
(1985) 09 RAJ CK 0067

In the Rajasthan High Court

Case No : Habeas Corpus Writ Petition No. 1425 of 1985

Sita Ram Somani

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-09-1985

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 11, 12, 3, 8
Constitution of India, 1950 — Article 14, 166, 22
Customs Act, 1962 — Section 110
National Security Act, 1980 — Section 11

Citation : (1985) 2 WLN 539

Hon'ble Judges : Suresh Chandra Agrawal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Suresh Chandra Agrawal, J.—In this petition for a writ of Habeas Corpus, the petitioner, Sitaram Somani, is challenging the legality of his detention under Order (Annexure G) dated 4th June, 1985 passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (here in after referred to as "the Act").

2. The petitioner is a resident of house No. 834, Churuko-ka-rasta, Chaura Rasta, Jaipur. On 1st January, 1985, the officers of the Customs Department of the Government of India searched one Shri Omprakash Soni and his scooter outside the house of the petitioner and during the course of the said search a bag was recovered and in the said bag 8 biscuits of gold of foreign origin were found which were seized. Thereafter the Customs officers made a search of the house of the petitioner on the same day and during the course of the said search 36 gold biscuits of foreign origin and 12100 U.S. dollars were recovered. The petitioner was arrested on 1st January 1985 and his statement was also recorded on that day. By order dated 17th January 1985, the petitioner was ordered to be released on bail and in pursuance of the said order the petitioner was released

on bail on 19th January, 1985. On 4th June, 1985 an order (Annexure G) was passed for the detention of the petitioner under the provisions of the Act. In the said order it has been stated that with respect to the petitioner, the State Government was satisfied that with view to prevent him from smuggling gold and to prevent him from engaging in transporting, concealing and importing smuggled gold and dealing in smuggled gold, it was necessary to pass an order. The State Government in exercise of powers conferred on it under Sub-section (1) of Section 3 of the Act, directs that the petitioner may be kept in detention in the Central Jail, Jaipur. In pursuance of the said order of detention dated 4th June, 1985, the petitioner was arrested on 10th June, 1985 and he was lodged in the Central Jail, Jaipur on 11th June, 1985 the petitioner was served with a memorandum (Annexure H) dated 4th June 1985 alongwith the ground of his detention and the documents annexed as Annexures A to G with the said grounds of detention. By letter (Annexure J) dated 18th June, 1985 addressed by Shri Herjinder Singh Advocate, on behalf of the petitioner, to the Commissioner and Administration Secretary, Home Department Jaipur a request was made for supply of the documents mentioned in paragraph 3 of the said letter. In the letter aforesaid, it was also stated that the detention of the petitioner was illegal in violation of Article 22(5) of the Constitution of India and was liable to be revoked immediately. Thereafter the petitioner submitted a representation (Annexure K) dated 22nd June 1985 to the Commissioner and Administration Secretary, Home Department, Government of Rajasthan, Jaipur, wherein the petitioner submitted that his detention was illegal and that the order of detention be revoked and the petitioner be set forth at liberty. On 9th July, 1985, the petitioner was supplied with the documents referred to in the letter dated 18th June, 1985 of Shri Herjinder Singh Advocate. By communication dated 11th July, 1985, the petitioner was informed by the Deputy Secretary to the Government of Rajasthan, Home Department that his representation dated 22nd June, 1985 has been carefully considered by the State Government and has been rejected. In the meanwhile on 24th June, 1985, the case of the petitioner had been referred by the State Government to the Advisory Board consisting of three Hon"ble Judges of this Court constituted under the provisions of Section 8 of the Act. The petitioner had also submitted representations (Annexure No. 1 and No. 2) dated 28th June, 1985 and 8th July, 1985 before the Advisory Board. The matter of the petitioner's detention was taken up by the Advisory Board on 11th July, 1985 and the petitioner was produced before the Advisory Board on the date but the matter was adjourned to 22nd July, 1985. On that date the petitioner sub-mitted a further representation (Annexure No. 3) dated 22nd July, 1985 before the Advisory Board. On 22nd July, 1985 the matter was postpond to 29th July, 1985. On 29th July, 1985 the petitioner was produced before the Advisory Board. Thereafter the Advisory Board sent its report to the State Government wherein it expressed the opinion that there was sufficient cause for the detention of the petitioner. After considering the report of the Advisory Board, the State Government passed order (Annexure O) dated 14th August, 1985, in exercise of its powers u/s 8(f) of the Act, whereby the State Government confirmed the

order of the detention of the petitioner and directed that the petitioner be kept in detention for a period of one year i.e. till 9th June, 1986. Thereupon the petitioner has filed this writ petition.

3. A reply to the writ petition has been filed on behalf of respondents No. 1 and 3 i.e. the State of Rajasthan and the Superintendent, Central Jail, Jaipur. The said reply is supported by the affidavit of Shri S.C. Pagoria, Deputy Secretary Home (Security), Government of Rajasthan. A reply has also been filed on behalf of respondent No. 2 i.e. Union of India. A further affidavit of Shri S.C. Pagoria, Deputy Secretary Home (Security), Government of Rajasthan dated 12th September, 1985 was filed during the course of the hearing of the writ petition.

4. We have heard Shri B.L. Sharma, the learned counsel for the petitioner and the learned Government Advocate for respondents Nos. 1 and 3 and Shri B.P. Gupta for respondent No. 2.

5. Shri Sharma has urged the following contentions to assail the legality of the detention of the petitioner:

(i) The satisfaction of the detaining authority which led to the passing of the impugned order of detention u/s 3(1) of the Act was vitiated because

(a) certain relevant facts and documents which could have weighed with the detaining authority and would have influenced the mind of the detaining authority for the purpose of arriving at the requisite satisfaction were purposefully withheld and suppressed from the detaining authority;

(b) the detention of the petitioner is based on one solitary act and the said solitary act cannot justify the detention of the petitioner; and

(c) before passing of the order of detention, the petitioner had been released on bail on 19th January, 1985 and the activities of the petitioner after his release on bail were not such as to give rise to an apprehension that he would indulge in the activities mentioned in the order of detention;

(ii) The detention of the petitioner is in violation of the provisions of Sub-section (3) of Section 3 of the Act in as much as the petitioner was not supplied within the period prescribed under Sub-section (3) of Section 3 of the Act the documents which have been relied upon or are referred to in the grounds of detention served on the petitioner;

