

(1994) 02 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18349 of 1993 and 20731/93

Pinjari Hussain Sab

APPELLANT

Vs

District Collector, Anantapur and Others

RESPONDENT

Date of Decision : 09-02-1994

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)

Constitution of India, 1950 — Article 19, 19(1), 21, 22, 22(5)

Citation : (1994) 1 ALT 262 : (1994) 1 ALT(Cri) 332 : (1994) 1 APLJ 157 : (1995) 2 RCR(Criminal) 409

Hon'ble Judges : P. Ramakrishnam Raju, J;M.N. Rao, J;M. Ranga Reddy, J

Bench : Full Bench

Advocate : D. Vijay KumarV. L. Surendra, for the Appellant; A.G., for the Respondent

Judgement

M.N. Rao, J.—These two habeas corpus writ petitions are listed before us pursuant to an order of reference dated 19-1-1994 made by a Division Bench of this court comprising two of us - M. N. Rao and P. Ramakrishna Raju, JJ. These two writ petitions, in the first instance, came up for hearing before the Division Bench on 19-1-1994. In W.P. No. 18349 of 1993, one of the contentions urged by Sri Vijay Kumar, learned counsel for the petitioner, was that the impugned order of detention was liable to be struck down on the ground of non-application of mind by the detaining authority. The detention order specifically mentioned that it was passed by the detaining authority in exercise of the powers conferred by Section 3(2)(a) r/w Section 3(1)(a) and (b)(i) and (ii) of the Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act No. 7 of 1980) (hereinafter referred to as the "Act") with a view to preventing the detenu from acting further in a manner prejudicial to the maintenance of supplies of commodities essential to the community. No provision of law falling within the ambit of Section 3(1)(b)(ii) of the Act has been mentioned in the detention order or in the grounds. The argument advanced was that if Section

3(1)(b) came into play, it was incumbent on the part of the detaining authority to mention the provision of law in respect of which breach has been alleged. Unless there was material to support the allegation as to contravention of Section 3(1)(b)(ii) the order of detention must be held to be vitiated, the counsel urged. He relied upon the Division Bench judgment of this court in *H. Thippanna v. The Chief Secretary, Government of A.P.* (W.P. No. 5128 of 1992 dated 20th May, 1992) in which the order of detention was struck down on the ground :

"Non-specification of the provisions of contravention becomes vague and disables the detenu from making an effective representation under Article 22 of the Indian Constitution."

The Division Bench followed the view taken by the Karnataka High Court in *Leharibai v. State of Karnataka*, 1981 Cri LJ 1048.

2. Another Division Bench of this court in *Pidakala Seshagiri Rao v. The District Collector, Anantapur* (W.P. No. 10073 of 1993 dated 2-9-1993) has taken a contrary view deriving support from the decision of a Full Bench of this court in *Kalavathi v. State of A.P.*, 1987 (1) ALT 260 : 1987 Cri LJ 1101. In *Kalavathi's* case (*supra*), the order of detention mentioned breaches of two provisions of law - clause (7) of the A.P. Rice Procurement (Levy) Order, 1984 and clause (3) of the A.P. Paddy (Restriction on Movement) Order, 1983. It was found that there was no violation of clause (7) of the Rice Control Order. The Full Bench while rejecting the contention that the order of detention was vitiated on the ground that two provisions of law were stated to have been allegedly breached when, in fact, there was only breach of one provision of law, observed (at page 1104 of Cri LJ) :

"It is not disputed that the said activity on the part of the detenu would squarely fall within the ambit of clause (3) of the Paddy Order. Merely for the reason that the detaining authority expressed the view that the said activity would also be violative of another provision of law, namely, clause (7) of the Rice Order, what otherwise is one ground would not become two grounds, nor would the finding that the whole activity amounted to violation of clause (3) of the Paddy Order alone and that there was no violation of clause (7) of the Rice Order render the detention order as a nullity (nullity ?)".

3. In *Pidakala Seshagiri Rao's* case (W.P. No. 10073 of 1993), the detention order mentioned the provision of law in respect of which breach was alleged as Section 3(1) and (b)(i) of the Act. In the body of the order, Section 3(1)(a) and (b)(i) were mentioned. In the grounds supplied to the detenu, at the beginning, Section 3(1)(b)(ii) was referred to but in the operative portion Section 3(1) alone was mentioned. The contention that the order of detention was vitiated on the ground of non-application of mind was rejected by the Division Bench following the aforesaid view expressed by the Full Bench.

4. After noticing the aforesaid divergent views, the Division Bench comprising two of us viz., M. N. Rao and P. Ramakrishna Raju, JJ., observed in the order of

reference :

"We, therefore, find that the views expressed by the two Division Benches in W.P. No. 5128 of 1992 and W.P. No. 10073 of 1993 are at variance with each other. The Full Bench decision in Kalavathi's case has not considered the question as to whether an order of the present nature could be said to be vitiated on the ground of non-application of mind. We, therefore, are of the considered view that the matter requires to be decided authoritatively by a Full Bench of this Court".

5. W.P. No. 20731 of 1993 also raises an identical question of law and so it was directed to be heard along with W.P. No. 18349 of 1993.

6. In both the writ petitions, the orders of detention dated 20-10-1993, specifically mentioned that in exercise of the powers conferred by Section 3(2) (A) r/w Section 3(1)(a) and (b)(i) & (ii) of the Act, detentions were ordered with a view to preventing the detenu from acting further in a manner prejudicial to the maintenance of supplies of commodities essential to the community. In the grounds also, the same provisions of law were recited.

