

(2014) 09 TP CK 0016
In the Tripura High Court
Case No : WP (C) No. 04 of 2014
Shyamal Das VsThe Union of India

Date of Decision : 10-09-2014

Acts Referred:

Arms Act, 1959 — Section 25(a)(B), 27
Constitution of India, 1950 — Article 22(5), 226
Criminal Procedure Code, 1973 (CrPC) — Section 107, 110, 161
National Security Act, 1980 — Section 3, 3(1)(a), 3(2), 3(3), 5A
Penal Code, 1860 (IPC) — Section 120(B), 302, 304, 307, 324

Citation : (2015) 2 GLD 48 : (2014) 4 GLT 802

Hon'ble Judges : Deepak Gupta, C.J.;S.C. Das, J

Bench : Division Bench

Advocate : Somik Deb, S. Bhattacharjee and D.P. Ghosh, Advocate for the Appellant; B.C. Das, Advocate General and R.C. Debnath, Addl. P.P, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—By filing this writ petition under Article 226 of the Constitution of India, the petitioner challenged the order of detention dated 04.03.2014 (Annexure-P1 to the writ petition) issued by respondent No. 4, the District Magistrate, West Tripura, Agartala(for short, D.M., West Tripura) under the National Security Act, 1980 (for short, N.S. Act) and the subsequent order of confirmation of the said detention order issued by the State Government on 25.04.2014 (Annexure-P12 to the writ petition) and the petitioner prayed for quashing/setting aside the said order of detention and order of confirmation and for releasing him from custody.

2. Heard learned counsel, Mr. Somik Deb for the petitioner and learned Advocate General, Mr. B.C. Das, assisted by learned Addl. P.P., Mr. R.C. Debnath for respondent Nos. 2 to 5. None appeared for respondent No. 1.

3. Respondent No. 5, the Superintendent of Police, West Tripura, Agartala(for short, S.P., West Tripura) submitted a report to respondent No. 4, D.M., West Tripura, dated 24.02.2014, proposing/requesting thereby to pass an order of

detention of the petitioner u/s 3(2) of the N.S. Act to prevent him from acting in any manner prejudicial to the security of the State and maintenance of public order.

4. Considering that report, respondent No. 4, D.M. West Tripura passed the impugned order of detention dated 04.03.2014 u/s 3(3) of the N.S. Act and the detention order was served on the petitioner in the Central Jail, Agartala on the same date of passing the order.

For ready reference and for fair appreciation, the impugned order of detention is reproduced which reads as follows:

"GOVERNMENT OF TRIPURA OFFICE OF THE DISTRICT MAGISTRATE & COLLECTOR WEST TRIPURA DISTRICT (Confidential Section)

No. 1(53) DM/W/CON/2014

Dated: 04-03-2014

ORDER

UNDER NATIONAL SECURITY ACT, 1980

WEST TRIPURA DISTRICT.

WHEREAS, the State Government, in exercise of the powers conferred by sub-section(3) of Section 3 of the National Security Act, 1980 has issued direction vide Order/Notification No. 25(1)-PD/88-II, dated 25-12-2013 that District Magistrate in their respective jurisdiction shall exercise the powers conferred by Sub-Section (2) of Section 3 of the Act;

AND

WHEREAS, in certain areas within the local limits of my jurisdiction as District Magistrate of the West Tripura District, anti social activities like rowdy/rough, habitual crimes, forceful extortion, incidents of murders and movements of mafias whose avowed objective is to create lawlessness which is prejudicial to the maintenance of public order in the State and safety of the people;

AND

WHEREAS, I have carefully gone through the reports, documents and information made available to me in respect of Sri Shyamal Das @ Simul(41) S/o Late Narendra Das of Joypur, P/S West Agartala, district West Tripura and it appears to me that he is involved in the criminal activities which are extending to Assam and neighboring Bangladesh's territory too.

AND

WHEREAS, it appears to me that he was an active participant in the incident/ series of incidents mentioned in the GROUNDS FOR DETENTION which is annexed herewith and forms part of this order and those indicates incidents were

aimed at seriously affecting the peace and tranquility of the community at large with repetitive tendency and have disrupted the Public order;

AND

WHEREAS, it appears from the West Agartala P/S. Case No. 97/2008 U/S. 324/325/302 IPC dated 25-05-2008 that on 09-05-2008, East Agartala PS Case No. 194/2013 U/S. 395/400 IPC 25(a)(B)/27 of Arms Act dated 21-09-2013, West Agartala PS Case No. 355/2013 U/S. 395/400/307 IPC and 27 Arms Act dated 23-11-2013, West Agartala PS Case No. 02/2014 U/S. 458/387/120(B)/34 IPC dated 03-01-2014, East Agartala PS GDE No. 967 and 972 dated 19-10-2013, West Agartala PS GDE No. 102 dated 02-09-2013, GD No. 104 dated 02-09-2013, GDE No. 500 dated 10-11-2013, GDE No. 508 dated 11-11-2013, GDE No. 534 dated 12-01-2014, GDE No. 548 dated 12-11-2013, MG Bazar TOP GDE NO. 344 and 345 dated 18-12-2014, East Agartala PS GDE No. 1821 and 1828 dated 30-11-2013, GDE No. 1131 and 1144 dated 18-02-2014, NCC PS GDE No. 1133 and 1138 of 19-02-2014, West Agartala PS GDE No. 855 and 879, West Agartala PS PR No. 115/14 U/S. 110 CrPC dated 16-01-2014, East Agartala PS PR No. 4202/2013 U/S. 110 CrPC dated 21-2-2013, PR No. 3592 U/S. 107 CrPC dated 20-10-2013 that subject is habitual criminal, active anti social, rowdy and can commit serious crime at any place. The Subject is in the judicial custody at Kendriya Sansodhanagar with effect from 16-12-2013.

WHEREAS, there is a likelihood of his release on bail and if released on bail, there is also likelihood of his committing criminal activities like murder, extortion, anti-social activities etc. and threat to public order;

AND

WHEREAS, I am satisfied that for preventing Sri Shyamal Das @ Simul(34), S/O Lt. Narendra Das of Joypur, P/S. West Agartala, Dist-West Tripura from indulging in any activities prejudicial to the public order within the local limits of my jurisdiction, it is necessary and expedient to detain him under the Act;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (2) of section 3 of the Act read with notification/order of the State Government issued under sub-section (3) of section 3 and in consideration of the grounds of detention hereinafter appearing(annexed herewith), I, Abhishek Singh, District Magistrate of West Tripura District do hereby order that the aforesaid person be detained u/s 3(2) of the National Security Act, 1980 for one year from the date of the detention order.

It is mentioned that the detainee Sri Shyamal Das @ Simul(34) S/O Lt. Narendra Das of Joypur, P/S. West Agartala, Dist-West Tripura has the right u/s 8(1) to submit his representation to Central/State Government against this order of detention. Such representation may be submitted to the undersigned for onward transmission to the Central/State Government. The detainee is also informed that

he will get all reasonable opportunity for making representation against this order to the Central/State government. He may therefore state to the undersigned what opportunity he needs for this purpose. The detainee is also apprised of his right to make representation before the undersigned against this detention order.

The detainee is informed that he also has a right to make representation to and be heard before the Advisory Board.

The Superintendent of Kendriya Sansodhanagar is requested to depute a responsible Officer at the time of effecting detention order to the addressee who will explain in detail the contents of this order along with grounds of detention and other relevant papers like FIR, copies of statement, etc. Even assistance of another government Official or any other person may be taken to brief him about the order etc. in the language which the detainee understands in presence of two witnesses on receipt of signature or thumb impression in token from the detainee.

The Superintendent of Kendriya Sansodhanagar is directed to extend all assistance to the detainee in making representation to the concerned authority. The assistance provided by the Superintendent of Kendriya Sansodhanagar may include stationery and any other item as desired by the detainee. The Superintendent of Kendriya Sansodhanagar will also provide a literate person who shall assist the detainee, if he is not literate, in drafting the representation to the Central/State Government.

-Sd- [Abhishek Singh] District Magistrate West Tripura, Agartala."

5. It is a settled law that a detention order under the N.S. Act may be made by the appropriate authority on subjective satisfaction based on the materials placed before it. If the authority was satisfied that the detention of such person was necessary to prevent the person from being indulged in anti-national activities and/or vitiating the public order and that the person was a potential danger to the society, whose activities were prejudicial to the maintenance of public order and there was a likelihood that he would continue such activities if he was allowed to remain at large, the appropriate authority(D.M.) can issue such an order of detention.

6. The first argument advanced by learned counsel, Mr. Deb for the petitioner is that the petitioner was in custody w.e.f. 16.12.2013 in connection with East Agartala P.S. Case No. 194 of 2013 and West Agartala P.S. Case No. 355 of 2013. The order of detention was passed on 04.03.2014 when the petitioner was already in custody in connection with those FIR cases. According to learned counsel Mr. Deb, the preventive detention, being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability, etc. ordinarily, is not needed when the detenu is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. According to Mr. Deb, learned

counsel, there was no material before the detaining authority to be reasonably satisfied that the detenu was likely to be released on bail and nothing is mentioned in the detention order as to what material the detaining authority had considered to arrive at a conclusion that the detenu was likely to be released on bail in the criminal cases in connection with which he was already in custody. Mr. Deb further contended that if the detaining authority is reasonably satisfied with cogent materials that there is likelihood of his release and in view of his antecedent activities, which are proximate in point of time, he may be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made. It is contended by Mr. Deb that the detenu's coming out on bail was merely ipse dixit of the detaining authority, unsupported by any materials whatsoever. There was no cogent materials before the detaining authority on the basis of which the detaining authority satisfied himself that the detenu was likely to be released on bail and hence the detention order cannot sustain.