(iii) There has been contravention of the provisions of Section 3(2) of the Act in as much as the State Government did not submit its report to the Central Government within the prescribed period and further there is nothing to show that the Central Government has considered the said report;

(iv) The representation dated 18th June, 1985 submitted by the petitioner through his counsel Shri Herjinder Singh, has not been considered by the detaining authority;

(v) There has been inordinate delay in the consideration of the representation of the petitioner dated 22nd June, 1985;

(vi) Before the Advisory Board, the petitioner was not afforded proper opportunity to make his submissions in as much as the friend of the petitioner was not called by the Advisory Board on 11th July, 1985 and 22nd July, 1985 and on 29th July, 1985 the friend of the petitioner was called by the Advisory Board for ten minutes only;

(vii) The proceedings of the Advisory Board were vitiated on account of the presence of the officiate of the Customs Department before the Advisory Board at the time of the consideration of the case of the petitioner;

(viii) The order of the State Government dated 14th August, 1985 confirming the order of detention is vitiated for the reason that the record of the Advisory Board was not sent to the State Government by the Advisory Board and the said order dated 14th August, 1985 was passed by the State Government without considering the record of the Advisory Board;

(ix) There is no proper return to the writ petition in as much as the affidavit filed in support of the return filed on behalf of respondents Nos. 1 and 3, is not by the person who had considered and passed the order for detention of the petitioner, but is supported by the affidavit of the Deputy Secretary, Home (Security), Government of Rajasthan, Jaipur.

6. In support of his contention that the satisfaction of the detaining authority was vitiated on account of the suppression of relevant facts and documents from the detaining authority, Shri Sharma has urged that the fact that the petitioner had retracted from his previous statement by making an application to the Collector of Customs on 19th January 1985 and Shri Omprakash Soni had also retracted from his confessional statement by making an application on 18th Jan., 1985, were very material facts and the suppression of the application dated 9th January, 1985 submitted by the petitioner and the application dated 18th January, 1985 submitted by Shri Omprakash to the Collector of Customs for the detaining authority has vitiated the satisfaction of the detaining authority. In support of his aforesaid contention Shri Sharma has placed reliance on the decision of the Supreme Court in Ashadevi Mehta (Detenu) Vs. K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat and Another, , Mohd. Shakeel Wahid Ahmed Vs. State of Maharashtra and Others, , and unreported judgment of the Supreme Court in Kurjibhai Dhanjibhai Patel v. State of Gujarat and Ors. Criminal Appeal No. 332 of 1984 decided on 16th April 1985. On behalf of the respondents it has been stated that the application dated 19th January 1985 submitted by the petitioner to the Collector for Customs retracting from his earlier statement as well as the application submitted by Omprakash on 18th January, 1985 to the Collector of Customs had been placed before the detaining authority and the same were duly considered by the detaining authority before passing the impugned order of detention. Shri, Sharma has however disputed that the aforesaid documents were

placed before the detaining authority and were considered by it before passing the impugned order of detention and in this connection Shri Sharma has invited our attention to the averments contained in the replies filed on behalf of respondents No. 1 and 3 and respondent No. 2.

7. In *Ashadevi v. K. Shivraj* (supra) the detenu had retracted from the confessional statements made by him earlier before the Customs Officers and it was contended on behalf of the detenu that the order of detention was based on the confessional statement of the detenu which had been retracted subsequently and the facts about the retraction of the confessional statement were not placed before the detaining authority and, therefore the satisfaction of the detaining authority was vitiated. The Supreme Court accepted the said contention and held that in passing the detention order the detaining authority obviously based its decision on the detenu's confessional statements of December 13 and 14, 1977 and, therefore, it was obligatory upon the Customs Officers to report the retraction of those statements by the detenu on December 22, 1977 to the detaining authority for it cannot be disputed that the fact of retraction would have its own impact one way or the other on the detaining authority before making up its mind whether or not to issue the impugned order of detention. The said view was reaffirmed by the Supreme Court in *Kurjibhai Dhanjibhai Patel v. State of Gujarat and Ors.* (supra). In view of the aforesaid judgments of the Supreme Court, it must be held that the application submitted by the petitioner to the Collector of Customs on 19th January, 1985 retracting the statement made by him earlier as well as application dated 18th January, 1985 submitted by Shri Omprakash retracting from the confessional statement, were material facts which should have been placed before the detaining authority and the satisfaction of the detaining authority would be vitiated if the said facts were not placed before the detaining authority.

8. In the present case we find that in para 9 of the reply filed on behalf of the Union of India, it is stated that the representation made by the petitioner in which he had retracted from his earlier confessional statement and had also denied his involvement, was placed before the detaining authority. Shri Sharma has however submitted that no reliance should be placed on the aforesaid averment in view of the averment contained in the latter part of the said reply wherein while replying to ground (vii) of the writ petition it has been stated that the documents enumerated in the said para were not considered to be material for the purpose of consideration of the detaining authority. In this context it may be stated that in the reply filed on behalf of respondents Nos. 1 and 3 it has been stated that the matter was investigated upto 13th March, 1985 by the Customs authorities and the Collector of Customs requested the State Government for passing the detention order with all relevant documents on 14th March, 1985 and thereafter the documents of the case of the petitioner were got screened, examined and processed at different levels of the Government upto 24th May, 1985 and on 24th May, 1985 the Home Secretary, who was competent to dispose of the matter under the Rules of Business, disposed of the case and on 29th May,

1985, the Chief Minister cum Home Minister, examined the case and applied his mind and affirmed the view of the Home Secretary and thereafter after framing the grounds of detention, the detention order was issued on 4th June, 1985. In the affidavit of Shri S.C. Pagoria, Deputy Secretary to Government of Rajasthan Home (Security), Jaipur dated 12th September, 1985, it has been further asserted that after the request of the Collector of Customs for passing the detention order, the State Government referred the matter to a Screening Committee consisting of the Law Secretary to the Government of Rajasthan, the Director General and Inspector General of Police, Rajasthan and the Collector of Customs, and that the Screening Committee after calling the whole record of this case and considering the same, gave its opinion on 4th April 1985 for taking further action of detention under the Act by the Home Department. In the said affidavit it has been further stated that all matters pertaining to confessional statements, retraction of confessional statements, bail application Court orders and all other record were placed before the Screening Committee by the Customs Department. In order to further satisfy ourselves about the correctness of the aforesaid submissions we examined the original record both in office of the Collector of Customs, Jaipur as well as in the office of the State Government. The said records show that along with his letter dated 14th March, 1985, the Collector of Customs had sent copies of various documents to the State Government and amongst the said documents which were sent by the Collector of Customs, included the application dated 19th January, 1985 submitted by the petitioner to the Collector of Customs retracting from his earlier statements as well as the application dated 18th January 1985 submitted by Omprakash Soni retracting from his earlier confessional statement. This would show that the aforesaid applications were before the detaining authority at the time the impugned detention order was passed and it cannot therefore be said that the said applications were suppressed from the detaining authority.

