
(1989) 09 DEL CK 0027

In the Delhi High Court

Case No : Criminal Writ No. 221 of 1989

Sh. Harish Bhatia

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 28-09-1989

Acts Referred:

Citation : (1990) CriLJ 732 : (1990) 41 DLT 693

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Judgement

1. This writ petition has been brought under Art. 226 of the Constitution read with S. 482, Criminal P.C. for issuance of a writ of habeas corpus or any other appropriate order for quashment of detention order dated February 13, 1989 passed by respondent No. 2 under S. 3(1) of the COFEPOSA Act with a view to prevent the petitioner from acting in any manner prejudicial to the augmentation of foreign exchange.

2. The facts leading to the passing of the detention order, in brief, are that on receiving a secret information that petitioner was indulging in the sale and purchase of foreign exchange on a large scale and he was likely to sell substantial foreign exchange on January 5, 1989 at about 3-15 p.m. to some person at the business premises of one Naresh Aggarwal at G-26, first floor (rear entrance), South Extension Market, Part I, New Delhi, the petitioner on the said date and time and at that place was apprehended by the officers of the Enforcement Directorate and personal search of the petitioner was carried under S. 34 of the Foreign Exchange Regulation Act, 1973 resulting in seizure of 5,850 US dollars, Indian Currency of Rs. 500/- and some documents as mentioned in the Panchnama. The business premises of Naresh Aggarwal and residential premises of the petitioner were searched and some dollars and documents were also recovered. The petitioner stated to have made a voluntary statement under S. 40 of the FERA 1973 in which he admitted that he had purchased the aforesaid U.S. dollars at the rate of Rs. 18/- per dollar and was to sell the same

at the rate of Rs. 18.20 per dollar and that the calculations appearing at Page 6 of the document seized from his residential premises represent foreign exchange purchased by him and entries have been later on struck out by him and he reproduced the said entries with regard to the foreign exchange and explained the abbreviations appearing in those entries. He also admitted to have in this way purchased and sold foreign exchange worth rupees four lac earlier. He admitted that he had no permission from Reserve Bank of India for purchase and sale of foreign exchange at explained that two visiting cards of M/s. Gift Hut, D-39, New Delhi South Extension Part II which have been seized pertain to one Shri Bhandari doing Video business with whom he did little sale and purchase of foreign exchange. The petitioner was arrested and was produced before the Magistrate who remanded him to judicial custody but in the meanwhile petitioner moved the application for bail on January 6, 1989 and on the following day the petitioner was granted bail with directions to join investigation whenever required and should not leave the country except with prior permission of the Court.

3. It is averred that petitioner gave another statement on January 9, 1989 and explained the entries appearing at the reverse of the Visiting Card of V.K. Associate. On 17th January, 1989 the business premises and residential premises of different persons including one of Surinder Vasudeva were searched. One diary was recovered from the premises of Surinder Vasudeva and some documents were recovered from his business premises i.e. M/s. Vasudeva Publicity Service. Statement of one Aditya Kumar Bhandari was recorded who admitted that he had sold foreign exchange worth 1500 U.S. dollars to the petitioner and later on he retracted his previous statement. Surinder Vasudeva could not be contacted and in spite of summons being issued to him for different dates, he did not appear on one pretext or the other for giving the statement. On January 23, 1989, petitioner is stated to have given another statement to the authorities in which he admitted that 6 U.S. dollars recovered from his house were from the unspent amount of U.S. 500 dollars obtained by him on June 30, 1987. Vide letter dated February 1, 1989, petitioner is stated to have retracted his confession earlier made and leveled allegations against the officers of having procured his false statements.

