
(2013) 04 DEL CK 0204

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 410 of 2013

Payal Garg

APPELLANT

Vs

UOI and Another

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1), 5A
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 108

Citation : (2013) 5 AD 498

Hon'ble Judges : V.P. Vaish, J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Vikram Chaudhary, Mr. Prem Ranjan Kumar and Mr. Awanish Sinha, for the Appellant; Jatan Singh, CGSC and Mr. Soayib Qureshi, Advocate for UOI, for the Respondent

Judgement

Sanjiv Khanna, J.—Payal Garg, wife of the detenu Lokesh Garg, has filed the present writ petition under Article 226 of the Constitution of India for issue of writ in the nature of Habeas Corpus for quashing the detention order bearing F. No. 673/17/2010-CUS-VIII dated 27th August, 2010 passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA, for short). By the amended writ petition, the petitioner has also challenged the order dated 18th February, 2013 passed by the Central Government after considering the report of the Advisory Board.

2. At this stage, we may record that Mr. Jatan Singh, Standing Counsel for Union of India, has stated that the counter affidavit filed to the original writ petition may be treated as the counter affidavit filed to the amended writ petition.

3. Lokesh Garg had earlier filed Writ Petition (Criminal) No. 1470/2010 at pre-detention stage. However, the said writ petition was dismissed as withdrawn as recorded in the order dated 28th September, 2010 with liberty to challenge the

detention order after grounds of detention and the detention order was served. Thereafter, Sushma Garg, mother of Lokesh Garg, had filed Writ Petition (Criminal) No. 142/2011 before the Supreme Court, which was tagged with other writ petitions, including Writ Petition (Criminal) No. 137/2011 titled Subhash Popatlal Dave versus Union of India and Another, wherein the question/issues relating to challenge to detention orders at pre-execution stage were being examined with reference to the earlier decision of the Supreme Court in Additional Secretary, Government of India versus Alka Subhash Gadia, (1992) Supp. 1 SCC 496. The questions of law raised in Subhash Popatlal Dave (supra) were answered vide judgment dated 10th July, 2012 and thereafter it was directed that individual writ petitions would be listed for final hearing. In the meanwhile, Lokesh Garg was arrested on 1st December, 2012 and the grounds of detention were served on him on 4th December, 2012. The Supreme Court by order dated 7th March, 2013 noticing the fact that Lokesh Garg had been detained and the detention order dated 28th September, 2010 was operative, permitted Sushma Garg to withdraw the petition with liberty to move to the High Court to challenge the detention order.

It was also observed that the High Court would consider disposing of the matter as early as possible, but preferably within two months from the date of filing as the detenu-Lokesh Garg had already undergone three months of the detention period.

4. The petitioner before us has raised several grounds. However, in view of the decision in Writ Petition (Criminal) No. 1565/2010 titled Laxman Dass Jalhotra versus Union of India and Others, decided on 16th March, 2011, one ground has been pressed, while reserving the right to raise other grounds, if required and necessary. Manish Jalhotra son of Laxman Dass Jalhotra, co-detenu was detained vide detention order dated 27th August, 2010 under COFEPOSA. The said detention order was executed on 1st September, 2010. Laxman Dass Jalhotra, father of Manish Jalhotra had filed the aforesaid writ petition, which has been allowed.

5. Having heard counsel for the parties, we feel that the present writ petition should be allowed for the reasoning and ratio in Laxman Dass Jalhotra (supra) and in these circumstances we are not examining the other grounds or reasons raised by the petitioner in the present writ petition.

6. The contention of the petitioner is that the sponsoring authority had not placed before the detaining authority, copy of the retraction letter and bail application of the co-detenu Manish Jalhotra. The detaining authority in the present case has relied upon confessional statement of Manish Jalhotra dated 14th June, 2010 and the same was mentioned at serial No. 9 in the list of relied upon documents. Secondly, it is stated that Lokesh Garg retracted his inculpatory statement dated 9th March, 2010 by writing letter dated 11th March, 2010 to the ACMM, inter alia, recording that he was intimidated and coerced to make a false and involuntary statement, which was dictated to him and the same was contrary

to the documents and record. It is submitted that the detaining authority had relied upon the confessional statement of Lokesh Garg dated 9th March, 2010, as mentioned at serial Nos. 5 and 6 of the relied upon documents, but the retraction letter dated 11th March, 2010 written by the detenu to the ACMM was not enclosed and was not brought to the notice and knowledge of the detaining authority. It is highlighted that the retraction made by Lokesh Garg vide letter dated 11th March, 2010 was specifically mentioned in the bail application moved by Lokesh Garg on 15th March, 2010 before the ACMM and a reply was filed by the Customs authorities. Thus, the Customs authorities were aware and had knowledge of the retraction made by Lokesh Garg vide letter dated 11th March, 2010.