9. Shri Sharma has urged that even if it be held that the aforesaid applications had been sent to the detaining authority by the Collector of Customs, there is nothing to show that the detaining authority had considered the said applications before arriving at the requisite satisfaction leading to the passing of the impugned order of detention. It is not possible to accept this contention of Shri Sharma in view of averments contained in the reply filed on behalf of respondent Mo. 1 and 3 and the additional affidavit of Shri S C Pagona which clearly show that the entire material sent by the Collector of Customs along with the letter dated 14th March, 1985 as well as the other record of the Customs Department including the bail applications court orders were considered by the Screening Committee and the Home Secretary to the Government of Rajasthan and the Chief Minister-cum-Home Minister Rajasthan, Jaipur. In the circumstances, it cannot be said that the satisfaction of the detaining authority was vitiated on account of withholding of the facts relating to the retraction of the confession of the petitioner and Shri Om Prakash Soni and there was non-consideration of the said facts by the detaining authority.

10. In support of the submission that the satisfaction of the detaining authority is vitiated for the reason that it is based on a solitary incident Shri Sharma has submitted that in the grounds of detention which were served upon the petitioner, reference is made only to the search of the premises of the petitioner on 1st January, 1985 and seizure of 36 gold biscuits of foreign origin and 12100 U.S. dollars and that said solitary incident could not be made basis for arriving at the satisfaction by the detaining authority that it was necessary to detain the petitioner with a view to prevent him from smuggling of gold and to prevent him from engaging in transporting concealing or keeping smuggled gold and dealing in smuggled gold. In support of the aforesaid submissions Shri Sharma has placed reliance on the decision of the Supreme Court in *Debu Mahato Vs. The State of West Bengal*,

11. In *Debu Mahto v. State of West Bengal (supra)*, the Supreme Court was dealing with a case of detention under the provisions of the Maintenance of Internal Security Act, 1971 on the ground that the said detention was necessary with a view to prevent the detenu from acting in anv manner prejudicial to the maintenance of supplies and services essential to the community. The said detention was based on one incident of wagon breaking in which the petitioner was involved. The Supreme Court set aside the detention on the view that one solitary isolated act of wagon breaking committed, by the detenu could not possibly persuade any reasonable person to reach the satisfaction that unless he was detained, the detenu would in all probability indulge in further acts of wagon breaking and that no criminal propensities for wagon breaking could reasonably be inferred from a single solitary act of wagon breaking committed by the detenu in the circumstances of that case. In this connection the Supreme Court has observed that in a given situation when wagon breaking as a crime has assumed alarming proportions and it is seriously obstructing and thwarting smooth and quick flow of supplies and services essential to the community, even a single act of wagon breaking by an individual may be regarded in a different light and conceivably afford justification for reaching a satisfaction that such individual may be detained in order to prevent him from acting in a prejudicial manner. After referring to the affidavit filed by the detaining authority the Supreme Court observed that there was nothing in the said affidavit even remotely suggesting that wagon breaking was a crime which had become very rampant, in the said case the Supreme Court also observed that:

We must of course make it clear that it is not our view that in no case can a single solitary act attributed to a person form the basis for reaching a satisfaction that he might repeat such acts in future and in order to prevent him from doing so, it is necessary to detain him. The nature of the act and the attendant circumstances may in a given case be such as to reasonably justify an inference that the person concerned, if not detained, would be likely to indulge in commission of such acts in future. The order of detention is essentially a precautionary measure and it is based on a reasonable prognosis of the future behavior of a person based on his past conduct judged in the light of the

surrounding circumstances. Such past conduct may consist of one single act or of a series of acts. But whatever it be, it must be of such a nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts so as to warrant his detention. It may be easier to draw such an inference where there is a series of acts evincing a course of conduct but even if there is single act, such an inference may justifiably be drawn in a given case.

12. If the grounds of detention that were served on the petitioner are considered in the light of the aforesaid observation of the Supreme Court, it cannot be said that the detaining authority was not justified in reaching the satisfaction leading to the passing of the impugned order of detention. In Ground No. 1 it has been stated that on the basis of previous information the Customs Department had knowledge that the petitioner is involved in the business of import, receipt and sale of smuggled foreign gold and that after the recovery of 8 biscuits of illegal foreign gold from the possession of Omprakash Soni by the officers of the Customs Department on 1st January, 1985, a search was made in the house of the petitioner and during the course of said search, 36 gold biscuits of foreign origin and 12100 U.S. dollars were recovered. In Ground No. 2 it is stated that the aforesaid 36 foreign gold biscuits were bearing seals showing that they were made in a foreign country and that the petitioner was not able to produce any legal document about the import and receipt of the said gold biscuits as well as 12100 U.S. dollars and thereupon the said goods were seized u/s 110 of the Customs Act for the reason that they were brought or retained illegally in India. In ground No. 3 it is stated that in his statement dated 1st January, 1985, the petitioner had admitted that 36 gold biscuits which were found during search from his house as well as 8 gold biscuits which were recovered from Omprakash Soni on the same day, were brought by him illegally from Hongkong and the same had been obtained from Ashwini, a resident of Hongkong, In his aforesaid statement, the petitioner had also admitted that till he had been caught, he had made five trips to Hongkong and that in all he had brought 89 foreign gold biscuits and that he used to sell the same to Omprakash Soni in Jaipur (India) in exchange of foreign currency and that the petitioner used to take the said foreign currency clandestinely to Hongkong and hand it over to Ashwini and he used to bring foreign gold to India that was given to him by Ashwini. In the said statement the petitioner also stated that apart from his first visit, the return tickets for the other visits were sent by Ashwini and that the aforesaid facts indicate that the petitioner is connected with an international gang which is involved in smuggling of gold. In Ground No. 4 it is stated that on 1st January, 1985 the petitioner had admitted in the presence of two witnesses, namely, Govind Ram son of Asha Ram and Smt. Suraj Devi Saxena wife of late Shri Chhuttan Lal that 36 foreign gold biscuits and 12100 U.S. dollars were recovered from his house. In Ground No. 5 it is stated that Shri Om Prakash Soni in his statement dated 1st January, 1985 has stated that 25 days prior to the recovery of foreign gold by the Customs Officers from him, the petitioner had given one foreign gold biscuit to him at his shop and that on 24th December, 1984, he had

