

(1996) 09 AHC CK 0048

In the Allahabad High Court

Case No : Habeas Corpus W.P. No. 1327 of 1996, Connected with Habeas Corpus W.P. No. 2269 of 1996

Nihal and Ors.

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 03-09-1996

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (1996) 09 AHC CK 0048

Hon'ble Judges : N.L.Ganguly, J and B.K.Sharma, J

Final Decision : Allowed

Judgement

B. K. Sharma, J.—These two habeas corpus writ petitions have been heard together and are being disposed of by this common judgment.

2. Counteraffidavit has been filed by Bansi Dhar Pandey on behalf of State of U.P. A separate counteraffidavit has been filed by Sri Har Bhajan Singh, District Magistrate, Kanpur Nagar. Sri O.P. Singh, Deputy Jailor in District Jail, Kanpur Nagar has also filed a counteraffidavit. Rejoinderaffidavit has been filed on behalf of the petitioner in the aforesaid petitions.

3. Heard Counsel for both the petitioners and also the learned Addl. Govt. Advocate.

4. Nihal petitioner filed habeas corpus writ petition for issuance of a habeas corpus writ and quashing of the order of detention dated 41195 passed by District Magistrate, Kanpur Nagar, respondent No. 3 against him under Section 3(2) of the National Security Act.

5. Habeas corpus writ petition has been filed by Anjani Kumar petitioner for issuance of a habeas corpus writ and quashing of the order of detention dated 41195 passed by the District Magistrate, Kanpur Nagar, respondent No. 3 against him.

6. An F.I.R. was lodged by constable Sri Jagdish Singh at police station Bajariya, Kanpur Nagar under Sections 147,148,149, 307, 353,1.P.C. and under Section 3/5 of the Explosives Act and Section 7 of the Criminal Law Amendment Act on 25101995 with the allegation that he and other constables were on picket duty on 25101995 at 5.30 p.m., that the SHOR (noise) was heard from the side of Shakti Din Hata, that thereupon the police party went to that side and saw that some bad character were quarreling amongst themselves about winning and losing in gambling, that out of them some were Hindus and some were Mohamdans, that Mohamdans being present there were supporting Mohamdan bad characters and Hindus being present there were supporting Hindus bad characters, that Binu and petitioner Nihal attacked on the police party, that Binu threw a bomb upon the police party which exploded on the road though the police party managed to avoid any hurt, that in the meantime Nihal petitioner threw a bomb which exploded on the road injuring informant constable Sri Jagdish Singh, Constable Uma Chandra Pandey, and Constable Gajraj Singh, that as a result of the explosions the atmosphere of fear and terror prevailed amongst the persons present there and they started going to their houses and concealing themselves and shop keepers started closing shutters of their shops and people started running hither and thither, that on the arrival of the police force the bad characters quarrelling with each other were controlled, otherwise the incident would have resulted into a communal riot, that out of the bad characters Anjani Kumar petitioner and Manoj alias Tandon ran away firing while Rama Shankar and threefour others ran away towards Moti Kathi, that as a result of these actions of bad characters in a public place an atmosphere of fear and terror spread amongst the public and the public order was completely disturbed and that the said constables were medically examined and injuries were found on their person.

7. On the move of the jpolice the District Magistrate, Kanpur Nagar passed detention order dated 41193 against Nihal petitioner, which is AnnexureII to the writ petition. The grounds of detention and its annexures were also served on the petitioner. These are available in the writ petition at pages 22 to 44.

8. The District Magistrate, Kanpur Nagar passed a seperate detention order dated 41195 against Anjani Kumar petitioner also, a copy of which is AnnexureI to his writ petition. The grounds of detention alongwith annexures communicated to him (Anjani Kumar petitioner) are available at pages 19 to 47 of his writ petition.

9. The detention orders were served on the respective petitioners on 4111995 itself. The Advisory Board submitted its report to the State Government and thereupon the State Government rejected the representation of Nihal petitioner and confirmed the detention order aforesaid which also on the report of the Advisory Board were in the negative. In the case of Binu his detention order was revoked by the Central Government.