7. The detenu in W.P. No. 18349 of 1993 - Pinjari Hussain Sab alias Hussainappa - is a resident of Pennampalli village of Molkalmuru Mandal, Chitradurg District, Karnataka State. In the order of detention passed by the District Collector, Anantapur, the first respondent in that writ petition, it was mentioned that the detenu was indulging in unauthorised trade of purchasing paddy in Anantapur District of Andhra Pradesh and transporting it for sale in Karnataka State in contravention of the provisions of clause (3) of the A.P. Paddy (Restriction on Movement) Order, 1987 and Section 7 of the Essential Commodities Act, 1955. The grounds supplied to the detenu refer to the previous conduct of the detenu and also the actual grounds based upon which the belief of the detaining authority to order detention was based. The narration part dealing with the previous conduct of the detenu refers to the activities of the detenu and his brother, Vonnur Sab, and their involvement in as many as five cases pending before the Joint Collector, Anantapur concerning illegal dealings in paddy. Individually, in as many as four cases, the petitioner, the brother of the detenu, was involved. In the actual grounds, based upon which the impugned order was passed, it was mentioned that on 1-6-1993, the Deputy Superintendent of Police, Vigilance and his staff intercepted, at about 7.00 a.m. on Bollanaguddam-Bellary Easter Raod near Ramanna Vanka at a distance of one kilometre from the inter-State border in Andhra Pradesh limits, a lorry bearing registration No. MYT 6395 coming from the direction of Bollanaguddam and proceeding towards Bellary at high speed. The detenu and his brother along with the driver, Sharmas, jumped from the lorry pelted stones at the Vigilance Cell police party and ran in the Southern direction and could not be caught in spite of the best efforts by the police and the Vigilance Cell Officials. The lorry was found to contain 100 bags of "Tella Hamsa" variety of paddy each bag weighing 75 kgs. No documents like permit, licence or trip-sheet or way-bill covering the paddy under transport or registration documents or insurance certificates or route permit were found. The

paddy along with the vehicle was seized and a case was registered in Crime No. 29/VC-ATP/93 and a report submitted to the Joint Collector, Anantapur. The lorry belonging to the petitioner was released by the Joint Collector on his furnishing third party security in a sum of Rs. 50,000/-. The Sessions Judge, Anantapur, granted anticipatory bail to Vannurappa, the brother of the detenu, on 10-6-1993. In the bail application, the detenu's brother - Vannurappa - had asserted that he was not in the lorry when it was intercepted and that he was undergoing treatment as an inpatient in the Government Hospital, Moka in Bellary District from 31-5-1993 to 2-6-1993. The detenu was arrested on 9-6-1993 at 6.50 a.m., and when interrogated, he admitted being present in the lorry along with his brother when it was intercepted on 1-6-1993. The detenu was granted bail by the Sessions Court on 14-6-1993 in CrI.M.P. No. 772 of 1993. The request of the detenu for release of the seized stock was rejected by the Joint Collector on 5-7-1993 and the seized paddy was directed to be sold in public auction. The inferences drawn by the detaining authority, as mentioned in the grounds, are in the following terms :

"Thus after careful consideration of the entire material placed before me, I am fully satisfied that you are carrying on clandestine trade in paddy, a commodity essential to the community at large in the locality for your own personal monetary gain and you are acting in a manner prejudicial to the maintenance of supplies of the said commodity in the locality and that it is necessary to prevent you from acting further so immediately. I am further satisfied that action by way of seizing the vehicle, and the commodity under transport and taking action for their confiscation u/s 6A of the E.C. Act, arresting and sending you and your employees for remand and launching prosecutions against you and/or employees involved will not have the desired effect as the procedural formalities involved therein take a considerably long time for their culmination.

Being therefore satisfied that it is essential to detain you invoking the powers vested in me u/s 3(2)(a) of the Act 7 of 1980 (Central), I have today passed orders for your detention u/s 3(2)(a) r/w 3(1)(a) and (b)(i) and (ii) of the said Act."

8. In W.P. No. 20731 of 1993, the detenu is a resident of Sreedharaghatta village in Bommanhal Mandal, Anantapur District, a place in close proximity, to Andhra Pradesh-Karnataka inter-State border. He is the owner of the lorry bearing No. AP-02-T-0863 which was intercepted on 22-5-1993 by the Deputy Superintendent of Police, Vigilance Cell at about 12.00 noon when it was coming from the direction of Nemakal and proceeding towards Bellary in Karnataka State. In the grounds supplied to the detenu, it was mentioned that when the vehicle was stopped, he along with the driver jumped down from the cabin and attempted to run away. When the Vigilance officials chased them, they both pelted stones and that the police could apprehend the driver but the detenu ran away. On examination, it was found that the lorry was carrying 100 bags of paddy each of about 75 kgs. There were no documents like permit, trip-sheet

etc. The investigation disclosed that the paddy was purchased at low rates by the detenu in the villages of Sridharaghatta and Uddehal for selling the same at higher rates in Karnataka State. The stock was seized and the driver was arrested under a cover of mahazar and a case in Crime No. 25/VC-ATP/93 was registered. The driver was released by the Sessions Judge on 26-5-1993 on bail in CrI.M.P. No. 737 of 1993 on his executing a bond with two sureties in a sum of Rs. 5,000/- each. The lorry was released by the Joint Collector by an order dated 5-6-1993 on the condition of the detenu furnishing security in a sum of Rs. 35,000/-. On 30-5-1993, the detenu was arrested and he was released on bail by the Sessions Judge on 4-6-1993. On 16-6-1993, two ryots filed an application before the Joint Collector for release of the seized paddy claiming that they were the producers of the paddy in question and when they were transporting it from their village, the lorry was intercepted. Their plea was rejected by the Joint Collector and the paddy was directed to be sold in public auction. The inferences drawn by the detaining authority from the aforesaid allegations are similar to those relatable to the other detenu in W.P. No. 18349 of 1993.