brought 5 foreign gold biscuits from the house of the petitioner. In the said ground it is also stated that from the connected pass-ports it appears that on 20th December, 1984, the petitioner had himself returned from Hongkong and that on 24th December, 1984, his son Pramod, had come from Hongkong. A perusal of the aforesaid grounds of detention shows that the detention of the petitioner is not based on a solitary incident, but is based on a number of transactions involving dealings in foreign smuggled gold and foreign currency. It is, therefore, not possible to say that the detention of the petitioner is based on a solitary incident. Further more, even if it be held that the detention of the petitioner is based on a solitary incident of recovery of foreign gold and foreign currency, we are of the opinion that the said conduct of the petitioner in dealing in foreign smuggled gold and foreign currency is such that the detaining authority could arrive at the requisite satisfaction for the detention of the petitioner under the provisions of the Act and the order of detention cannot be held to be bad on the ground that the detaining authority could not arrive at the requisite satisfaction on the basis of the grounds mentioned in the grounds of detention.

13. Another contention that has been urged by Shri Sharma to assail the satisfaction of the detaining authority was that at the time of the passing of the impugned order of detention, the petitioner was on bail and that while releasing the petitioner on bail, this Court had imposed the condition that the petitioner would not leave the country without permission of the court and that in view of the said condition, it was not possible for the petitioner to indulge in the activities referred to in the order of detention and that the detaining authority has passed the impugned order of detention without taking into account the fact that the petitioner had been released on bail subject to certain conditions. In our opinion there is no substance in the aforesaid contention. The law is well settled that detention order would not become invalid merely because the detenu was in jail at the time of passing of the order. In *Alijan Mian Vs. District Magistrate, Dhanbad and Others*, it has been held that the pendency of a criminal prosecution is no bar to an order of preventive detention nor is an order of preventive detention a bar to prosecution and that it is for the detaining authority to have the subjective satisfaction whether in such a case there are sufficient materials to place the person under preventive detention in order to prevent him from acting in a manner prejudicial to public order or the like in future. In that case the detenu was in jail custody on the date of the passing of the order of detention but was likely to be released on bail. The Supreme Court held that the order of detention could be passed if the detaining authority was satisfied that if the detenu was released on bail of which there was every likelihood, it was necessary to prevent him from acting in a manner prejudicial to public order. This would show that an order for detention of a person in jail can be passed if there is likelihood of his being released on bail. If an order for detention of a person who is in jail can be passed if there is likelihood of his being released on bail, there is no reason why an order cannot be passed for the

detention of a person who is on bail, if the detaining authority is satisfied that it was necessary to do so in order to prevent him from indulging in prejudicial activities. The mere fact that conditions have been attached to the order releasing the person on bail, may not be a sufficient safeguard to prevent him from indulging in such activities and if the detaining authority is satisfied that there is likelihood of a person, on bail, indulging in such activities despite the conditions being attached in the order releasing on bail, the detaining authority may pass an order for his detention. In our opinion, therefore it cannot be said that the detaining authority could not arrive at the requisite satisfaction for passing an order for detention of the petitioner for the reason that the petitioner had been released on bail under the order of this Court and certain conditions had been attached in the order and that a breach of the said conditions would have resulted in cancellation of the bail of the petitioner.

14. As regards the submission of Shri Sharma that the relevant facts regarding the petitioner being released on bail by this Court & the conditions that were attached in the said bail order were not placed before the detaining authority at the time of the passing of the impugned order of detention, it may be stated that in the affidavit of Shri S.C. Pagoria dated 12th September, 1985, it has been specifically stated that the Screening Committee after calling the whole record of this case and considering the same, gave its opinion on 4th April, 1985 for taking further action of detention under the Act by the Home Department and all matters pertaining to confessional statements, retraction of confessional statements, bail application, court orders and all other record were placed before, the Screening Committee by the Customs Department. It cannot, therefore, be said that the fact that the petitioner was on bail and that the conditions had been attached to the order granting bail to the petitioner, were not placed before the detaining authority at the time of passing of the impugned order of detention.

15. In support of his second contention relating to the violation of the provisions of Section 3(3) of the Act, Shri Sharma has submitted that under Article 22(5) of the Constitution, it is obligatory on the part of the detaining authority to furnish grounds of detention to the detenu and that this obligation to furnish the grounds of detention includes the obligation to furnish the copies of the documents which are relied on or referred to in the grounds of detention. Shri Sharma has submitted that u/s 3(3) of the Act, it has been prescribed that the grounds of detention should be communicated to the detenu as soon as may be after detention but ordinarily not later than five days, and in exceptional circumstances and for the reasons recorded in writing, not later than 15 days from the date of detention. According to Shri Sharma, there has been contravention of the aforesaid provisions contained in Section 3(3) of the Act in as much as the documents which are relied upon and referred to in the grounds of detention were not supplied to the petitioner till 9th July, 1985 i.e. long after the expiry of the period prescribed in Section 3(3) of the Act. In support of his aforesaid submission. Shri Sharma has placed reliance on the decisions of the

Supreme Court in Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, and Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others,