10. On the basis of the aforesaid facts twofold arguments have been advanced from the side of the petitioners. One was that following the principle of parity the

detention order of the respective petitioners should be quashed by this Court. We have noted the facts as narrated in the F.I.R. The transaction was the same and the active participation by Rama Shankar and Binu coaccused was mentioned therein along with the present petitioners. Reliance has been placed on a Division Bench authority of this Court *Wazir Yadav v. State of U.P. and others*, 1993 JIC 182 (All). In that case the following observations are significant:

"24. The question arising for consideration here is that when the grounds of detention are identical; one served on Om Prakash and the other served upon the petitioner, can it be permitted to be said by the State that the detention order still stands. It is impossible to countenance such an argument as that will permit extreme arbitrariness on the executive. It is reprehensible to permit a citizen to enjoy liberty on the same ground while permit another to languish in jail in detention. This will be in the teeth of the purpose and objective behind Section 12, N.S.A. read along with Section 14, quoted above.

26. In Habeas Corpus Petition No. 11 of 1991 and 12 of 1991 of the Lucknow Bench of this Court, decided by the said Bench on 24 1991 by Hon"ble Virendra Kumar and Hon"ble J.K. Mathur, JJ., though several grounds were canvassed, the relevant paragraph is quoted hereunder from the certified copy produced by the learned Counsel at the Bar:

"In the first place learned Counsel for the petitioners assailed the orders of detention on the ground that the third detenu Wahid against whom similar order of detention on the same ground was passed, has already been released after cancellation of his detention order of the same date passed by the District Magistrate, Lucknow under Section 3(2) of the Act. To be specific, in paragraph 19 of the writ petitions the petitioners submitted that Wahid's detention order was not confirmed by the Advisory Board though the ground for detention of the petitioners and Wahid was one and the same. In the reply given to this point, in the counteraffidavit furnished by the detaining authority, that is, the District Magistrate, Lucknow, all that is stated is that the order of detention against Wahid was revoked by the State Government on receipt of the opinion of the Advisory Board and that each case depended on its own facts and circumstances. Thus, it is not the case of the opposite parties that the case of the detenu Wahid was different and distinct from that of the present petitioners. The contents of the First Information Report (reproduced above) which formed the basis of the detention order against Wahid and the present petitioners, makes out that the implication of Wahid and the present petitioners in the occurrence was identical and Wahid was in no way less involved in that occurrence or the offence. Thus there is force in the contention of the learned Counsel for the petitioners that the cases of all the three detenu being identical and they having been detained on the same ground, the present petitioners are entitled to their release like that of Wahid on the ground of parity. In Writ Petition No. 9493 of 1988 *Khalil v. State of Uttar Pradesh*, Division Bench of this Court has decided on 1589 that a detenu was entitled to release on the ground of parity when the codetenu with identical

cases had already been set at liberty. The writ petition, therefore, deserves to be allowed on this score alone."

* * * *

"29.....it was rightly argued that there is nothing more important in a civilised democratic society than individual liberty. Conceding that the State Government is bound to follow the opinion of the Advisory Board relating to release of a detenu, it is to be emphasised that the reciprocal action would be necessitated on the part of the State regarding his co detenu also if his grounds and facts are same and identical. Any other interpretation is likely to result in gross discrimination between person to person and may beacon the end of Rule of law. From this point of view, quasi judicial opinion of the Advisory Board should be respected vizaviz the order regarding even that person also who remains in detention in view of the Advisory Board's earlier opinion."