7. It is an accepted position that the letter dated 11th March, 2010 was not filed and placed before the detaining authority. In fact, the respondents claim that they did not have copy of the letter dated 11th March, 2010 which was transmitted by Lokesh Garg from Jail to the ACMM. It is not denied that letter dated 11th March, 2010 is on the record of the ACMM. It is also an accepted position that in the bail application dated 15th March, 2010 filed by Lokesh Garg reference was made to the retraction letter dated 11th March, 2010 and a reply to the said application was also filed by the custom authorities. The respondents claim that the retraction letter dated 11th March, 2010 of Lokesh Garg is not on their records as it was not marked to them.

8. Similarly, the respondents state that the retraction by Manish Jalhotra was in the form of a letter and in the bail application but both of them were not available with the sponsoring authority or the detaining authority as they were filed in the court of ACMM. Thus they were not considered.

9. Grounds of detention in the present case from paragraphs 6 to 10, refer to the confessional statement of Lokesh Garg dated 9th March, 2010 and its contents. The said statement was recorded u/s 108 of the Customs Act.

10. Paragraph 12 of the ground of detention refers to the proceedings in the Court of ACMM, Patiala House, and reference has been made to the bail application filed by Lokesh Garg and the reply filed. The bail application was rejected by the ACMM vide order dated 19th March, 2010. Thereafter the second bail application was filed. In Paragraph 21 again, reference is made to the statement of the detenu dated 9th March, 2010 and reference to the said statement continues in Paragraph 22.

11. At this stage, it would be appropriate to notice that grounds of detention in the case of Manish Jalhotra and Lokesh Garg are substantially similar and identical. In the case of Manish Jalhotra reliance was placed upon the confessional statement of Lokesh Garg dated 9th March 2010. Reliance was substantially placed on the confessional statement dated 14th June 2010 made by Manish Jalhotra.

12. In Laxman Das Jalhotra referring to the retraction which was made by Lokesh

Garg and Manish Jalhotra in the letter and/or the bail application, the Division Bench has held as under:-

Lokesh Garg was arrested on 09.03.2010 and he is said to have made a statement u/s 108 of the Customs Act, 1962 on that date itself. This statement dated 09.03.2010 was retracted by Lokesh Garg on 11.03.2010 before the learned ACMM, Patiala House, New Delhi. Lokesh Garg was subsequently released on bail by the learned ACMM by an WP (CRL) No. 1565/10 Page 3 of 12 order dated 07.04.2010. The retraction dated 11.03.2010 was not placed before the detaining authority.

5. On 14.06.2010, the detenu (Manish Jalhotra) was arrested and he is said to have made a voluntary statement u/s 108 of the Customs Act, 1962 on that date itself. He was produced before the learned ACMM on 15.06.2010, on which date he allegedly retracted the statement dated 14.06.2010. Annexure P-6 is a copy of his written retraction in Hindi, the English translation whereof reads as follows: - "I have been falsely implicated in this case. I was forced to write the statement-when I was ill." The detenu had also moved a bail application on 15.06.2010 before the learned ACMM. In paragraph 4 of the said bail application it was, inter alia, stated as under:-

That the statements of the applicant/accused, alleged to have recorded u/s 108 of the Customs Act, 1962 by the department, are in fact involuntary in nature, which is also apparent from the fact that he was carrying medical certificate of RML Hospital, New Delhi, from where he was getting his treatment, which he duly supplied to the Customs department with the request to record his statement after few days. However, no heed was paid to this request of his. And he was dictated the statements contrary to his wishes and he was forced to write those statements in his own hand...

(emphasis supplied)

The written retraction, as well as the bail application which also indicated that the statement of 14.06.2010 was not voluntary, were not placed before the detaining authority.