6.1. Learned Advocate General, on the other hand, has submitted that the subjective satisfaction of the detaining authority is enough to arrive at a conclusion that the detenu was likely to be released on bail in the criminal cases in which he was in custody at the time of passing the order. Referring to Annexure-P2 colly learned Advocate General has submitted that Bail Application No. 12 of 2014 in connection with West Agartala P.S. Case No. 355 of 2013 was heard on 11.02.2014 and the bail order was passed on 06.03.2014 and in Bail Application No. 13 of 2014 in connection with East Agartala P.S. Case No. 194 of 2013 was heard on 13.02.2014 and the bail order was passed on 25.03.2014 and those two documents filed by the petitioner make it abundantly clear that on the date of passing of the detention order, i.e. on 04.03.2014 both the bail applications were already heard and pending for order before this Court and in Bail Application No. 12 of 2014 order was passed on 06.03.2014 while in Bail Application No. 13 of 2014 order was passed on 25.03.2014. It is, therefore evident that the detaining authority had valid reason to arrive at a conclusion that the petitioner may be released on bail at any time and therefore the detention order was passed and it was served on the petitioner on the date of passing the order itself.

6.2. In the detention order, which is reproduced hereinbefore, the respondent No. 4, the detaining authority has mentioned--

"WHEREAS, there is a likelihood of his release on bail and if released on bail, there is also likelihood of his committing criminal activities like murder, extortion, anti-social activities etc. and threat to public order;"

Admittedly, there is no mention in the detention order that any bail application was pending for consideration. In his counter affidavit, respondent No. 4 in para 8 stated that considering the materials placed before him, he became aware that the detenu was in jail in connection with criminal cases and he was satisfied that there was a real possibility of the detenu being released on bail and that after his

release he will indulge in criminal activities like murder, extortion, anti-social activities, threatening public order and it was necessary to detain him in order to prevent him from doing so. The detention order was passed taking into consideration the said facts. He has also stated that the detenu himself has admitted that he was released on bail by the orders of the Hon"ble High Court dated 06.03.2014 and 25.03.2014. He has also stated that the preventive detention is based on reasonable prognosis of future behaviour of a person based on his past activities in the light of surrounding activities and it is not an order of punishment for past activities.

6.3. In the grounds of detention 4(four) FIR cases have been referred in ground Nos. 3 to 6. In West Agartala P.S. Case No. 97 of 2008 under Sections 324/325/302 of IPC being charge-sheeted he was already tried by the Court of Sessions, which found him guilty but on appeal he was acquitted by the High Court on 23.09.2013. In East Agartala P.S. Case No. 194 of 2013 under Sections 395, 400 of IPC and Section 25(a)(B)/27 of the Arms Act registered on 21.09.2013 he was in custody. In West Agartala P.S. Case No. 355 of 2013 registered under Sections 395, 400, 307 of IPC and 27 of the Arms Act registered on 23.11.2013 also, he was in custody. In ground No. 6, another FIR case has been referred, i.e. West Agartala P.S. Case No. 2 of 2014 under Sections 458, 387, 120(B)/34 of IPC and in that FIR it was alleged that some persons named in the FIR who were the associates of the petitioner demanded an amount of Rs. 2,00,000/- (rupees two lakhs) to the informant to meet the expenses of Court to get their leader, i.e. the petitioner, released from the cases. He was not shown arrested in that case.

6.4. Annexure-P2 colly, i.e. the copies of bail orders passed by the Single Bench of this Court in Bail Application No. 12 of 2014, shows that in connection with West Agartala P.S. Case No. 355 of 2013 under Sections 395/400/307 of IPC and Section 27 of the Arms Act, the petitioner moved bail application and hearing on the bail application was made on 11.02.2014 and the order was passed on 06.03.2014. In Bail Application No. 13 of 2014(Annexure-P2 colly) in connection with East Agartala P.S. Case No. 194 of 2013, the bail application moved on behalf of the petitioner was heard on 13.02.2014 before the Single Bench of this Court and the order was passed on 25.03.2014. So, it is an admitted position that on the date of passing the order of detention dated 04.03.2014 the bail applications were moved on behalf of the petitioner in connection with both the police cases in which he was in custody and those were pending for order. So, the subjective satisfaction of the detaining authority, though it is not mentioned in the detention order, it is on record that bail applications were already heard in connection with both the cases in which the petitioner was detained in custody and subsequently order of bail was passed in both the cases. It cannot, therefore, be said that it was a simply ipse dixit of the detaining authority that the petitioner may be released on bail at any time. Rather in our considered opinion, the detaining authority had valid reason for arriving at a subjective satisfaction of the fact that the detenu was likely to be released on bail in near

future.

6.5. In the case of Rameshwar Shaw Vs. District Magistrate, Burdwan and Another, the apex Court has held--

"12. As abstract proposition of law, there may not be any doubt that S. 3(1)(a) does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail; but the relevant facts in connection with the making of the order may differ and that may make a difference in the application of the principle that a detention order can be passed against a person in jail..... "

6.6. In the case of Union of India (UOI) Vs. Paul Manickam and Another, the apex Court in para 14 of the judgment observed:

"14. So far as this question relating to the procedure to be adopted in case the detenu is already in custody is concerned, the matter has been dealt with in several cases. Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and decision in this regard must depend on the facts of the particular case. Preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability etc. ordinarily, it is not needed when the detenu is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. If the detaining authority is reasonably satisfied with cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated. (See N. Meera Rani Vs. Government of Tamil Nadu and Another, and Dharmendra Suganchand Chelawat and another Vs. Union of India and others, The point was gone into detail in Kamarunnissa and Others Vs. Union of India and another, The principles were set out as follows: even in the case of a person in custody, a detention order can be validly passed: (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds

of detention show an awareness of custody and/or a possibility of release on bail."

6.7. In the case of *Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another*, the apex Court in para 27 of the judgment observed:

"27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed."

6.8. Preventive detention, being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State, maintaining of public order, etc. ordinarily is not needed when the detenu was already in custody. The detaining authority should show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. If the detaining authority was reasonably satisfied with the cogent reasons that the detenu was likely to be released on bail, he can still be detained by a detention order.

6.9. In the case at hand, Annexure-P2 colly, the two bail orders passed by the Single Bench of this Court as indicated hereinbefore, shows that the bail applications preferred on behalf of the petitioner for bail in connection with both the FIR cases were already heard and pending for order and bail orders were passed subsequent to the passing of the detention order dated 04.03.2014. Since the bail applications were pending for consideration it cannot be said that the observation of the District Magistrate was merely a bold statement and an ipse dixit of the detaining authority and hence in our considered opinion the argument advanced by learned counsel, Mr. Deb on this ground has no merit to set aside and/or to quash the order of detention.

7. The next point advanced by learned counsel, Mr. Deb is that the impugned order of detention dated 04.03.2014 is founded on vague, irrelevant, non-existent and extraneous factors having no live link with the object of detention. It is submitted that the detention order is not sustainable since it does not record the subjective satisfaction of respondent No. 4 as to on what grounds the respondent No. 4 has arrived at a conclusion that the petitioner would indulge in activities prejudicial to the security of the State or the maintenance of public order. It is submitted that the petitioner has already been acquitted in West Agartala PS Case No. 97 of 2008. His bail order has been passed by the Single Bench of the High Court in connection with East Agartala P.S. Case No. 194 of

2013 and West Agartala P.S. Case No. 355 of 2013. West Agartala P.S. Case No. 2 of 2014 was registered when he was already in custody. All the G.D. Entries mentioned in the grounds of detention in Sl. Nos. 7 to 18 are all made by the police officers without any reference to any independent source and that those were vague G.D. Entries made within a period of few months only for the purpose of detaining the petitioner at any cost. Grounds in Sl. Nos. 19 to 21 are some police reports submitted under Sections 110 and 107 of CrPC. Those grounds since are vague, non-existent and made on extraneous factors cannot be considered as a valid ground for detention under the N.S. Act. The order does not disclose any ground for reaching at the conclusion that the petitioner would indulge in activities, which are prejudicial to the security of the State, and maintenance of public order, posterior to his release from custody and therefore the impugned order of detention is liable to be quashed/set aside. In support of his contention learned counsel, Mr. Deb relied on the following case laws:

- (i) Gulab Mehra Vs. State of U.P. and Others,
- (ii) Jahangirkhan Fazalkhan Pathan Vs. Police Commissioner, Ahmedabad and Another,
- (iii) Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City and Another,
- (iv) Ahmedhussain Shaikhhussain @ Ahmed Kalio Vs. Commissioner of Police, Ahmedabad and Another,
- (v) Veerendra Singh Vs. State of M.P. and Another,
- (vi) Smt. Pebam Ningol Mikoi Devi Vs. State of Manipur and Others,