"30. What is parity in common language is perhaps equality before law in legal terminology and what it equality before law in legal terminology has it foundation in Article 14 of the Constitution. The word "parity" is generally used in regular criminal matters such as bail applications or where a set of evidence against one stands on the same footing as against another, which may not in all cases be drawn in use in detention matters. But as on the facts and circumstances of the present case, the grounds were identical in as much as the wordings in the detention order were also identical with the only difference of the names of the two detenu in the two respective orders and no dissimilarity could be found and, therefore, in order to uphold the Rule of law, Article 14 shall have to be invoked to avoid any misgiving in the minds of the citizen that noninterference by this Court perpetuates injustice visavis the petitioner."

11. An authority of the Supreme Court was produced before that Bench but that related to detention orders in similar cases and there it was said that each case has to be decided on its own facts and so that was not applicable. In that authority the said authority was held bad on the said ground and the detenu was directed to be set at liberty. There was another Division Bench authority of this Court Charan Singh Yadav v. State of UP. and another in Writ Petition No. 494 (H/C) of 1995 cited. In that authority a similar question arose as the Advisory Board recommended the release of Awadhesh Yadav as well as Manoj Yadav, who were detained in the same incident, the court noticed that the grounds of detention of Awadesh Yadav as well as Manoj Yadav covered the same field and the order of detention of the petitioner and the grounds of detention of Awadesh Yadav and Manoj Yadav were not only similar but appeared to be a prototype copy and the State Government revoked the detention order of Awdesh Yadav and Manoj Yadav but approved further detention of the petitioner. The argument advanced was that the action of the State Government in approving the detention of the petitioner and revoking the order of detention of two detenu Awadesh Yadav and Manoj Yadav on the same set of grounds was hit by Article 14 of the Constitution of India. In the said authority several authorities of this Court were referred,

which were considered and the arguments of the learned Counsel for the petitioner were accepted.

12. There was another authority of this Court *Hari Narain A wasthi v. State of U. P.* in Habeas Corpus Writ Petition No. 3833 of 1996. In that case the allegation against the petitioner and two other coaccused was similar and reliance was placed on several authorities and the plea of the petitioner was accepted by the Court. There also, as in the present case, the learned Addl. Government Advocate had argued that there is no material on record to show as to what was the material before the Advisory Board to consider and pass orders in favour of the co accused and that unless the Advisory Board was made a party and given an opportunity of bringing the relevant record before it or unless the original record of the Advisory Board was obtained it would be not proper for the Court to take into consideration the facts and circumstances for revocation of the detention orders against the coaccused persons. In that case this Court has observed as follows:

"We consider it that the case of the petitioner and the case of two accused persons, namely, Satish alias Raju Nigam and Raju Yadav and the case against the petitioner, as per F.I.R. and the prosecution case, are apparently similar. The public at large had not seen the details of the FIR which may have created a terror in the mind against the petitioner alone. If the commission of the offence is presumed to have taken place, the effect of the commission of the offence would be the same on the public at large for all the accused persons, named therein. The public at large would not know that who was assigned a particular role in the commission of the offence as that of commission of rape on a minor girl."

13. An ancillary point was raised before us from the side of the petitioners that the fact that in the case of coaccused Rama Shankar and Binu in the same occurrence their detention orders were revoked, in one case by the State Government and in another case by the Central Government were material facts to be considered by the State Government while disposing of the representation of the present petitioners. It has also been argued that in the case of Rama Shanakar Yadav, there was the comment of the Advisory Board in his favour and that comment also was a material fact to be considered by the State Government while disposing of the representation of the present petitioners for considering whether to confirm the detention orders of the present petitioners or not. In this regard reliance has been placed on the authority of the Supreme Court *Mohd. Shakeel Wahid Ahmed v. State of Maharashtra*, AIR 1983 SC 541. In that case the petitioner was detained under an order dated Nov. 7, 1981 and prior to that one Shamsi was detained under an order dated August 19, 1981 passed by the same Government and after considering the material placed before it in Shamsi's case the Advisory Board reported to the State Government on October 10, 1981 that there was in its opinion no sufficient cause for Shamsi's detention and Shamsi was released in pursuance of the said opinion of the Advisory Board.