9. The Advisory Board, after considering the materials placed before it and the representations of the two detenus, had expressed the opinion that in each of the two cases, there is sufficient cause for ordering detention.

10. In both the writ petitions, common contentions were advanced. Sri Vijaya Kumar, learned counsel appearing for both the writ petitioners, says that the impugned orders of detention in both the cases are liable to be struck down :

(i) The detaining authority passed the orders in a casual manner without being clear in his mind as to the exact provisions of law allegedly breached by the detenus. When the orders of detention and the grounds specifically mention Section 3(1)(a) and (b)(i) & (ii) as having been violated and when the material place before the court shows that the detenus have not committed any breach of the provisions of Section 3(1)(b)(ii), the inference that must necessarily follow is that without applying his mind properly to the relevant facts and circumstances, the detaining authority, in a casual manner has passed the orders of detention;

and

(ii) In each of the two cases, there has been undue delay between the date of the alleged incidents and the date of the passing of the detention orders and, therefore, the chain of connection between the alleged breaches and the orders of detention is snapped.

Re (1) :

11. The Act was enacted, as its long title indicates, "to provide for detention in certain cases for the purpose of prevention of black-marketing and maintenance of supplies of commodities essential to the community and for matters connected therewith". Section 3 deals with the power to make orders of detention in respect of certain persons. Sub-section (1), which is relevant for our purpose, is in the

following terms :

"(1) The Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to the Government specially empowered for the purposes of this section by that Government or any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation : For the purposes of this sub-section, the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" means -

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 (10 of 1955) or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community; or

(b) dealing in any commodity -

(i) which is an essential commodity as defined in the Essential Commodities Act, 1955 (10 of 1955) or

(ii) with respect to which provisions have been made in any such other law as is referred to in clause (a),

with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid".

12. Sub-section (2) says that the District Magistrate and Commissioners of Police, wherever they have been appointed, may also exercise the powers conferred by sub-section (1) if they are satisfied as provided in sub-section (1). The explanation to sub-section (1) is an integral part of sub-section (1). The explanation clearly indicates as to when a person can be said to have acted in a manner prejudicial to the maintenance of supplies of commodities essential to the community. Committing or instigating any person to commit an offence under the Essential Commodities Act by itself can be an independent ground for ordering detention. If there is any law controlling the production, supply or distribution or trade and commerce in relation to any commodity essential to the community and if any person commits or instigates another to commit the offence in relation to the said law, it can also be an independent ground for ordering detention under clause (a). Thus, clause (a) takes within its sweep violations of penal laws in respect of certain commodities essential to the community. The words "control of the production, supply or distribution of or trade and commerce" are wide enough to encompass every activity relating to any commodity essential to the community whether falling under the ambit of

the Essential Commodities Act, 1955 (by virtue of Section 3 of that Act) or any other law. In two contingencies under clause (b) a person can be detained : (i) when he is dealing in any essential commodity as defined under the Essential Commodities Act "with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act;" or (ii) dealing in any commodity with respect to which provisions have been made in any law of the nature referred to in clause (a) and that dealing must be with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that law. In a given case, the prejudicial activities alleged against the detenu may fall both under clauses (1) and (b) including the two sub-clauses of clause (b).

13. The record produced before us clearly shows that the acts alleged against the detenus concern breaches of provisions of the Andhra Pradesh Paddy (Restriction on Movement) Order, 1987, a statutory Control Order passed under the provisions of the Essential Commodities Act. Sub-clause (ii) of clause (b) of Section 3(1) has nothing to do with breaches of any provisions relatable to an essential commodity and this factual position was candidly conceded by Sri Ravinder Rao, learned Assistant Government pleader, appearing for the State. But both in the grounds as well as the order of detention, in both the cases, specific mention was made of Section 3(1)(b)(ii). Can it be said to be a vitiating factor on the ground of non-application of mind ? Article 22(5) of the Constitution of India imposes an obligation on the detaining authority to communicate to the detenu as soon as may be, "the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order". Communication of the grounds as well as affording an opportunity of making a representation against the order of detention are the twin obligations imposed upon the detaining authority. How the question of application of mind assumes relevance in this context was explained by the Supreme Court in *Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others*, :

"Communication of the grounds pre-supposes the formulation of the grounds and the formulation of the grounds requires and ensures the application of the mind of the detaining authority to the facts and materials before it, that is to say to pertinent and proximate matters in regard to each individual case and excludes the elements of arbitrariness and automatism (if one may be permitted to use the word to describe a mechanical reaction without a conscious application of the mind). It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote".

