

(1987) 12 PAT CK 0004

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 141 of 1987 (r)

Shambhu Nath Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-12-1987

Acts Referred:

Arms Act, 1959 — Section 27
Bihar Control of Crimes Act, 1981 — Section 12, 12(1), 12(2), 16, 17
Criminal Procedure Code, 1973 (CrPC) — Section 107, 82, 83, 83
Penal Code, 1860 (IPC) — Section 143, 144, 147, 302, 34

Citation : (1989) PLJR 654

Hon'ble Judges : B.P. Singh, J;B. Prasad, J

Bench : Division Bench

Advocate : Rajendra Prasad Singh and S. Radhey Shyam, for the Appellant; S.B. Gadodia and S.N. Rajgarhia, for the Respondent

Judgement

B.P. Singh, J.—In this writ application, the petitioner has prayed for a writ of habeas corpus commanding the respondents to release the petitioner forthwith from illegal detention, purported to be one u/s 12 (2) of the Bihar Control of Crimes Act, 1981 (hereinafter referred to as "the Act"). According to the petitioner, his detention is illegal for various reasons. According to him he is a law-abiding citizen carrying on business in the name and style of M/s Singh and Co. and his false implication in several criminal cases, as well as his detention under the Act, is on account of business rivalry within certain influential persons who tried to extort money from him, but failing to do so, they resorted to falsely implicating the petitioner in criminal cases and getting him detained under the Act. The District Magistrate, Singhbhum, by an order dated 20th November, 1985, in exercise of powers conferred by sub-section (1) of section 12 of the Act read with notification No. 10437 dated 10.9.1985 directed that the petitioner be detained as he was satisfied that with a view to preventing him from acting in a manner prejudicial to the maintenance of public order, it was necessary to detain the petitioner. The petitioner according to the order, is an antisocial element as

defined under section 2(d) (i) of the Act. The order u/s 12 (1) of the Act was passed on 20th of November, 1985 and on 24th November, 1985 the order containing the grounds was issued pursuant to section 17 of the Act. This order dated 24th November, 1985 sets out certain facts under the heading "background". In the background it is mentioned that the petitioner is a veteran criminal, Dada, and an anti-social element of the area. He has terrorised the people of the area with his anti-social activities to such an extent that the people do not report against him. The public order and peace has been badly disturbed with his activities. The background, thereafter mentions five criminal cases pending against the petitioner which establishes his criminal and anti-social activities. Three of the cases relate to the year 1984, and two to the year 1985. Thereafter the order proceeds to enumerate the "grounds". Under the heading "grounds", the District Magistrate has referred to several criminal cases against the petitioner. The first case relates to an incident which took place on 24th of May, 1985 at about 9 p.m. in which it is alleged that the petitioner with his associates equipped with fire arms went to the residential quarters of Ram Bachan Roy with a view to kill his son, Ramjee Roy. When they did not find Ramjee Roy they threatened to shoot his father. On the next day, when Ram Bachan Roy was coming from duty he was threatened by the petitioner and asked to produce his son by the evening failing which he will be shot. A criminal case was lodged by said Ram Bachan Roy and it was registered under sections 144 /452 of the Indian Penal Code and 27 Arms Act. A chargesheet has been submitted in that case.

The second case relates to an incident which took place on the third of July, 1985 in which the petitioner and his associates are said to have chased one Johar Kishore Roy who was kidnapped on the point of gun from the busy Basant Talkies Chowk. This incident created a panic. Till the date of the order said Johar Kishore Roy had not been found. A case was registered under sections 143 , 147 , 341 , 364 of the Indian Penal Code and 27 Arms Act against the petitioner. In the said case chargesheet has been submitted.

The third case relates to an incident which took place on the 25th July, 1985 in which it was alleged that the petitioner together with his associates armed with fire arms went to the house of one Sushil Kumar Mandal and searched for him. They threatened his family members to vacate the house and that they may be killed. The brother of Sushil Kumar Mandal reported the matter to the Police on the basis of which a case under sections 143 /452 of the Indian Penal Code was registered. The case was under investigation on the date on which the order was passed.

The last case referred to relates to an incident which took place on the third of November, 1985 in which the petitioner and his associates shot dead one Jairam Sharma on the main road of Adityapur. This created panic in the Adityapur and Jamshedpur town. Shops were closed and normal life was disturbed. The police could restore peace after great efforts. A case was registered u/s 302 /34 of the

Indian Penal Code and 27 Arms Act in which chargesheet was being submitted.

It is further mentioned that the house of the petitioner was raided with a view to arrest him. During the course of raid a country-made pistol, a bonda cartridge, one Nepali Bhujali etc. were recovered, and a case was registered on 3.11.1985.

2. On the basis of the above grounds, the District Magistrate recorded his satisfaction that if the petitioner was allowed to be at large, he would indulge in activities prejudicial to the maintenance of public order, and there were reasons to fear that he will again create terror and also intimidate witnesses, and that his activities could not be prevented otherwise than by his detention.

3. Though the order of detention was passed on the 20th November, 1985 and the order containing the grounds is dated 24.11.1985, the same could not be served upon the petitioner since he was alleged to be absconding. The order of detention and the grounds could be served upon the petitioner only on the 9th of July, 1987. Earlier by its order dated 30th November, 1985, the State Government had approved the order of detention.

4. The petitioner sent his representation to the State Government through the jail authorities on 12th July, 1987. The representation was received by the State Government on the 17th July, 1987 and the same was rejected on 31st July, 1987. The order of rejection was communicated to the petitioner on 2nd August, 1987. The case of the petitioner was sent for consideration by the Advisory Board on 24th July, 1987 and the papers were received by the Secretary to the Advisory Board on 25th July, 1987. On the 24th August, 1987, the Advisory Board heard the petitioner. The Advisory Board gave its opinion on 26th August, 1987 finding that there were sufficient grounds to detain the petitioner, and that his detention was justified. The detention of the petitioner was confirmed by the State Government on the 3rd September, 1987 and the same was communicated to the petitioner on the 5th of September, 1987.

5. At the outset I may notice the preliminary objection raised by Shri Gadodia, Standing Counsel I, appearing on behalf of the State of Bihar. He submitted that the instant writ petition was not maintainable since the petitioner had come to this Court on two earlier occasions in connection with the same order of detention, and hence this writ petition, which is the third, is not maintainable. He submitted that even if the petitioner withdrew his first writ petition, the instant writ petition could not be maintained by him in view of the judgment of the Supreme Court reported in AIR 1987 Supreme Court 88.