It was urged by the Counsel for the present petitioners before the Apex Court that one of the grounds on which Shamsi was detained was the same as ground No. 1 in that case, that the fact that the Advisory Board had reported that there was no sufficient cause for Shamsi's detention ought to have been placed before the detaining authority which passed the order of detention against the petitioner and that the failure of the State Government to place a highly relevant and important piece of material before the detaining authority vitiated the order of detention. It was further argued that if the detaining authority in that case was apprised that the Advisory Board had reported on examining, inter alia an identical ground that there was no sufficient cause for detention of another person involved in the same transaction it may not have passed the order of detention against the petitioner, which was based on similar facts. The Apex Court observed as follows:

".....This submission is well founded and must be accepted. It is clear that Shamsi was detained for engaging in a smuggling activity arising out of the same incident and transaction which forms the subjectmatter of ground No. 1 in the instant case. The opinion of the Advisory Board that there was no sufficient cause for Shamsi's detention may not have been binding on the detaining authority which ordered the detention of the petitioner but, it cannot be gainsaid that the fact that the Advisory Board had recorded such an opinion on identical facts involving a common ground was at least a relevant circumstance which ought to have been placed before the detaining authority in this case. Since three out of the four grounds on which the petitioner was detained have been held to be bad by the High Court, we have to proceed on the basis that the petitioner was detained and could validly be detained on the remaining ground only. That ground is similar to one of the grounds on which Shamsi was detained, the transaction being one and the same, as also the incident on which the two orders of detention are based. That is why the opinion of the Advisory Board in Shamsi's case becomes relevant in the petitioner's case. The failure of the State Government to place before the detaining authority in the instant case, the opinion which the Advisory Board had reported in favour of a detenu who was detained partly on a ground relating to the same incident deprived the detaining authority of an opportunity to apply its mind to a piece of evidence which was relevant, if not binding. In other words, the detaining authority did not, because it could not apply its mind to a circumstance which, reasonably, could have affected its decision whether or not to pass an order of detention against the petitioner.

7.....The question is whether the order of detention was passed in this case after applying the mind to the relevant facts which bear upon the detention of the petitioner. It seems to us plain that the opinion of the Advisory Board in Shamsi's case was, at any rate, an important consideration which would and ought to have been taken into account by the detaining authority in the instant case. That opportunity was denied to it.

8.....The substance of the matter is that the detaining authority in this case failed to apply its mind to the highly relevant circumstance that an order of detention passed on the ground on which the detention of the petitioner now rests, in addition to do something more was not sustained by the Advisory Board in Shamsi's case. We cannot exclude a reasonable probability that since the Advisory Board had not sustained Shamsi's detention on a ground which was common to him and the petitioner, namely ground No. 1 the detaining authority would have, if at all, passed the order of detention against the petitioner on the remaining three grounds only. Those three grounds have been held to be bad by the High Court and it is only by resorting to the provisions of Section 5A of the Act that the High Court upheld the detention of the petitioner."

The learned Addl. Govt. Advocate has argued that the aforesaid authority does not in terms apply in the present case because the said authority related to a case where the District Magistrate had not yet passed any order of detention of the coaccused, when the order of revocation was passed, while in the present case the revocation of detention order in respect of one coaccused by State Government and in respect of another coaccused by the Central Government was made much after the passing of the detention order by the detaining authority, namely, the District Magistrate. Technically this is correct. The principle that has been laid down in the said authority has never the less to be taken note of and applied to the facts of the present case. If the fact that the Advisory Board had reported that there was no sufficient cause for detention of a coaccused on the same set of facts was a material fact to be considered by the detaining authority before passing the detention order in respect of another coaccused in the same transaction, the said fact would be equally a material fact to be considered by the State Government while confirming the detention order in respect of the other coaccused and on the same reasoning the revocation of the detention order in respect of the coaccused in the same transaction would be a material fact to be considered by the Central Government while confirming the detention order in respect of another coaccused in the same transaction.

