997 was served on the petitioners while they were in Jail. Other materials were also supplied to them and after perusing

the same, he passed the impugned order. It is wrong to say that all the relevant materials were not supplied to him. The sponsoring authority had mentioned in their reports that the petitioners had moved applications for bail on 21.4.1997 and were trying to be released soon. On this fact and on the basis of other facts, he passed the impugned order. The basis was that the petitioners had already initiated proceedings for bail in a competent court of law. On the basis of his past experience, he thought that the petitioners would try upto the last to get their bail. Therefore, rejection of the bail application by the Sessions Judge, was of no consequence. Both the orders on the bail application dated 25.4.97, were not placed before him. But even if it had been placed before him, the result would have been the same, i.e., after coming to a satisfaction that the petitioners were trying to be released and after getting released on bail, they would repeat their activities, which would be prejudicial to the maintenance of public order, as the act of the petitioners is prima facie the proof of their attempts to disturb the public order. It is incorrect to say that the statement of the injured Mahendra Singh is the sole basis for passing the impugned detention order. There are more vital and cogent materials, on the basis of which the deponent was satisfied before passing the impugned order. It appears that due to fear and terror of the petitioners, the injured Mahendra Singh had changed his version u/s 164, Cr. P.C., although his statement u/s 164, Cr. P.C. was not placed before him. The result would have been the same even if it had been produced before him. The detention order of the petitioners has been confirmed by the State Government as well as the Advisory Board. As the crime has been committed in an organized way by the petitioners, it was sufficient to satisfy the detaining authority personally that the accused would restart their criminal activities, which is likely to disturb the public order in case they are released on bail. He admits in para 13 of the counter-affidavit that some documents were not supplied to him by the sponsoring authority. Even his conclusions would have been the same had they been supplied to him before passing the order. In para 21, he admits that only 2 pages of bail application had been placed before him by the sponsoring authority and the same had also been supplied to the petitioners. Moving the bail application is a fact and was to be seen for satisfying the deponent, only to get himself satisfied that the petitioners are trying to be released on bail. It is incorrect to say that the sponsoring authorities had deliberately concealed these facts and did not supply the full materials.

8. The two petitioners have moved a joint application on 3.3.1997 for permission to surrender before the C.J.M.

9. Other co-respondents have also filed their affidavits. But their affidavits are not relevant in the present case, as the learned counsel has challenged the impugned order mainly on the ground that the District Magistrate before passing the impugned order, had no cogent material before him for his personal satisfaction and he has acted in a routine and callous manner, without proper application of mind. So the impugned order suffers from the vice of one non-application/misapplication of mind after going thoroughly through the entire

material available on the record.

10. We have heard learned counsel for the parties and gone through the record. We find that there is much force in these petitions and they deserve to be allowed.

11. Unless anybody has challenged, this shall be the legal position that even on a solitary incident involving these petitioners, there may be circumstances in which the public order is disturbed and the detaining authority can pass suitable orders u/s 3/2 of the N.S.A. This portion of law is not disputed.

12. The question relevant for consideration is as to whether the detaining authority had passed the impugned order in a routine manner or he had sufficient material after examining which he came to the conclusion that the detention of the petitioners was essential for maintaining proper peace and public order and they may repeat their performances similarly if they were released on bail.

13. The law on the point is enunciated in the celebrated judgment of the Hon"ble Supreme Court in Kamrunnissa v. Union of India 1991 SCC (Cri) 88. In para 11 the following words of their Lordships of Hon"ble Supreme Court at page 98 are very relevant, which run as follows :--

"These were not ordinary carriers. These were persons who had prepared themselves for a long term smuggling programme and, therefore, the officer passing the detention orders was justified in inferring that they would indulge in similar activity in future because they were otherwise incapable of earning such substantial amounts in ordinary life. Therefore, the criticism that the officer had jumped to the conclusion that the detenus would indulge in similar prejudicial activity without there being any material on record, is not justified. It is in this backdrop of facts that we must consider the contention of the learned counsel for the detenus whether or not there existed "compelling circumstances" to pass the impugned order of detention. We are inclined to think keeping in view the manner in which these detenus received training before they indulged in smuggling activity, this was not a solitary effort, they had in fact prepared themselves for a long term programme. The decisions of this Court to which our attention was drawn by the learned counsel for the petitioners, lay down in no uncertain terms that detention orders can validly be passed against detenus who are in Jail, provided the officer passing the order is alive to the fact of the detenus being in custody and there is material on record to justify his conclusion that they would indulge in similar activity if set at liberty."

