
(1980) 05 GUJ CK 0009
In the Gujarat High Court

Smt. Aabadabegum

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 03-05-1980

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1), 3(1), 8
Constitution of India, 1950 — Article 22, 22(5), 226

Citation : (1981) 22 GLR 177

Hon'ble Judges : B.J. Divan, C.J;N.H. Bhatt, J

Bench : Division Bench

Judgement

B.J. Divan, C.J.—In this group of seven Special Criminal Applications the same grounds of detention based on the same instance were utilised by the detaining authority, namely, the State of Gujarat, against the respective detenu whose case has come up before the High Court under Article 226 of the Constitution praying for writ of habeas corpus on behalf of the respective detenu and in view of the fact that common questions of fact and law are involved in each of these cases, we will dispose of all these cases by this common judgment.

2. Out of these Special Criminal Applications, Special Criminal Application No. 72 of 1980 has been argued at length before us and in the other Special Criminal Applications the petitioners have urged the same arguments though there is one salient difference in facts between (he detenu in Special Criminal Application No. 72 of 1980 and the rest of the detenues in this case and that difference we will point out in the course of this judgment. Barring that particular difference, the rest of the facts are all the same.

3. The detenu in Special Criminal Application No. 72 of 1980 is one Jashwant Chandulal Patel. He is a partner of two firms both of which deal in bullion, silver bullion, silver ornaments etc. One of these firms is the firm of Messrs Chokshi Vinodchandra Chandulal Patel and the other firm of which he is a partner is Messrs Jashwant Bullion Company. Both these firms carry on business as dealers

in bullion at Ahmedabad. By order of detention dated January 30, 1980 Jashwant Chandulal Patel was detained and the order was passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (herein-after referred to as "the COFEPOSA") and the detention was with a view to preventing Jashwant Chandulal Patel from abetting the smuggling of goods and the detaining authority, namely, the Government of Gujarat, was satisfied that with a view to preventing him from abetting the smuggling of goods it was necessary so to do.

4. The detenu in Special Criminal Application No. 45 of 1980 is Usman Aboobakar Mulla. In his case also the order is dated January 30, 1980 and the order was passed u/s 3(1) of the COFEPOSA because the Government was satisfied that with a view to preventing him from abetting the smuggling of goods it was necessary to detain the said detenu. In Special Criminal Application No. 62 of 1980 the detenu is Rashmikant Chimanlal Patel. The order is u/s 3(1) of the COFEPOSA and the order of detention was passed because the State Government was satisfied that with a view to preventing him from abetting the smuggling of goods it was necessary to detain him. The detenu in Special Criminal Application No. 69 of 1980 is Kailaschandra Shantilal Jain. The order is dated January 30, 1980 and the order is passed u/s 3(1) of the COFEPOSA because the Government was satisfied that with a view to preventing him from abetting the smuggling of goods it was necessary to detain the detenu. In Special Criminal Application No. 71 of 1980 the detenu i.e. one Narendra Babubhai Patel and the order in his case was also u/s 3(1) of the COFEPOSA and the order was passed as the State Government was satisfied that with a view to preventing him from abetting the smuggling of goods it was necessary to detain him. In Special Criminal Application No. 73 of 1980 the detenu is one Babukhan Istiarkhan Pathan, a resident of Udaipur in the State of Rajasthan and the order was passed u/s 3(1) of the COFEPOSA because the State Government was satisfied that with a view to preventing him from abetting the smuggling of goods it was necessary to detain him. The detenu in Special Criminal Application No. 74 of 1980 is Mohmed Hussein Hanif Mohmed Pathan, residing at Udaipur in the State of Rajasthan and the order in his case was also passed u/s 3(1) of the COFEPOSA because the State Government was satisfied that with a view to preventing him from abetting the smuggling of goods it was necessary to detain the said detenu. Thus in each of these seven cases the State Government was satisfied with respect to each of the detenus that it was necessary to detain the particular detenu with a view to preventing him from abetting the smuggling of goods. Each of these seven persons before us is said to be connected with a conspiracy to smuggle silver out of India.