7.1. Learned Advocate General has submitted that the grounds of detention is a part of the detention order wherein Sl. Nos. 1 and 2 are introductory to the grounds for detention and the rest are all definite grounds considered by the detaining authority while passing the order of detention. Out of those 19(nineteen) grounds considered by the detaining authority if one ground is found to be cogent and material, it is enough to sustain an order of detention. He has referred the provision of Section 5A of the N.S. Act and submitted that consecutive criminal cases of serious offence registered against the petitioner and his associates made it abundantly clear that the petitioner is a potential threat to the public order in general and there is no other alternative but to pass an order of detention to prevent him from his such nefarious activities. The grounds of detention in Sl. Nos. 3 to 6 are very cogent, consistent and definite and in one case though the accused has been acquitted in the meantime the fact of that case may be taken into consideration for passing the detention order. According to learned Advocate General, all those G.D. Entries mentioned in Sl. Nos. 7 to 18 of the grounds of detention were made by the police officers in the respective P.S. based on definite allegations against the petitioner and those G.D. Entries also may be taken to consideration along with ground Nos. 3 to 6 as

collateral supporting materials which have been reasonably considered by the detaining authority. Grounds in Sl. Nos. 9 to 21 are the police reports submitted under Sections 110 and 107 of CrPC which also show that the petitioner was involved in activities which disturbed the tempo of the community and therefore the order of detention made by the detaining authority was justified which has been rightly approved by the State Government after it was approved by the Advisory Board and therefore there is no reason to set aside and/or quash the order. In support of his contention learned Advocate General referred the following case laws:

- (i) Attorney General for India and Others Vs. Amratlal Prajivandas and Others,
- (ii) Vashisht Narain Karwaria Vs. State of U.P. and another,
- (iii) Madan Lal Anand Vs. Union of India and others,
- (iv) State of U.P. and Another Vs. Sanjai Pratap Gupta @ Pappu and Others,
- (v) Dhananjoy Das Vs. District Magistrate, Darrang and Another,

7.2. In the impugned detention order dated 04.03.2014, the detaining authority, i.e. respondent No. 4 has stipulated that the petitioner was an active participant in the incidents/series of incidents mentioned in the grounds of detention which is annexed with the detention order and forms part of that order and that those incidents were aimed at seriously affecting the peace and tranquility of the community at large with repetitive tendency and/or disrupted the public order. It is, therefore evident that the grounds of detention has been made a part of the detention order. The said grounds of detention, for ready reference, are reproduced hereunder which reads as follows:

"DISTRICT-WEST TRIPURA DETENTION ORDER UNDER NATIONAL SECURITY ACT, 1980. GROUNDS FOR DETENTION

With respect to Sri Shyamal Das @ Simul(41) S/O. Lt. Narendra Das of Joypur, P/ S. West Agartala, Dist-West Tripura.

1. It appears from the history sheet of the subject Sri Shyamal Das @ Shimul(41) S/o Lt. Narendra Chandra Das of Joypur PS-West Agartala, District-West Tripura prepared in this district dated 18-07-2010 that he is a listed rowdy/ rough of Agartala city. He is a habitual criminal of the Agartala city and its adjacent areas. He is involved in many anti social activities in Agartala city and its adjoining areas. Due to his nefarious activities, local people are afraid in lodging any complaint to the police against him. The subject is known to have involved in many incidents of murder in Agartala city areas. Due to his nefarious activities and criminal background, people are very scared of him and do not want to speak openly against him. The criminal activities of Shyamal Das are extending to Assam and neighboring country Bangladesh territory too.

2. In the recent past, the criminal activities of Sri Shyamal Das @ Shimul(41) S/ o Lt. Narendra Chandra Das of Joypur PS-West Agartala, District-West Tripura

have been increased in many fold and he started committing crime in Agartala city in organized manner. He committed a series of crimes at Agartala city which are prejudicial to the maintenance of public order, grave and repetitive in nature. Many cases were not reported to police out of fear of life.

3. It is revealed from the FIR copy of West Agt PS case number 97/2008 U/S. 324/325/302 IPC dated 25-05-2008 that on 09-05-2008 at about 1330 hrs FIR named accused person Shyamal Das and Nikhil Debnath called the son of the complainant namely Biswajit Banik S/o Lt. Milan Chandra Banik of North Badharghat, Bapuji School road, PS-West Agartala from his house and forcibly took him in a motor bike towards Bapuji School and wrongfully confined him for two days in unknown destination and assaulted him severely with false allegation that his son committed theft in the house of Shyamal Das. The complainant further stated that the accused person intentionally implicated her son in a theft case and assaulted him severely. On 11-05-2008 the subject Shyamal Das and his associates brought Biswajit Banik in her house with mark of injuries on his person and one Nikhil Debnath raised allegation that a piece of Gold chain and a gold ring were recovered from the pocket of Biswajit Banik and again assaulted him severely in presence the complainant and the witnesses. Thereafter, her son was handed over to the police with a fabricated complaint. On 16-05-2008 at about 2230 hrs Biswajit Banik succumbed to his injuries at GB Pant Hospital Agartala. The complainant lodged the complaint against the subject Shyamal Das and his associates who are responsible for commission of murder of her son. (Copy of FIR is enclosed in Annexure-A).

After completion of investigation, IO SI Sanjoy Laskar submitted charge sheet against the subject and others on 13-08-2008 u/s. 342/325/302/34 IPC. (Copy of Charge sheet is enclosed in Annexure-B, Copy of statement of witnesses recorded by IO is enclosed in Annexure-C).

The LD. Additional Session Judge, West Tripura, Sri K. Chakraborty conducted trial of the case and after conclusion of the trial the Ld. Court convicted the subject Shyamal Das @ Shimul and others namely Snehangshu Roy, Tapan Miah, Bikash Das and Safikul Islam @ Latif with rigorous imprisonment for a period of ten years and to pay a fine of Rs. 20,000/- each I.d. to suffer rigorous imprisonment for a period of two years for the offence punishable u/s 304 part II of the Indian Penal code read with section 34 IPC.

Also they were sentenced to suffer imprisonment for a period of one year each and also to pay fine of Rs. 1,000/- each I.d. to suffer rigorous imprisonment for a period of two months for the offence punishable u/s 342 IPC read with section 34 IPC. Both the sentence shall run consecutively. (Copy of Judgment passed by Sri K. Chakraborty, Addl. Session Judge, West Tripura on 25-11-2010 is enclosed in Annexure-D).

Thereafter the subject filed an appeal before the Hon"ble High Court of Tripura against the Judgment passed by Ld. Additional Session Judge, West Tripura. On

23-09-2013 after hearing the appeal the Hon''ble High Court set aside the Judgment passed by Ld. Additional Session Judge, West Tripura and acquitted the Shyamal Das and others from the liability of this case. (Copy of Judgment passed by Hon''ble High Court of Tripura on 23-09-2013 is enclosed in Annexure-E).

It is to be mentioned here that though the Hon''ble High Court has acquitted the subject, the prosecution and police department has taken up the matter with Government to prefer appeal against the Judgment Passed by the Hon''ble High Court of Tripura before the Hon''ble Supreme Court of India.

4. It is revealed from the FIR copy of East Agartala PS Case number 194/2013 U/ S. 395/400 IPC and 25(a)(B)/27 of Arms Act dated 21-09-2013 that on 21-09-2013 the complainant of the case received one secret information from reliable source that one criminal gang headed by Shyamal Das @ Shimul and another Amitava Ghosh @ Ankan assembled near Sanitala old motor stand area and made a preparation in his house for committing dacoity in any house under East Agartala PS area or other places of Agartala city and its adjoining areas. For that purpose a meeting was arranged in the house of Amitava Ghosh @ Ankan. On the basis of that information, the complainant accompanied with SDPO Sadar Sri Rajendra Datta O/C MG Bazaar TOP, SI Manik Lal Deb, SI Sukanta Das and PS staff including women staff of East AGT PS and TSR personnel's went to the house of the accused Amitava Ghosh @Ankan. As soon as the police party went to the house of the Amitava Ghosh and was just cordoning his house, the accused persons namely Shyamal Das @ Shimul, Billal Miah, Rajendra Das and some 8/9 others jumped out from that house and managed to escape from the backside of the house. They started running and fled away. The accused Amitava Ghosh @ Ankan could not flee away from spot and the police party managed to detain him from his house. The police party headed by the O/C East Agartala PS conducted search in the house of the Amitava Ghosh @ Ankan in the presence of the independent witnesses. At 2130 hrs during search in the room of Amitava Ghosh @ Ankan, the police party recovered one unloaded automatic 7.65 bore pistol along with five rounds live 7.65 cartridges and one iron made sharp bhujali having length about 18 inches including handle which was kept under the pillow of his bed. The recovered articles i.e. weapons were seized by SI Rana Chatterjee O/C MGB TOP in the presence of the witnesses as directed by the O/C PS and arrested the accused person Amitava Ghosh @ Ankan. (Copy of FIR is enclosed in Annexure-F)

During investigation of the case, the accused person of the case namely Sri Shyamal Das, Uday Sankar Banik and Billal Miah were arrested. They were forwarded to the LD. Court and brought in police remand. During police remand they were interrogated by IO and a team of police officers. During investigation, the involvement of the shyamal Das @Shimul in c/w the case has been well established. During investigation from the statement of the witnesses and circumstantial evidence as well as from the interrogation of the arrested accused

person it has been prima facie established that the accused Shyamal Das @ Shimul belonging to a group of habitual criminals/dacoits and on 21-09-2013 they assembled in the house of Amitava Ghosh @ Ankan with a preparation to commit dacoity in the house of successful businessmen/contractor of Agartala city. They Accused Shymal Das is the leader of the gang of the mafias active in Agartala city and on 21-09-2013 he along with his other associates assembled in the house of co-accused Amitava Ghosh @ Ankan for the purpose of habitually committing heinous crime and made criminal conspiracy to commit dacoity in Agartala city areas. Evidence has also came out in investigation that the accused persons threatened and put pressure upon some of the witnesses of the case so that they do not come out for giving evidences against them in court.