4. The first point raised by the learned counsel for the petitioner in challenging the detention order is that petitioner had vide his representation dated March 3, 1989 in Para 5 had requested the detaining authority to furnish him with the copy of the statement of Shri Surinder Vasudeva but the copy of the said statement was never supplied and thus petitioner has been deprived of an opportunity to make an effective and purposeful representation against the detention order. Shri A. K. Batabayal, Joint Secretary, Govt. of India, Ministry of Finance, Department of Revenue has filed an affidavit in contesting this writ petition in which it has been averred on this point that no statement of Surinder Vasudeva was recorded before passing of the detention order but it was admitted that statement of Shri Surinder Vasudeva had been recorded. Later on he has

pleaded that as the said statement was neither relied on by the detaining authority nor any reference to the same appears in the grounds of detention nor the same was placed before the detaining authority, hence it was not necessary to supply the copy of the said statement to the petitioner.

5. The crucial question which arises for decision on this point is whether non-supply of such a statement of Surinder Vasudeva has the effect of vitiating the detention order or not.

6. The learned counsel for the petitioner has vehemently argued that the statement of Surinder Vasudeva though had been recorded after the passing of the detention order, was a material and relevant document which could have enabled the petitioner to make an effective and purposeful representation against the detention order. He has argued that the said statement was available with the sponsoring authority and ought to have been supplied to the petitioner when petitioner has made a specific demand for the same in the representation made to the detaining authority. He has urged that the right of the petitioner to make an effective and purposeful representation stood prejudiced by not making available to him the copy of the statement of the said person.

7. The learned counsel for the respondent on the other hand, has argued that there is no legal duty cast upon the detaining authority or on the sponsoring authority to have supplied copy of the statement of Surinder Vasudeva inasmuch as the said statement was never placed before the detaining authority for consideration and was not even in existence at the time the detention order was made and thus the same obviously was not relied upon or referred to by the detaining authority for passing the detention order and the same was even not referred to casually by way of narration of facts in the grounds of detention. The learned counsel for the petitioner has made reference to certain cases in support of his contention which I shall now consider.

8. In *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, it has been held that Clause (5) of Art. 22 of the Constitution of India confers two rights on the detenu namely (1) a right to be informed of the grounds on which the order of detention has been made and (2) to be afforded the earliest opportunity to make a representation against the order and if grounds which have a rational connection with the objects mentioned in S. 3 of Preventive Detention Act of 1950 are supplied, the first condition is complied with but the right to make a representation implies that the detenu should have information so as to enable him to make a representation and if the grounds supplied are not sufficient to enable the detenu to make a representation, he can rely on the second right and if he likes, he can ask for further particular which will enable him to make a representation and on an infringement of either of these two rights, detained person has a right to approach the Court and if an infringement of the second right under Art. 22(5) is alone established, he is entitled to be released. The question which arose for decision before the Supreme Court was in case the grounds supplied to the detenu which are the basis for passing the detention

order are somewhat vague, could the detenu be supplied with additional grounds in support of the detention order and if the grounds are vague, could the detenu ask for more particulars which could enable him to make an effective representation ? It was held that the authorities must discharge the duty in furnishing grounds for the order of detention as soon as may be and also provide the earliest opportunity to the detained person to make the representation; the number of communications from the detaining authority to the detenu may be one or more and they may be made at intervals provided the two parts of the aforesaid duty are discharged in accordance with the wording of Clause (5) and it was further held that so long as the later communications do not make out a new ground, their contents are no infringement of the two procedural rights of the detenu mentioned in Art. 22, Clause (5). They may consist of a narration of facts or particulars relating to the grounds already supplied. But in doing so the time factor in respect of second duty, viz., to give the detained person the earliest opportunity to make a representation cannot be overlooked. The Supreme Court noticed that in numerous cases there has been obscurity on the part of the detaining authority in stating the grounds and inspire of giving the information with reasonable details, there is a deliberate attempt to use the minimum number of words in the communication conveying the grounds of detention. It was held that under Art. 22(5) there is a clear obligation to convey to the detenu all the material which enable him to make a representation. In this judgment no ratio of law has been laid down that a copy of the document which was never considered by the detaining authority and was not at all relied upon, still there is a duty cast on the detaining authority to supply copy of such a document if there is request made by the detenu for the supply of the same.