14. In the authority *Arun Shankar v. State of U.P. and another*, AIR 1994 All 1031, a Full Bench of this Court relied upon the observation of the Supreme Court in A.I.R. 1974 SC 806 where it was observed by the Supreme Court:

"The State Government while approving the detention order or confirming the same has to apply its mind and cannot mechanically take a decision to approve it or disapprove it. Naturally if the Government had to record its approval or disapproval to a particular detention order it cannot be recorded without the application of mind as to in what particular circumstance an order is to be approved and in what other circumstances it is not to be approved."

The Supreme Court further observed:

"Where the grounds of detention were common in case of two persons and in case of one person the detention order was not approved by the Advisory Board

and consequently, it was revoked by the State Government, in such a case, the order of detention passed against the other was liable to be quashed when it was passed without taking into consideration the abovementioned fact. In the instant case, it was held that though the Government could not send the opinion of the Advisory Board to the detaining authority because it had already passed the detention order but while confirming the order and later approving it the State Government should have taken such circumstances in consideration as entire material was in its possession."

15. The next argument advanced on behalf of the present petitioners is that the detaining authority took into account material which was extraneous material. In the grounds of detention of Nihal petitioner available at page 22, a dossier was attached with the letter sent by the Senior Superintendent of Police, Kanpur City to District Magistrate, Kanpur City dated 311096, on the basis of which the detention order has been passed. The lifehistory of Nihal petitioner was given in it in the following words :

"Jeewancharitra

Nihal Putra Taufiq ka janma janpad kanpur nagar men hi ek madhyam wargiya pariwar men huwa tha, iske matapita ne isko padhane likhane ka kafiprayas kiyaprantu bachpan se hi shararti aur udand pravriti ka hone ke karan jyada padhtikh nahin saka, aur apradhi pravriti ke vyaktiyon ki sangati menpadkar swayam bhi apmdh karne laga."

16. Similarly a dossier was also attached with the letter sent by the Senior Superintendent of Police Kanpur City to the District Magistrate, Kanpur City dated 311095 on the basis of which the detention order has been passed about Anjani Kumar petitioner which is available in the grounds of detention of Anjani Kumar petitioner at page 29 of the writ petition. The lifehistory of Anajani Kumar petitioner has been given in it in the following Words :

"Jeewan Charitra:

Anjani Putra Shri Shivnath ka janma janpad Kanpur Nagar men hi ek sampanna pariwar men huwa tha, iske matapita ne isko padhane likhane ke kaphiprayas kiye, parantu bachpan se hi galat logon ki sangati men pad jane ke karan jyada padh likh nahi saka aur apradhi pravriti ke vyaktiyon ki sangati mepadkar swayam bhi apradh karne laga."

17. In respect of this extraneous material, plea has been taken in para 15 of the writ petition of Nihal petitioner that the facts (extracted above from the dossier) led the District Magistrate to draw an inference that the petitioner may at in future which will be prejudicial to the maintenance of public order, but the police dossier is not accompanied with any material, nor the District Magistrate has supplied any material which are stated in the police dossier giving the petitioner's lifehistory and as such forming of satisfaction for passing the order of detention against the petitioner was invalid. In respect of this plea in the

counteraffidavit of Sri Ham Bhajan Singh, District Magistrate, Kanpur Nagar, respondent No. 3, it was stated in para 13."

".....The deponent has taken into account the relevant material placed before him while passing the detention order against the petitioner. The facts mentioned in para under reply has been mentioned in the report of the sponsoring authorities. The facts mentioned in the police report cannot be said to be incorrect particularly in the present proceedings. The deponent has considered the material placed before him including the first information report of ease Crime No. 232 of 1975."

18. In respect of Anjani Kumar petitioner the corresponding averment was made in para 14 of this writ petition. After narrating allegations in the dossier, as reproduced above, it was stated:

".....In fact these facts stated in the police dozier led the District Magistrate to draw inference that the petitioner may act in future which may be prejudicial to the maintenance of public order. However, the police dozier is neither accompanied with any material nor District Magistrate has supplied material which are stated in the police dozier, as such the forming of satisfaction for passing the order of detention against the petitioner is invalid."