5. We will deal with the grounds of detention furnished to Jashwant Chandulal Patel, the detenu concerned in Special Criminal Application No. 72 of 1980 and the grounds of detention narrate that in or about the second week of October 1979 intelligence was received that a number of telephone calls were booked by one Lallu Jogi, a suspected smuggler of Marwad, Nani Daman, from various

telephones in Bulsar, Killa Pardi and Udwada to telephone No. 396868 installed at the residence of one Mohmed Umar Siddik Bakshi alias Umar Bakshi, a suspected smuggler of Bombay, and the Telephone No. 396868 was at Bombay and it appears that intelligence was received by the customs authorities that - on the night of November 29/30, 1979 a consignment of about 20 silver bars was likely to move from Ahmedabad to Lallu Jogi's place at Daman "and these bars would be concealed in a truck and the bars were sent for the purpose of smuggling them out of India. The number of the truck was reported to be HSR 3896 or RSH 6983 or HSR 6983. It was further revealed by intelligence sources to the customs authorities that the Narendra Patel (one of the detenues before us) and one Usman Aboobakar Mulla (another detenu in this batch before us) were making "arrangements for sending the silver bars on behalf of Umar Bakshi to Lallu Jogi and that because of the arrangement between Lallu Jogi and Umar Bakshi, this conspiracy was hatched for the purpose of sending silver 3 bars from Ahmedabad to Lallu Jogi's place at Daman. It is alleged that \$t about 10.20 A. M. on November 30, 1979 a party of officers that was "keeping watch at Ankleshwar saw a truck bearing Registration No. RSY "6983 proceeding towards Surat on National Highway No. 8. The officers followed the truck and intercepted the truck near Pipodra village. On preliminary interrogation, the occupants of the truck disclosed their identities as Kailaschandra Shantilal Jain; Babukhan Tstiyarkhan Ahmed Patban, the cleaner; and Mohmed Hussein Hanif Mohmed Pathan, the driver; (all of these persons are detenues in the batch before us). All these three persons, namely, Kailaschandra Shantilal Jain, Babukhan Istiyafkhan Ahmed. Pathan and Mohmed Hussein Hanif Mohmed Pathan were residents of Udaipur. On search of the truck 23 bars of silver weighing in the aggregate 692.527 Kgs. valued at Rs. 15,65,11 l/-were found concealed atrcngrst the bags of fertilizers which were stacked in that truck. 240 bags of fertilizers were in the the truck and the silver bars were found amongst the tags of fertilizers. Because of the chain of statements which started from the statement of Kailaschandra Shantilal Jain recorded on November 30, 1979 and December 1, 1979, it was revealed as shown in the grounds of detention that because of the contact between Narendra Patel and Umar Bakshi it was arranged that Narendra Patel should make airangements at Ahmedabad in consultation with Usman Mulla to despatch about 25 silver bars daily to Lallu Jogi's place at Nani Daman and it was arranged that code words would be seat in telephone messages and the truck carrying the silver bars from Ahmedabad to Lillu Jogi's place would deliver the silver bars on the code number being disclosed to the driver of the truck. It was disclosed that on 27th November 1979, 25 bars of silver were transported because of this conspiracy from Ahmedabad to Lallu Jogi's place. No consignment was sent on November 26, 1979 but on November 29, 1979 another consignment of 23 silver bars was despatched and that consignment was intercepted near Pipodra village on the highway between Ankleshwar and Surat as we have mentioned earlier.

6. The grounds of detention reveal that the principal members of the conspiracy were Umar Bakshi of Bombay, Lallu Jogi of Nani Da-man,Narendra Babubhai