In respect of preventive detention matters, the parameters of judicial review are very limited. The court is precluded from examining the sufficiency of the grounds of detention nor can it adjudicate upon the question whether the

detaining authority has properly exercised his discretion. Want of good faith, non-application of mind and failure to comply with procedural safeguards are the only aspects open for judicial scrutiny in judging the legality of an order of preventive detention. As observed by the Supreme Court in Shalini Soni's case (supra) :

"Since all the constitutional protection that a detenu can claim is the little that is afforded by the procedural safeguards prescribed by Article 22(5) read with Article 19, the Courts have a duty to rigidly insist that preventive detention procedures be fair and strictly observed. A breach of the procedural imperative must lead to the release of the detenu". (pp. 433-434).

The duty to take into consideration pertinent and proximate matters and eschewal of irrelevant and remote matters being the test for deciding whether or not the detaining authority has applied his mind, it cannot be said, in our considered opinion, that the detention orders in question are vitiated on the ground of non-application of mind by the detaining authority. All pertinent matters have been taken into consideration by the detaining authority. The mere mention of Section 3(1)(b)(ii) along with Section 3(1)(b)(i) is not indicative of non-application of mind. There is no reference in the grounds to any acts referable to Section 3(1)(b)(ii). The detaining authority was clear in his mind that the orders of detention, he was passing were only for breaches of Section 3(1)(b) (i). There was no scope for him to entertain any dilemma as to the precise provision of law that was attracted. Mention of sub-clause (ii) of clause (b) is only an accidental slip. It is not suggestive of non-application of mind. The detenu has a constitutional right under Article 22(5) to be informed of all that is taken into consideration against him by the detaining authority. Where the grounds are relatable only to the infraction of the provision of law and along with that another provision of law also is mentioned accidentally, and if the record produced clearly shows that at no point of time was there any existence of material relatable to the other provision of law and no oscillation on the part of the detaining authority as to why he was ordering the detention, the order cannot be said to be the result of casualness or a routine one passed in a mechanical manner without the application of mind. In such a case, no prejudice, whatever, is caused to the detenu to make a representation against the order of detention. If in the order of detention or in the grounds, a provision of law which was not necessary to be mentioned, if mentioned, would not affect the validity of the order.

14. In Kamarunnissa and Others Vs. Union of India and another, , one of the contentions urged was that the impugned order of detention made u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act did not mention the particular clause number on which the order u/s 3(1) was founded and, therefore, it was liable to be struck down. Summarily rejecting the contention as "one of the minor grounds that may be stated to be rejected", the Supreme Court held :

"The detention orders clearly state that the power is being exercised with a view

to preventing the smuggling of goods referable to clause (i) of the sub-section. Merely because the number of that clause is not mentioned, it can make no difference whatsoever".

The Court should not discard realistic approach although procedural infractions assume great relevance in testing the validity of an order of detention. Quoting the view of Benjamin Cardozo, one of the eminent judges of the American Supreme Court :

"A constitution states or ought to state not rules for the passing hour but principles for an expanding future",

the Supreme Court in Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, while dealing with the concept of "grounds" in Article 22(5) of the Constitution, sounded a note of caution at page 798 of Cri LJ :

"The concept of "grounds", therefore, has to receive an interpretation which will keep it meaningfully in tune with the contemporary notions of the realities of the society and the purpose of the Act in question in the light of the concepts of liberty and fundamental freedoms guaranteed by Articles 19(1), 21 and 22 of the Constitution".

15. The detention order impugned in Devji Vallabhbhai Tandel Ors. Vs. Administrator of Goa, Daman and Diu and Another, was made u/s 3(1) of the COFEPOSA Act. The detenu was supplied with a Gujarathi translation of the grounds of detention, but not the order of detention. He did not know any language except Gujarathi. It was urged before the Supreme Court, inter alia, that non-supply of the Gujarathi version of the detention order and the failure to mention in the Gujarathi version of the grounds supplied, the section of the COFEPOSA Act, vitiated the detention. Both the contentions were negatived by the court. The detention order was held to be a mere formal recital of Section 3(1) of the COFEPOSA Act showing the provision of law under which detention has been made and although the section of the COFEPOSA Act was not mentioned in the grounds, but inasmuch as the Gujarathi version of the grounds clearly recited that the detenu was engaged himself in "smuggling goods and that there is sufficient cause to pass detention order against you with a view to preventing you from smuggling goods" it could not be said that "the detenu was in any way handicapped in submitting his representation or there has been any violation of Article 22(5) of the Constitution".

16. A Division Bench of the Karnataka High Court in Leharibai's case (1 supra) had considered the effect of an order of detention passed u/s 3(1) of the Act without mentioning specifically either of the two clauses of the Explanation to Section 3(1). In the impugned order of detention in that case, it was mentioned that the Commissioner of Police, the detaining authority, was satisfied that with a view to preventing the detenu "from acting in any manner prejudicial to the maintenance of supply of commodities essential to the community, it is necessary to make an order directing him to be detained". The Advocate-General

for the State of Karnataka conceded before the Division Bench that in a given case, if the order of detention "falls exclusively under one or the other clause and not both, it might then be necessary for the detaining authority to indicate in the order itself the appropriate head under which the activities of the detenu fell". Quashing the order of detention on the ground of non-application of mind, the Division Bench held at page 1052 of Cri LJ :

"The detaining authority, therefore, must, in each case, apply his mind to the activities alleged against the person and indicate in the order itself that it is necessary to detain him with a view to preventing him from committing the acts falling under one or the other or both the heads set out under the explanation. If this is not done, the inference that the authority has not applied his mind or was not firm or clear in his mind about the grounds of detention gets strengthened. The mechanical reproduction of the language of Section 3(1) is only a blind man's approach. Secondly, when the meaning of the said expression "prejudicial to the maintenance of supply of commodities essential to the community" is covered by two clauses under the Explanation, the detenu must be told specifically under which clause or clauses his grounds of detention fell. To put it in laconic words, if a detention could be ordered for indulging in activity "A" or "B" the detenu must be told by expressly indicating in the order that he is detained with a view to preventing him from committing either "A" or "B" or "A" and "B". That is an indication of the application of mind".