6. The preliminary objection raised on behalf of the State must be rejected. It is true that the petitioner had preferred a writ petition earlier being Cr. WJC No. 122 of 1987 (R). That writ petition was disposed of by this Court by order dated 7.8.1987. The order of this Court which is Annexure-3 to the writ petition discloses that after some argument, learned counsel for the petitioner prayed for permission to withdraw the writ petition. The application was permitted to be withdrawn. The Hon'ble Judges disposing of the writ application also recorded in

their order that they were informed that the petitioner had been directed to be produced before the Advisory Board. It is, therefore, quite apparent that in view of the fact that the petitioner was to be produced before the Advisory Board, the petitioner prayed for permission to withdraw the writ petition at that stage.

The petitioner thereafter preferred another writ petition being Cr. WJC No. 137 of 1987 (R). This writ petition was filed on the 17th of August, 1987, that is, only ten days after the order of this Court passed in the earlier writ petition. This Court while disposing of the second writ petition by its order dated 18.8.1987 noticed the order of this Court while disposing of the earlier writ petition. It was then observed that in view of the order passed only ten days earlier," it seems that present application is still premature. Therefore, as prayed for, by the learned counsel for the petitioner, we permit him to withdraw this writ application at this stage with the observation that the Advisory Board should dispose of the matter as soon as possible, preferably within two weeks from today." It would thus appear that by order dated 18.8.1987, this Court permitted the petitioner to withdraw his writ application at that stage in view of the fact that the case of the petitioner was to be considered very soon by the Advisory Board. Thus, neither the first writ application nor the second writ application was disposed of on merit. On both occasions, the writ application was allowed to be withdrawn at that stage so that the case of the petitioner could be considered by the Advisory Board. In these circumstances, it is difficult to hold that the instant writ application is barred by any principle of resjudicata. The judgment of the Supreme Court relied upon by the Standing Counsel does not support his case inasmuch as the judgment in express terms excludes the operation of that rule insofar as habeas corpus petitions are concerned. The preliminary objections raised by the Standing Counsel, therefore, must be rejected.

7. Mr. Rajendra Prasad Singh, learned counsel appearing on behalf of the petitioner pressed before us several submissions, and I now proceed to deal with each one of them.

The first submission urged by the learned counsel was that the detaining authority had taken into consideration pendency of cases under the Arms Act. This vitiated the order of detention passed by him since he had taken into account irrelevant material which he could not have taken into account. According to him, the order of detention described the petitioner as an anti-social element as defined u/s 2 (d) (i) of the Act. In that view of the matter, the detaining authority could not take into account cases pending under the Arms Act since that was covered by section 2 (d) (v) of the Act. Thus, he had taken into consideration extraneous materials which he could not take into account even for the purpose of his subjective satisfaction.

This submission proceeds on the basis that the grounds of detention mentions four cases, and while referring to some of those cases, it is mentioned that a case had been recorded against the petitioner under various sections of the Indian Penal Code, as also u/s 27 of the Arms Act. According to the petitioner by

mentioning section 27 of the Arms Act, the detaining authority has taken into account extraneous material since the pendency of cases under the Arms Act is not relevant for a case where the petitioner is said to be an anti-social element u/s 2 (d) (i) of the Act. This submission must be rejected. It is true that the grounds refer to four criminal cases against the petitioner. The date and number of the cases is given in the grounds and the various sections of the Indian Penal Code have also been mentioned. It is further mentioned that in three of those, cases had also been registered u/s 27 of the Arms Act. The mere fact that section 27 of the Arms Act has been mentioned, is not a ground for holding that the detaining authority had taken into account irrelevant materials. The fact that criminal cases are pending against the petitioner under various sections of the Indian Penal Code, and in three of the cases, offence under the Arms Act is also involved is not in dispute. Therefore, when the detaining authority gave the particulars of the cases pending against the petitioner, it also mentioned the fact that apart from various sections of the Indian Penal Code, in the cases registered, the offence u/s 27 of the Arms Act was also involved. This is a simple statement of fact and does not in any manner vitiate the satisfaction reached by the detaining authority. If the contention urged on behalf of the petitioner is to be accepted, the detaining authority should not have mentioned the fact that apart from various sections of the Indian Penal Code, cases, have also been registered under the provisions of the Arms Act. This would amount to stating incomplete facts. The grounds simply state the facts and, therefore, it was necessary to mention that the cases were registered against the petitioner not only under the provisions of the Indian Penal Code but also under the Arms Act. The mere mention of section 27 of the Arms Act does not amount to saying that the detaining authority considered him to be an anti-social element not u/s 2 (d) (i) of the Act but u/s 2 (d) (v) of the Act. I, therefore, reject the first submission advanced on behalf of the petitioner.

8. The second submission urged by the learned counsel for the petitioner was that the order of detention mentions that the order was being passed by the District Magistrate in exercise of powers conferred by sub-section (1) of section 12 of the Act. According to the learned counsel for the petitioner the order was really passed under sub-section (2) of section 12 of the Act, and hence a casual approach is disclosed in the matter of issuance of the order of detention. In reply to the aforesaid contention, it has been urged on behalf of the State that the order of detention was really passed under sub-section (2) of section 12 of the Act, but by typing mistake instead of sub-section (2), sub-section (1) had been typed. This however, did not cause any prejudice to the petitioner. I am of the view that the submission urged on behalf of the petitioner cannot prevail. Sub-section (1) of section 12 vests power in the State Government to make an order directing detention of any persons with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The power can be exercised by the State Government if it is satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the

maintenance of public order, it is necessary to detain such a person. Sub-section (2) of section 12 provides that having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate, the State Government is satisfied that it is necessary so to do, it may be an order in writing direct that during such period as may be specified in the order, such District Magistrate may also, if satisfied as provided in sub-section (1), exercise the powers conferred upon by the said sub-section. To put it simply, the power to make an order of detention is vested in the State Government by sub-section (1) of section 12 . By sub-section (2) the same power can be exercised by the District Magistrate if the State Government vests such power in the District Magistrate. Thus, the power to issue an order of detention is to be found in sub-section (1) of section 12 of the Act. Sub-section (2) of section 12 only [enables] the District Magistrate to exercise that power. Thus it is not incorrect to say that the District Magistrate has exercised the power under sub-section (1) of section 12 of the Act since the power to issue an order of detention under the Act emanates from subsection (1) of section 12 . Sub-section (2) of section 12 only enables the State Government to authorise the District Magistrate to exercise that power. I, therefore, do not find that by referring to the exercise of power under sub section (1) of section 12 , the District Magistrate has committed any error. In any event even if it were to be held that he has wrongly referred to sub-section (1) instead of sub-section (2) of section 12 , that would not be an error which would vitiate the order of detention in the facts and circumstances of the case. The second submission of the petitioner is also rejected.