16. We have given our careful consideration to the aforesaid submissions of Shri Sharma and in our view, the said contention cannot be accepted. In Khudiram Das Vs. The State of West Bengal and Others, , the Supreme Court has laid down that all basic facts and material particulars which influenced the detaining authority in arriving at the requisite satisfaction leading to making of the order of detention must be communicated to the detenu so that the detenu may have an opportunity of making an effective representation against the order of detention. In Vakil Singh Vs. The State of J. and K. and Another, , it has been held that the grounds mean material or facts on which order of detention is primarily based and that they must contain the pith and substance of primary facts but not subsidiary facts or evidential details. In that case it was held that the requirement as to the communication of all essential constituents of the grounds was complied with in as much as the basic facts, as distinguished from factual details, were incorporated in the material communicated to the detenu. In Smt. Icchu Devi Choraria v. Union of India and Ors. (supra), it has been held that copies of documents, statements and other materials relied upon in the grounds of detention, form part of such grounds and they have to be supplied to the detenu within the time prescribed under clause (5) of Article 22 of the Constitution and Section 3(3) of Act. In Smt. Shalini Soni and Ors. v. Union of India and Ors. (supra), it has been held that copies of documents to which reference is made in the grounds, must be supplied to the detenu as part of the grounds. In Hansmukh Vs. State of Gujarat and Others, , it has been pointed out that while expression "grounds" in Article 22(5) and in Section 3(3) of the Act includes not only conclusion of fact but also all the "basic facts" on which these conclusions are founded, they are different from subsidiary facts or further particulars of the basic facts. The Supreme Court has emphasised that the distinction between basic facts which are essential factual constituents of the "grounds" and their further particulars or subsidiary details is important and that while the basic facts being integral part of the grounds must according to Section 3(3) of the Act be communicated to the detenu as soon as may be, after the detention, ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing not later than 15 days from the date of detention, further particulars of those grounds, in compliance with the second constitutional imperative spelled out from Article 22(5), in Khudiram's case (supra) are required to be communicated to the detenu, as soon as may be practicable with reasonable expedition. The legal position in this regard has been considered by the constitution bench of the Supreme Court in a recent decision in State of Punjab and Others Vs. Jagdev Singh Talwandi, . In that case the Supreme Court rejected the contention urged on behalf of the detenu that the detaining authority should have disclosed the evidence on the basis of which the order of detention was passed because in the absence of knowledge of such evidence, the detenu could not have made any effective

representation against the order of detention and observed that "it is not the law that the evidence gathered by the detaining authority against the detenu must also be furnished to him". In that case the learned Judges, after taking note of the earlier decisions, have observed that:

These cases show that the detenu is not entitled to be informed of the source of information received against him or the evidence which may have been collected against him as, for example, the evidence corroborating that the report of the CID is true and correct. His right is to receive every material particular without which a full and effective representation cannot be made. If the order of detention refers to or relies upon any document, statement or other material, copies thereof have of course, to be supplied to the detenu as held by this Court in *Icchu Devi Choraria v. Union of India*.

17. In that case the grounds of detention were based on the report of the speeches made by the detenu as recorded by the CID branch of the Punjab police. Along with the ground of detention, the detenu was supplied with the extract from the CID report and not whole of it and it was urged that there was non-compliance with the requirement of Article 22(5) of the Constitution. The said contention was rejected by the Supreme Court on the view that no prejudice had been caused to the detenu since the grounds and the particulars were served upon him simultaneously and Ground No. 1 mentioned every conceivable detail which it was necessary to mention in order to enable the detenu to make a proper representation against the order of detention and that what was omitted from the extract furnished to the detenu was incorporated in Ground No. 1. According to the Supreme Court, furnishing of the CID report, of which a truncated extract was furnished to the detenu was a superfluous exercise in the light of the facts of that case.

18. In view of the aforesaid decision of the Supreme Court in *State of Punjab and Ors. v. Jagdev Singh Talwandi* (supra), it must be held that although a detenu is not entitled to be informed of the source of information received against him or the evidence which may have been collected against him the detenu is entitled to receive every material particular without which a full and effective representation cannot be made and that if the grounds of detention refer to or rely upon any document, statement or other material, copies thereof have to be supplied to the detenu. The said case also shows that if the grounds of detention mention every conceivable detail which it is necessary to mention in order to enable the detenu to make a proper representation against the order of detention, it cannot be said that the failure to supply copies of the documents would vitiate the detention.

19. In the present case, Shri Sharma has submitted that the documents mentioned in Para 3 of the letter (Annexure J) dated 18th June, 1985 sent by Shri Herjinder Singh counsel for the petitioner to the Commissioner and Administration Secretary, Home Department, Jaipur, should have been supplied to the petitioner along with the grounds of detention and the failure on the part

of the detaining authority to supply the copies of the said documents along with the grounds of detention vitiates the detention of the petitioner. We have carefully perused the documents referred to in the aforesaid letter and we are of the view that except the statement of Omprakash dated 1st January, 1985, to which reference is made in Ground No. 5 of the grounds of detention, is it not possible to say that the other documents referred to in the said order are relied upon or referred to in the grounds of the detention. In accordance with the law laid down by the Supreme Court in the cases referred to above, it cannot, therefore, be said that it was incumbent upon the detaining authority to furnish copies of the said documents along with the grounds of detention. In so far as the statement of Omprakash Soni dated 1st January, 1985 is concerned it can be said that the statement is relied upon in ground No. 5 of the grounds of detention and in view of the decisions of the Supreme Court referred to above, it was necessary that the copy of the said statement should have been supplied along with the grounds of detention. The question which next arises for consideration is as to whether the petitioner can be said to have been prejudiced in making an effective representation by the failure on the part of the detaining authority to supply the copy of the said statement dated 1st January, 1985. A perusal of the grounds of detention shows that in ground No. 5 it has been stated that Shri Omprakash Soni in his statement dated 1st January, 1985 has stated that 25 days prior to the recovery of foreign gold from his possession by the Customs officials, petitioner had given one foreign gold biscuit to him at his shop and that on 24th December, 1984, he had brought five foreign gold biscuits from the house of the petitioner. In our opinion ground No. 5 of the grounds of detention reproduces relevant portion of the statement of Omprakash Soni dated 1st January, 1985 and it can be said that ground No. 5 mentions every conceivable detail which it was necessary to mention in order to enable the petitioner to make a proper representation against the order of detention and it cannot, therefore, be said that any prejudice has been caused to the petitioner by not furnishing to him the copy of the statement of Omprakash Soni dated 1st January 1985 along with the grounds of detention because the furnishing of the statement of Omprakash Soni would have been a superfluous exercise in the facts of the present case.

20. As regards the third contention of Shri Sharma based on the provisions of Section 3(2) of the Act it may be observed that Sub-section (2) of Section 3 prescribes that when any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall within ten days, forward to the Central Government a report in respect of the order. In the reply filed on behalf of Respondents Nos. 1 and 3, it has been stated that after the arrest of the petitioner on 10th June, 1985 the State Government referred the matter to the Government of India and the relevant documents were also sent on 11th June 1985. This would show that the requirements of Section 3(2) of the Act have been fulfilled Shri Sharma has, however urged that Section 3(2) also postulates that the Central Government

should consider the matter, after it has received the report of the State Government and that in the present case there is nothing on the record to show that the Central Government has considered the report sent by the State Government u/s 3(2) of the Act and therefore the detention of the petitioner is illegal. In our opinion there is no substance in this contention. The object underlying Section 3(2) of the Act is to enable the Central Government being kept well informed about the action taken under the Act by the State Government or its officers because the purpose of preventive detention under the Act is conservation and augmentation of foreign exchange and prevention of smuggling activities which are matters of vital concern for the Central Government. Moreover u/s 11 of the Act, the Central Government has been empowered to revoke an order of detention made by a State Government or its officers and a detenu can make a representation against his detention to the Central Government. THE REPORT sent by the State Government u/s 3(2) of the Act will enable the Central Government to deal with such a representation expeditiously. But this does not mean that even in the absence of any representation from the detenu the Central Government must, on its own, consider the report sent to it by the State Government u/s 3(2) of the Act and pass an order. The third contention urged by Shri Sharma is, therefore rejected.