19. In this regard in his counteraffidavit Sri Har Bhajan Singh, District Magistrate, Kanpur Nagar, respondent No. 3 has stated in paragraph 13:

".....The deponent has taken into account the relevant material placed before him while passing the detention order against the petitioner. The facts mentioned in para under reply has been mentioned in the report of the sponsoring authorities. The facts mentioned in the police report cannot be said to be incorrect particularly in the present proceedings....."

20. It will be seen that the reply of the District Magistrate, Kanpur Nagar is that he had noted the abovenoted acts as given in the dossier and he has affirmed that he has taken these averments of the police given in the dossier into consideration while making his subjective satisfaction which led to his passing of the detention order in respect of the present two petitioners. It may be placed on record that no concrete material was placed before the detaining authority in support of the averment that the petitioners had taken to life of crime,

21. In regard to such circumstances we have an authority of the Supreme Court Vashisht Narain Karwaria v. Union of India and others, AIR 1990 SC 1272 : 1990 JIC 5(All). In this authority paras 8 to 10 are relevant which are reproduced below:

"8. Mr. R.K. Jain, the learned Sr. Counsel appearing on behalf of the appellant made a number of submissions at the hearing, one of which being that the sponsoring authority had placed certain irrelevant and extraneous matters before the detaining authority which should have influenced the mind of! the detaining authority and stealthily crept into the decision of the said authority directing

detention of the detenu and as such the impugned order is liable to be quashed. This argument was raised by Shri Dalveer Bhandari, the learned Counsel appearing on behalf of the respondents that the detaining authority had not considered any other material save the material referred to in the grounds of detention. Therefore, the short question for our consideration is whether the sponsoring authority has placed before the detaining authority any extraneous and irrelevant materials which might have influenced the mind of the detaining authority. It cannot be disputed indeed there is none that the four documents referred to above. copies of which were furnished to the detenu have been placed before the detaining authority. It follows that the detaining authority passed this order only on consideration of the above said materials. In the confidential letter dated 31st March, 1988 sent by the Senior Superintendent of Police, Allahabad to the detaining authority it is stated thus:

"It is stated that the accused is a hardened criminal and has a gang. Such persons are committing heinous crimes often which adversely affect the public order. There are many cases/offences against accused Vashishtha Narayan registered in various police stations. It has become his habit to commit offences.....Hence I recommend that an order for at least 12 months" detention be passed against Shri Vashishtha Narayan Karvaria alias Bhukkhal son of the late Shri Jagat Narayan Karvaria, the aforesaid accused under Section 3(2) of the above mentioned Act."

(9) The preamble of the letter submitted by the Station House Officer of Colonelganj, Allahabad dated 31/3/1988 to the Senior Superintendent of Police, Allahabad reads as follows:

"It is submitted that Shri Vashishta Narayan Karvaria alias Bhukkhal, the aforesaid accused is a hardened criminal and has a gang. In this gang his son Kapil and two other big offenders Ram Chandra Tripathi and Santosh Kumar Tripathi son of Gaya Prasad, resident of Gansupur, P.S. Nihal & Ors. v. Union of India & Ors. Pooramufti, District Allahabad, are included. These people often used to commit heinous crimes, by which terror and fear prevails in the people. Many crimes are registered against Vashishtha Narayan Karvaria in many Police Stations."