9. The third submission advanced on behalf of the petitioner was that there has been breach of section 19 of the Act in the matter of referring the case of the petitioner to the Advisory Board. Section 19 provides that in every case where a detention order has been made under the Act, the Government shall, within three weeks from the date of detention of a person under the Order, place before the Advisory Board the grounds on which the order has been made and the representation if any made by the person affected by the order, and in case where the order has been made by the District Magistrate, also the report by such officer under sub-section (3) of that section. The mandatory requirement of the section is that the Government shall place the case of the detenu before the Advisory Board within the period prescribed. According to the petitioner, his case was not placed before the Advisory Board within three weeks. Learned counsel appearing for the petitioner stated that he could not give more particulars since the petitioner had no specific knowledge about the facts relating to the placing of the petitioner's case before the Advisory Board. However, from the counter affidavit filed on behalf of the State, I find that the case of the petitioner was sent to the Advisory Board on the 24th July, 1987. The papers were received by the Secretary to the Advisory Board on the 25th July, 1987. In view of the fact the order of detention had been served on the 9th of July, 1987, it is apparent that the case of the petitioner was placed before the Advisory Board for

consideration within the period of three weeks prescribed by section 19 of the Act. In this view of the matter, it cannot be contended that there has been breach of section 19 of the Act.

10. The fourth contention urged on behalf of the petitioner is that the grounds disclosed "background" and "GROUNDS". According to the petitioner the background as well as grounds are nothing but grounds, and it is not possible to draw any distinction between the background and grounds. It has further been submitted that the background refers to a proceeding u/s 107 of the Code of Criminal Procedure which does not come under Chapter 16 or 17 of the Indian Penal Code. Thus, the argument proceeds, the detaining authority has taken into account extraneous materials in recording its satisfaction u/s 12 of the Act. The petitioner has relied upon a judgment of the Supreme Court in support of this contention reported in AIR 1979 Supreme Court 1925. It was contended that even if one of the grounds was vague, or irrelevant, the order of detention was vitiated and in such a case the detention became illegal. Learned Standing Counsel appearing on behalf of the State submitted that the judgment of the Supreme Court relied upon by the petitioner must be understood in the peculiar facts and circumstances of that case. In that case it was held that the grounds of detention served upon the detenu were vague and it was held that where the grounds of detention are so vague that the detenu cannot possibly make an effective representation, the detention must be held to be bad. An argument was advanced before the Supreme Court in that case to the effect that a distinction should be made between the introductory and background facts, and the grounds of detention. One of the learned Judges observed that in that case they were unable to so dissect the factual allegations mentioned in the document supplied to the detenu as furnishing the grounds of detention. The Supreme Court held that the grounds served upon the detenu in that case contained vague allegations and it was not possible to dissect the grounds and to find out which of them were the grounds properly so called, and which were the facts which were only introductory and provided the background for passing of the order. On behalf of the State reliance has been placed upon a judgment of the Supreme Court reported in Dhananjay Das Vs. District Magistrate, Darrang and Another, . After referring to the case reported in AIR 1979 Supreme Court, their Lordships observed :

7. Be that as it may, the observations referred to above do not indicate that there can be no preamble or introductory para in the grounds of detention. There is no bar to have introductory paragraphs in the grounds. The observations only mean all allegations of facts which led to the passing of the order of detention will form part of the grounds of detention. It is, therefore, difficult to accept the contention that there could be no introductory para in the grounds.

8. Whether a particular paragraph in the grounds amounts only to a preamble or introduction is to be determined on the facts and circumstances of each case and it is open to the Court to come to its own conclusion whether that paragraph is

only an introductory para or contains the grounds on the basis of which the detaining authority had the subjective satisfaction for passing the order of detention

Applying the law laid down by the Supreme Court in Dhananjay Das's case to the facts of the instant case. I am quite clear in my mind that the facts mentioned under the heading "back ground" in the instant case are really in the nature of a preamble or introductory paragraph. In the instant grounds of detention we have no such difficulty as was faced by the Supreme Court in Md. Yusuf's case. In the instant case certain facts have been mentioned under the heading "back ground" and, therefore, there is no confusion as to whether those facts constitute the grounds or whether they are in the nature of introductory paragraphs or background. The facts which constituted the grounds for detention have been separately stated under the heading "grounds". The detaining authority has, therefore, not taken into consideration the facts mentioned under the heading "background" as the basis for the order of detention. The facts which formed the basis for the order of detention have been clearly and separately mentioned under the heading "grounds". This submission, therefore, must also be rejected. In view of my finding that the facts stated in the "background" did not form the basis for the satisfaction reached by the detaining authority it is not necessary for me to consider the authority cited at the bar in support of the proposition that taking into account irrelevant matter, or mentioning of vague and irrelevant grounds may vitiate the order of detention. Such a submission was advanced on the basis that the facts and the grounds stated in the "background" were either irrelevant or vague and were taken into account by the detaining authority for reaching the satisfaction justifying the detention.