The Division Bench also observed that omission to advert "with specificity" to both the clauses (a) and (b) of the Explanation, renders the order susceptible to the complaint that it was made in a casual way and without proper application of the mind to the activities alleged against the detenu.

17. Following the aforesaid view, a Division Bench of this court in Thippanna's case (W.P. No. 5128/92) quashed the order of detention impugned in that case. The impugned order of detention in that case was passed by the District Collector, Anantapur under sub-section 2(a) of Section 3 r/w Section 3(1)(a) and (b)(i) of the Act. Taking the view that the detention ordered for contravention of Section 3(1)(a) and also Section 3(1)(b) is vague, it was held :

"Non-specification of the provisions of contravention becomes vague and disables the detenu from making an effective representation under Article 22 of the Indian Constitution".

With great respect to the learned judges, we are unable to accept the view that failure to mention a sub-clause in the order of detention is a vitiating factor for the reasons already stated supra. In a given case, an order of detention could validly be made u/s 3(1)(a) as well as Section 3(1)(b). The impugned order of detention in Thippanna's case fell under both heads as disclosed by the grounds supplied to the detenu. But the Division Bench appeared to have not noticed this aspect.

18. Another Division Bench of this court in Kuntumalla Rangappa v. The Govt. of

A.P. & Others, (W.P. No. 9411 of 1985 dated 11-9-1985) had an occasion to consider a similar question. Neither the order of detention nor the grounds in that case had mentioned whether both or either of the clauses of Section 3(1) were attracted. The order of detention mentioned only Section 3(1) and the grounds contained all the relevant details to enable the detenu to make an effective representation. The Division Bench, therefore, rejected the contention as regards the invalidity of the detention order on the ground of non-application of mind, observing :

"If the grounds justify the detention and satisfy the requirements of Article 22(5) of the Constitution, then the detention has to be upheld".

Adverting to the Karnataka High Court's decision in Leharibai's case (1 Supra), the Division Bench said that the Karnataka High Court has not considered the question whether the mention of these details in the grounds of detention will serve the purpose of affording a reasonable opportunity to the detenu as required under Article 22(5) of the Constitution of India. Non-mention of a clause of Section 3(1) in the detention order was thus held to be not a vitiating factor. For the reasons already stated by us, we are inclined to agree with the view taken by the Division bench in Kuntumalla Rangappa's case.

19. Kuntumalla Rangappa's case was followed by another Division Bench of this court comprising one of us M. Ranga Reddy, J., in Pidakala Seshagiri Rao's case (W.P. No. 10073/93). In that case, the order of detention was passed u/s 3(1) of the Act but reference was made to sub-clauses (a) and (b)(i) in the body of the order and on the top of the order, reference was made to Section 3(1) and (b)(i). In the grounds, the provision of law mentioned was Section 3(1)(b)(ii). The Division Bench sustained the order of detention taking the view that the opinion expressed in Thippanna's case is not applicable to the fact situation. In coming to that conclusion, the Division Bench also referred to the decision of the Full Bench of this Court in Kalavathi's case (2 Supra). In Kalavathi's case, as was already noticed, the impugned order of detention adverted breaches of two provisions of law - clause (7) of the Andhra Pradesh Rice Procurement (Levy) Order, 1984, and clause (3) of the A.P. Paddy (Restriction on Movement) Order, 1983. The record placed before the Full Bench disclosed that there was no violation of clause (7) of the Rice Control Order. While recording a finding that the acts alleged against the detenu squarely fell within the ambit of clause (3) of the Paddy Order, the Full Bench said :

"... What otherwise is one ground would not become two grounds, nor would the finding that the whole activity amounted to violation of clause (3) of the Paddy Order alone and that there was no violation of clause (7) of the Rice Order render the detention order as a nullity".

Specifically, no doubt, the question whether such an order would be vitiated on the ground of non-application of mind was neither raised nor considered by the Full Bench. But judged in the light of the ratiocination of the rulings of the

Supreme Court already referred to, it would not be possible to interfere with an order of detention of the nature questioned before the Full Bench in Kalavathi's case (2 Supra) on the ground of non-application of mind. The detenu did not suffer any prejudice in the exercise of his right under Article 22(5) of the Constitution to make a representation to the detaining authority nor was the detaining authority not clear as to for what reasons he was satisfied for ordering the detention. We, therefore, reject the contention that had the Full Bench dealt with the argument based on non-application of mind, it would have come to a different conclusion. We accordingly affirm the view taken by the two Division Benches in Kuntumalla Rangappa's case and Pidakala Sehagiri Rao's case and over-rule the decision in Thippanna's case.