14. At page 99, while referring the other cases decided by the Hon"ble Supreme Court, the following legal position was laid down :--

"It was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. There must be "cogent material" before the officer passing the

detention order, for inferring that the detenu was likely to be released on bail. This inference must be drawn from material on record and must not be the ipse dixit of the officer passing the detention order. Eternal vigilance on the part of the authority charged with the duty of maintaining law and order and public order is the price which the democracy in this country extracts to protect the fundamental freedoms of the citizens. This Court, therefore, emphasized that before passing a detention order in respect of the person who is in Jail, the concerned authority must satisfy himself and that satisfaction must be reached on the basis of cogent material that there is a real possibility of the detenu being released on bail and further if released on bail, the material on record reveals that he will indulge in prejudicial activity if not detained."

15. A similar view was taken in *Abdul Razak Abdul Wahab Sheikh, v. S. N. Sinha, Commissioner of Police* (1989) 2 SCC 22 : 1989 SCC (Cri) 326. In that case, the detention order was quashed on the ground of non-application of mind as it was found that the detaining authority was unaware that the detenu's application for being released on bail was rejected by the Designated Court."

16. In *Shashi Aggarwal Vs. State of U.P. and Others*, , the Hon'ble Supreme Court laid down that the possibility of the Court granting bail is not sufficient nor is bald statement that the detenu would repeat his criminal activities enough to pass an order of detention unless there is credible information and cogent reason apparent on the record that the detenu, if enlarged on bail, would act prejudicially. The entire law has been summed up in para 13 at page 100 as belows :--

"From the catena of decisions referred to above, it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody ; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released, he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher Court. What this Court stated in the case of *Ramesh Yadav* was that ordinarily a detention order should not be passed merely to preempt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well-settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore, find it difficult to accept the contention of the counsel for the petitioners that there was

valid and compelling reason for passing the impugned orders of detention because the detenus were in custody."

17. Almost a similar view was taken in *Rivadeneyta Recardo Agustin v. Government of the National Capital Territory of Delhi and others* 1994 SCC (Cri) 354, in which it was stated that ordinarily a detention order should not be passed merely on the ground that the detenu who was carrying on smuggling activities and was likely to be enlarged on bail. But even in such a case where the detenu is already in Jail, an order can be passed if there was imminent possibility of his being released therefrom. The power of detention should not be ordinarily exercised ; but when there existed "cogent material" before the detaining authority inducing him to infer that the detenu was likely to be released on bail. This inference must be drawn from the material on record and must not be ipse dixit of the officer passing the detention order. The satisfaction must be reached on the basis of cogent materials.

18. In *K. Satyanarayan Subudhi Vs. Union of India, and others*, , the detention order was quashed because retracted confession of the detenu was not placed before the detaining authority at the time of passing of the detention order. Another factor which weighed with their Lordships was that the detenu was under detention for over 8 months and the order of detention was for a period of one year. In the present case before us, the detenu is in Jail since 6.5.1997.

18A. In *Surya Prakash Sharma v. State of U. P. and others* 1994 SCC (Cri) 1691, the law was summarised at page 1693 as follows :

"The question as to whether and in what circumstances an order for preventive detention can be passed against a person who is already in custody has been engaging the attention of this Court since it first came up for consideration before a Constitution Bench in *Rameshwar Shaw v. District Magistrate, Burdwan*, To eschew prolixity we refrain from detailing all those cases except that of *Dharmendra Suganchand Chelawat v. Union of India*, wherein a three-Judge Bench, after considering all the earlier relevant decisions including *Rameshwar Shaw* answered the question in the following words : (SCC p. 754, para 21).