6. The grounds of detention indicate that the mind of the detaining authority was greatly influenced by the so-called voluntary statements of Lokesh Garg dated 09.03.2010 and of the detenu (Manish Jalhotra) dated 14.06.2010. Insofar as Lokesh Garg's statement dated 09.03.2010 is concerned, it has been referred to in detail in paragraph 5 of the grounds of detention. It is stated therein that Lokesh Garg admitted in his said "voluntary? statement about his involvement and the involvement of the detenu (Manish Jalhotra). The statement dated 14.06.2010 attributed to the detenu has been referred to in even greater detail in paragraphs 10, 11 and 16 of the grounds of detention. The retractions, however, of these statements have not been mentioned in the grounds of detention. In the counter affidavit it is stated that as the retraction dated 11.03.2010 by Lokesh Garg was addressed to the ACMM and no copy was

endorsed to the Customs Department (the sponsoring authority), the same could not be placed before the detaining authority. But, it was stated that the bail application of Lokesh Garg which had a mention of the retraction by him was placed before the detaining authority. Therefore, as per the counter affidavit, the detaining authority was aware of the retraction. We cannot agree with this. It is an admitted position that the customs department was represented before the ACMM in the bail matter. They cannot feign ignorance of the retraction by Lokesh Garg. The letter dated 11.03.2010 containing the retraction was available in the file of the learned ACMM. We also do not agree with the submission that just because the bail application which had a mention of the retraction was placed before the detaining authority, she was aware of it. No WP (CRL) No. 1565/10 Page 5 of 12 such inference can be drawn inasmuch as there is no reference to the retraction in the grounds of detention.

13. The Division Bench then examined the legal position and referred to the case law *Ashadevi Mehta (Detenu) Vs. K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat and Another*, and has quoted the following passage from the said judgment.

7. With regard to the retraction of the detenu on 15.06.2010, it has been stated in the counter affidavit that the written retraction is not addressed to anyone, it is undated and a copy has not been endorsed to the customs department. Consequently, it was not "feasible? for the sponsoring agency to place a copy of the retraction before the detaining authority. It is also admitted that the bail application dated 15.06.2010, which contained the retraction, was not placed before the detaining authority. But, the reply to the bail application was placed before the detaining authority. Therefore, it was contended, the detaining authority was aware of the contentions made in the bail application. Here, again, we cannot agree with the respondents. The bail application was clearly available with the sponsoring agency, even if it is assumed that the undated written retraction was not. The said bail application also contained a retraction of the statement of 14.06.2010. But, the bail application was not placed before the detaining authority. A question may be asked as to why only the reply was placed before the detaining authority and not the bail application? The respondents have no answer to this. It is also not discernible from the grounds of detention that the detaining authority was aware of the retraction.

Another passage from *Deepak Bajaj Vs. State of Maharashtra and Another*, has been quoted. The same reads:-

29. The most important of these documents which were not placed before the detaining authority were the retractions given by Kuresh Rajkotwala to DRI dated 4-12-2006, Kuresh Rajkotwala's affidavit filed before the learned Additional Chief Metropolitan Magistrate, Esplanade, Mumbai, Bharat Chavhan's retraction to DRI dated 9-5-2008, Bipin Thaker's retraction to DRI dated 19-1-2008, Sharad Bhoite's retraction dated 24-4-2007 before the Additional Chief Metropolitan Magistrate, Esplanade, Mumbai and his affidavit filed before the same authority,

etc.

30. Shri Naphade, learned counsel submitted that these retractions were made before DRI and the Additional Chief Metropolitan Magistrate, and not before the sponsoring authority who was the Additional Director of Revenue Intelligence. Shri Naphade submitted that the sponsoring authority was not aware of these retractions and hence, it could not have placed them before the detaining authority. We find no merit in this submission.

31. Most of the retractions were made to DRI, and it belongs to the same department as the sponsoring authority, who is the Additional Director, Revenue Intelligence. Hence, it was the duty of DRI to have communicated these retractions of the alleged witnesses to the sponsoring authority, as well as the detaining authority. There is no dispute that these retractions were indeed made by persons who were earlier said to have made confessions. These confessions were taken into consideration by the detaining authority when it passed the detention order. Had the retractions of the persons who made these confessions also been placed before the detaining authority it is possible that the detaining authority may not have passed the impugned detention order. Hence, in our opinion, the retractions of the confessions should certainly have been placed before the detaining authority, and failure to place them before it, in our opinion, vitiates the detention order.