5. It is revealed from the FIR copy of West Agartala PS Case number 355/2013 U/S. 395/400/307 IPC and 27 of Arms Act dated 23-11-2013 that the Complainant is a journalist by profession and on 23-11-2013 at 1330 hrs for performing his professional duties he and his colleague went to the Water resource office situated at Gangail road, Battala. At that time an organized group of 20 Mafias criminally restricted their movement by showing automatic pistol and other weapons. Their intention was to kill the complainant and his colleagues. The criminal group then tried to kill the complainant and his colleagues. The Mafias started physically assaulting them with an ulterior motive, even they snatched away the gold chains, camera, money bags of the complainant and his colleagues. This incident created terror in whole of Agartala Town. The people from media organization took out protest marches and the incident got wide coverage in the media, which created an impression that Agartala city was unsafe for the law abiding people to live. As a result panic was created in Agartala city and an atmosphere insecurity was prevailing. Police had to work very hard to restore the confidence of people through action like arrest of the subject. The complainant identified some of the antisocial but could not identify most of them. He lodged the FIR and SI Ranjit Debnath of West Agartala PS was entrusted for the investigation of the case. SI Ranjit Debnath examined many witnesses who are acquainted with the fact and circumstances of the case followed by recording of their statements u/s. 161 CrPC. From the statement of the witnesses examined by the IO, the name of Shyamal Das as the master mind/ leader of the gang was come out. There are direct evidences against Shyamal Das in the case and some of the witnesses even saw him at the PO. It came out that Shyamal Das and his group members committed the crime in order to collect extortion money with keeping away the media from their organized crime activities and also to give signal to the other media group that nobody should dare to come forward to publish their activities. The case is under investigation. (Copy of FIR is enclosed in Annexure-G).

6. It is revealed from the FIR copy of West Agartala PS case number 02/014 u/s. 458/387/120(B)/34 IPC dated 03-01-2014 that on 02-01-2014 at about 2030 hrs five anti social elements forcefully entered into the house of the complainant who is the teacher by profession, the miscreants by putting the complainant in

fear of death and grievous injury demanded Rs. 2,00,000/-(Rupees two lakhs) from him as ransom to meet the expenses of court to get released of their leader Shyamal Das @ Shimul. By saying so the miscreants/mafia gang of Shyamal Das @ Shimul left the house of complainant and stated that they would come again to collect the money. Again on the same day at 2100 hrs when the said miscreants came to the house of complainant to collect the demanded money, the local people detained one of the associate of Shyamal das @Shimul namely Sri Jagadish Hrishi Das @ Bhaiya. During investigation from the statement of the witnesses examined by the IO it came out that Shyamal Das @ Shimul(41) S/o Lt. Narendra Chandra Das of Joypur PS-West Agartala, District-West Tripura is the leader of the Mafia Gang active under Agartala city and although he is in jail custody but he is making criminal conspiracy from jail to collect money out of extortion/illegal negotiation of land selling/purchase/negotiation of government contract works. The associates of the Shyamal Das @ Shimul on the other hand are desperately trying to get him released from the jail custody and for that reason they are forcibly collecting money from the people. It is clear from the statement of the witnesses examined by the IO that from jail he is continuing his extortion activities through his agents. The prima facie involvement of Shyamal Das was established in that case and he was shown arrest in c/w the case. The open extortion activities of his gang members under the direction of Shyamal Das have created panic in the area and the common people are scared of his gang. They are feeling insecure of their life and property. This has affected the normal life in the area and hence the public order effected very badly. (Copy of FIR is enclosed in Annexure-H).

7. It appears from the extract copy of East AGT PS GD Entry number 967 and 972 dated 19-10-2013 that local common people of GB informed police that Shyamal Das @ Shimul(41) S/o Lt. Narendra Chandra Das of Joypur PS-West Agartala, District-West Tripura was making disturbance in the GB/Kunjaban/Nandannagar areas. It was reported that he was forcefully collecting money from successful businessmen, contractors, Land seller etc. SI Manik Lal Deb of East AGT PS verified the matter and found that the fact was true. It was found that Shyamal Das @ Shimul is a very desperate and dangerous person, he always makes "ADDA" with his associates rowdies in these areas. He threatens the local people by saying that if any person report against him to police, he would kill him. He openly stated that many cases were lodged against him in many PS"s but nobody could do anything against him. No one can do anything against him. His activities creates panic in the area. No person was found willing to speak against him out of fear. (Copy of extract of GD is enclosed in Annexure-I-1 & I-2).

8. It appears from the extract of West AGT PS GD Entry number 102 dated 02-09-2013 that some anti social under the leadership of Shyamal Das @ Shimul assembled in front of MI office at Battala and they were threatening to the bonafide contractors who were trying to enter the MI office for their official works. Due to the activities and fear of Shyamal Das and his group, the contractors could not enter into that office for their works. The norms of the

office system were broken due to the terror activities of Shyamal Das @ Shimul. (Copy of extract of GD is enclosed in Annexure-J).

9. It appears from the extract of West AGT PS GD Entry number 104 dated 02-09-2013 that SI Ranjit Debnath the then OC of Battala TOP under West AGT PS after conducting enquiry of the West AGT PS GDE no 102 of date came to know that Mafia Leader Shyamal Das @ Shimul along with his gang members were collecting money from the listed contractors of the areas by way of putting them in fear. It also came out that the activities of the Shyamal Das @ Shimul and his gang members are highly prejudicial to the maintenance of the public order. The Shyamal Das @ Shimul and his gang members are involved in destructive and subversive activities in the West Agartala PS areas and Battala TOP areas. People are in fear to open their mouth against him and his gang. Out of their activities, the entire official machinery/development works has been paralyzed/collapsed. Not only that due to the activities of Shyamal Das @ Shimul and his Gang the normal life of the peace loving public of the area has been affected very badly. (Copy of extract of GD is enclosed in Annexure-K).

10. It appears from the extract copy of West AGT PS GD Entry number 500 dated 10-11-2013 that due to the gun shoot murder of Dilip Ghosh S/O Lt. Dhananjoy Ghosh of Rampur, Gangail road on 09-11-2013 at Ramnagar road no 09 in open public place the normal life of the public in that area has been badly affected and has become disordered. Total panic was prevailing in that area as students were not willing to go to their school, ladies stop going outside their house and businessmen were avoiding to run their shops and go out for work. It came out that the public learnt that one Shyamal Das @ Shimul and some others anti socials elements group might have committed the crime. Out of fear of the Mafia group led by Shyamal Das @ Shimul, the local public did not open their mouth. Although normalcy has been developed in that area but, still now there is a panic in the areas out of fear of shyamal Das and his Gang. (Copy of extract of GD is enclosed in Annexure-L)

11. It appears further from the extract copy of West AGT PS GD Entry number 508 dated 11-11-2013 that OC West AGT PS and OC Ramnagar TOP after visit of Ramnagar areas in connection with the West AGT PS GDE number 500 and during enquiry the contents of GD entry are found true. It is further gathered from the residents of the area that Shyamal Das @ Shimul is a very desperate and dangerous person and he along with his group are engaged in collection of money from the listed successful contractors/businessmen by way of threat and negotiation. The activities of Shyamal Das @ Shimul and other antisocial whose names have come out are highly prejudicial to the maintenance of public order, grave threat to the normal life and peace for the society. They are involved in destructive activities and subversive activities in the West Agartala PS jurisdiction. People do not open their mouth against them out of fear of their life and property. These people are promoting enmity among the various section of the society. Due to their such type of activities, the entire life and the normal life

of the peace loving people of the area have been very badly affected. (Copy of extract of GD is enclosed in Annexure-M)

12. It appears from the extract copy of West AGT PS GD Entry number 534 dated 12-01-2014 that on 12-01-2014 at 1855 hrs West Agartala PS received a telephonic information that a group of Mafia who are the associate of Shyamal Das @ Shimul assembled at Ujjayanta Market in front of Tulshibati School with a view to make a plan to collect huge amount money from listed contractors as well as businessmen/vendors of land in order to get released of their leader Shyamal Das @ Shimul from the jail custody. The informant also added that the normal life in Ujayanta Market area was badly hampered due to the anti social activities of Shyamal Das and his group. (Copy of extract of GD is enclosed in Annexure-N)

13. It appears from the extract copy of West AGT PS GD Entry number 548 dated 12-11-2013 that OC West PS went to Ujayanta Market for verification of the entry noted in West AGT PS GD entry number 534 of 12-01-2014 and learnt from local businessmen that on seeing police, the anti social elements who are associates of Mafia Leader Shyamal Das @ Shimul fled away from the spot but nobody opened their mouth against them out of fear of retaliation from Shyamal Das @ Shimul" and his group. (Copy of extract of GD is enclosed in Annexure-O)