Patel of Ahmedabad, Rashmikant of Ahmedabad and Jashwant Chandulal Patel, the detenu in Special Criminal Application No. 72 of 1980. Mulla was also one of the principal figures in this conspiracy and the arm of the conspiracy was to despatch daily 25 silver bars from Ahmedabad and for that purpose the services of Jashwant were to be utilised. Jashwant was to be paid a premium over the ruling rates for silver bullion in the Ahmedabad market because he knew, according to the statements made by him, that the bars were intended for being smuggled out of India and it is because of this material that the orders of detention ultimately were passed with a view to preventing all these seven detenues before us from abetting the smuggling of goods out of India. Lallu Jogi, according to the statements before the customs authorities was engaged in a two-way traffic of smuggling, namely, smuggling of goods from abroad into India particularly from middle-East countries and the Gulf countries and smuggling of silver bars from India to the Gulf countries and it is because of the materials collected that it was alleged that there was a conspiracy in which twelve people were involved to smuggle silver bullion out of India. The principal members of the conspiracy were the persons whose names have been mentioned above and the rest were links in the chain of conspiracy to smuggle bullion out of India. In the instant case it is nobody's case that the detenues were connected with the disposal of goods which were being smuggled into India by Lallu Jogi. We are concerned with the conspiracy to smuggle silver bullion out of India and the principal figures were Umar Bakshi and Lallu Jogi. The rest were their supporters and the part played by participant in the conspiracy was larger or smaller according to the customs authorities.

7. The detenues before us were all taken into custody on January 30, 1980 and the grounds of detention on identical lines were served on each of the detenues but the substance of the grounds of detention is as we have set out hereinabove. It may be mentioned at this stage that after he was arrested. Narendra Patel was produced before the learned Metropolitan Magistrate, Ahmedabad, and at that stage in the bail application made by his wife it was alleged that Narendra Babubhai Patel had appeared as a witness before the Shah Commission complaining of harassment at the hands of customs authorities during the period of the Emergency and that because of his deposition before the Shah Commission, the custom authorities bore a grudge against him and wrongly involved him in the present case of alleged conspiracy. It may be mentioned that all these detenues were released on bail. Those who were arrested in the first instance on or about November 30, 1979 were released on bail by the learned Metropolitan Magistrate on or about 10th December 1979 and in one case the order of bail was granted by the High Court. In most of the other cases the orders of bail were passed by the learned Metropolitan Magistrate but after the first arrest the detention orders came to be passed on January 30, 1980 and the grounds of detention dated January 30, 1980 were furnished to each of the seven detenues before us.

8. The one fact which distinguishes the case of Jashwant Chandulal Patel, the

detenu in Special Criminal Application No. 72 of 1980 from the six other cases before us is that on February 28, 1980 Mr. Virendra Parikh, an advocate who was instructed in connection with that detenu, wrote a letter to the Deputy Secretary, Government of Gujarat, Home Department (Special), Sachivalaya, Gandhinagar, asking for certain copies at the earliest opportunity and no such demand for copies appears to have been made on behalf of any of the other six detenues before us. That is the one distinguishing feature in the case of detenu in Special Criminal Application No. 72 of 1980. Barring that factor, all other contentions and all other facts are the same in all the seven cases before us.

9. On behalf of the detenu in Special Criminal Application No. 72 of 1980, Mr. Poras A Mehta, the learned Counsel appearing for the petitioner, urged the following submissions before us:

(1) The incident, namely, that of interception of the truck carrying 23 silver bars occurred on November 30, 1979 and the grounds of detention were furnished and the orders of detention were passed on January 30, 1980 and hence there was two months' delay in passing the detention orders. There was no live-link or nexus between the incident and the passing of the detention order.

(2) There was non-application of mind by the detaining authority to the possibility of prosecution being launched against the detenues under the provisions of the Customs Act.

(3) There was non-application of mind as to the unlawful detention of the detenues for more than 24 hours before putting them up, put before the Judicial Magistrate and he contended in this connection that the material statements of most of the detenues were taken by the customs authorities while the detenues were under such illegal detention.

(4) There was delay in supplying the statements and documents relied on and thereby there was interference with the right to make an effective representation as expeditiously as possible.

(5) Even after the delay, all the documents were not supplied and particularly the statements of the Manager of Bharat Bullion Refinery and a copy of the bail application made by wife of Narendra Babubhai Patel before the learned Metropolitan Magistrate, Ahmedabad, were not supplied to Mr. Virendra Parikh, Advocate.