32. It has been repeatedly held by this Court that if a confession is considered by the detaining authority while passing the detention order, the retraction of the confession must also be placed before him and considered by him, otherwise the detention order is vitiated. Thus, in *Ashadevi Mehta (Detenu) Vs. K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat and Another*, this Court observed (vide SCC pp. 228-29, para 7):

7. Further, in passing the detention order the detaining authority obviously based its decision on the detenu's confessional statements of 13-12-1977 and 14-12-1977 and, therefore, it was obligatory upon the Customs Officers to report the retraction of those statements by the detenu on 22-12-1977 to the detaining authority, for, it cannot be disputed that the fact of retraction would have its own impact one way or the other on the detaining authority before making up its mind whether or not to issue the impugned order of detention. Questions whether the confessional statements recorded on 13-12-1977 and 14-12-1977 were voluntary statements or were statements which were obtained from the detenu under duress or whether the subsequent retraction of those statements by the detenu on 22-12-1977 was in the nature of an afterthought, were primarily for the detaining authority to consider before deciding to issue the impugned detention order but since admittedly the aforesaid vital facts which would have influenced the mind of the detaining authority one way or the other were neither placed before nor considered by the detaining authority it must be held that there was non-application of mind to the most material and vital facts vitiating the requisite satisfaction of the detaining authority thereby rendering

the impugned detention order invalid and illegal.

It may be noted that in the above decision, this Court has held that it was the duty of the Customs Officer to have reported the retraction of the statements to the detaining authority. Hence, even if the retractions in the present case were not placed before the detaining authority that will not be of any avail to the respondents, since it has been held that it was the duty of the authorities before whom the retractions were made to have forwarded them to the detaining authority and the sponsoring authority. We entirely agree with the above view.

14. Thereafter, the Division Bench in Laxman Das Jalhotra (Supra) has held:

10. In the light of these decisions, it is clear that as the detaining authority had placed great reliance on the statements of 09.03.2010 and 14.06.2010, it was obligatory upon the sponsoring authority to place the retractions of these statements before the detaining authority. Indirect or oblique references contained in the reply to the bail application are no substitute for the direct retractions. Had the retractions been placed before the detaining authority, perhaps she would have come to a different conclusion. What might have been her ultimate view, we cannot say. But, we can say one thing for sure that the retractions were of vital importance and were certainly something which could have altered the satisfaction of the detaining authority. Thus, WP (CRL) No. 1565/10 Page 9 of 12 non-placement of the retractions before the detaining authority clearly vitiated the detention order.

11. The learned counsel for the respondents had placed reliance on the Supreme Court decision in the case of Vinod K. Chawla (supra) to contend that the non-placement of a retraction was not fatal to the detention order. It is true that in that case the Supreme Court held that the non-placement of the retraction made by the detenu's son (Asheesh Chawla) did not vitiate the subjective satisfaction of the detaining authority. The Court also observed that the law does not require that every document or material in the possession of the sponsoring authority must necessarily be placed before the detaining authority. But, a closer examination of the said decision reveals that it does not in any way advance the case of the respondents in the present case. In Vinod K. Chawla (supra), the retraction in question was that of the detenu's son Mr. Asheesh Chawla. The Supreme Court noted that a reading of the whole of the detention order clearly showed that the detaining authority had placed reliance entirely upon the statement of the detenu, Vinod K. Chawla, himself and the documents and materials recovered from the business premises and godowns of the firms which were admittedly owned by the detenu. The Court further observed that there was only a passing reference to the statement of Asheesh Chawla and that the detention order was not at all based upon the statement of Asheesh Chawla. In this backdrop the Supreme observed as under:-

... It is important to note that the alleged retraction of statement has not been made by the appellant but by his son Asheesh WP (CRL) No. 1565/10 Page 10 of

12 Chawla. As mentioned earlier, the detention order is not based upon the statement of Asheesh Chawla but merely makes a passing reference to the same. Had the appellant retracted from his statement and the said retraction had not been placed before the detaining authority, the position may have been different as in such a case it could be urged that the formation of opinion by the detaining authority and his subjective satisfaction in that regard had been affected. But such is not the case here. The retraction of the statement by Asheesh Chawla has no bearing at all as it in no way could affect the formation of opinion and the subjective satisfaction of the detaining authority...