14. It appears from the extract copy of MG Bazaar TOP GD Entry number dated 344 and 345 dated 18-02-2014 that on 18-02-2014 MG Bazaar TOP received an information from reliable source that some anti social elements namely 1 Mafir Uddin @ Kutti Miah 2. Biswajit Chakraborty @ Mangal. Pintu Miah 4. Litan Debnath 5. Mithun Debnath 6. Bikash Das 7. Sankar Ghosh. Dalu ghosh 8. Gabbar Suman 9. Mintu and others who are associates of Mafia Leader Shymal Das @ Shimul were assembled in Ramthakur Sangha areas and they were sending messages to the successful businessmen of Gulbazaar areas to give them money as part of "Hafta" for running their business without any disturbance. The source added that these anti social elements were collecting money as a part of their campaign to get their leader Shyamal Das @ Shimul released from Jail custody. OC MG Bazaar TOP verified that information and from the extract of the GD entry number 344 and 345 of 18-02-2014 it came out that these associates of the Shyamal Das visited Ramthakur Sangha areas in order to extort money from business heads of Gul bazaar by way of putting them in fear of death. The antisocial elements fled away by sensing police arrival. However, their presence and forcible collection of money from local businessmen created a terror among the business community of MG Bazaar but no body was found willing to give any evidence against them out of fear of the past activities of Shyamal Das. (Copy of extract of GD is enclosed in Annexure-P-1 & P-2)

15. It appears from the extract copy of East AGT PS GD Entry number 1821 and 1828 dated 30-11-2013 that OC East AGT PS S. Basu Roy Chowdhury got information from his source that the Gang of Mafia/anti socials of Agartala under the leadership of Sri Shyamal das @ Shimul(41) S/o Lt. Narendra Chandra Das of

Joypur PS-West Agartala, District-West Tripura had assembled in the Malanchaniwas areas of the PS and they were collecting money from the bonafied contractors by way of threat. The activities of these persons are highly prejudicial to the maintenance of public order. They are indulged in destructive activities in East AGT PS as well as other PS areas of the city. People did not open their mouth out of fear of them. The OC East PS during his visit in the Malanchaniwas areas found corroboration to the above fact but no person was found willing to give evidence against Sri Shyamal Das @ Shimul as they knew that Shyamal Das and his associates would kill them if they come to know about speaking against them. (Copy of extract of GD is enclosed in Annexure-Q-1 & Q-2)

16. It appears from the extract copy of East AGT PS GD Entry number 1131 and 1144 dated 18-02-2014, that some anti social/rowdy/mafias, who are close associates of Mafia Gang Leader Shyamal Das were assembled at Math Chowmahani areas to attend a secret meeting for finding ways to get Shyamal Das @ Shimul released from the jail custody. On that information OC East AGT PS verified the matter and found that the associates of Shyamal Das@ Shimul had collected names and particulars of the witness of the East AGT PS case number 194/2013 and they had chalked out plan to terrorize the witnesses so that they do not come forward to give evidence against them at the time of trial. It was also found that from jail Shyamal Das has instructed his associates that very soon he and Amitava Ghosh @ Ankan would get bail from jail custody and would see the people who disposed before police against them. Some of the witnesses of the case who were earlier threatened by Amitava Ghosh @ Ankan made contact and they stated that for the last couple of days they noticed that some unknown people are following their movements. By the time police went to Math chowmahani these mafias fled away and could not be traced out. The local people did not open their mouth out of fear of Shyamal Das @ Shimul and his gang. (Copy of extract of GD is enclosed in Annexure-R-1 & R-2)

17. It appears from the extract copy of NCC PS GD Entry number 1133 and 1138 of 19-02-2014 that some of the mafias who are associates of Shyamal Das @ Shimul, are regularly assembling in housing Board areas in order to get control over the tender process of Government contract works under Housing board/ PWD. The mafias are stopping the bonfide government contractors to drop tender and they in collaboration with some interested contractors are negotiating the government contract works. In the process the authentic and trusted firm are not getting work and low rated/ill reputed contractors are getting government construction work in higher rates by causing huge loss of the government(loss estimated to cores of rupees) In the process Sri Shyamal Das @ Shimul(41) S/o Lt. Narendra Chandra Das of Joypur PS-West Agartala, District-West Tripura are earning huge amount of money. The Mafia gang of Shyamal Das then distributed these illegal earned money to their subordinate members of different localities/ purchased of fire arms etc and thereby dominated over the underworld criminals of Agartala city. This activities of Shyamal Das @ Shimul and his mafia Gang are

prejudicial to the maintenance of public order or they are acting in such manner which are prejudicial to the maintenance essential services to the community specially in the Public welfare related construction works. The activities of Sri Shyamal Das @ Shimul(41) S/o Lt. Narendra Chandra Das of Joypur PS-West Agartala and his Gang members is a threat to public order of the city and its adjoining areas. (Cop of extract of GD is enclosed in Annexure-S-1 & S-2)

18. It appears from the extract copy of West Agartala PS GD Entry number 855 and 879 that Sri Shyamal Das @ Shimul (41) S/o Lt. Narendra Chandra Das of Joypur PS-West Agartala and his Mafia Gang are planning to carry out massive subversive activities in the coming days after getting bail from jail custody. They had plan to eliminate some of the witnesses of East PS Case 194/2013 U/S. 395/400 IPC and 25(a)(B)/27 of Arms Act dated 21-09-2013 and West Agartala PS Case number 355/2013 U/S. 395/400/307 IPC and 27 of Arms Act dated 23-11-2013. It also appears that the Gang of Shyamal Das @ Shimul are collecting money from successful Government contractors/Businessmen by giving threat in order to meet the expenses of the court to get released of Shyamal das @ Shimul. People are not willing to open their mouths in fear of retaliation from Shyamal Das @ Shimul and his group considering their past activities. (Copy of extract of GD is enclosed in Annexure-T-1 & T-2)

19. It appears from the West AGT PS PR number 115/14 u/s. 110 crpc dated 16-01-2014 that the PR u/S. 110 CrPC was submitted by O/C West AGT PS Inspector Milan Datta against the Sri Shyamal Das @ Shimul(41) S/o Lt. Narendra Chandra Das of Joypur PS-West Agartala. The PR U/S. 110 CrPC was submitted against Sri Shyamal Das @ Shimul(41) as the habitually commits, attempts to commit, or abets the Commission of, offences, involving, a breach of the peace, and crimes which are grievous in nature, which effect the life and property of the citizen. The details of his habitual criminal activities are narrated in the said PR. (Copy of PR is enclosed in Annexure-U)

20. It appears from the East AGT PS PR number 4202/2013 u/s. 110 crpc dated 21-12-2013 that the PR u/S. 110 CrPC was submitted by O/C East AGT PS Inspector S. Basu Roy Chowdhury against the Sri Shyamal das @ Shimul(41) S/o Lt. Narendra Chandra Das of Joypur PS-West Agartala. The PR U/S. 110 CrPC was submitted against Sri Shyamal das @ Shimul(41) as he habitually commits, or attempts to commit, or abets the Commission of, offences involving a breach of the peace, and crimes which are grievous in nature. The details of his habitual criminal activities are narrated in the said PR. (Copy of PR is enclosed in Annexure-V).

21. It appears from the East AGT PS PR number 3592 u/s. 107 crpc dated 20-10-2013 that the PR u/S. 107 CrPC was submitted by SI Manik Lal Deb against the Sri Shyamal das @ Shimul (41) S/o Lt. Narendra Chandra Das of Joypur PS-West Agartala. The PR U/S. 107 CrPC was submitted against Sri Shyamal das @ Shimul(41) as he was creating disturbance in Kunjaban/ Nandannagar/GB bazaar/water resource office areas. It was found during visit of

these areas that Sri Shyamal Das @ Shimul(41) and his associates are openly threatening people and forcefully collecting money from Local Contractors, seller and purchaser of land, businessmen. He was threatening some people to sell their land to him. He openly told people that he would kill the West person who would dare to speak against him. No person was willing to speak against him out of fear. An underground panic was prevailing on such activities. To bind him down the PR was submitted. (Copy of PR is enclosed in Annexure-W)

Considering the above, I am of the opinion that Sri Shyamal Das @ Shimul(34) S/O Lt. Narendra Das of Bhattapukur, P/S. West Agartala, Dist-West Tripura should be detained u/s 3 of National Security Act. 1980.

Enclosures:-

- 1) Detention order.
- 2) Copies of FIR
- 3) Copies of GD Entries.
- 4) Other documents

-Sd- [Abhishek Singh] District Magistrate West Tripura, Agartala."