9. In *Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others*, , it was laid down that a person detained is entitled in addition to the right to have the grounds of his detention communicated to him to a further right to have particulars as full and adequate as the circumstances permit furnished to him as to enable him to make a representation against the order of detention and the sufficiency of particulars conveyed in the second communication is a justiciable issue, the test being whether they are sufficient to enable the detained person to make a representation which on being considered may give him relief. In the cited case the grounds of detention made reference to some unlawful activities of three political parties which did not directly implicate to the detenu although it was indicated in the grounds of detention that detenu was helping and actively participating in the activities of the said parties which has resulted in violence to threat of maintenance of public order. The contention raised was that grounds were extremely vague and gave no particulars to enable the petitioner to make an adequate representation. The Supreme Court held that no sufficient particulars have been given to enable the detenu; to make an effective representation and the grounds were vague, so the detention order was vitiated. Nothing said in this judgment supports the contention of the learned counsel for the petitioner that even though a particular document has never been considered

or relied upon or was even not in existence at the time the detention order was passed still there is a duty cast on the detaining authority to supply copy of such a document on demand being made by the detenu.

10. Learned counsel for the petitioner has then referred to Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, in which the Supreme Court has again reiterated that a detenu has two rights under Art. 22(5) of the Constitution (1) to be informed as soon as may be of the grounds on which the order of detention is made i.e. the grounds which led to the subjective satisfaction of the detaining authority and (2) to be afforded the earliest opportunity of making a representation against the order of detention i.e. to be furnished with sufficient particulars to enable him to make a representation which on being considered may obtain relief to him. It is not understood how these observations of the Supreme Court lend support to the contention of the learned counsel for the petitioner that it was incumbent upon the authorities to supply the copy of the statement of Surinder Vasudeva although the said statement came into existence much after the passing of the detention order.

11. Then reference is made to State of Punjab and Others Vs. Jagdev Singh Talwandi, . In this judgment all previous judgments delivered by the Supreme Court with regard to interpretation of Art. 22(5) were considered and it was held that law is now well settled that a detenu has two rights under Art. 22(5) of the Constitution (1) to be informed as soon as may be all the grounds on which the order of detention is passed i.e. the grounds which led to the subjective satisfaction of the detaining authority and (2) to be afforded an earliest opportunity of making a representation against the order of detention i.e. to be furnished with sufficient particulars to enable the detenu to make a representation which on being considered may obtain relief to him. In the cited case the question which arose for decision was whether the grounds which have been furnished to the detenu were sufficient or not. The question which has arisen before me did not arise for consideration in this case.

12. The Division Bench of this Court in Vinod Kumar Arora @ Vinod Kumar Vs. Administrator, Union Territory of Delhi and Others, considered the question as to what document should be supplied to the detenu if detenu makes a request for the same. In the cited case the detenu had sought inter alias copies of some air tickets which had been seized and were referred to in the Panchnama and which had been considered by the detaining authority for passing the detention order. The authorities had not supplied copy of the said documents to the detenu although detenu had made specific request for the same in his representation. The Division Bench made reference to the judgment in Mohd. Hussain Vs. Secretary, Govt. of Maharashtra, Home Department, Mantralaya, Bombay and others, which had after surveying the case law on the subject held as follows (at p. 1859) :

"We may Therefore summarise the law laid down by the Supreme Court on the points as follows :-

(a) the copies of all the documents which are relied upon in or which form the basis of the grounds of detention must be supplied to the detenu along with the grounds of detention;

(b) the documents which are not relied upon or do not form the basis of the detention order but which are merely referred to casually or incidentally as and by way of narration of facts in the grounds of detention need not be supplied to the detenu;

(c) however, even such documents "if the detenu requests for the same, have to be supplied to him for whether they are relevant to his defense or not is for the detenu to decide and not for the detaining authority to judge" "

The Division Bench approved the said ratio and held that document which though is not relied upon for passing the detention order yet if the same has been considered by the detaining authority or has been referred to in the grounds of detention or in the Panchnama referred to in the grounds of detention, the same must be supplied to the detenu on his making the request to enable the detenu to make an effective and purposeful representation against the detention order and it is not for the detaining authority or for the Court to decide whether such a document is relevant or not. The case of Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, was distinguished because in the said case it was held that it is unnecessary to furnish copies of documents to which casual or passing reference may be made in the course of narration of facts and which are not relied upon by detaining authority in making the detention order as it was not a case where such documents were not supplied on detenu making a request for the same. This judgment does not deal with the point now arising before me as to whether a document which was not at all in existence when the detention order was made or a document which was never considered by the detaining authority and was not relied upon or referred to or even touched upon in the course of narration of facts, is there any duty cast on the detaining authority to supply copy of such a document to the detenu even if a request for the same is made by the detenu ?