11. The fifth submission urged on behalf of the petitioner, though faintly, was that the grounds did not disclose facts which could have any adverse effect on public order, and at most it gave rise to a case of law and order. The distinction between "public order" and "law and order" is by now well established by a series of decisions of the Supreme Court, and it is not necessary to repeat those authorities. However, I am tempted to quote from the judgments of the Supreme court reported in the case of *Indradeo Mahato Vs. The State of West Bengal*, where, if I may say with great respect, the Supreme Court very succinctly declared the law. It was observed:

Difference between an ordinary law and order problem and that of public order has been explained by this court on several occasions and the legal position is by now fairly crystalised. In *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, this court dealt with the question at length and illustrated the difference by fictionally drawing three concentric circles, the largest representing law and order, the next representing public order and the inner most representing security of State Every violation or breach of law would no doubt necessarily affect order and the frequency of such infraction may pose a problem of law and

order, but it need not necessarily affect public order may not automatically affect security of the State. In *Pushkar Mukherjee and Others Vs. The State of West Bengal*, the difference between the concept of "public order" and "law and order" was stated to be similar to the distinction between "public" and "private" crimes in the realm of jurisprudence. The real test seems to us to depend on the degree and extent of the disturbance and act caused to the normal balanced peaceful tempo of civil life of the community and not on the mere definition of crime given to such acts in the law of crimes. Similar acts in different situation may give rise to different problems in one set of circumstances an act may pose only a law and order problem whereas in another it may generate deep and wide spread vibrations having serious abiding society so as to affect public order. One has to weigh the degree and sweep of the harm the act in question is capable of in its contest. Every case has, therefore, to be considered on its own facts and circumstances.

12. Dealing with cases under the Act, the Supreme Court has held that three offences of the nature described were sufficient to sustain an order of detention under the Act. Reliance has been placed in this regard in the case of *Raj Kumar Singh Vs. State of Bihar and Others*, and the case of *Vijay Narain Singh Vs. State of Bihar and Others*, . The true test as laid down by the Supreme Court is to consider the effect of degree and extent of disturbances the act caused to the normal balanced peaceful tempo of civil life of the community in the facts and circumstances of the case and the realities of the situation as they exist. I may observe that the situation that confronts the administration in this part of the country is somewhat different from the normal situation that may prevail in any other parts of the country. Crime and criminals have attained threatening proportions, and this is further aggravated by the realities of the situation that exist today. Large number of groups of persons who have taken to crime as a way of life have come into existence Many persons who otherwise claim respectable positions in the society, are nothing but leaders of such gangs, though they masquerade as respectable citizens. Often, feuds arising out of their inter se rivalry, and often the atrocities committed by such groups or gangs upon innocent citizens, has its own impact upon the normal life of the community. The ordinary man suffers a reign of force and fear. It is by now well known, and this has been widely discussed in public, that in the southern districts of Bihar, there is existing today a situation loosely described as Mafia rule. The leaders of various gangs within their respective areas of operation force traders and businessmen as well as the ordinary citizens to pay to them regularly certain amounts commonly known as "Rangdari tax", so that their lives may be spared. This is what is sometimes described as "safety money". If their demands are not fulfilled they threaten the citizens with dire consequences, and very often execute these threats into realities. Sometime these groups fight amongst themselves and when such rivalries came to the surface and widespread criminal activity is the natural consequence, can it be said that such criminal activities do not completely upset the normal tempo of civil life of the community ? Does it

not create an impression in the mind of ordinary public and ordinary citizens that the administration will not be able to effectively protect their lives and liberty ? The answer to these questions must be in a very firm affirmative. The degree and sweep of the harm caused by such acts is immense, and results in complete loss of faith in the ability of the State to protect the life of law-abiding citizens. These are the realities of the situation, and those charged with the duty of maintenance of public order are not expected to live in ivory towers, completely oblivious of the stark realities. In the ultimate analysis, every crime on paper appears to be an offence under one of the provisions of the Indian Penal Code, which can be punished under the ordinary law of the land. But the purpose of preventive detention is not to punish the criminal, but to prevent him from doing acts which adversely affect public order. In regard to the crimes that he may commit, the criminal must be punished in accordance with law, but with a view to avoid the nasty effect that such crimes have upon the life of the community, he must be detained so as to prevent him from indulging in activity prejudicial to public order. Viewed in this light the criminal cases against the petitioner do disclose his high handed nature and tendency. If such crimes are repeated too often, they adversely affect public order. In the facts and circumstances of this case, I am satisfied that the detaining authority was justified in issuing the order of detention on the ground that it was necessary to prevent the petitioner from acting in a manner prejudicial to law and order.

13 This takes me to the sixth submission advanced on behalf of the petitioner. It has been contended on behalf of the petitioner that the order of detention was passed on the 20th November, 1985. It was served upon the petitioner on the 9th of July, 1987, almost one year and eight months later. According to the petitioner, this inordinate delay in serving the order of detention throws considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate. It has been submitted on behalf of the petitioner that no explanation is forthcoming from the State explaining the delay, it must be held that the detaining authority did not apply its mind and arrive at a real and genuine satisfaction that it was necessary to detain the petitioner with a view to preventing him from acting in a manner prejudicial to public order. The order of detention was illegal since the condition precedent for making an order of detention was not satisfied. On behalf of the State it has been contended that since the petitioner was absconding it was not possible to serve him with the order of detention. In paragraph 13 of the counter affidavit it has been stated that the order of detention could not be served on the petitioner as he was absconding. In paragraph 14 of the counter affidavit filed on behalf of respondent no. 2 it has been stated as follows :-

14. That in reply to the aforesaid paragraph 8 of the writ petition, it is, further stated that the petitioner was absconding and, thereby evaded the service of the impugned order of detention but he continued to commit offences, as mentioned above. On 13.11.1985, there was kurki japti against the petitioner and the articles seized/attached were later on recommended for auction and the

petitioner surrendered on 6.7.1987 in Adityapur P.S. Case no. 66 of 1986 corresponding to G.R. Case No. 225 of 1986 and immediately thereafter the impugned order was served upon him on 9.7.1987.