(6) While in unlawful detention no intimation or information was given to the detenues that they had a right to consult their lawyers if they so desired.

(7) There was non-application of mind on the part of the detaining authority to the fact that the silver was sent from one place in Ahmedabad by Jashwant to another place in Ahmedabad without a transport voucher. No such transport voucher was necessary since the silver bullion was transported within the limits of Ahmedabad City where even under the Customs Act the provisions of transport vouchers would not apply. So far as Jashwant is concerned, since,

there was no question of issue of transport voucher there was no offence and hence there was non-application of mind.

(8) That the bail application of wife of Narendra Babubhai Patel, one of the detenues before us, before the learned Metropolitan Magistrate, was not sent to the detaining authority and was not considered by the detaining authority before the detention orders were passed.

(9) The reference to the Advisory Board is illegal.

10. Now as regards the last ground it may be pointed out that the Advisory Board which considered the cases of the detenues before us was newly constituted by the State Government on March 5, 1980. It was constituted in exercise of the powers conferred by Section 8 of the COFEPOSA and it was passed in supersession of Government Notification, Home Department, dated April 4, 1979. The earlier notification of April 4, 1979 set up the Advisory Board consisting of three persons and the new Board which was constituted on March 5, 1980 consists of Mr. Justice S.H. Sheth, a sitting Judge of this High Court and two retired Judges of this High Court, namely, Mr. A.A. Dave and Mr. M.C. Trivedi. Mr. Mehta on behalf of the petitioner contended that by virtue of the directive given by the Central Government, cases of detenues who were detained before Section 3 of the Forty-Fourth Constitution Amendment making changes in Article 22 of the Constitution was made applicable, were to be referred to the old Board and cases set up after the newly amended Article 22 as amended by the Forty-Fourth Amendment would be brought into force were to be referred to the newly set up Board. The difference between the amended and unamended provisions of Article 22 is that under the unamended Article the case of the detenu was required to be referred to the Advisory Board within three months whereas under the amended Article 22, the case of the detenu was required to be referred to the Board within two months. Another difference was that under the unamended Article the Advisory Board should consist of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court whereas under the amended Article, the requirement is that the Advisory Board should consist of a Chairman and not less than two other members, and the Chairman shall be a serving Judge of the appropriate High Court and the other members should be serving or retired Judges of the High Court. Thus even under the unamended Article, a sitting Judge of the High Court could be a member and retired Judges of the High Court could also be the members of the Advisory Board. Thus there is nothing wrong even under the unamended Article if the Advisory Board consisting of a sitting Judge of the High Court and two retired Judges is constituted. Even though the amended Article 22 was not brought into force, the State Government constituted a Board which would meet the requirements of both the amended and unamended Article and, it cannot be said that the previous Board was not superseded because the notification by which the previous Board was set up on April 4, 1979 itself was superseded. Under these circumstances, the last submission urged on behalf of the detenues before

us that the reference to Advisory Board was illegal cannot be sustained and must be rejected.

11. As regards the submission that the bail application made by wife of Narendra Babubhai Patel to the Metropolitan Magistrate, Ahmedabad, was not sent to the detaining authority, it may be mentioned that the papers which were sent by the sponsoring authority to the detaining authority have been shown to us and we have satisfied ourselves that the copy of the said bail application was forwarded by the sponsoring authority, namely, the customs authority, to the State Government, and, therefore, this particular ground must also be rejected.

12. It may be mentioned in this connection that there is an averment in the petition in Special Criminal Application No. 72 of 1980 and other similar petitions that this bail application was not forwarded to the detaining authority. In paragraph 10(b)(ii) in Special Criminal Application No. 72 of 1980, it has been alleged that Narendra Patel, one of the detenues detained for the very same transaction, had submitted a bail application before the learned Metropolitan Magistrate, Ahmedabad, in which he had made serious allegations against the officers of the customs to the effect that he had been falsely implicated. The petitioner understood that the said bail application was not brought to the notice of the detaining authority and the detaining authority had not applied its mind to the said statements. An affidavit-in-reply has been filed on behalf of the State Government by P. M. Shah, Deputy Secretary to Government of Gujarat, Home Department (Special), and in paragraph 3 of this affidavit dated 12th May 1980 it has been stated that the bail application made by Narendra Patel was brought to the notice of the first respondent (the State of Gujarat) and the State Government had considered the said application before passing the impugned order of detention. As we have observed above, we have satisfied ourselves by looking at the file that copy of the bail application was amongst the papers that were sent by the customs authorities to the State Government and was considered by the State Government before the orders, of detention were passed.