7.3. A reading of the grounds of detention in Sl. Nos. 3 to 5 shows that the petitioner was involved in three FIR cases out of which he has been acquitted in the case mentioned in Sl. No. 3. However, there is no bar for the detaining authority to take the fact of that also for consideration in passing a detention order under N.S. Act. FIR cases in Sl. Nos. 4 and 5 are two pending cases in which the petitioner was in custody at the time when the detention order was passed, i.e. on 04.03.2014. FIR case in Sl. No. 6 shows that it was a case registered while the petitioner was in custody and the case has been registered against some associates of the petitioner who indulged in extortion of money as alleged for the release of the petitioner. So, in our considered opinion, the grounds mentioned in Sl. Nos. 3 to 6 are based on cogent material which cannot be said to be vague, indefinite, irrelevant, non-existent or extraneous. The grounds stated in Sl. Nos. 7 to 18 are several 18(eighteen) numbers of G.D. Entries made in East Agartala P.S., West Agartala P.S., M.B. Bazar Police Out Post and New Capital Complex P.S. After going through those G.D. Entries we find that five G.D. Entries were made while the petitioner was in custody and the rests were made within a few months before he was arrested and detained in custody(16.12.2013). Those G.D. Entries were made by the police officers of respective Police Stations and it is a fact that there is no reference to any independent source while making those G.D. Entries. The rests 3(three) grounds mentioned in Sl. Nos. 19 to 21 are police reports submitted under Sections 110 and 107 of CrPC which shows that the petitioner habitually commits or attempts to commit or abates the commission of offence involving breach of peace and involving the public order.

7.4. For arriving at a cogent finding on the issue Section 5A of the N.S. Act is relevant for taking note of and it is reproduced here as under:

"[5A. Grounds of detention severable.-Where a person has been detained in pursuance of an order of detention [whether made before or after the commencement of the National Security (Second Amendment) Act, 1984] u/s 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly-

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are-

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever, and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds.]"

7.5. In view of the above provision, even a single ground of detention if found based on cogent material it is sufficient to maintain an order of detention.

8. In the case of Gulab Mehra(supra) the allegation was of separate incidents of extorting money from shopkeepers by threatening them and also of throwing bomb to the police party causing panic in the community as a whole. Particulars of names of persons who had been threatened for money and names of witnesses in whose presence threat was given or alleged bomb was thrown was not furnished and in the particular fact of that case the Supreme Court has held that the grounds were vague and therefore the order of detention was quashed. The Court has held that an act whether amounts to breach of law and order or a breach of public order solely depends on its extent and reach to the society. If the act is restricted to particular individuals or a group of individuals it breaches the law and order problem but if the effect and reach and potentiality of the act is so deep as to affect the community at large and/or the even tempo of the community then it becomes a breach of the public order.

8.1. In the case of Jahangirkhan Fazalkhan Pathan (supra) referring to five consecutive criminal cases the detention order was passed. The Supreme Court in para 8 of the judgment has held that the grounds regarding the vagueness of the averments made in the grounds about the petitioner indulging in criminal

activities apart from the five criminal cases lodged under the Prohibition Act and mentioned in the grounds of detention do not satisfy the requirements envisaged in Section 3(1) of the PASA Act inasmuch as the said five specific criminal cases have no connection with the maintenance of public order. The criminal activity does not appear to have disturb the tempo of life of the people of Ahmedabad city or of the particular locality. In the given facts of that case the Supreme Court set aside the detention order.

8.2. In the case of Piyush Kantilal Mehta(supra), in the grounds of detention under Gujarat Prevention of Anti-social Activities Act, 1985, two criminal cases were mentioned and in the grounds of detention it was alleged that the petitioner was a prohibition bootlegger and that by indulging in use of force and violence and by illegal sale of liquor, the petitioner creates an atmosphere of fear and terror by beating innocent citizens and that the petitioner was indulging in anti-social activities and that the activities were against public order. The Supreme Court after analyzing the grounds of detention found that the detaining authority failed to substantiate that the alleged anti-social activities of the petitioner adversely affected or were likely to be affected adversely the maintenance of public order and hence quashed the order of detention.

8.3. The case of Ahmedhussain Shaikhhussain(supra) also relates to a detention order issued under Gujarat Prevention of Anti-social Activities Act, 1985 and in that case also the detention order was quashed on the ground that the allegations were unfounded and vague. The Court has held that there is a wide gap between the law and order and public order. The criminal offence may relate to the field of law and order but such an offence would not necessarily give rise to a situation of public order. Depending upon peculiar situations an act which may otherwise have been overlooked as innocuous might constitute a problem of public order. In the given fact of that case the Court has held that selling of liquor by the petitioner would certainly amount to an offence under the Prohibition Act but without something more would not give rise to a problem of public order. Similarly commission of any other criminal offence, even assault or threat of assault, would not bring the matter within the ambit of public order.

8.4. In the case of Veerendra Singh(supra) the Division Bench of Madhya Pradesh High Court while considering a case under the N.S. Act has held that out of the grounds of detention, grounds Nos. 1 to 12 were only entries in the crime register and some of the grounds relate to preventive proceedings and other grounds do not amount to prejudicial to the maintenance of public order and therefore the order of detention was quashed.

8.5. In the case of Pebam Ningol Mikoi Devi(supra) the Supreme Court has held that to decide the correctness or otherwise of the detention order, two issues of importance arise. The first is regarding the documents and material on which reliance was placed by the detaining authority in passing the detention order. Secondly, with those materials, the detaining authority was justified in arriving at a finding that the detenu should be detained under the National Security Act

without any trial. In matters of this nature, the Court normally will not go into the correctness of the decision as such but will only look into the decision-making process. Judicial review, is not an appeal from a decision but review of the manner in which the decision was made. The purpose of review is to ensure that the individual receives a fair treatment. The Court has further held that there must be a reasonable basis for the detention order, and there must be material to support the same. The Court is entitled to scrutinize the material relied upon by the authority in coming to its conclusion, and accordingly determine if there is an objective basis for the subjective satisfaction. The subjective satisfaction must be twofold. The detaining authority must be satisfied that the person to be detained is likely to act in any manner prejudicial to the maintenance of the public order and the authority must be further satisfied that it is necessary to detain the said person in order to prevent from so acting. Whether the grounds stated in the order of detention are sufficient or not to order preventive detention, is not within the ambit of the discretion of the court and it is the subjective satisfaction of the detaining authority which is implied. However, if one of the grounds or reasons which lead to the subjective satisfaction of the detaining authority under the NS Act, is non-existent or misconceived or irrelevant, the order of detention would be invalid no distinction can be made between introductory facts, background facts and "grounds" as such; if the actual allegations were vague and irrelevant, detention would be rendered invalid.

8.6. In the case of Attorney General for India(supra) a Constitution Bench of 9 Judges referring to Section 5A of COFEPOS Act which is *pari materia* to Section 5A of the N.S. Act, in paras 45, 46 and 48 the Court has held thus:

"45. Section 5-A of COFEPOSA may be reproduced here for ready reference. It reads:

"5-A. Grounds of detention severable.-Where a person has been detained in pursuance of an order of detention under sub-section (1) of Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly-

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are-

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever, and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of Section 3 with reference to the remaining

ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds."

46. The Section is in two parts. The first says that where an order of detention is made on two or more grounds, "such order of detention shall be deemed to have been made separately on each of such grounds", while the second part says that such order shall not be deemed to be invalid or inoperative merely for the reason that one or some of the grounds are either vague, non-existent, irrelevant or unconnected. That the second part is merely a continuation of and consequential to the first part is evident from the connecting words "and accordingly". The second part goes further and says that the order of detention must be deemed to have been made on being satisfied with the remaining good ground or grounds, as the case may be. Both the parts are joined by the word "and".

48. Now, take a case, where three orders of detention are made against the same person under COFEPOSA. Each of the orders is based upon only one ground which is supplied to the detenu. It is found that the ground of detention in support of two of such orders is either vague or irrelevant. But the ground in support of the third order is relevant, definite and proximate. In such a case, while the first two orders would be quashed, the third order would stand. This is precisely what the first part (the main part) of Section 5-A seeks to do. Where the order of detention is based on more than one ground, the Section creates a legal fiction, viz., it must be deemed that there are as many orders of detention as there are grounds which means that each of such orders is an independent order. The result is the same as the one in the illustration given by us hereinabove. The second part of it is merely clarificatory and explanatory, which is evident from the fact that it begins with the word "accordingly" -apart from the fact that it is joined to the first part by the word "and". In such a situation, we are unable to see how can the section be characterised as inconsistent with Article 22(5). Had there been no first part, and had the section consisted only of the second part, one can understand the contention that the section is in the teeth of Article 22(5) as interpreted by this Court-this was indeed the situation in *K. Yadigiri Reddy v. The Commissioner of Police*, ILR (1972) Andh Pra 1025, as we shall presently indicate. It is difficult to conceive any inconsistency or conflict between Article 22(5) and the first-the main part of Section 5-A. The Parliament is competent to create a legal fiction and it did so in this case. Article 22(5) does not in terms or otherwise prohibit making of more than one order simultaneously against the same person, on different grounds. No decision saying so has been brought to our notice. Be that as it may, we do not see why the Parliament is not competent to say, by creating a legal fiction, that where an order of detention is made on more than one ground, it must be deemed that there are as many orders of detention as there are grounds. If this creation of a legal fiction is

competent, then no question of any inconsistency between the section and Article 22(5) can arise."

8.7. In the case of *Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others*, the Supreme Court in para 71 of the judgment has held--

"71. Section 5-A stipulates that when the detention order has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly that if one irrelevant or one inadmissible ground had been taken into consideration that would not make the detention order bad."

8.8. In the case of *Vashisht Narain Karwaria(supra)*, the same principle has been laid by the apex Court that in view of the specific provision even a single ground for detention if found to be material may be the basis of the detention order.

8.9. In the case of *Sanjai Pratap Gupta(supra)*, the apex Court has observed that "Public order", "law and order" and the "security of the State" fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State. The Court further held that the stand that a single act cannot be considered sufficient for holding that public order was affected is clearly without substance. It is not the number of acts that matters. What has to be seen is the effect of the act on the even tempo of life, the extent of its reach upon society and its impact.