13. In Govind Ram v. Union of India 1985 (1) Crimes 776, a Division Bench of this Court again considered the same question. In the said case the detenu had asked for documents referred to in the Panchnama. Admittedly the Panchnama was supplied to the detenu along with the grounds of detention. The question which arose for decision was whether the copies of the documents mentioned in the Panchnama were liable to be supplied to the detenu on his making the request for the supply of the same. As a matter of fact, it was found that the documents referred to in the Panchnama were placed before the detaining authority at the time the detaining authority reached the subjective satisfaction of passing the detention order. It was held in this case that documents were material which were placed for passing the impugned order. If that be so these documents had to be supplied to the detenu even if the documents have not been relied upon for passing the detention order. It was also mentioned in this

judgment that these documents were in possession of the sponsoring authority and Therefore were available to the detaining authority. It was held that law on this point was settled that on demand such documents had to be supplied to the detenu to enable him to make an effective representation. I may again say that in this judgment also it was not considered whether a document which was never placed before the detaining authority for consideration and which was not relied upon for passing the detention order and which also was not even referred to while narrating the facts in the grounds of detention and which was also not part of any document mentioned in any Panchnama which is relied upon for passing the detention order whether such a document is liable to be supplied to the detenu or not on his making a request for the same ? The observation of the Division Bench with regard to the factum of documents being in possession of the sponsoring authority have to be seen in the context of the facts that the said documents were considered by the detaining authority. No broad proposition of law has been laid down by the Division Bench that the detaining or the sponsoring authority are legally bound to supply copies of every document which may be in possession of the sponsoring authority.

14. In Smt. Madhu Khanna Vs. Union of India and others, the Division Bench of this Court laid down that it is the duty of the detaining authority to supply such materials and documents on which the detention order is made to the detenu *pari passu* the grounds of detention. Thus there are two stages of the matter. At the first stage the detaining authority has to come to the conclusion based on his subjective satisfaction on all the material facts and documents placed before him and the second stage arises after the detaining authority has arrived at its opinion regarding detention of a particular person. In respect of the first stage, if any vital document or material which is beneficial to the detenu and is relevant to the matter, is not placed before the detaining authority the detention order can be struck down on account of non application of mind. But where all relevant material and vital documents have been placed before the detaining authority then the second stage comes and at this stage the detaining authority may not consider it necessary to pass the detention order on all the information and documents before him. He may consider it sufficient to refer to or rely upon only some of the material or documents and may not seek the aid of the others in support of his order of detention. He has thus to go through a process of selection and then; formulate the grounds of his satisfaction for passing the detention order. Such grounds would include the material documents on which the conclusion to detain is arrived at. It is only copies of such documents that should be supplied to the detenu even without his demand, as part of the grounds of detention. It was held that the other documents which do not go to influence the mind of detaining authority in passing the detention order but yet the same are also vital documents which must be considered by the detaining authority as they could go to influence the mind of the detaining authority for consideration whether detention order should be made or not then the said documents which are not necessary to be supplied *pari passu* the grounds of

detention must be supplied to the detenu on his making the request. So it is clear from the perusal of these judgments of the three Division Benches of this Court that documents which are not relied upon but considered by the detaining authority and the documents which are referred to in the grounds of detention by way of narration of facts in casual manner and the documents which stand mentioned in the same documents already supplied to the detenu, they are bound to be supplied to the detenu on his making a request for the same to enable the detenu to make an effective and purposeful representation. If such documents are not supplied on request, the detention order would stand vitiated.