"The decision referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention ; and (ii) there were "compelling reasons" justifying such detention, despite the fact that the detenu is already in detention. The expression "compelling reason" in the context of making an order for detention of a person already in custody implies that there must be "cogent material" before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him

in order to prevent him from engaging in such activities."

When the above principles are supplied to the facts of the instant case, there is no escape from the conclusion that the impugned order cannot be sustained. Though the ground of detention indicates the detaining authority's awareness of the fact that the detenu was in judicial custody at the time of making the order of detention, the detaining authority has not brought on record any "cogent material" nor furnished any "cogent ground" in support of the averments made in grounds of detention that if the aforesaid Surya Prakash Sharma is released on bail "he may again indulge in serious offences causing threat to public order" . To put it differently, the satisfaction of the detaining authority that the detenu might indulge in serious offences causing threat to public order, solely on the basis of a solitary murder, cannot be said to be proper and justified."

Even this Court in *Porichhat and another v. State of U. P.* 1996 ACR 765, made the following observations in paragraph 1, in which quotations from *Dharmendra Suganchand Chelawat and another v. Union of India* AIR 1990 SC 1996, were incorporated.

"It was held that (i) it is necessary that the ground of detention must show that the detaining authority was aware of the fact that the detenu is already in detention and (ii) there must be "compelling" "reasons" justifying such detention, despite the fact that the detenu is already in detention. The expression, "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be "cogent material" before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities. So far as the first requirement about the awareness of the detaining authority, that the detenu was in detention, this requirement is undoubtedly fulfilled in this case. The question for consideration is : can it be said that the detaining authority was satisfied on the basis of "cogent materials" that detenu was likely to be released from custody in near future? The grounds of detention state that the petitioner was in custody under the provisions of the Gangsters" Act that an application had already been moved before the Special Sessions Judge, Agra for his release on bail, that the possibility of the petitioner being released on bail could not be ruled out and that in case he was released on bail, there was likelihood of the petitioner again indulging in activities prejudicial to the maintenance of public order. The satisfaction recorded by the detaining authority was merely to the effect that the possibility of the petitioner being released on bail could not be ruled out. The detaining authority did not record the satisfaction that the petitioner was likely to be released on bail in the near future. In our view, the satisfaction that the possibility of being released on bail cannot be ruled out is much inferior in qualitative terms that the satisfaction that he was

likely to be released on bail in the near future. If the submission of the learned Additional Government Advocate is accepted and it is held that the satisfaction that the possibility of being released on bail cannot be ruled out is sufficient, then protection to the detenu to which he is entitled under the aforesaid decision of the Supreme Court, will become illusory, since in practical terms, there will be no case where it cannot be said that the possibility of the detenu being released on bail could not be ruled out."

19. In *Rajiv Hazra v. State of U. P.* 1987 ALJ 521, the same view has been taken. Specially we want to quote the following observations made at page 526 because similar reasons have been assigned by the District Magistrate in the counter-affidavit here also :

"It is submitted that the deponent on the basis of material placed before him regarding third ground which is in respect of the incident dated 16.8.1985 was objectively satisfied that the incident affected the public order and not law and order and in order to prevent the petitioner from indulging into the activities prejudicial to the maintenance of public order, it was essential to pass the detention order. The deponent accordingly passed the detention order detaining the petitioner. Even if the assertions set up by the petitioner were placed before the deponent, the deponent's satisfaction would not have changed as deponent felt satisfied that the occurrence affected public order as it relates to firing at an accused in custody in Court Compound."

20. Further in para 9, it has been observed as follows :

"The grounds under Article 22(5) of the Constitution do not mean mere factual inferences but mean factual inferences plus factual materials which led to such factual inferences. We hold that in the instant case, non-consideration of the application of the co-accused and the police report, as also other material cannot be put at par with the facts of *Prakash Chandra Mehta's* case (supra)."