8.10. What emerges from the discussions made above is that mere registration or pendency of a few criminal cases of specific offences, if not otherwise disturbed the tempo of life of the community, can not be a ground for issuing a detention order under the N.S. Act. Mere entries of some incidents in the General Diary Book of the Police Station also cannot be accepted as sufficient material for arriving at a subjective satisfaction to pass an order of detention. Something else is required to get satisfied that the impact of commission of specific offence and other activities of the detenu has terrorized the community as a whole and that cumulative effect of those criminal cases registered for specific offence and other entries in the G.D. Book of the Police Station and other materials placed before the detaining authority was sufficient to arrive at a conclusion that the effect and

reach and potentiality of the act is so deep as to affect the community at large and that tempo of the community has affected and otherwise it cannot be treated as a breach of the public order.

In the case at hand, 3(three) criminal cases of serious offences consecutively registered against the petitioner. It has been mentioned in the grounds of detention that the detenu is involved in nefarious activities and having with criminal background and that the people are scared of him and do not want to speak openly against him. Apart from three criminal cases in which the petitioner is directly involved, another criminal case, i.e. the case mentioned in Sl. No. 6 of the grounds of detention is also serious in nature since the petitioner, though in custody, his associates are involved in extortion of money for releasing him from custody. As already stated, 18(eighteen) numbers of G.D. Entries made in all the police stations in and around Agartala city. All those G.D. Entries show that the petitioner is involved in criminal activities in this way or that way and thereby terrorized the common people as a whole which has affected the tempo of life of the community. No doubt, the personal liberty of a person guaranteed by the Constitution is of utmost importance but where the exercise of personal liberty of a person causes distress to the community as a whole, there remains no other alternative but to curtail the personal liberty to a permissible extent as per law for the benefit of the community. Personal liberty is liable to be sacrificed if it is in conflict with the interest of the community. In the present case at hand, the detaining authority considered not only the criminal cases instituted against the petitioner/detenu but all other materials placed before it on an objective basis for arriving at a subjective satisfaction.

We may gainfully refer here the observation of the apex Court in the case of Nandini Satpathy Vs. P.L. Dani and Another, His Lordship, Justice V.R. Krishna Iyer in paras 15 and 21 of the judgment has observed--

"15. The paradox has been put sharply by Lawis Mayers:

"To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other is a perennial problem of statecraft. The pendulum over the years has swung to the right. Even as long ago as the opening of the twentieth century, Justice Holmes declared that "at the present time in this country there is more danger that criminals will escape justice than that they will be subject to tyranny." As the century has unfolded, the danger has increased.

Conspiracies to defeat the law have, in recent decades, become more widely and powerfully organized and have been able to use modern advances in communication and movement to make detection more difficult. Law-breaking tends to increase. During the same period, an increasing awareness of the potentialities of abuse of power by law-enforcement officials has resulted, in both the judicial and the legislative spheres, in a tendency to tighten restrictions on

such officials, and to safeguard even more jealously the rights of the accused, the suspect, and the witness. It is not too much to say that at mid-century we confront a real dilemma in law enforcement.

In consequence, there is clearly discernible a tendency to re-examine the assumptions on which rest our complex of rules and doctrines which offer obstacles, perhaps wisely, to the discovery and proof of violations of law. In such a re-examination, the cluster of rules commonly grouped under the term "privilege against self-incrimination", which has for many decades been under attack, peculiarly calls for restudy. In the words of Wigmore, "Neither the history of the privilege, nor its firm constitutional anchorage need deter us from discussing at this day its policy. As a bequest of the 1600's, it is but a relic of controversies and convulsions which have along since ceased..... Nor does its constitutional sanction, embodied in a clause of half a dozen words, relieve us of the necessity of considering its policy..... A sound and intelligent opinion must be formed upon the merits of the policy."

21. We have earlier spoken of the conflicting claims requiring reconciliation. Speaking pragmatically, there exists a rivalry between societal interest in effecting crime detection and constitutional rights which accused individuals possess. Emphasis may shift, depending on circumstances, in balancing these interests as has been happening in America. Since *Miranda vs. Arizona*, 384 US 436, in *Navjot Sandhu (supra)* there has been retreat from stress on protection of the accused and gravitation towards society's interest in convicting lawbreakers. Currently, the trend in the American jurisdiction according to legal journals, is that "respect for (constitutional) principles is eroded when they leap their proper bounds to interfere with the legitimate interests of society in enforcement of its laws....." (*Couch v. Unites States*. (1972) 409 U.S. 322, 336). Our constitutional perspective has, therefore, to be relative and cannot afford to be absolutist, especially when torture technology, crime escalation and other social variables affect the application of principles in producing humane justice."

The particular facts and the grounds of detention in the cases referred by learned counsel, Mr. Deb is quite distinguishable to that of the facts and grounds of detention as a whole in the case at hand. The ratio laid down in those referred cases, therefore, in our considered opinion cannot fairly be applied in the case of the petitioner.

Referring to the decision of the *Pebam Ningol Mikoi Devi(supra)* a judgment passed by the apex Court learned counsel, Mr. Deb has argued that even one non-existent, misconceived or irrelevant ground or reason is enough to invalidate an order of detention. According to Mr. Deb, the G.D. Entries are all misconceived grounds of detention and because of that ground the entire detention order is liable to be quashed. The above observation referred by learned counsel, Mr. Deb in *Pebam Ningol Mikoi Devi(supra)* is found to be in contrast of the decision of 3-Judges Bench of the apex Court in *Prakash Chandra Mehta(supra)*. We have

already mentioned hereinbefore para 71 of the said judgment wherein the apex Court has held that even some irrelevant or inadmissible ground is found to be considered, that would not make the detention order bad. The 9-Judges Constitution Bench of the apex Court in the case of Attorney General for India(supra) has held that even if some grounds are found to be vague, non-existent, irrelevant or unconnected, whereas the detaining authority satisfied with the remaining good ground or grounds as the case may be, the detention order shall sustain in view of the provision of Section 5A of the N.S. Act. On careful perusal of the decision of Pebam Ningol Mikoi Devi(supra) we find that the case of Prakash Chandra Mehta(supra) and the case of Attorney General for India(supra) were not referred in that reported case and as a result a contrary decision has come. Since a Constitution Bench and a 3-Judges Bench decision has held that the detention order shall sustain even if some of the grounds are found to be either vague, non-existent or irrelevant or unconnected with the issue whereas some other good grounds are there for consideration, the detention order shall sustain.

8.11. Having regard to what has been observed by the apex Court in the decisions referred by the parties, we have given our anxious consideration to the grounds of detention in the case at hand. Out of the 19(nineteen) grounds set forth in the grounds of detention, which is a part of detention order, the first 4(four) of the grounds mentioned in Sl. Nos. 3 to 6 are the specific cases registered on the basis of FIR and out of it cases in Sl. Nos. 3 to 5, the petitioner was named in the FIR. All those cases are of offences of serious nature which have grave impact on the community as a whole. The FIR mentioned in Sl. No. 6 also involves serious offence of extortion of money by the associates of the petitioner in his name. The grounds mentioned in Sl. Nos. 7 to 18 are all G.D. Entries made in different police stations. Independent source of making the G.D. Entries has not been mentioned. Copies of those G.D. Entries have been annexed which show that the police officers of those concerned police stations made those G.D. Entries. Those particular G.D. Entries by itself would not be sufficient to arrive at a conclusion that the petitioner was involved in prejudicial activities of violation of public order but those G.D. Entries may be taken into consideration for collateral purpose as a supporting material to that of the grounds set forth in Sl. Nos. 3 to 6. The G.D. Entries have been made in 4(four) police stations spread in Agartala city. Those police officers who made the G.D. Entries have no animosity against the accused. Those entries were not made in a single day but were made within a period of a few months before the detention order was passed. Of course, 5(five) G.D. Entries were made while the petitioner was in custody. A careful reading of those G.D. Entries makes it abundantly clear that the petitioner let loose a reign of terror and thereby tempo of life of the community has been affected. Therefore, in our considered opinion, the G.D. Entries, by itself, may not be sufficient to arrive at a conclusion of the disrupting of public order but coupled with the consecutive criminal cases instituted against the accused and his associates, it makes out a case of genuine grounds for

subjective satisfaction of the detaining authority. The G.D. Entries mostly made, based on secret information received at P.S. or from telephonic information from local people. Independent and identical source of information has not been mentioned in the G.D. Entries but it is recorded that particular police officer on receipt of information from the sources made those G.D. Entries which abundantly speaks of unlawful activities of the petitioner and his associates. It is a general phenomena that the peace loving common people normally are scared of gangsters, organized criminals and mafias. Because of fear of being heckled by such criminals, it is an ordinary trend that the common people do not normally show their face against such gangsters and mafias and such realities of life cannot be ignored. Police has a solemn duty of maintaining peace, tranquility and public order in the community. It is the duty of the police to get record of such criminal activities of gangsters or mafias in the community who indulge in disturbance of public order. While the police officers made such entries, though it is expected that independent and definite source of information should be recorded, such entries in the G.D. Book of the P.S. cannot be altogether ignored from consideration unless there is an alternative case pleaded or shown with material particulars that with an ulterior motive those entries were purposely made. We are, therefore of considered opinion that the G.D. Entries referred in the grounds of detention cannot be ignored from consideration in the given facts and circumstances of the case. The grounds mentioned in Sl. Nos. 19 to 21 are prosecution reports submitted by police under the provision of Sections 110 and 107 of CrPC and those also support the fact that the petitioner is involved in breach of peace in the community. The subjective satisfaction of the detaining authority is based on all the materials referred in the grounds of detention and the cumulative effect of all those grounds of detention, no doubt leads to the only conclusion that the activities of the petitioner is prejudicial to the maintenance of public order in the community of Agartala as a whole and hence we are of considered opinion that the grounds of detention cannot be marked as vague, irrelevant, non-existent or extraneous.