(emphasis supplied)

12. Clearly, the decision in Vinod K. Chawla (supra) is of no help to the respondents. Unlike the statement of Asheesh Chawla in that case, in the present case the statements of Lokesh Garg and the detenu (Manish Jalhotra) are the mainstays of the detention order. The subjective satisfaction of the detaining authority places a heavy reliance on these statements. Consequently, the retractions would be of vital significance. In fact, the said decision of the Supreme Court, far from coming to the aid of the respondents, emphasises the importance of placing the retraction of a relied upon statement before the detaining authority.

15. The aforesaid observations are opposite and equally applicable to the factual matrix of the present case. There is no distinguishing feature which compels us to take a different view. We feel the principle of consistency and uniformity should be applied. We may notice that the learned counsel for the respondents has pointed out that an appeal has been preferred against the decision in Laxman Das Jalhotra (supra) and the same is pending before the Supreme Court but no stay has been granted.

16. Faced with the aforesaid situation learned counsel for the respondents referred to Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, to contend and submit that the detaining authority in the grounds of detention in addition to the statement dated 9th March 2010 of Lokesh Garg and statement of Manish Jalhotra dated 14th June 2010, has referred to the subsequent statements of the appellant dated 5th March, 2010 and 6th August, 2010. He has also referred to the statement of Manish Jalhotra dated 17th March, 2010, Para 25 which makes reference to the statement of Vikas Chowdhary dated 27th February, 2010, para 28 makes reference to four invoices and para 29 where reference is made to two companies in Hong Kong. It is accordingly submitted that there were multiple and distinct grounds of detention and not one single ground. On the aforesaid aspect our attention was drawn to the following observations in Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others,

75. ... The same argument was presented in a little different shade, namely, the fact of retraction should have been considered by the detaining authority and the

Court does not know that had that been taken into consideration, what conclusion the detaining authority would have arrived at. This contention cannot be accepted. We are not concerned with the sufficiency of the grounds. We are concerned whether there are relevant materials on which a reasonable belief or conviction could have been entertained by the detaining authority on the grounds mentioned in Section 3(1) of the said Act. Whether other grounds should have been taken into consideration or not is not relevant at the stage of the passing of the detention order. This contention, therefore, cannot be accepted. If that is the position then in view of Section 5-A of the Act there was sufficient material to sustain this ground of detention.

17. We have considered the said contention raised by the respondents but are unable to agree and accept the defence. A perusal of the ground of detention would show that the statement of Lokesh Garg dated 9th March, 2010 forms the edifice and corner stone of the detention order. It is the foundation or the basis on which the grounds of detention have been drafted. The substantial portion of the detention order refers to and reproduces the contents of the statement dated 9th March, 2010. Similarly, the statement of Manish Jalhotra dated 14th June 2010 is referred to in the following paragraphs:-

24. Shri Manish Jalhotra tendered his voluntary statement on 14.06.2010 u/s 108 of the Customs Act 1962 wherein he inter alia stated that since August-September 2009, he was using Shri Lokesh Garg i.e. you to carry the goods from China; that in this activity (carrying) the buyers from India come to China, place purchase order on the shopkeeper, take a copy of this order and hand it over to this shipper who then used to give door to door delivery at the address of the buyer in India; that carrying charges are fixed around 30 to 35% of the purchase value of goods in China; that depending on the terms, the buyer is required to pay 20 to 30% advance to the said shipper in cash in India; that only after this payment, the shipper sends the goods of the buyer to India; that there is no transaction of money through banking channels; that all the transaction is done through cash payment which is paid to the agent of the shipper in India; that after the goods are delivered to the buyers in India, the balance amount and the carrying charges are paid in cash to the agent of the shipper in India; that he was paying 30% carrying charges to Shri Lokesh Garg i.e. you; that he first met you in the office of Shri Kamal Sehgal in ICD, TKD in August, 2009 and met in his ship in Karol Bagh next day where it was agreed that he will get his goods carried through you; that when the payment in respect of the goods of foreign origin was made 50: 50 by you and him, he would pay carrying charges @ 27% to you whereas when the value of goods was paid entirely by you, he would pay carrying charges @ 30% to you; that he imported the goods of foreign origin worth Rs. 1.75-2.00 Crore through you (between August, 2009-February, 2010); that no Customs duty was paid on those goods as no duties of Customs were charged by you from him; that you charged only invested amount along with carrying charges; that no documentary proof of duty payment was provided by you to him; that no payment was made through banking channel; that all the