13. It is true that copy of the bail application was not in the bunch of papers furnished to the learned Advocate of the detenu and it is also true that there is no reference to the bail application of Narendra Patel and the contentions set out in the bail application so far as the grounds of detention are concerned. Though there is a reference to the other contentions of the detenu and those other contentions have also been dealt with since there is a categorical statement made in the affidavit of P. M. Shah and since we have satisfied ourselves that the copy of the bail application was forwarded to the State Government, this submission urged on behalf of the detenu be rejected.

14. It must be pointed out that there is a peculiar thing which has happened in this case and that will have material bearing on the conclusions that we will arrive at and it is this that from the papers and the affidavit-in-reply it seems that a bunch containing 691 pages consisting of copies of statements, documents and other relevant materials had been sent by the customs authorities to the

detaining authority, namely, the State Government. But when copies came to be supplied to the learned Advocate of the detenu, the bunch of papers contained 460 pages only and thus material consisting of 231 pages was not furnished to the detenu.

15. It is contended that there was delay in supplying the statements and documents relied on in grounds of detention. The law on this point is very clear. The Constitution in unamended Article 22 which was in force at the material time states in Clause (5) that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making representation against the order. It is well-settled by now that the opportunity of making a representation must be an opportunity of making an affection representation to the detaining authority. We may mention that this provision is also incorporated in the COFEPOSA Under Sub-section (3) of Section 3, for the purposes of Clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention. The right to mate a representation conferred by Article 22(5) means a right to make a representation to the State Government and when the case of detenu is referred to the Advisory Board set up under the COFEPOSA, the representation of the detenu has also to be forwarded to the Advisory Board. That is also the settled legal position.

16. In paragraphs 6 and 7 of the petition in Special Criminal Appli cation No. 72 of 1980, it has been pointed out-

6. On 28th February, 1980 Shri Virendra Parikh, the Advocate for the detenu had addressed a letter by registered post to the second respondent requesting him to give complete copies of the statements, documents, panchnamas and seizure memos and other papers which were produced by the sponsoring authority before the detaining authority and on the basis of which the order of detention was issued. On the same day, by another letter, addressed to the second respondent, the Advocate for the detenu had requested to disclose the names and designation of the detaining authority who had passed the order of detention.

7. In spite of the specific requests made, the copies of the statements and records were not supplied till 21st March 1980. Only on 21st March, 1980 at about 11. 25 P M. in the night the copies of the statements, panchnamas, seizure memos etc., produced by the sponsoring authority before the detailing authority and on the basis of which the detention order was issued were delivered at the residence of, Shri Virendra Parikh, Advocate, per messenger. No such papers were supplied to the detenu.

It is contended in this connection in paragraph 10(c) that the Customs Authorities had recorded, amongst others, the statement of the Manager of Bharat Bullion Co-operative Society Limited which runs a refinery in Ahmedabad and it is pointed out that the Bharat Bullion Society had received slabs of silver "Chandi Ni Peti" from the firm of Messrs Chok-shi Vinodchandra Chandulal Patel and had converted the same into silver "Chorsa" or squares on which the Trade Mark of the Refinery and the mark "999" had been embossed. It is the contention of the petitioner that the said statement is a very relevant piece of evidence which would seriously reflect on the entire theory of sponsoring authority that the detenu had supplied the silver in question to Narendra Patel. According to the petitioner, whatever silver was received in the form of slabs was converted into squares and there was no question of the petitioner having sold and delivered silver in the form of slabs to Narendra Patel and according to the petitioner amongst the bunch of papers which had been supplied by the second respondent to the Advocate of the detenu on 21st March 1980, there is no copy of the statement of the Manager of Bharat Bullion Co operative Society Limited. It is contended that this statement was not considered by the detaining authority.