14. The plea raised on behalf of the State in regard to the delay in serving the order of detention is a general and vague plea devoid of any particulars. On the other hand the petitioner has stated facts to show that if the detaining authority was really serious about serving the order of detention upon the petitioner, it could have done so. In any event it is contended, that this inordinate delay has not been explained by the State and it was obligatory for the State to explain this delay if the order of detention was to be sustained. This takes me to the consideration of certain facts stated on behalf of the petitioner in the writ application as also in the rejoinder affidavit filed on behalf of the petitioner. It is stated in paragraph 18 of the writ application that no reason has been disclosed by the State as to why an order passed as far back as on 20th November, 1985 was executed on 9.7.1987. It is further stated that the C.I.D. (Crimes) was entrusted with the investigation of Adityapur P.S. Case no. 187 of 1985 and it submitted a report that the allegations as against the petitioner and others were false, and the petitioner was granted bail by the learned Sub-divisional Judicial Magistrate, Saraikella in the said case. In reply to the explanation submitted by the State in paragraphs 13 and 14 of the counter affidavit, the petitioner in his rejoinder affidavit stated various facts referring to the records of various cases to show that the general explanation given by the State that the petitioner was absconding, is untenable. It is asserted on behalf of the petitioner that he was all along doing his business at Jamshedpur and other places. Referring to Adityapur P.S. case no. 66 of 1986 referred to in paragraph 14 of the counter affidavit filed on behalf of the State, it has been stated that the petitioner was falsely implicated in that case. The petitioner as well as other accused persons filed two applications for grant of anticipatory bail before the Patna High Court, Ranchi Bench, Ranchi. These applications were numbered as Cr. Misc. No. 1994 of 1986(R) and Cr. Misc. No. 1996 of 1986(R). The High Court directed that the petitioner and others will not be arrested till the 1st of May, 1986 and the petitioner and others were directed to move applications for grant of anticipatory bail before the learned Sessions Judge. This order of the High Court was communicated and ultimately the learned Sub-divisional Judicial Magistrate by his order dated 26.4.1986 informed the Officer-in-charge of the concerned police station about the order passed by the High Court. Thereafter, the petitioner filed an application for grant of anticipatory bail before the learned Sessions Judge, Singhbhum. Learned Sessions Judge was pleased to stay the arrest of the petitioner and others till 16th of May, 1986 and called for a report. This order of the learned Sessions Judge was also communicated to the Sub-divisional Judicial Magistrate, and in turn the learned Sub-divisional Judicial Magistrate communicated the order of the learned Sessions Judge to the Officer-in-charge. Thereafter the interim order staying arrest of the petitioner and others was extended from time to time by the learned Sessions Judge, and all such orders

were communicated to the Sub-divisional Judicial Magistrate, Saraikeila. Ultimately the application for anticipatory bail was rejected and the petitioner appeared before the Sub-divisional Judicial Magistrate on the 6th of July 1987 and prayed for grant of regular bail. That application was rejected. But the learned Sessions Judge ultimately granted bail to the petitioner and the release order was issued on 10th of July, 1987. However, before the petitioner could be released, he was served the order of detention on the 8th of July, 1987. It has further been stated in paragraph 37 of the rejoinder affidavit that the plea regarding the petitioner absconding was false since the petitioner used to appear in Court regularly. It is categorically stated in paragraph 37 of the rejoinder affidavit that the petitioner personally appeared and furnished bail bonds on 26.12. 1985 in G.R. No 621 of 1985 corresponding to Adityapur P.S. Case no. 189 of 1985 dated 3.11.1985 (one of the cases referred to in the order containing grounds of detention). The petitioner had personally appeared in the court of the Sub-divisional Judicial Magistrate in obedience to the order passed by the High Court granting anticipatory bail to the petitioner in Criminal Miscellaneous No. 4465 of 1985 (R). It was urged on behalf of the petitioner that order of detention having been passed on the 20th of November, 1985, if really the detaining authority wanted to serve upon the petitioner the order of detention, nothing prevented them from doing so when the High Court by its order granted anticipatory bail to the petitioner in one of the cases and petitioner appeared before the court on 26.12.1985 to furnish bail bond.

15. The petitioner has also contended that the process issued under sections 82 and 83 of the Code of Criminal Procedure was not in force when the petitioner appeared before the court to furnish bail bonds. As observed earlier it is the case of the State that process under sections 82 and 83 of the Code of Criminal Procedure was issued against the petitioner on 13.11.1985 in connection with Adityapur P.S. Case No. 66 of 1986. According the petitioner the order of detention was passed on 20th of November, 1985. Admittedly no action was taken under sections 82 and 83 of the Code of Criminal Procedure after that date. In particular, the petitioner has referred to section 16 of the Act which provides that if the detaining authority has reasons to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, it may make a report in writing of the fact to the Chief Judicial Magistrate having jurisdiction in the place where the said person ordinarily resides, or by order notified in the official gazette direct the said person to appear before such officer at such place and within such period as may be specified in the order. Subsection (2) of section 16 of the Act provides for the applicability of the provisions of sections 82 ,83 ,84 and 85 of the Code of Criminal Procedure where report is made in writing to the Chief Judicial Magistrate. Similarly subsection (3) of section 16 provides that if a person does not appear before the officer concerned pursuant to an order being notified in the official gazette, he shall be punished with imprisonment for a term which may extend to one year or with fine or with both. The submission

advanced on behalf of the petitioner is that neither any action was taken under sections 82 and 83 of the Code of Criminal Procedure nor was any action taken u/s 16 of the Act which specifically provides for action that may be taken in case a person against whom an order of detention has been made is found to be absconding or concealing himself. Mere reference to sections 82 and 83 of the Code of Criminal Procedure proceeding said to have been initiated on 13.11.1985 is of no avail, since that was prior to the date of the order of detention. There is nothing to show that after the order of detention was passed, any step whatsoever was taken to serve the order upon the petitioner. Even the specified provisions of section 16 of the Act were not resorted to.

16. It is well settled that where there is delay in arresting a detenu pursuant to an order of detention which is prima facie unreasonable the State must give persons explaining the delay. If no explanation is given for the delay in arresting the petitioner it must be held that the condition precedent for making the order of detention was not satisfied. In such a case it cannot be said that the District Magistrate applied his mind and arrived at a real and genuine satisfaction that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner. The unexplained delay in detaining the petitioner pursuant to the detention order would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate (*Sk. Nizamuddin Vs. State of West Bengal*,).