(10) The above averments made in the above two letters, the copies of which are furnished to the detenu along with grounds of detention unequivocally and clearly spell out that the detenu is a hardened criminal, having a gang under his control often committing heinous crimes, that many cases against the detenu are registered in various police stations and that he is in the habit of committing offences. No doubt, these averments are not made mention of in the grounds of detention. But can it be said that these materials placed before the, authority might not have influenced the mind of the detaining authority in taking the decision detaining the detenu. In our view, the above averments which are extraneous touching the character of the detenu though not referred to in the grounds of detention, might have influenced the mind of the detaining authority

to some extent one way or the other in reaching the subjective satisfaction to take the decision of directing the detention of the detenu. As rightly pointed out Mr. Jain, had these extraneous materials not been placed before the detaining authority, he might or might not have passed this order. Therefore, we have to hold that the detention order is suffering from the vice of consideration of extraneous materials vitiating the validity of the order....."

22. There is also a Division Bench authority of this Court *Mahesh Tyagi v. State of U.P. and others*, 1992 CrL. L.J. 779. In this authority the detention order was challenged by the detenu on various grounds, one of which was that it was indicated in the report submitted by the police officers to the District Magistrate that the petitioner is a hardened criminal and a criminal Goonda and he used to receive money by abducting persons and possess illicit weapons which are utilised for kidnapping persons, that there existed no material before the detaining authority in support of the said contention and the detaining authority passed the detention order on the basis of incorrect imports. There in the counteraffidavit of the District Magistrate it was stated that in the report of the Senior Superintendent of Police it was mentioned that the petitioner was a hardened criminal. The Division Bench relying upon the aforesaid authority of the Apex Court observed that the averments which are extraneous touching the character of the detenu though not referred to in the grounds of detention, might have influenced the mind of the detaining authority to some extent one way or other in reaching the subjective satisfaction to take the decision of directing the detention of the detenu. Had these extraneous materials not been placed before the detaining authority, he might or might not have passed this order. Therefore, it could be held that the detention order is suffering from the vice of consideration of extraneous materials vitiating the validity of the order.

23. There is one more circumstance in favour of the present petitioners. It was that the aforementioned allegations in the dossier were too vague and did not provide particulars or details of the cases in which these were convicted or wanted. If such details existed, the detaining authority would have furnished the particulars thereof to the detenus while serving the detention order and its grounds to them to enable them to make an effective representation. On the same facts in the case of *Mahesh Tyagi v. State of U.P.* (supra) the Division Bench found that no such particulars or details were furnished to the detenu to enable him to make an effective representation to the authorities and accordingly the Division Bench held that the order of detention suffers from the vice of consideration of extraneous material and that the detention order is totally vitiated.

24. So, to sum up, the detention orders in respect of both the petitioners, suffer from similar fatal infirmities. One is that on the principle of parity the detention order was invalid. The second is that the fact that the Advisory Board had given a negative opinion in favour of Rama Shankar petitioner and that the State Government had considered it and revoked his detention order and the fact that

the detention order of Binu was revoked by the Central Government were not considered by the State Government while confirming the detention orders of the present petitioners though these were relevant materials to be kept in mind by the State Government while passing confirmation orders in respect of their detention. The third is that the detaining authority had considered irrelevant and extraneous material while forming his subjective satisfaction while passing the detention orders in respect of the present petitioners and the fourth ground is that the particulars of life of crimes alleged in the dossier against each of the petitioners were not furnished to them and consequently they were totally deprived of the opportunity of making an effective representation about the same. So the detention order in respect of Nihal petitioner and the detention order in respect of Anjani Kumar petitioner get vitiated and consequently are liable to be quashed.

25. Much after the conclusion of the hearing the hearing the Union of India on 16896 filed a counteraffidavit of Desk Officer Ishwar Singh dated 521996. It being inadmissible as not having been a properly sworn affidavit according to Allahabad High Court Rules or before a notary public we have declined to look into it. Moreover, this affidavit was immaterial as these writ petitions are succeeding on grounds relating to other respondents i.e. respondents No. 2 to 4.

26. Both the habeas corpus petitions are allowed. The detention order in respect of Nihal petitioner and the detention order in respect of Anjani Kumar petitioner are quashed. Petitioners Nihal and Anjani Kumar shall be set at liberty forthwith unless required in any case