payments advance/final were made in cash to your employees; that money was being paid in cash because carrying activity itself is illegal and amounts to smuggling in which the buyer and the shipper, both, are equally involved; that he went to Import Shed on 06.02.2010 to examine the goods pertaining to M/s. D.P. Enterprises on being told by Shri Lokesh Garg i.e. you; that you were standing in the parking of ICD, TKD, New Delhi; that you told him that this was your firm; that on 09.02.2010, he was present with you in ICD, TKD and you had informed him that you four containers were to be released on the day; that entries pertaining to the month of September, 2009, showing payment of huge cash amounts by him to you such as Rs. 10 Lakh and Rs. 6 Lakh etc. in the notebook recovered from you godown were in respect of the amount paid by him to you in cash for carrying the goods. Shri Manish Jalhotra was arrested on 14.06.2010. The Duty Magistrate, Patiala House, New Delhi remanded him to judiciary Custody till 29.06.2010. Subsequently, he was ordered to be released on bail on 03.07.2010.

18. If we exclude these two statements from the grounds of detention what we will have is extremely truncated grounds which are meaningless and devoid of any substance. The aforementioned observations of the Supreme Court in Prakash Chandra Mehta case were considered in the case of K. Satyanarayan Subudhi Vs. Union of India, and others, and it was observed as under:-

3. We have considered the same very minutely and carefully and it appears to us that in fact there were not two grounds but only one ground and the non-placement of the retraction of the confessional statement by the detenu before the detaining authority and non-consideration of the same while arriving at his subjective satisfaction in making the order of detention goes to the root of the order of detention and in our considered opinion makes the order of detention invalid.

4. In these circumstances we do not think that the decisions of this court in Smt. Rukmani Devi and Others Vs. Narendra Lal Gupta, as well as Madan Lal Anand Vs. Union of India and others,] are applicable to the instant case. We have also considered another aspect of the matter i.e. the detenu is under detention for over eight months and the order of detention is for a period of one year. Considering this aspect also along with the other aspect mentioned hereinbefore we think it just and proper to quash the order of detention and direct for the release of the detenu-appellant forthwith provided he is not wanted by any other order. The appeal is thus allowed and the order of detention is quashed.

In the said case also the detenu, after he was produced before the Magistrate, had retracted the confessional statement but the same was not placed before the detaining authority. The factual position in K. Satya Narayan Subudhi (supra) and the present case is identical.

19. Similarly in A. Sowkath Ali Vs. Union of India and Others, , the Supreme Court has observed:-

20. There can be no doubt, it was not necessary, while considering the case of the petitioner detenu, to place all or any of the documents which are relevant and are relied on in the proceedings of a co-accused, but where the sponsoring authority opts out of its own volition to place any document of the other co-detenu, not merely as a narration of fact but reiterating in details the confession made by him, then it cannot be said it would not prejudice the case of the detenu. If this has been done it was incumbent for the sponsoring authority to have placed their retraction also. As held in *Rajappa Neelakantan Vs. State of T.N. and Others*,] the placement of document of other co-accused may prejudice the case of the petitioner. In the first place the same should not have been placed, but if placed, the confessional statement and the retraction, both constituting a composite relevant fact both should have been placed. If any one of the two documents alone is placed, without the other, it would affect the subjective satisfaction of the detaining authority. What was the necessity of reproducing the details of the confessional statement of another co-accused in the present case? If the sponsoring authority would not have placed this then possibly no legal grievance could have been made by the detenu. But once the sponsoring authority having chosen to place the confessional statement, then it was incumbent on it to place the retraction also made by them. In our considered opinion, its non-placement affects the subjective satisfaction of the detaining authority. This Court has time and again laid down that the sponsoring authority should place all the relevant documents before the detaining authority. It should not withhold any such document based on its own opinion. All documents, which are relevant, which have bearing on the issue, which are likely to affect the mind of the detaining authority should be placed before him. Of course a document which has no link with the issue cannot be construed as relevant.