17. In reply to the averments in the petition, it has been stated in paragraph 8 of the affidavit-in-reply of P. M. Shah, being affidavit dated April 30, 1980 that by two letters dated February 28, 1980 from the Advocate pf the detenu which were received by the State Government on March 1, 1980, a request was made to the State Government for copies of the documents and statements and inquiring about the name and designation of the detaining authority who had passed the order of detention. March 2, 1980 was a holiday and that the Assistant of the COFEPOSA Branch in the State Government had submitted a Note on March 5, 1980 and the letter to the Collector of Customs was issued on March 6, 1980 for sending the copies of the documents and the statements. An attempt has been made in the said paragraph 8 to show how the time was taken till March 21, 1980 in supplying these copies of different documents to the Advocate of the detenu. It is further contended in paragraph 14 of the said affidavit-in-reply that the statement of the Manager, Bharat Bullion Co-operative Society was placed before the detaining authority and that the same had been considered by the detaining authority before passing the impugned order of detention. In paragraph 18 of this affidavit-in-reply it has been pointed cut that the material sent by the sponsoring authority was voluminous which contended as many as 691 pages and an effort has been made to show that because of this voluminous material time was taken in considering all that material before the detention order was passed.

18. We are only concerned a, this stage with the delay in supplying the documents. In our opinion, here are two aspects which must be very strongly emphasized, namely. (1) material spread over 231 pages was not supplied to the detenu or the detenu's advocate because the bunch of papers supplied to Mr. Virendra Parikh consisted of 460 pages and not 691 pages; and (2) barring Jashwant Chandulal, the detenu in Special Criminal Application No. 72 of 1980,

on behalf of no other detenu in the batch of cases before us was any demand made for copies of statements and documents on the basis of which grounds of detention and orders of detention were passed, nor were any such documents supplied to any of these other detenus.

19. The Supreme Court in *Smt. Pushpa Vs. Union of India (UOI) and Others*, has pointed out in paragraph 14 at page 1959-

Undoubtedly when the Court is dealing with question of deprivation of liberty of a citizen it would like to remind the detaining authority that as grounds of detention have to be served within five days from the date of detention it would be an additional safeguard and make the constitutional right of making the representation effective and purposeful to keep at least copies of those documents ready which have been taken into account while preparing the grounds of detention so that the copies can be furnished as expeditiously as possible.

(emphasis supplied).

Again in *Ramchandra A. Kamat Vs. Union of India (UOI) and Others*, Kailasam J., speaking for the Supreme Court has stated-

The right to make a representation is a fundamental right. The representation thus made should be considered expeditiously by the government. In order to take an effective representation, the detenu is entitled to obtain information relating to the grounds of detention. When the grounds of detention are served on the detenu, he is entitled to ask for copies of the statements and documents referred to in the grounds of detention to enable him to make an effective representation. When the detenu makes a request for such documents, they should be supplied to him expeditiously. The detaining authority in preparing the grounds would have referred to the statements and documents relied on in the grounds of detention and would be ordinarily available with him-when copies of such documents are asked for by the detenu the detaining authority should be in a position to supply them with reasonable expedition. What is reasonable expedition will depend on the facts of each case.

20. In *Frances Coralie Mullin Vs. W.C. Khambra and Others*, , Chinnappa Reddy, 3., speaking for the Supreme Court has pointed out quoting from the earlier judgment of the Supreme Court in *Ramchandra 4. Kamat v. Union of India* (supra)-

If there is undue delay in furnishing the statements and documents referred to in, the grounds of detention the right to make effective representation is denied. The detention cannot be said to be according to the procedure prescribed by law. then the Act contemplates the furnishing of grounds of detention ordinarily within five days of the order of detention, the intention is clear that the statements and documents which are referred to in the grounds of detention and which are required by the detenu and are expected to be in possession of the detaining

authority should be furnished with reasonable expedition.