20. Certain rulings of the Supreme Court evidencing instances of non-application of mind are cited by Sri Vijaya Kumar, learned counsel for the petitioners and in our considered opinion, they have no application to cases of the present nature. In Jagannath Misra Vs. State of Orissa, , the impugned order of detention passed under the Defense of India Act and the rules framed thereunder, adverted to six grounds on the basis of which, the detention was ordered. One of the contentions urged was that the one Minister, who passed the order under the Business Rules, did not apply his mind inasmuch as the order was made copying out practically all the grounds specified in Sections 3(2)(15) of the Defence of India Act. The counter-affidavit filed by the Home Minister disclosed that while adverting to the requisite satisfaction for ordering detention, mentioned only two grounds-safety of India and maintenance of public order-although the detention order had recited six grounds. While laying down the test "where detention is made under the Rules that the authority ordering detention should act with a full sense of responsibility keeping in mind on the one hand the interests of the country in the present emergency and on the other hand the importance of the liberty of the citizen in a democratic society", the Supreme Court ruled : at Page 819 of Cri LJ

"But if it appears that though the order of detention mentions a large number of grounds the authority concerned did not apply its mind to all those grounds before passing the order, there can in our opinion be no doubt in such a case that the order was passed without applying the mind of the authority concerned to the real necessity of detention".

Application of mind as to the necessity of detention must be discernible from the record is the crucial test for judicial assent to any impugned order of detention. As the Home Minister's counter-affidavit showed that the authority concerned exhibited casualness in passing the order of detention, it was held to be bad. There is a catena of case law concerning the legality of detention orders passed under the Maintenance of Internal Security Act, 1971 on alleged acts prejudicial to public order or security of the State but the authority concerned was not clear in mind as to which of the two or both were attracted. The distinction between the security of the State, Public Order and law and order was very graphically explained by Hidayathullah, J., (as he then was) in Dr. Ram Manohar Lohia Vs.

State of Bihar and Others, :

"One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State".

21. In *Bhupal Chandra v. Arif Ali*, , the impugned order of detention made under the Maintenance of Internal Security Act mentioned 16 grounds as the requisite satisfaction to prevent the detenu from acting in any manner prejudicial to the maintenance of public order but five of them had no rational connection with public order. As one third of the grounds were irrelevant, the order of detention was struck down on the reasoning that it was not possible to assess "how far these five grounds have swayed the mind of the District Magistrate and tilted his judgment against the detenu. To the intertwining of relevant and irrelevant grounds of detention, the rule of severalty would not apply. and the whole order of detention will fall down". The order impugned was not professedly made to prevent the detenu from acting in any manner prejudicial to the security of the State but in the grounds of detention, it was mentioned that certain activities of the detenu had posed serious threat to the security of the State and the maintenance of public order. Adverting to this aspect, the Supreme Court held :

"A conjoint reading of the detention order and the grounds of detention is suggestive of the inference that the District Magistrate had either no information of the grounds relevant to the security of the State at the time of the passing of the detention order, or that, if he had information of those grounds, he did not believe them to be factually correct and accordingly did not bottom his detention order on them. In the first event, he cannot now seek to buttress his detention order by those grounds because the detention order is made for the maintenance of public order only; in the second event also, those grounds should be totally ignored. If he did not think it proper to rely on them while making the detention order, he cannot deploy them now as another string to the bow. There is difference between public order and security of the State. Every breach of public order will not necessarily affect the security of the State".

In *Shri Satya Brata Ghose Vs. Mr. Arif Ali*, District Magistrate, Sibasagar, Jorhat and Others, , the impugned order of detention passed u/s 3 of the Maintenance of Internal Security Act mentioned nine grounds of which ground No. 6 was that the detenu visited a place called Moriani and made secret contacts with three individuals named therein and spoke ill of Assamese people and the State Government and at his instance, Moriani Area Council was formed under the CDBA. It was found by the Supreme Court that the mere act of speaking ill of Assamese people and the State Government will not necessarily affect public order and that activity "has got little rational connection with public order". On that view, the detention order was struck down. The detention order also mentioned in the grounds that the "hate campaign" started by the detenu has

posed serious threat to the security of the State and to the maintenance of public order. Some of the grounds were relevant to the security of the State but the order of detention related only to the maintenance of public order. The detention order was therefore, struck down following the view expressed in Bhupal Chandra's case (9 supra) that the grounds relating to the security of the State cannot be taken into account in judging the validity of the order of detention, which adverted to breaches of only public order.

22. In *Kishori Mohan Bera Vs. The State of West Bengal*, , the order of detention passed by the District Magistrate under the Maintenance of Internal Security Act recited that the detention was ordered in order to prevent the detenu from acting in any manner prejudicial to the maintenance of "public order or security of the State" Sustaining the contention that the detaining authority did not seriously apply his mind as to whether the alleged activities of the detenu endangered public order or security of the State, the Supreme Court observed : at page 1752; of Cri LJ

"The satisfaction of the District Magistrate was on the disjunctive and not conjunctive grounds, which means that he was not certain whether he had reached his subjective satisfaction as to the necessity of exercising his power of detention on the ground of danger to the public order or danger to the security of the State."

Faulting the authority that he has merely reproduced mechanically the language of Section 3(1)(a)(ii) it was held by the Supreme Court :

"When such equivocal language is used in an order and the detenu is not told whether his alleged activities set out in the grounds of detention fell under one head or the other, or both, it is not difficult to appreciate that a detenu might find it hard to make an adequate representation to Government and the Advisory Board."

Dealing with the obligation on the part of the detaining authority to expressly mention in the order whether the alleged activities of the detenu endangered either the security of the State or public order or both, the court observed :

"If the activities are of such potentiality or impact so as to affect both of them, the conjunctive "and" and not the disjunctive "or" would be the appropriate word".