17. The facts of the instant case disclose that the order of detention was passed on 20th November, 1985. That order of detention was served upon the petitioner on the 9th of July, 1987, that is, almost one year and eight months later. The delay is inordinate and, therefore, it was incumbent upon the State to disclose the reasons why the order of detention could not be executed. The simple reply given by the State is that the petitioner was absconding, and no further particulars have been given to show as to what efforts were made by the State to apprehend the petitioner. All that is mentioned is that in connection with one criminal case being Adityapur P.S. Case No. 66 of 1986 proceeding under sections 82 and 83 of the Code of Criminal Procedure was taken on 13.11.1985. Accepting the facts stated in the counter affidavit filed on behalf of the State to be correct, it is worth noticing that the proceeding under sections 82 and 83 of the Code of Criminal Procedure was initiated earlier than the passing of the order of detention on 20th November, 1985. Admittedly no steps were taken under sections 82 and 83 of the Code of Criminal Procedure after passing of the order of detention on 20th November, 1985. This apart, section 16 of the Act itself provides special procedure to be followed in cases where the detenu avoids the order of detention by absconding or by concealing himself. Section 16 specifically deals with such cases. It empowers the detaining authority to make a report in writing to a Magistrate having jurisdiction in the place where the detenu ordinarily resides, and once such a report is made, the provisions of sections 82 and 83, 84 and 85 of the Code of Criminal Procedure, 1973, apply in respect of such a person and his property, as if the detention order against him were a

warrant of arrest issued against him by a Magistrate. Alternatively, it is open to the detaining authority to direct the detenu by an order notified in the official gazette to appear before such officer at such place and within such period as may be specified in that order, and failure of the detenu to comply with the said order makes him liable to be punished with imprisonment for a term which may extend to one year or with fine or with both. It is obvious that the framers of the Statute conceived of cases where a detenu may avoid execution of the detention order. It was, therefore, considered desirable to evolve a special procedure by which such a detenu could be compelled to surrender. It is, therefore, natural to expect that where an order of detention is passed, and the detaining authority fails to serve the order of detention upon such a person, it would take steps u/s 16 of the Act to secure his attendance so that the order of detention can be served upon him. If no such step is taken, one would be justified in assuming that the detaining authority was not really serious about its apprehension and the need for detention, and that while passing the order of detention it entertained no genuine and bona-fide belief that it was necessary to detain the petitioner with a view to preventing him from acting in prejudicial manner. This is very important circumstances which can be held against the detaining authority. Moreover, the averment of the petitioner that he had been attending to his business and had also been attending proceedings in court has not been disputed. That may not be of much consequence. There is one fact, however, which I cannot ignore, and that is that the petitioner had been granted anticipatory bail by the High Court in G.R. Case No. 621 of 1985 corresponding to Adityapur P.S. Case no. 189 of 1985. This is one of the four cases mentioned in the order containing the grounds. In this case the petitioner was granted anticipatory bail and he appeared in person in the court of the Sub-divisional Judicial Magistrate on 26.12.1985 to furnish bail bond. This was almost one month after the order of detention had been passed. There is no good reason to explain why the petitioner was not taken into custody on that date. In the light of these facts and circumstances, I am constrained to hold that the State has failed to explain the delay in executing the order of detention: This has vitiated the order of detention, inasmuch it is not possible to hold that the satisfaction reached by the detaining authority was genuine and bonafide. Consequently, the condition precedent for making the order of detention was not satisfied. The order of detention, therefore, cannot be sustained.

18. Before parting with the discussions on this submission, it is only fair to consider two judgments of the Supreme Court upon which the learned Standing Counsel placed great reliance. He has referred to the decisions of the Supreme Court in the case of *Indradeo Mahato Vs. The State of West Bengal*, for the proposition that even if it was found that the State Government had not taken any steps under the provisions of the Code of Criminal Procedure, that by itself did not render the detention illegal. In particular, he relied upon the observations of the Supreme Court, where it was observed:

Section 87 , Cr.P.C. which occurs in part C of Chapter VI of that Code merely

empowers a court issuing a warrant of arrest to publish a written proclamation requiring the person concerned to appear at the specified place and time as required by that section, if the court has reason to believe that the said person has absconded or is concealing himself to evade execution of the warrant. Section 88 empowers the said court to attach the property belonging to the proclaimed person. In the case in hand no warrant was issued by any court as indeed section 3 of the Act does not contemplate the authorities empowered to make orders of detention to function as courts. In terms, therefore, these sections- may not be attracted. But even assuming, it is permissible to have resort to such procedure the mere omission to do so could not, in our opinion, render the order of detention either illegal or mala fide as the suggestion connoted. The petitioner's detention cannot, therefore, be considered illegal on this ground.

It will be apparent from the observations quoted above that the Supreme Court held that in the case in hand, no warrant was issued by any court, and section 3 of the Act (Maintenance of Internal Security Act, 1971) did not contemplate the authorities empowered to make orders of detention to function as courts. In terms, therefore, the provisions of sections 87 and 88 of the Code of Criminal Procedure were not attracted. It may have been permissible for the State to resort to such procedure, but mere omission to do so did not vitiate the order of detention. In the instant case, the circumstances are quite different. Under the Act, there is a specific provision, namely, section 16, which provides for the manner in which the detenu can be compelled to surrender, so that an order of detention can be served upon a person who has absconded or who is believed to be concealing himself. In the instant case, the authorities are empowered to make orders u/s 16 of the Act to secure the presence of the petitioner, and those powers authorise them also to resort to the procedure prescribed by sections 82 to 85 of the Code of Criminal Procedure. This makes all the difference. Since under the Act, the detaining authority is itself vested with the power to issue such orders, it is expected that in cases where a detenu is believed to be absconding or concealing himself, the authorities would resort to the provisions of section 16 of the Act, and compel the detenu to surrender, so that the order of detention can be executed. Where such powers have been expressly conferred upon the detaining authority, fact that the detaining authority did not exercise its power u/s 16 of the Act is one of the important circumstances to establish that the satisfaction reached by the detaining authority was not genuine and bonafide. I must add, that in the instant case, there is no explanation whatsoever to explain the delay. It may be that in a given case, in the facts and circumstances, the delay may be explained by the detaining authority by reference to other steps that may have been taken, even if the detaining authority did not resort to the power vested in it u/s 16 of the Act. But as observed earlier, the non-exercise of power u/s 16 of the Act would certainly be a relevant circumstance against the detaining authority, particularly when no other steps were taken against the detenu. The aforesaid judgment, therefore, is

clearly distinguishable in view of the fact that there is specific provision under the Act, which was not there under the Act under consideration by the Supreme Court.