21. In support of the fourth contention relating to non-consideration of the representation dated 18th June, 1985 Shri Sharma has urged that the letter (Annexure J) dated 18th June, 1985 sent by Shri Herjinder Singh, Advocate, to the Commissioner and Administration Secretary Home Department, Jaipur, was in the nature of a representation against the detention of petitioner. Communication dated 11th July, 1985, there is no reference to the representation contained in the letter dt. 18th June, 1985. If the letter (Annexure J) and the said representation has not been considered by the State Government. The learned Government Advocate, on the other hand has urged that the said letter of Shri Herjinder Singh cannot be regarded as a representation but was only a request for supply of copies of the documents mentioned in the said letter and the said request was granted and the copies of the documents mentioned therein were supplied to the petitioner on 9th July, 1985. We have perused the letter dated 18th June, 1985 and we are unable to agree with the learned Government Advocate that the said letter was not a representation against the detention of the petitioner. In *Smt. Shalini Soni and Ors. v. Union of India and Ors.* (supra), the Supreme Court has observed:

The representation has not to be made in any prescribed form. There is no formula nor any magical incantation like "open sesame" to be repeated or chanted in order to qualify a communication as a representation. So long as it contains a demand or a request for the release of the detenu in whatever form or language couched and a ground or a reason is mentioned or suggested for such release there is no option but to consider and deal with it as a representation for the purpose of Article 22(5) of the Constitution. The communication dated July 27, 1980 contains demand that the detenu should be released forthwith. It

mentions a reason for the demand for release, namely, that copies of statements documents and materials relied upon by the detaining authority in arriving at the requisite satisfaction were not furnished to the detenu and that the detention was therefore, illegal. In support of the claim that the detention was illegal, reference was made to a decision of the Gujarat High Court. The communication, then ended with a reiteration of the request for the release of the detenu. We find it impossible to read the communication as anything but a representation against the order of detention.

22. If the letter dated 18th June, 1985 is read in the light of the above mentioned decision, the conclusion is inevitable that the said letter was a representation against the order of detention. In para 2 of the said letter it has been stated that the right of the petitioner guaranteed under Article 22(5) of the Constitution has been violated and the detention is illegal and is liable to be revoked immediately. Again in para 3 it has been stated that the documents mentioned in the said paragraph which have been relied upon in passing the detention order, have not been supplied to the petitioner and in the end it has been stated that the said documents ought to have been supplied along with the grounds of detention and failure to supply the same makes the detention order illegal. Although in the said letter a request has been made for the supply of the documents immediately so that the petitioner can make a purposeful and effective representation, but it does not mean that the letter dated 18th June, 1985 was not a representation against the detention of the petitioner because in the said letter it has been clearly stated that the detention of the petitioner is illegal and is liable to be revoked immediately.

23. The next question which arises for consideration is as to whether the said representation dated 18th June, 1985 has been considered by the State Government. In this connection it may be stated that after the aforesaid letter dated 18th June, 1985 addressed by Shri Herjinder Singh Advocate, the petitioner had submitted a detailed representation (Annexure K) dated 22nd June, 1985 and by letter (Annexure L) dated 11th July, 1985, the petitioner was informed that the representation dated 22nd June, 1985 had been carefully considered by the State Government and has been rejected. In the said dated 18th June, 1985 and the representation (Annexure K) dated 22nd June, 1985 are read together, it would be noticed that the representation dt. 22-6-1985 is very comprehensive and the said representation also includes the submissions contained in the letter dated 18th June, 1985. In the letter dt. 18th June, 1985, Shri Herjinder Singh Advocate had made two points, viz., (i) that failure to supply all copies of documents referred to and relied upon or taken into consideration by the detaining authority has resulted in any violation of fundamental right of the petitioner as guaranteed under Article 22(5) of the Constitution of India and as the said detention is illegal and is liable to be revoked immediately, and (ii) that the copies of the said documents as enumerated in the said letter dated 18th June, 1985 should be supplied immediately to the petitioner to enable him to make a purposeful and effective

representation The representation dated 22nd June, 1985 apart from other submissions, also contains the submission that the detention of the petitioner is illegal being violative of the provisions of Article 22(5) of the Constitution of India and that the order of detention should be revoked and the petitioner be set at liberty forthwith. In para 13 of the said representation dated 22nd June, 1985 the petitioner has referred to the letter dated 18th June, 1985 sent by Shri Herjinder Singh Advocate and has enumerated the documents, the copies of which have not been supplied to the petitioner and that the same has deprived him from making an effective and purposeful representation and he has reiterated the request for supply of the said documents immediately. This would show that the representation dated 22nd June, 1985 is comprehensive and includes both the submissions contained in the letter dated 18th June 1985 and it cannot be said that the petitioner has in any way been prejudiced on account of the absence of formal order rejecting the representation dated 18th-June, 1985. Moreover, from the affidavit of Shri S.C. Pagoria dated 12th September, 1985 it appears that the letter dated 18th June, 1985 was sent for comments to the Collector of Customs and that the Collector of Customs had sent his comments on the said letter along with his comments on the representation dated 22nd June, 1985 and that both the representations dated 18th June 1985 and 22nd June, 1985 along with the comments of the Collector of Customs were considered by the Deputy Secretary in the Home Department as well as by the Home Commissioner and the Chief Minister cum Home Minister and thereafter the order dated 11th July, 1985 was passed rejecting the said representation, but at the same time it was decided to supply the copies of the documents referred to in the letter dated 18th June, 1985 and the representation dated 22nd June, 1985 to the petitioner and the said documents were furnished to the petitioner on 9th June, 1985. In the circumstances it is not possible to accept the contention of Shri Sharma that the representation contained in the letter of Shri Herjinder Singh Advocate dated 18th June, 1985 has not been considered by the detaining authority.