15. In *Rajinder Anand v. Union of India*, 1989 (1) DL 150 this Court has held that unless and until a document has been considered by the detaining authority or has been referred to in the grounds of detention by way of narration of facts in a casual manner even, there is no duty cast on the authorities to supply copy of such a document even though a request is made in that respect. This Court has referred to *Ramchandra A. Kamat Vs. Union of India (UOI) and Others*, in support of this view which I reproduce (at p. 767) :

"The right to make a representation is a fundamental right. The representation thus made should be considered expeditiously by the Government. In order to make an effective representation, the detenu is entitled to obtain information relating to the grounds of detention.

When the grounds of detention are served on the detenu, he is entitled to ask for copies of the statements and documents referred to in the grounds of detention to enable the detenu to make an effective representation. When the detenu makes a request for such documents, they should be supplied to him expeditiously. The detaining authority in preparing the grounds would have referred to the statements and documents relied on in the grounds of detention and would be ordinarily available with him - when copies of such documents are asked for by the detenu the detaining authority should be in a position to supply them with reasonable expedition"

16. In *Mohd. Saleem v. Union of India*, 1989 (2) D L 909 this Court reiterated the said ratio. In *Ishwar Parasram Punjabi v. Union of India*, 1989 (2) DL 255 another single Judge of this Court considered the point and held that a consistent view has been taken by this Court that some documents are under the power of custody of the detaining authority and are asked for by the detenu then the same should be supplied and in the event of non supply of the same, the continued detention would be vitiated. The support for this view was sought from the Division Bench judgments given in *Govind Ram v. Union of India* 1985 (1) Crimes 776 (Delhi) (supra) and *M. M. Yusuf v. Union of India*, Cri. Writ No. 324 of 1986 decided on March 17, 1987 (reported in (1987) 3 Reports 481 (Delhi)). With respect I may mention that the perusal of the ratio laid down in the aforesaid cases does not appear to lay down the law categorically that there is a duty cast on the detaining authority to supply copy of every document on demand being made if the same is within power and possession of the detaining

authority. The ratio laid down in the case of Govind Ram (supra) has been analysed by me above. In the case of M. M. Yusuf (supra) the document stood mentioned in the Panchnama and the Panchnama stood annexed to the grounds of detention and it was held that if a request is made by the detenu for supply of copy of such a document then it is obligatory on the detaining authority to supply the same. The view expressed by this Court in cases of Rajinder Anand and Mohd. Saleem (supra) does not appear to be in consistent with any ratio laid down by the Division Bench of this Court either in the case of Govind Ram or Vinod Kumar Arora @ Vinod Kumar Vs. Administrator, Union Territory of Delhi and Others, . Even in the case of Om Prakash Mahendru v. Union of India, 1989 (1) Crimes 479 (Delhi) such broad proportion of law has not been laid down. As a matter of fact the point which arose for decision in the aforesaid case of Ishwar Parasram (supra) was whether the documents which stand referred to in Panchnama and which in turn stood referred to in the grounds of detention were liable to be supplied to the detenu on his making a request. The law on this point was well settled that is there is a reference by narration of facts or otherwise to such documents even though they are not relied upon documents, the same are liable to be supplied to the detenu on his making a request. This was the law which was laid down in the case of Smt. Madhu Khanna Vs. Union of India and others, by the Division Benches of this Court and learned single Judge in those cases followed the said law. But it is not understood how the view expressed by this Court in the case of Mohd. Saleem (supra) is in any manner inconsistent with the ratio laid down in the said cases decided by the different Division Benches of this Court. In the case of M. M. Yusuf (supra) the facts were that a request has been made for supply of copy of a search authorization which stood mentioned in the Panchnama. The copy of the Panchnama was a relied upon document. So it was held that the search authorization stood referred to in the Panchnama and thus the duty was cast upon the detaining authority to supply copy of such search authorization to the detenu on his making the request to enable him to make an effective and purposeful representation.

17. So in view of the above discussion I conclude that as the statement of which copy as demanded by the detenu had not even come into existence at the time the detention order was made so the question of supplying the same to the detenu does not arise even if he had made a request for the same.