In dealing with this aspect, the Supreme Court approvingly referred to Jaganath's case (supra). Similar was the fact situation in *Akshoy Konai Vs. State of West Bengal*, , in which the order of detention merely recited that the facts attributed to the detenu were prejudicial to the security of the State or maintenance of public order. Following the precedent laid down in *Kishori Mohan*'s case (supra), the detention order was struck down. What is the legal effect if the order of detention mentioned that certain acts alleged against the detenu were prejudicial to the maintenance of public order but the grounds

disclosed that the detenu's remaining at large was prejudicial to the maintenance of public order and also to the security of the State, was the question that fell for consideration in *G.M. Shah Vs. State of Jammu and Kashmir*, . Following the test laid down in *Bhupal Chandra (supra)* and *S. B. Ghose's cases (supra)*, the impugned order was struck down by the Supreme Court observing :

"A combined reading of the order of detention and the grounds furnished to the detenu shows that at the time when the order was made, the District Magistrate either had no material relevant to the security of the State on which he could act or even if he had information of those grounds, he did not propose to act on it. He, however, tried to support the order of detention by stating in the course of the grounds that by the detenu remaining at large, the security of the State was likely to be prejudiced."

From the precedents cited by Sri Vijay Kumar, it is clear that a detention order can be struck down on the ground of non-application of mind if the grounds relied upon are non-existent or the detaining authority has mis-conceived the application of law in relation to the prejudicial acts alleged against the detenu or if the grounds mentioned are totally irrelevant for forming the requisite satisfaction for ordering detention.

23. As the two impugned orders of detention in question did not fall within the aforesaid parameters, it cannot be said that they can be successfully challenged on the ground of non-application of mind.

24. Before considering the second contention, we would like to state that in judging the legality of an order of detention, the court should adopt a realistic attitude. In *Rajesh Kumar v. Govt. of AP*, 1987 (1) APLJ 320, a Division Bench of this Court speaking through one of us (M. N. Rao, J.,) said :

"It is almost trite to say that in a democratic society like ours governed by Rule of law, right to personal liberty is of perennial concern. Equally it is true that our Constitution-makers without succumbing to any doctrinaire approaches felt that the larger interest of the society should not be sacrificed at the altar of unbridled personal liberty. Viewed pragmatically the point of equilibrium in this regard is represented by the preventive detention laws springing from the very Constitution itself."

Cautioning that unrealistic idealism should be eschewed, another Division Bench of this Court in *Smt. P. Syamala Rao Vs. S.V. Prasad, Secretary to Government (Political), General Administration Department, Govt. of Andhra Pradesh and Others*, speaking through one of us (M. N. Rao, J.,) observed :

"When personal liberty is curtailed, the forensic thrust is mainly on the guaranteed constitutional protection. Law attains sublimation in the Constitution : it is but inevitable that it enshrines majestic generalities in their idealized form. In public law adjudication, the danger of pragmatism

disappearing in the fog of idealism is not uncommon. A guaranteed constitutional right in its application to a concrete situation, in the interpretative process, should neither metamorphise into a pious promise bereft of practical content nor emerge as an esoteric edict ordaining immunity to offenders of law. Eschewal of sterile legalism is as much an imperative as avoidance of unrealistic idealism; both are taboos".

What Robert S. Peck, an American Professor of Public Law, Said :

"Judges, it must be remembered, are products of national culture and not platonic guardians of our rights" See Robert S. Peck -- The Bill of Rights and the Politics of Interpretation p. 3.

applies in equal measure to us also.

Re 2 :

25. The contention urged concerns the snapping of causal link between the prejudicial acts alleged and the order of detention by reason of long and unexplained delay. In W.P. No. 18349 of 1993, the order of detention was passed on 20th October, 1993. In paragraph 11 of the affidavit filed in support of that writ petition, it is alleged that the gap of nearly five months between the two dates vitiates the order of detention, as any amount of doubt is cast on the satisfaction of the detaining authority. Traversing this aspect, it is averred in paragraph 13 of the counter-affidavit that there is a clear nexus between the incident and the order of detention. The brother of the detenu who was also involved in the illegal transportation of paddy from Andhra Pradesh to Karnataka on 1-6-1993 along with the detenu made a representation on 4-6-1993 asserting that on 1-6-1993, he was undergoing treatment as an inpatient at the Primary Health Center, Moka in Karnataka State and that the Vigilance authorities had deliberately implicated him. As the plea of alibi was raised by the detenu's brother, the authorities had to investigate the matter thoroughly and a report submitted by the Deputy Superintendent of Police to the District Collector on 10-8-1993 highlighting the fact that the alibi was false. Within two months thereafter, the order of detention was passed on 20-10-1993. We are, therefore, of the considered view that there was no undue delay in passing the order of detention. The interregnum between 10-8-1993 and 20-10-1993, in the particular circumstances of the case, cannot be termed as unduly long so as to snap the chain of connection between the alleged acts and the passing of the detention order.