21. The word "cogent" means, according to the Chambers Dictionary, as powerful and convincing. No doubt the satisfaction of the District Magistrate is personal and subjective and the Court will not go into the adequacy of the same, but the recent trend as is apparent from the Supreme Court Rulings noted above, is that the court wants to introduce some sort of objectivity by peeping into the deep veins of secrecy as well in judging the satisfaction of the detaining authority. They have laid down, taking inspiration from *Rameshwar Shaw Vs. District Magistrate, Burdwan* and *Another*, , by using the words "there were compelling reasons justifying such detention, i.e., there must be cogent material before the detaining authority on the basis of which it may be satisfied that taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody, he would again indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities" . Basing the judgment upon the earlier rulings, the Hon'ble Supreme Court has observed that "the satisfaction of the detaining authority that

the detenu might indulge in serious offence causing threat to public order, solely on the basis of a solitary murder, cannot be said to be proper and justified."

22. Supposing the District Magistrate dreams in the night that Mr. X is going to disturb the public order or is likely to disturb the public order in case he is released from Jail. The District Magistrate is personally satisfied that his inspirations are correct. He passes an order. Can it be said to be a valid order u/s 3(2) of the N.S.A.? The reply is certainly not. The reason is simple that there is no material at all sufficient enough to compel the District Magistrate to come to this conclusion. So there must be "compelling reasons", which can be based on the antecedent activities of the detenu and mere subjective satisfaction without any cogent material available before him, is not sufficient to pass a detention order.

23. In the case before us, the District Magistrate had no antecedents of the petitions as there were in fact none before him. Further, there was no history of antecedent activities of the petitioners before him. So, he could not normally come to the conclusion that the detention of the petitioners was justified u/s 3(2) of the NSA. That is why, the Hon"ble Supreme Court has used the words "cogent materials" "sufficient materials" and antecedents of the petitioners, compelling reason, etc. as valid grounds for action u/s 3(2), N.S.A.

24. From the recent trend of the rulings aforesaid, it is clear that the Hon"ble Supreme Court wants to introduce some sort of objectivity in the satisfaction of the detaining authority, that is why mere reason of belief has been found to be inchoate. The Court insists that there should be cogent reasons," meaning thereby that mere reasons were not sufficient. There should be some sort of some material, which may compel the detaining authority to come to a conclusion that further detention of the detenu is essential in the larger interest of the society. This is an effort on the part of the Court to penetrate into the deep and dark veins of secrecy in order to safeguard the right of life under Article 21 of the Constitution.

25. In the present case, nothing, but the solitary F.I.R. and different documents connected therewith, were made available to the District Magistrate, and on that basis alone, he concluded that the detention of the petitioners is a must under the N.S.A. Not only this, it has been specifically admitted by the District Magistrate in para 5 of his counter affidavit that relevant "cogent materials" were placed before him by the sponsoring authority. But he does not say anything more than the documents relating to the same solitary F.I.R. were provided to him or any other antecedents of the petitioners were made available to him. Then how did he come to the conclusion that in future, on being released from the Jail, the petitioners would indulge in the activities prejudicial to the maintenance of public order. Here, mere assertions will not do. There shall be something much more than that, in order to satisfy the conscience of the Court.

26. In para 7, he says that "the petitioner has committed the crime in an

organised way with the help of other co-accused", which has been made the basis of grounds of detention." in para 13, he says that the copy of the statement made by the injured Mahendra Singh, u/s 164. Cr. P.C. was also considered by him. But palpably, it appears wrong, because Mahendra had totally exonerated the petitioners from the crime. He further states that had the statement of Mahendra u/s 164. Cr. P.C. been placed, the result would have been the same. This is a routine type of reply because the statement of an injured witness, can alone constitute the basis of acquittal/conviction in a particular case. His evidence is very valuable for the prosecution. But here, is the case wherein the injured witness Mahendra has totally disowned any responsibility for implicating the petitioners in this crime. Had the detaining authority really considered this material, i.e. statement u/s 164, Cr. P.C. he would not have come to a conclusion as a reasonable man that the evidence supplied was the "cogent". In fact, this document was not supplied to him at all. Why such a relevant material was withheld is not clear. The State has given no explanation for the same. Thus after coming to the conclusion that the prosecution story is correct, there was only the F.I.R. and nothing more than that before the District Magistrate. Hence his satisfaction is vitiated, for want of cogent and capable evidence.