24. Shri Sharma has next contended that in any event there has been inordinate delay in the disposal of the representations of the petitioner dated 18th June, 1985 and 22nd June, 1985 in as much as the said representations were disposed of on 11th July, 1985. In other words according to Shri Sharma, there was a delay of 23 days in the disposal of representation dated 18th June, 1985 and a delay of 19 days in the disposal of the representation dated 22nd June, 1985. In *Jayanarayan Sukul Vs. State of West Bengal*, , decided by the Constitution bench of the Supreme Court, it has been held that "no definite time can be laid down within which a representation of a detenu should be dealt with save and except that it is a constitutional right of a detenu to have his representation considered as expeditiously as possible". In *Nagendra Nath Mondal Vs. The State of West Bengal*, , it has been held that "there can be no hard and fast rule with regard to the time which Government can or should take, and that each case must be decided on its own facts". In the present case we find that Shri S.C. Pagoria in

his affidavit dated 12th September, 1985 has stated that the letter of Shri Herjinder Singh Advocate dated 18th June, 1985 was received in the office of the Home department on 22nd June, 1985 and that 23rd June, 1985 was Sunday and the said letter was sent for comments to the Collector of Customs on 24th June, 1985. The representation of the petitioner dated 22nd June, 1985 was given to the Jail authorities on 22nd June, 1985 and 23rd June, 1985 being Sunday, it was received in the office of the Home Department on 25th June, 1985 and the Home Department sent the said representation to the office of the Collector of Customs for comments on 26th June, 1985. The Collector of Customs sent his comments on the letter of Shri Herjinder Singh dated 18th June 1985 and the representation of the petitioner dated 22nd June 1985 on 2nd July, 1985. As the letter of Shri Herjinder Singh dated 18th June, 1985 was received back from the Collector of Customs along with his comments, a request was made to the Collector of Customs to send the original letter on the same day and reminder was again given to the Collector of Customs on 4th July, 1985. The original letter of Shri Herjinder Singh Advocate dated 18th June, 1985 was received in the Home Department on 5th July, 1985. 6th July and 7th July, 1985 were Saturday and Sunday respectively and the letter of Shri Heerjinder Singh dated 18th June, 1985 and the representation of the petitioner dated 22nd June, 1985 were processed by the Assistant Secretary, Home Department on 8th July, 1985 and by Shri Pagoria on 9th July, 1985 and the same were submitted to the Home Commissioner cum Home Secretary on 9th July, 1985 and that the Home Commissioner cum Home Secretary gave his comments on 9th July, 1985 and thereafter the file was submitted to the Chief Minister cum Home Minister and after applying his mind, he confirmed the order of the Home Commissioner cum Home Secretary on 11th July, 1985. Shri Sharma has submitted that undue delay had occurred in the disposal of the representation on account of the time taken by the Collector of Customs in sending his comments on the representations which were forwarded to him. We are unable to agree. The letter of Shri Herjinder Singh Advocate was sent to the Collector of Customs on 24th June, 1985 and within two days thereafter i.e. on 26th June, 1985, the detailed representation dated 22nd June, 1985 was sent to the Collector of Customs for comments. This shows that before the Collector of Customs could send his comments on the representation dated 18th June, 1985 he received the representation dated 22nd June, 1985 which was very comprehensive and also included the submissions contained in the representation dated 18th June, 1985. The Collector of Customs, therefore, sent his comments on both the representations and the same were sent on 2nd July, 1985 i.e. within six days of the receipt of the representation dated 22nd June, 1985. In Smt. Masuma Vs. State of Maharashtra and Another, , the Supreme Court has expressed the view that period of 4 or 5 days taken by the Customs authorities in furnishing their parawise comments on the representation could not be regarded as unreasonable. Taking into consideration the facts and circumstances referred to above, it cannot be said that there has been inordinate delay in the consideration of the representations dated 18th June 1985 and 22nd June, 1985.

25. We may now come to the contention of Shri Sharma in relation to the proceedings before the Advisory Board. In this connection Shri Sharma has urged that the petitioner was not afforded adequate opportunity of representing his case before the Advisory Board. Shri Sharma has pointed out that the Advisory Board met on 11th July, 1985, 22nd July, 1985 & 29th July, 1985 to consider the matter relating to the detention of the, petitioner and that in the meetings held on 11th July and 22nd July, 1985 the, Advisory Board did not call the friend of the petitioner who was to assist the petitioner in representing his case before the Advisory Board even though he was present and on 29th July, 1985 the friend of the petitioner was called only for ten minutes. The learned Government Advocate has placed before us the proceedings of the Advisory Board and from a perusal of the said proceeding, We find that the petitioner had examined two witnesses, viz., Om Prakash and Dwarka Das before the Advisory Board and that the Advisory Board had also heard the friend who had come to assist petitioner. It cannot, therefore, be said that adequate opportunity was not afforded by the Advisory Board to the petitioner and his friend, who had come to assist him to make his submissions before the Advisory "Board.

26. Another contention that has been urged by Shri Sharma was that there has been denial of the right to equality under Article 14 of the Constitution in as much as the officers of the Customs and Home Department who were well acquainted with the legal affairs, were present before the Advisory Board at the time when the case of the petitioner was considered and that the petitioner was not afforded assistance of a lawyer. In this connection it may be mentioned that in the reply that has been filed on behalf of respondents Nos. 1 and 3, it has been stated that the officers of the Customs and Home Department were only used by the Advisory Board to sort out or pick out the necessary documents which were demanded by the Advisory Board. In our opinion the presence of the officers of the Customs and Home Department for the purpose of sorting out the relevant documents which were demanded by the Advisory Board does not involve the violation of the right of equality under Article -14 of the Constitution and it does not vitiate the proceedings of the Advisory Board. In this context reference may be made to the decision of the Supreme Court in Suresh Bhojraj Chelani Vs. State of Maharashtra, , wherein it has been held that there was no question of violation of Article 14 of the Constitution on account of presence of the Customs officers before the Advisory Board to produce files and documents as directed by the Advisory Board in as much as the Customs officers had neither pleaded nor argued the case on behalf of the Government before the Advisory Board. Here also it is not the case of the petitioner that the officer of the Home and Customs Department who were present before the Advisory Board had either pleaded or argued the case on behalf of the Government before the Advisory Board. In the circumstances it cannot be said that the proceedings of the Advisory Board were vitiated on account of the presence of the officers of the Customs and Home Department before the Advisory Board.