That other judgment of the Supreme Court relied upon by the learned Standing Counsel is the one reported in *Bhawarlal Ganeshmalji Vs. State of Tamil Nadu and Another*, . In my considered opinion even this judgment of the Supreme Court does not support the case of the State. Their Lordships of the Supreme Court observed that there must be a "live" and "proximate" link between the grounds of detention alleged by the detaining authority and the avowed purpose of detention, namely, the prevention of smuggling activities. The Court in appropriate cases may assume that the link is snapped if there is a long and unexplained delay between the date of detention and the arrest of the detenu. But where the delay is not only adequately explained, but is found to be the result of recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the link not snapped, but strengthened. The observation of the Supreme Court really supports the conclusion which I have reached, namely, that the delay between the date of order of detention and arrest of detenu must be explained by the detaining authority. If it is explained, no question of striking down the order of detention on this ground arises. But where such delay is not explained, or explanation offered is found to be unsatisfactory, it will be open to the Court to hold that the order of detention is vitiated. In *Bhawarlal's* case, the Supreme Court in paragraph 6 of its judgment considered the explanation furnished by the State. It was found that a proclamation had been made u/s 82 of the Code which was published in several leading English and local daily newspaper. His photograph was exhibited in cinema halls, and a reward of Rs. 5,000/- was also announced for his apprehension. The Court was satisfied with these facts, and the State had explained satisfactorily that it had made all efforts to apprehend him, but on account of recalcitrant conduct of the detenu, it was not successful in arresting him earlier. In the instant case, the detaining authority has not produced before us any material to show that any steps whatsoever were taken to apprehend the petitioner. Mention has been made of a proceeding under sections 82 and 83 of the Code initiated against the petitioner. That was also prior to the date of passing of the order of detention. There is, therefore, no explanation whatsoever for the delay and, therefore, it must be held that the order of detention cannot be sustained.

19. There is one more reason why the order of detention cannot be sustained, and that is the subject matter of the seventh submission advanced, on behalf of the petitioner, namely, that the relevant documents were not served upon the petitioner when the order of detention was served upon him. In paragraph 19 of the writ petition the petitioner has made a grievance that the non-supply of copy of the First information report forming grounds of detention of the petitioner amounted to denial of reasonable opportunity of making an effective representation. This averment in the writ petition has been controverted by the State in paragraph 21 of its counter affidavit. In the said paragraph it has been

stated that all the relevant papers including the first information report in respect of the grounds of detention were served on the petitioner on 9th of July, 1987, the acknowledgement of which was accepted by the petitioner/detenu on the office copy of the grounds of detention. It is stated that such enclosure/annexures were in 24 pages and included true copy of the first information report. Photostat copies of the office copy of the grounds of detention order containing the endorsement along with the enclosures have been annexed with the counter affidavit and marked Annexure-C series. However, the documents filed do not support the averments in the counter affidavit. The first photostat document annexed as part of annexure-C is the order of detention dated 20th November, 1985 in English. There is an endorsement by the accused on the said document dated 9th of July, 1987 and the time given is 11 a.m. The endorsement made in the handwriting of the detenu is in English and mentions "received any enclosures" signed illegible. The second photostat document is the order of detention in vernacular. On this document as well, the detenu has made an endorsement dated 9th July, 1987 at 11 A.M. The endorsement made in vernacular translated into english is to the following effect:

Received copy of detention order with annexures.

No doubt the remaining documents filed as part of Annexure-C are the various first information reports etc. It is now to be considered whether the documents produced by the State establish that all the necessary documents along with the order of detention were served upon the petitioner on the 9th of July, 1987 when he was detained. As noticed, the State relies upon the endorsement made by the detenu on the copies of the detention orders, one of which is in hindi and the other in english. However, both the endorsements mention the fact that the copy of the detention order had been served without annexures. Such an endorsement does not support the case of the State. It is not the case of the State or the detaining authority that those documents were served upon the petitioner on any subsequent date. The categoric assertion on behalf of the State is that along with the order of detention all the relevant documents, such as the first information report relied upon, were served upon the petitioner, and the evidence in proof thereof is the endorsement made by the petitioner on the copies of the detention orders. Unfortunately the endorsements made by the petitioner are quite to the contrary and, therefore, it leaves no option for me but to hold that none of the supporting documents which were required to be served along with the order of detention were really served upon the petitioner. Since it is not the case of the State that those documents were served on any subsequent date, the petitioner, therefore, had no opportunity to make an effective representation. It is well settled that this would vitiate the order of detention. I, therefore, hold that the detention of the petitioner is also vitiated on the ground that the necessary documents upon which reliance was placed in the detention order were not served upon the petitioner at any time, and hence the petitioner was deprived of the opportunity to make an effective representation, which is one of the basic rights guaranteed to a detenu. It is now well settled that preventive detention is

a serious invasion of personal liberty, and, therefore, in preventive detention jurisprudence whatever little safeguards the Constitution and the enactment authorising such detention provide, assume utmost importance and must be strictly adhered to. One such safeguard is that the failure to supply, without delay, the grounds of detention, as also documents and statements incorporated therein by reference, would be fatal. The detenu is entitled not only to the grounds of detention but also all documents, statements and other materials incorporated in the grounds by reference, and which have influenced the mind of the detaining authority in arriving at the requisite subjective satisfaction (Ibrahim Ahmad Batti alias Mohd. Akhtar Hussain alias Kandar Ahmed Wagher alias Iqbal alias Gulam Vs. State of Gujarat and Others,). I, therefore, hold that the State has failed to explain the long delay between the date of passing of order of detention and its service upon the detenu. The State has also failed to establish that all the relevant documents were served upon the detenu with the grounds of detention.

In view of my findings it is not necessary to consider the last submission of the learned counsel namely, that there was delay in disposal of the representation submitted by the petitioner before the State Government. However, in fairness to the learned counsel, I must consider the submission, strenuously urged at the bar. It was submitted by him that the order of detention was served upon the detenu on the 9th July, 1987. The petitioner submitted his representation to the jail authority on 12.7.1987. The representation was rejected by the State Government on the 31st July, 1987. It was, therefore, urged that almost 19 days elapsed between the date of submission of the representation and the date of its rejection by the State Government. On the other hand, the learned Standing Counsel submitted that there was no delay in disposal of the representation and that the State Government had acted promptly and efficiently in disposing of the representation. The counter affidavit filed on behalf of the State discloses that the representation, which was submitted to the jail authority on 12-7-1987, was received by the State Government on 17-7-1987. It was submitted on behalf of the State that the order of detention was passed by the District Magistrate of Singhbhum and, therefore, the State Government had to get his comments on the representation before disposing of the same. This involved calling for the comments and receiving them from the District Magistrate. It was, therefore, submitted that within a period of 15 days, all this was done, and the representation disposed of. It therefore, cannot be said that there, was delay on the part of the State Government in disposing of the representation.