27. The complete copy along with the Annexures of the bail application moved by the accused (petitioners) was not supplied to the District Magistrate. Only two pages of this application were supplied. Thus neither the Annexures of bail petition were before the District Magistrate nor the plea of the petitioners was available before the District Magistrate. So normally, he would not have come to the conclusion that the petitioners would necessarily reindulge in similar activities after their releases. Why only a small part of the bail application was provided to the District Magistrate, not the whole, is not explained. It means that the sponsoring authority was playing the game of hide and seek and did not want the entire material to be available before the District Magistrate for passing an order and basing his satisfaction.

28. In para 6 of the counter-affidavit of the District Magistrate, it is alleged as below :--

"It is incorrect to say that the statement of injured Mahendra made u/s 161, Cr. P.C. is the sole basis for passing the detention order against the petitioner. There are more vital and cogent materials on which basis the deponent was satisfied to pass the detention order."

29. What was other material, which is termed as vital and cogent by the District Magistrate, is not clear. It seems that either he had no such material available before him or the sponsoring authority wanted to keep him in dark by providing some material, that too incapable which was totally of no help and merely contained blames against the petitioners.

30. In para 19, although he has denied the allegation of total non-application of

mind but he has not supported his version by any other material on the record in the present case. Mere saying that he applied his mind to the materials supplied to him, is not sufficient. In para 21, he admits that only 2 pages of the bail application had been placed by the sponsoring authorities and had been supplied to the petitioners. But still he wants to say that even if the entire bail application had been produced before him, along with its Annexures, he would have come to the same conclusion. It is difficult to sustain this sort of argument on the part of a high authority like District Magistrate. It is like saying that even if he had seen the sun with his own eyes, but denied by the sponsoring authority, he would have stuck to the position that it was a night but not a day. The existence of sun in the sky as seen by the detaining authority, should have put at not all the efforts made by the sponsoring authority to still call it a night. Therefore, the reiteration of the same words by the District Magistrate did not carry us anywhere.

31. This legal position is not disputed that even when the petitioners are in Jail at the time of passing the order or they have committed a single offence, the detaining authority can pass an order u/s 3(2) of the N.S.A. But all the same, the Court expects that even the personal satisfaction arrived at by the District Magistrate should have been had on some sort of evidence on the record before him and not a mere fantasy and imagination of the District Magistrate will serve the purpose.

32. From the evidence on the record, it appears that the petitioners were not habitual criminals. Hence the question of connecting their antecedents did not arise. It has been alleged in para (vii), page 42 of the petition that "the names of the witnesses, the names of the persons who had been threatened or the persons who were involved in closing of the shops or caused traffic jam were not given or produced before the District Magistrate and in the absence of all these details, the petitioners were not able to give effective reply." Nay it appears that in absence of such documents, which were really not available to the District Magistrate, even like a reasonable and prudent man, he could not have arrived at the subjective satisfaction as developed by him. Rather, it appears to be an abuse and colourful exercise of power at the hands of the detaining authority hinting at mala fide and even dishonesty at the time of alleged application of mind as enunciated by the detaining authority in his counter-affidavit.

33. Taking into consideration the totality of the circumstances, we come to an irresistible conclusion that the detention order passed by the detaining authority is totally vitiated and it cannot be sustained, or allowed to continue.

34. Both the petitions are, accordingly, allowed. The petitioners shall be released forthwith unless required in some other case.