The argument advanced by learned counsel, Mr. Deb, therefore, does not deserve consideration for setting aside/quashing the order of detention.

9. The next argument advanced by learned counsel, Mr. Deb is that the petitioner was prevented from giving an effective representation against the order of detention since he was only supplied Bengali version of the detention order and the grounds of detention but the Bengali version of the annexures of grounds of detention were not supplied to the petitioner and as a result he has been prejudiced and therefore the detention order is liable to be set aside and quashed. He has relied on the decision of the apex Court in *Powanammal Vs. State of Tamil Nadu and Another*,

9.1. Per contra, learned Advocate General has submitted that the petitioner is a graduate and he knows both English and Bengali since he made statement in English before the Advisory Board and also signed it in English. Further, the copy

of the detention order and the grounds of detention were translated into Bengali and were supplied. Regarding annexures to the grounds of detention he was afforded all opportunity of getting the same translated in case he feels it necessary. While all those opportunities were given, the petitioner was not entitled to allege that he could not give effective representation for non-supply of the Bengali version of the annexures of the grounds of detention.

9.2. It is an admitted position that the copies of grounds of detention and annexures thereto were supplied to the petitioner within time prescribed for the same. Bengali version of the order of detention and the grounds of detention were supplied. The detention order itself shows that the detaining authority directed the Superintendent of Central Jail to depute a responsible officer at the time of effecting the detention order to the detenu to explain in detail the contents of the order along with the grounds of detention and other relevant papers like FIR, copies of statement, etc. Even assistance of another government official or any other person may be taken to brief him about the order, etc. in the language which the detenu understands in presence of two witnesses on receipt of signature or thumb impression in token from the detenu. The Superintendent, Central Jail was also directed to extend all assistance to the detenu in making representation to the concerned authority. The assistance provided by the Superintendent, Central Jail may include stationery and any other item as desired by the detenu. The Superintendent, Central Jail was also directed to provide a literate person who shall assist the detenu in drafting the representation to the Central/State Government, etc.

9.3. The detention order further shows that the detenu was informed that he may make representation against the order to the Central Government, State Government and to the detaining authority and that the order shall remain in force for one year.

9.4. Annexure-P4 shows that in response to a letter of the detenu dated 14.03.2014 the detenu was informed as follows:

"GOVERNMENT OF TRIPURA OFFICE OF THE DISTRICT MAGISTRATE & COLLECTOR WEST TRIPURA DISTRICT:: AGARTALA (Confidential Section)

No. F. 1(5)-DM/W/CON/2014/290-91

Dated 21-03-2014

To

Sri Shyamal Das @ Simul(41) S/o Late Narendra Das of Joypur, P/S. West Agartala, Dist.-West Tripura(now detained in Central Jail, Bishalgarh, Tripura).

Through the Superintendent of Kendriya Sansodhanagar, Bishalgarh, Tripura

Subject: Information as sought by the detenu vide his letter dated 13.03.2014 through the Superintendent, Kendriya Sansodhanagar, Tripura, Bishalgarh vide letter No. F. II-3/KST/BLG/NSA/2014/3533 dated 14.03.2014.

Sir,

With reference to the subject as mentioned above & this office earlier letter No. F. 1(54)-DM/W/CON/201/281-82 dated 15.03.2014, a Bengali translation of the detention order and the grounds for detention for comprehension only and not for any legal purpose is enclosed with this letter for assisting you in making your representation or for any other action. Further, it is hereby mentioned that this Bengali translation is only done for your understanding of the content of the order and shall not be treated as the original order and shall have no legal value. The original order remains as the detention order under NSA, 1980 dated 04.03.2014 in English.

It is also mentioned here that under NSA, 1980, there is no provision for translation in Bengali of all the enclosures etc. as demanded by you yet you may take assistance for submitting your representation through Superintendent of Kendriya Sansodhanagar, Bishalgarh, Tripura or a Legal Counsel. There is no prescribed time limit for making representation under NSA, 1980. However, the matter would be placed before the Advisory Board, NSA, Tripura within 3(three) weeks from the date of order of detention.

This is for your information and necessary action.

Enclo:- As stated

Yours faithfully, Sd/- illegible (Abhishek Singh) District Magistrate West Tripura"

9.5. It is contended by the petitioner that he was produced before the Advisory Board and the Advisory Board recorded his statement. Annexure-P5 is the statement of the petitioner recorded by the Chairman of the Advisory Board which reads thus--

"STATEMENT OF SHRI SHYAMAL DAS @ SIMUL S/O LATE NARENDRA DAS OF JOYPUR, P.S.-WEST AGARTALA DISTRICT-WEST TRIPURA

Date:- 05/04/2014

Place:- Office of the Board in Police Accountability Commission, Kunjaban, Shyamali Bazar.

My name is Shyamal Das @ Simul. I am before the Advisory board constituted under N.S. Act. I have been detained under the N.S. Act by order of the District Magistrate & Collector, West Tripura on 04/03/2014. I have received the detention order along with relevant papers on 06/03/2014. On my request I have been served with Bengali translation of the detention order. I have seen the grounds of detention and also the order of the District Magistrate. I have been afforded opportunity of submitting representation against the order of detention. I know that I have right to submit representation to the detaining authority, central government, state government and the advisory board against the detention order. But I have not submitted any representation as yet. I intend to submit representation and for that purpose I have already approached the

Superintendent of Police, Central Jail. One Shri Subrata Sarkar, a Lawyer has agreed to prepare my representation on y behalf. He is willing to visit the Central Jail for the purpose. I have not yet got any response of the Jail Authority about his visit.

I have nothing more to state to say.

This is my submission.

Sd/- illegible (Shyamal Das) 05/04/2014 Deponent

Recorded as per my dictation read over to detenu, admitted theas correctly recorded

Sd/- illegible (Justice A.B. Pal) Chairman N.S.A. Advisory Board"

9.6. From the above statement of the petitioner it is quite clear that he has made the statement in English and signed it in English and also put date in English. He received the detention order and other relevant papers and has gone through the same. He has been afforded opportunity of submitting his representation against the order of detention and he knew that he has right to submit representation to the detaining authority, Central Government, State Government and the Advisory Board against the detention order. He also took assistance of one lawyer, namely Adv. Subrata Sarkar for preparation of his representation. Therefore, the argument of learned counsel, Mr. Deb that the annexures to the grounds of detention since were not translated in Bengali the petitioner was deprived of making an effective representation, has no leg to stand.

9.7. In the case of Powanammal(supra) the majority of the three Judges Bench of the apex Court has held that Tamil version of a document in English which was relied upon in the grounds of detention was not supplied to the petitioner and therefore it was held that the detention order was bad. The minority view in that reported case was that the grounds which were supplied to the detenu was explained to her in Tamil and while making representation before the Advisory board she did not state that she did not understand the contents of the order and the procedural safeguards have been complied with and the detention order was valid.

9.8. In the case of Prakash Chandra Mehta(supra), a 3-Judges Bench of the apex Court held that whether grounds were communicated or not depends upon the facts and circumstances of each case. Court should apply commonsense while considering constitutional provisions for safeguards against misuse of powers by authorities though these constitutional provisions should be strictly construed. In the given facts of that case the Supreme Court has held--

"In the present case in the background of the facts that the grounds of detention were given to the detenu following search and seizure of gold biscuits from his room in his presence, that a mercy petition was made by him to the Government which was written in English though signed by him in Gujarati, and that he was

in constant touch with his daughter and sons who knew English and Hindi, it cannot be said that the grounds were not communicated in the sense the grounds of detention were not conveyed to the detenu. The detenu was merely feigning ignorance of English in which the grounds were furnished to him. The mere fact that Hindi translation of the grounds was served beyond the period of 5 days stipulated in Section 3(3), COFEPOSA Act is inconsequential even in absence of any exceptional circumstances because his daughter and sons knew both English and Hindi."

9.9. In the present case, the history sheet of the petitioner shows that he is a graduate. Annexure-P5 to the writ petition shows that he made statement in English recorded by Justice A.B. Pal, Chairman of N.S.A. Advisory Board and he signed the statement in English and also put the date in English. No allegation made by him that pursuant to the order passed by the detaining authority no opportunity was afforded to him by the Superintendent of Central Jail in explaining the annexures of the grounds of detention. Rather before the Advisory Board he made a statement that one lawyer, namely Sri Subrata Sarkar has agreed in preparing his representation.

Under such circumstances, we find no merit in the submission made by learned counsel, Mr. Deb.

10. In view of the discussions made above, we find no merit in the writ petition and accordingly the writ petition stands dismissed.

11. Parties to bear their own costs.