27. Another contention that has been urged by Shri Sharma in this regard is that

it was incumbent upon the Advisory Board to send the record to the State Government alongwith its recommendations u/s 8(c) of the Act and that in the present case the Advisory Board did not send its record to the State Government. In support of his aforesaid submission Shri Sharma has placed reliance on the decision of the Supreme Court in *Nand Lal Bajaj v. State of Punjab and Anr.* (1981) 4 SCC 366 wherein it has been held that the State Government while confirming the order of detention has not only to peruse the report of the Advisory Board, but also to apply its mind to the material on record and if the record itself was not before the State Government it follows that the order passed by the State Government was without due application of mind. The aforesaid decision in *Nand Lal Bajaj v. State of Punjab and Anr.* (supra) was considered by the Supreme Court in its recent judgment in *State of Rajasthan and Another Vs. Shamsheer Singh*, In the said case the Supreme Court was dealing with the provisions of the National Security Act, 1980 and has held that u/s 11(2) of the said Act the Advisory Board is required to submit its report and there is no obligation cast by the Act that the entire record of the Board should be placed before the State Government. While holding that there is no legal obligation on the part of the Advisory Board to send its record to the State Government, the Supreme Court held that the appropriate Government should have the entire material before it along with the report of the Advisory Board when it is called upon to consider whether to confirm or not to confirm the detention on the basis of the report of the Advisory Board u/s 12(1) of the said Act and that the Board should, therefore, forward the record containing the papers placed before it at the hearing of the matter along with its report so that the matter can be attended to by the State Government with due despatch and on taking a full view of the matter. The provisions of Section 8(c) of the Act are in pari materia with those contained in Section 11(2) of the National Security Act and in view of the decision of the Supreme Court in *State of Rajasthan & Anr. v. Shamsheer Singh* (supra), it must be held that although there is no obligation cast by the Act that the entire record of the Board should be placed before the State Government, but the Advisory Board should furnish the record containing the papers placed before it at the hearing of the matter along with report so that the matter can be attended to by the State Government with due care and on taking a full view of the matter. In the present case we find that Shri S.C. Pagoria, in his affidavit dated 12th September, 1985, has stated that the whole record of the Advisory Board except the order sheet and the confidential part was received by the State Government and was considered at the time of confirmation of the detention order. We have also perused the original record and we find that the statements of witnesses which were recorded before the Advisory Board as well as other documents produced before the Advisory Board had been forwarded by the Advisory Board to the State Government and were considered by the competent authority before the passing of the order dated 14th August, 1985, whereby the order of detention was confirmed and it cannot, therefore, be said that the record of the Advisory Board was not before the State Government at the time when it considered the matter of confirmation of the order of the

detention u/s 8(f) of the Act.

28. Shri Sharma has also raised an objection that there is no proper return to the writ petition in as much as the reply that has been filed on behalf of respondents Nos. 1 and 3 is not supported by the affidavit of the detaining authority, but is supported by the affidavit of Shri S.C. Pagoria, Deputy Secretary, Home (Security) Jaipur who is the officer-in-charge of the case. The submission of Shri Sharma was that the return should have been supported by the affidavit of either Chief Minister-cum-Home Minister to the Government of Rajasthan or the Commissioner and Administration Secretary, Home Department, Government of Rajasthan, Jaipur. In this connection Shri Sharma has placed reliance on the decisions of the Supreme Court in *Merugu Satyanarayana Vs. State of Andhra Pradesh and Others*, and *Biru Mahto v. District Magistrate, Dhanbad* (1982) 3 SC 322. We have carefully considered the aforesaid submissions of Sharma and we are unable to agree with the same. In the present case the order of detention has been passed by the State Government and the return is supported by the affidavit of Shri S.C. Pagoria Dy. Secretary Home (Security) to the Government of Rajasthan. In the writ petition no allegation of malafides has been made against the detaining authority and all the averments contained in the writ petition relate to matters of record. Shri Pagoria who is Deputy Secretary, Home (Security") to the Government of Rajasthan, was, therefore, competent to swear in the affidavit in support of the reply to the said averments. In this connection reference may be made to the decision of the Supreme Court in *State of Punjab & Ors v. Jagdeo Singh Talwandi* (supra). In that case the order of detention had been passed by the District Magistrate, Ludhiana and the counter affidavit was filed by the Deputy Secretary in the Home Department of the Government of Punjab. An objection was raised on behalf of the detenu that there was no proper return in as much as the District Magistrate Ludhiana had not filed the affidavit in support of the return. The Supreme Court rejected the said contention on the view that the failure to furnish counter affidavit of the District Magistrate who had passed the order of detention was improper though in most of the cases it may not be of much consequence especially when there was no allegation of mala fides against the detaining authority. In that case reference has been made to an earlier decision of the Supreme Court in *Shaik Hanif v. State of West Bengal* (1974) SC 637 wherein also the counter affidavit had been filed by the Deputy Secretary Home although the order of detention was passed by the District Magistrate. The Supreme Court observed that if for sufficient reasons shown to the satisfaction of the Court, the affidavit of the person who passed the order of detention cannot be furnished, the counter affidavit should be sworn by some responsible officer who personally dealt with or processed the case in the Government Secretariat or submitted it to the Minister or other Officer duly authorised under the rules of business framed by the Governor under Article 166 of the Constitution to pass orders on behalf of the Government in such matters. In the present case we find that Shri Pagoria who has filed the affidavit in support of the return is a responsible officer who holds the post of

Deputy Secretary Home (Security) in the Government of Rajasthan and from the affidavit of Shri Pagoria dated 12th September, 1985 it appears that under the Rules of Business Shri Pagoria is the processing authority of COFEPOSA matters under the Rules of Business framed under Article 166(3) of the Constitution of India and that he had processed the case of the petitioner for taking action u/s 3(1) of the Act on 21st May 1985 and that he has been dealing with the file of the detention of the petitioner. Taking into consideration of the facts and circumstances of the case, it cannot be said that the return filed on behalf of respondents No. 1 and 3 has not been supported by the affidavit of a competent person and for that reason the said return should be ignored.

29. Having considered the various submissions urged by Shri Sharma, we are of the view that none of the said contentions merits acceptance. Thus, no ground is made out for holding that the detention of the petitioner is illegal. The writ petition, therefore, fails and is accordingly dismissed. No order as to costs.