Learned counsel for the petitioner relied upon the judgment of the Supreme Court reported in the case of Harish Pahwa v. State of U.P. (A.I.R. 1981 Supreme. Court 1126) and in the case of Devi Lal Mahto v. State of Bihar (A.I.R. 1982 SC 1549 : 1983 PLJR (SC) 22). It was contended on the strength of these authorities that the State is bound to explain as to what action it took each and every day intervening, the date on which the representation received and the date on which the representation was disposed of. On the other hand, the

learned Standing Counsel has relied upon the judgment of the Supreme Court reported in the case of Union of India (UOI) and Others Vs. M. Ravi Varma and Others, , in the case of L.M.S. Ummu Saleema v. B.B. Gujaral (AIR 1981 SC 1194), and in the case of Asha Versus Union of India & ors. (A.I.R. 1986 Supreme Court 283) and submitted that there can be no yard stick of time in the matter of disposing of the representation, and that each case must depend on its own facts and circumstances.

In the case of Devilal Mahto (supra) relied upon by the petitioner, the Supreme Court found that there was no explanation why for a period of ten days the representation of the detenu was not examined by the competent authority. There was also nothing to show how the file moved after May 9, 1982, till the representation was rejected on June 3 1982. Their Lordships then came to the conclusion that there was inordinate delay in dealing with the representation, and 21 days time taken by the State Government in examining the representation had not been explained. Similarly in Hari Pahwas''s case, after examining the State''s affidavit the Court came to the conclusion that the State permitted the representation to lie without being attended to, and unnecessarily called for opinions of Secretary after Secretary, which was wholly unnecessary. The representation was made to travel from one table to another table for six days before reaching the Chief Minister who was the only competent authority to decide the representation. The Court observed that the manner in which the representation was dealt with was not justified, having regard to the type of action which the state is expected to take in a matter of vital importance. The Court emphasised that in the matter of preventive detention, the State must act with utmost expedition and not unnecessarily delay the determination of the representation.

In both these cases, therefore, the Court after examining the facts of the case came to the conclusion that the State was guilty of not having dealt with the representation with utmost expedition as required of it while dealing with cases of preventive detention. The judgments of the Supreme Court must be understood in the light of the findings recorded by the Court in those cases.

In the case of Nagendra Nath Mondal Vs. The State of West Bengal, , the Supreme Court observed that in a given case, the Government may not be able to reach on appropriate conclusion within a short time, specialty in a case where another authority has passed the detention order. It may have to make enquiry as to the situation in the locality, and circumstances in which the detention was found necessary, previous history of the person detained etc. It was observed that there cannot be a hard and fast rule with regard to the time which the Government can and/or should take, and that each case must be decided on its own facts. The same principle was reiterated in the decision of the Supreme Court reported in the case of Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, . In paragraph 7 of the report, their Lordships held:

Another submission of the learned counsel was that there was considerable delay

in the disposal of the representation by the detaining authority and this was sufficient to vitiate the detention. The learned counsel submitted that the detaining authority was under an obligation to adequately explain each day's delay and our attention was invited to the decision in *Pritam Nath Hoon Vs. Union of India (UOI) and Others*, and in *Shankar Raju Setty v. Union of India*. W.P. No. 640 of 1980 dated 26.6.1980 (SC). We do not doubt that the representation made by the detenu has to be considered by the detaining authority with the utmost expedition but as observed by one of us in *Frances Coralie Mullin Vs. W.C. Khambra and Others*, the time imperative can never be absolute or obsessive". The occasional observation made by this Court that each day's delay in dealing with the representation must be adequately explained are meant to emphasise the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release of the detenu. Law deals with the facts of life. In law as in life, there are no invariable absolutes. Neither life nor law can be reduced to mere but despotic formula.

From a consideration of the authorities it is quite clear that there can be no hard and fast rule to determine how much time the State Government must take in disposing of a representation. That must depend on the facts and circumstance of each case. It cannot be lost sight of that if the representation is disposed of too promptly, the order of Government disposing of the representation may be exposed to the criticism of being made mechanically, and idle formality, and a case of non-application of mind. On the other hand, if the representation is disposed of after sometime, the same may be characterised as inordinately delayed. It is, therefore, not possible to draw a precise line in such cases, and in each case, time taken in disposing of the representation must be considered in the facts and circumstances of the case. What is important is that the State must be conscious of the fact that it is dealing with the case of a detenu whose liberty has been impaired without trial, and that it is expected of the State to act in such case with utmost expedition. If such a consciousness permeates the thinking and action of the State Government, it cannot be said that the State Government has not considered the representation expeditiously. The State action must not betray casual, dilatory, or lethargic approach in the matter of disposal of the representation. The Court must be satisfied that the State Government was all the time conscious of the fact that a person had been detained without trial, and it did all that it was required to do with a view to dispose of the representation at the earliest. In its anxiety to dispose of the representation, the consideration of the representation must also not be reduced to an empty formality, since that would defeat the very purpose for which provision has been made for making representation to the State Government. All the factors have to be taken into account, and as long as the State Government is able to satisfy the Court that it was conscious of the fact that it was dealing with a case of preventive detention where freedom of a citizen had been curtailed without trial on a mere subjective satisfaction of the detaining authority, and that it did all that it could do with

utmost expedition, the fact that it took a little more time to dispose of the representation will not vitiate the detention. One ought not lose sight of the fact that no period is prescribed under the Act to dispose of the representation. At the same time two persons equally conscious of their responsibilities may not take the same time in coming to a firm conclusion. In the instant case having regard to the facts and circumstances of the case. I do not think the time taken by the State Government, about 14 days in disposing of the representation can be said to be too long a period. During this period, the State Government had to make its own enquiry before disposing of the representation, since the detaining authority was different from the State Government It must therefore, be held that in the facts and circumstances of the case, there was no delay in the disposal of the representation.

For these reasons, I hold that the detention of the petitioner is illegal and he is entitled to be released forthwith. I, therefore, direct that the petitioner shall be released forthwith unless he is required to be in custody in connection with any other case. The order of detention dated 20th November 1985 is quashed.