26. WP No. 18349 of 1993, therefore, fails and accordingly it is dismissed.

27. Coming to WP No. 20731 of 1993, the incident which is the foundation for the passing of the detention order, happened on 22-5-1993 and the order of detention was made on 20-10-1993 - after an interregnum of nearly five months. The specific plea raised in this regard in paragraph 5 of the affidavit filed in support of the writ petition is that no attempt was made by the respondents to

explain why the delay had occurred. Paragraph 6 of the counter-affidavit filed by the District Collector, the detaining authority, merely says that "this delay by itself cannot be said to have snapped the nexus between the incident and the order of detention. A proposal along with the materials for passing of the order of detention was placed before me on 20-10-1993 and on the same day, the order of detention was passed without any further delay". The counter-affidavit does not give any explanation at all for the delay. It is true that there is no hard and fast rule that mere delay by itself has the effect of snapping the nexus between the incident and the order of detention but it is the bounden duty of the detaining authority to explain as to why the delay had ensued.

28. In Rabindra Kumar Ghosel alias Buli Vs. The State of West Bengal, the delay complained of was three months between the acts alleged and the order of detention. No explanation was given in the counter-affidavit. Striking down the order of detention on that ground, the Supreme Court observed : at page 1235; of Cri LJ

"The chain of connection between the dangerous activities relied upon and the detention order passed is snapped by this long and unexplained delay. If there were some tenable explanation for this gap, we would have been reluctant to interfere with the detention order but none has been stated in the counter affidavit filed today many months after time was taken for filing a return. In these circumstances, we are not satisfied that there is any justification for the claim of subjective satisfaction put forward by the District Magistrate".

Similarly, there is no hard and fast rule as to what period of time intervening between the alleged acts and the order of detention is a vitiating factor. This was emphasised by the Supreme Court in Sk. Serajul Vs. State of West Bengal, by observing : at page 1329; of Cri LJ

"..... we must not be understood to mean that whenever there is delay in making an order of detention or in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. The detaining authority may have a reasonable explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine."

In the aforesaid case; the delay complained of was seven months. In the counter-affidavit filed on behalf of the Government of West Bengal, no explanation was given. Striking down the order of detention, the Supreme Court observed :

"It is the obligation of the State or the detaining authority in making its return to the rule in such a case to place all the relevant facts before the court and if there is any delay in making the order of detention or in arresting the detenu which is prima facie unreasonable, the State must give reasons explaining the delay".

Reviewing the case law on this aspect, it was held in T.A. Abdul Rahaman Vs.

State of Kerala and others, :

"..... when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner".

In the aforesaid case, the delay complained of between the alleged prejudicial act and the date of detention was eleven months. There was also a further delay of three months between the date of the order and the date of arrest. Setting aside the order of detention, the Supreme Court held :

"..... that leaving apart the question of delay in passing the order of detention from the date of seizure of the gold, the fact remains that the detaining authority has failed to explain the long delay in securing the arrest of the detenu after three months from the date of the passing of the detention order and this non-explanation in our view throws a considerable doubt on the genuineness of the subjective satisfaction of the detaining authority vitiating the validity of the order of detention."

29. In *K.P.M. Basheer Vs. State of Karnataka and another*, a delay of five months and 11 days in executing the warrant of arrest was sought to be explained by the detaining authority by mentioning that various efforts were taken to trace the detenu at Tellicherry at the address given in the grounds of detention as well as his Bombay address but he could not be secured and that when an attempt was made to arrest him at the court of the Chief Judicial Magistrate, Belgaum on 6-3-1991, 28-3-1991 and 14-5-1991, on which dates the criminal case stood posted before that court, the officers could not apprehend the detenu as he did not appear before the court for hearing. In the counter-affidavit, the Bombay address of the detenu was not mentioned. The detenu asserted that he appeared before the Assistant Collector of Customs on 6-2-1991 and 20-4-1991 but no attempt was made to arrest and detain him. But this assertion was not denied in the counter-affidavit. The explanation that the detenu was eluding arrest was not accepted by the Supreme Court and the order of detention was struck down since : at page 1929; of Cri LJ

"..... the live and proximate link between the grounds of detention and the purpose of detention is snapped on account of the undue and unreasonable delay in securing the appellant/detenu and detaining him."

30. Coming to the case on hand, the argument for the State that in the absence of judicial assent to detentions of the present nature, societal interests would affect adversely, merits little acceptance. A contention of this nature came up for consideration before the Privy Council in *Don John Francis Douglas Liyanage and others v. The Queen*, 1967 (1) AC 259 at 291-292 in the context of interpretation

of the Ceylon Constitution, Lord Pearce, in his speech, while emphatically rejecting such a plea, said :

"But that consideration is irrelevant and gives no validity to acts which infringe the Constitution. What is done once, if it be allowed, may be done again and in a lesser crisis and less serious circumstances. And thus judicial power may be eroded. Such an erosion is contrary to the clear intention of the Constitution".

As no explanation for the delay was mentioned in the counter-affidavit and the record produced before us does not contain any material even remotely suggestive of any tenable reason for the delay, we are constrained, to allow the writ petition following the binding precedents referred to supra that long and unexplained delay snaps the nexus between the acts relied upon and the order of detention.

31. W.P. No. 20731 of 1993 is accordingly allowed and the impugned order of detention passed by the District Collector, Anantapur in C.C. No. 3/Confl./93 dated 20-10-1993 is quashed. The detenu - U. Chandra Sekhar Reddy - who is now lodged in Secunderabad Jail shall be released forthwith.

32. Before parting with these two cases, we would like to place on record our high appreciation of the able assistance rendered to us by Sri D. Vijaya Kumar, learned Counsel for the petitioners and Sri Ravinder Rao, learned Assistant Government pleader, who represented the learned Advocate-General.

33. Order accordingly.