18. The next point urged in challenging the detention order is that there has taken place undue delay in considering the representation of the detenu and also in supplying copies of the documents. The facts have come out on the record that a representation dated 6th March, 1989 was made by the detenu which was received by the Ministry on March 8, 1989 and on the same day it was forwarded to the sponsoring authority for obtaining paradise comments which was received by the sponsoring authority on March 10, 1989 and vide letter dated March 13, 1989 the sponsoring authority had sent the paradise comments which was received in the Ministry on the following day and the representation along with paradise comments after being processed was put up through M.C.S. (R) to the

Finance Minister through; the detaining authority on March 15, 1989. On the same day the M.C.S. (R) had rejected the representation subject to the approval of the Finance Minister and the Finance Minister on March 18, 1989 rejected the representation and the file was received back on March 21, 1989 and memorandum of rejection was issued on the same day. The same was received on March 25, 1989 by the detenu and the copies of the documents asked for in the representation were supplied to the detenu on April 4, 1989. The meeting of the Advisory Board took place on April 6, 1989.

19. The first question to be seen is whether there has taken place any undue and unexplained delay in considering the representation of the petitioner. It must be mentioned here that during this period March 11, 12, 18, 19, 22, 24, 25, 26 April 1 and April 2 have been the holidays. The counsel for the petitioner has contended that Minister of State had no authority to reject the representation and the fact that he had rejected the representation subject to the approval of the Minister of Finance itself vitiates the detention order in as much as the Minister of Finance in such a situation had not applied his independent mind to the representation. There is no merit in this contention. The mere fact that comments have been received from the sponsoring authority and the matter was first examined by Minister of State does not mean that the Hon"ble Finance Minister who ultimately rejected the representation would be deemed to have not exercised his independent mind. The Minister of State had passed the order for rejecting the representation subject to the approval of the Minister of Finance. The said recommendation, in my opinion, is of no consequence because it was the Minister of Finance who was to ultimately decide the representation and he had ultimately passed the order rejecting the representation. So, nothing turns on this contention of the learned counsel for the petitioner.

20. The learned counsel for the petitioner has contended that there has taken place particularly unreasonable delay in between the period at least March 21, 1989 to April 4, 1989 in supplying the copies of the documents demanded by the detenu in his representation. I have gone through the representation and find that quite a few copies of the documents have been demanded by the detenu. So, if the authorities have taken a little time in supplying the copies of the documents in between the said period it does not mean that there has taken place un-explained delay. The facts are themselves clear as to why there has taken place delay in between the period March 21, 1989 to April 4, 1989 in as much as during this period the authorities took time for preparing the copies of the documents and for making them available to the detenu. It is true that the meeting of the Advisory Board was fixed for April 6, 1989 and the detenu was not having sufficient time after receipt of the copies to make a further effective representation to the Advisory Board on the basis of the copies of the documents supplied to him on April 4, 1989 but the detenu could have requested for a little more time from the Advisory Board for making his representation based on the additional documents of which copies he received on April 4, 1989. There is no such plea taken by the detenu that he had asked for any such further time from

the Advisory Board. As soon as it is held that there has not taken place any undue and un-explained delay on the part of the authorities in supplying copies of the documents to the detenu, the mere fact that the meeting of the Board was to take place only two days after the supply of copies of documents would not mean that the detenu had been prevented from making an effective or purposeful representation to the Advisory Board on account of any fault of the authorities;