24. Reliance is placed on *Smt. Rukmani Devi and Others Vs. Narendra Lal Gupta*, This was a case where retraction of confession made by the detenu was not referred to in the grounds of detention. This Court in view of Section 5-A held that the detention order should not vitiate on the ground of non-application of mind if subjective satisfaction was arrived at on the basis of other independent objective factors enumerated in the grounds. The Court held: (SCC Headnote)

If even ignoring the facts stated in the confession by the detenu the inference can still be drawn from other independent and objective facts mentioned in the grounds, then the order of detention cannot be challenged merely by the rejection of the inference drawn from confession. In the present case the authorities came to the conclusion that the detenus were engaged in smuggling relying on several factors, viz., the search and seizure in detenu's room and recovery of gold biscuits, the detenu's failure to explain the importation of those gold biscuits, the secretive manner in which the gold biscuits were kept, the connection with various dealers and the statements of the employees of the dealers that the detenus used to come with gold bars etc. These materials were in addition to the statements and confessions made by the detenus u/s 108 of

the Customs Act. So even if those statements which were retracted as such could not be taken into consideration, there are other facts independent of the confessional statement as mentioned hereinbefore which can reasonably lead to the satisfaction that the authorities have come to. In view of Section 5-A of the COFEPOSA Act there was sufficient material to sustain other grounds of detention even if the retraction of confession was not considered by the authorities.

27. Firstly, we find that the question of severability u/s 5-A has not been raised by the State in any of the counter-affidavits, but even otherwise it is not applicable on the facts of the present case. Section 5-A applies where the detention is based on more than one ground, not where it is based on a single ground. Same is also the decision of this Court in the unreported decision of Prem Prakash v. Union of India [Crl. A. No. 170 of 1996 dated 7-10-1996 (see below at p. 163)] decided on 7-10-1996 relying on K. Satyanarayan Subudhi Vs. Union of India, and others, Coming back to the present case we find really it is a case of one composite ground. The different numbers of the ground of detention are only paragraphs narrating the facts with the details of the document which is being relied on but factually, the detention order is based on one ground, which is revealed by Ground (1)(xvi) of the grounds of detention which we have already quoted hereinbefore. Thus on the facts of this case Section 5-A has no application in the present case.

20. Same contention was raised in Laxmi Das Jalhotra (supra) and the respondents referred to the decisions of the Supreme Court in Vinod K. Chawla Vs. Union of India (UOI) and Others, and Madan Lal Anand Vs. Union of India and others, but the said decisions were distinguished in para 12 which has been quoted above and in para 13, which is reproduced below for the sake of convenience.

13. We now come to the argument on behalf of the respondents that even if the statement of the detenu of 14.06.2010 is ignored, his subsequent statement of 23.07.2010 is un-retracted. From a reading of the grounds of detention it is apparent that a far greater reliance has been placed on the statement of 14.06.2010 than on the statement of 23.07.2010. Furthermore, though the two statements deal with different aspects, there is a clear linkage WP (CRL) No. 1565/10 Page 11 of 12 between the two statements insofar as the overall context is concerned and, to that extent, do not constitute distinct and severable grounds.

21. Learned counsel for the respondent has submitted that in the case of Laxman Das Jalhotra (supra), bail application and the retraction statement of the detenu Manish Jalhotra were not placed before the detaining authority but in the present case the bail application of the present detenu i.e. Lokesh Garg was placed before the detaining authority. The contention has no merit and has to be rejected for two reasons. In the present case reliance was placed on the confessional statement of Manish Jalhotra dated 15th June, 2010 but his bail application and retractions have not been placed before the detaining authority,

secondly, the retraction letter dated 11th March, 2010 written by detenu Lokesh Garg was not placed before the detaining authority. The legal effect thereof and the negative legal consequences thereupon are identical. For clarity and relevance we are reproducing the retraction letter dated 11th March, 2010;

AJAY PANDEY

ACMM,

PATIALA HOUSE,

NEW DELHI

SUB:- RETRACTION OF MY STATEMENT RECORDED ON 09.03.2010 u/s 108 CUSTOMS ACT, 1962

Sir,

I Lokesh Garg S/o Sh. Naresh Garg R/o E-1065, Saraswati Vihar, Delhi-110034 was forcibly picked up by Customs Official from residence of my brother in law in the night of 8/9 March, 2010 and was brought at ICD, TKD, New Delhi. I was kept in their Custody and summon was issued to me there only. I was intimidated coerced to make false and involuntary statement which has dictated to me and same are contrary to the documents and record. I therefore retract my statement dated 9th March 2010 as being involuntary and pray that same may kindly be not used against me.

Sd/-

(Thumb Impression)

11.03.2010

LOKESH GARG

JAIL NO. 4

In view of the aforesaid legal position, we allow the present petition. Writ of Habeas corpus is issued quashing the detention order dated 27th August, 2010 and the confirmation order dated 18th February, 2013. Lokesh Garg will be released forthwith unless required to be detained in accordance with law, in any other case/order.