21. Learned counsel for the petitioner has cited *Pritam Nath Hoon Vs. Union of India (UOI) and Others*, ; *Ramchandra A. Kamat Vs. Union of India (UOI) and Others*, ;, *Shri. Tushar Thakker Vs. Union of India (UOI) and Others*, ; *Harish Pahwa Vs. State of U. P. and Others*, ; *Mrs. Nafisa Khalifa v. Union of India*;; (1982) 1 SCC 422 . I have gone through all these judgments and find that these cases deal with different facts. It is true that if there has taken place, unexplained delay either in considering the representation or in supplying the documents, the order of detention would stand vitiated but it would depend on peculiar facts of each case to decide whether such undue and unexplained delay had occurred or not in these matters. In the present case it is to be remembered that the detenu had not only asked for supply of copies of documents but had also prayed for revocation of detention order. So, it was not a simple application of the detenu for supply of document which was to be considered by the authorities. The prayer of the detenu seeking a revocation of the detention order was to be also considered with due promptitude and thus after his representation was found to be without merit that a direction was issued for supply of copies of the documents mentioned in the representation. In the aforementioned cited cases undue delay had occurred either in supply of documents or in considering the representation and thus the orders of detention were quashed. In the present case I am of the view that no such undue and unexplained delay had occurred which could vitiate the detention of the petitioner.

22. The learned counsel for the petitioner has then urged that there has been non application of mind in as much as the detaining authorities had relied on some of the documents which do not make any sense and at least those documents are in no manner could be relied upon for passing the detention order. Annexure "P-7" attached with the writ petition are stated to be said documents. In the counter-affidavit it has been pleaded that the aforesaid documents have also a bearing in one way or the other on the illicit dealings of the petitioner in the foreign exchange. These documents stand referred to by the petitioner in his statement made by him to the authorities particularly a document appearing at page 41 of the Writ Petition originally indicated the calculations of foreign exchange purchased by the petitioner which calculations he detailed out in his statement and according to the petitioner he had himself struck out these entries. So, it cannot be said that some irrelevant documents have been relied upon by the detaining authority in reaching the subjective satisfaction with regard to the prejudicial activities of the petitioner.

23. Learned counsel for the petitioner has referred to Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, wherein it has been observed that it is an unwritten rule of 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. Learned counsel for the petitioner has also made reference to Sadhu Roy Vs. The State of West Bengal, wherein it has been observed that the satisfaction though attenuated by "subjectivity" must be real and rational, not random divination, must flow from an advertence to relevant factors, not be a mock recital or mechanical chant of statutorily sanctified phrases. He has then referred to Diwan Singh Verma v. Union of India; 1988 (2) DL 197 wherein certain documents had been relied upon had shown no link of the detenu with the alleged prejudicial activities and it was held that it amounted to non-application of mind by the detaining authority. However ratio laid in these judgments in my opinion would not apply to the facts of the present case where we find that these documents have been explained by the detenu himself in his statement which on reading the whole would give the inference that these documents are connected with the prejudicial activities of the detenu. So, I do not find any merit in this particular contention. Another ground urged by the learned counsel for the petitioner in support of the writ petition is that there was no material which could show that petitioner has been indulging in any activity which is prejudicial to the augmentation of foreign exchange. I have gone through the grounds of detention and find that petitioner has been purchasing foreign currency at some rate had been disposing of the said currency at a higher rate and it was clearly in violation of the provisions of Foreign Exchange Regulation Act 1973. It is evident that if private individuals living in India deal in foreign currency without the permission of the Reserve Bank of India, the foreign exchange would be dealt with in a clandestinely manner and would never put into the coffers of Government of India and obviously such an activity is prejudicial to the augmentation of foreign exchange by the country.

24. Learned counsel for the petitioner has cited Divi Das Vs. Union of India and Others, In the cited case there was no material shown in the grounds of detention that the detenu had indulged in the abatement of the smuggling and it was held that order of detention could not be sustained. Nothing said in this judgment is applicable to the facts of the present case. Hence, I do not find any merit in this contention of the learned counsel for the petitioner as well. The learned counsel for the petitioner has urged that the detention order is in violation of the guidelines issued by the Government itself that where the prejudicial activities do not involve any transaction exceeding rupees one lac, the detention order should not be passed. The perusal of the grounds of detention in the present case shows that the petitioner has dealt in the foreign exchange of the value of more than rupees four lac at different times. So, any thing said in the guidelines is of no help to the petitioner. No other point has been urged

before me.

25. In view of my above discussion I find no merit in this writ petition which I hereby dismiss and I discharge the rule.

26. Petition dismissed.