Chinnappa Reddy, J., has pointed out in paragraph 5 at page 279-

No freedom is higher than personal freedom and no duty higher than to maintain it unimpaired. The Court's writ is the ultimate insurance against illegal detention. The Constitution enjoins conformance with the provisions of Article 22 and the Court exacts compliance. Article 22(5) vests in the detenu the right to be provided with an opportunity to make a representation. Here the Law Reports tell a story and teach a lesson. It is that the principal enemy of the detenu and his right to make a representation is neither high-handedness nor mean-mindedness but the casual indifference, the mindless insensibility, the routine and the red tape of the bureaucratic machine. The four principles enunciated in *Jayanarayan Sukul v. State of W.B.* (1970) S.C.C. 219 as well as other principles enunciated in other cases, an analysis will show, are aimed at shielding personal freedom against indifference, insensibility, routine and red tape and thus to secure to the detenu the right to make an effective representation. We agree: (1) the detaining must provide the detenu a very early opportunity to make a representation, (1) the detaining authority must consider the representation as soon as possible, and this, preferably, must be before the representation is forwarded to the Advisory Board, (3) the representation must be forwarded to the Advisory Board before the Board makes its report, and (4) the consideration by the detaining authority of the representation must be entirely dependent on the hearing by the Board or its report, expedition being essential at every stage.

It is in the light of these wholesome principles that we have to consider what is the connotation and what is the content of the right to make an effective representation.

21. As D.A. Desai, J, has pointed out, it is right of the detenu to get copies of those documents which have been taken into account while preparing the grounds of detention. Thus the right to make an effective representation carries with it the right to get copies of documents which were before the detaining authority at the time when the order of detention was passed, or, as the Supreme Court says, "which have been taken into account while preparing the grounds of detention". It is possible that in the instant case, out of the 691 pages only some documents were relied upon by the State Government at the time of passing the order of detention and furnishing the grounds of detention. But what we want to emphasize is that the right to make an effective representation against the order of detention will be encroached upon and to that extent rendered nugatory if copies of all documents which have been taken into account while enquiring the grounds of detention are not furnished to the detenu. In this context, it must be pointed out that the mere circumstance that a particular detenu or his Advocate has asked for such documents, is of no importance. What is required to be considered is whether the detaining authorities have done everything in their power to enable the detenu to make an effective representation. It is obvious that an effective representation can be made only if

the detenu is given copies of all documents which have been taken into account while, passing the order of detention and preparing the grounds of detention. We are very clear in our minds that whether a detenu has made a demand for such copies or not is a totally secondary factor. What counts is the placing at the disposal of the detenu concerned all documents which have been taken into account while preparing the grounds of detention so that from those documents and from that material the detenu can point out materials or factors which are favourable to himself. It is only furnishing of copies of documents which have been "taken into account while preparing the grounds of detention" which will render the right to make a representation effective and it is only then that an effective representation can be made. If the right to make an effective representation conferred by Article 22(5) of the Constitution is not to wither away because of indifference and red-tapism in the Government Department, it must be obligatory on the detaining authority to furnish to the detenu copies of all documents which have been taken into account while passing the order of detention and preparing the grounds of detention and that obligation we recognise in the instant case. So far as the detaining authority is concerned, it should furnish to the detenu, whether demanded or not by the detenu, copies of all documents which have been taken into account while preparing the grounds of detention. If those copies are not furnished, material on which the detenu can rely for making his effective representation is being kept back from him. In the instant case, so far as detenu Jashwant Chandulal Patel, the detenu in Special Criminal Application No. 72 of 1980 is concerned, a specific demand was made. It is true, on behalf of the rest of the detenues, no such demand was made but whether demanded or not, it was an obligation of the detaining authority to keep those copies ready and supply them to the detenu concerned so that in the light of the grounds of detention and in the light of the documents which were taken into account before passing the order of detention, the detenu can make an effective representation as expeditiously as possible.

22. As Mr. Justice D.A. Desai has pointed out, the copies of all such documents should be kept ready by the detaining authority so that on demand they can be furnished. In our opinion, whether demanded or not, as a matter of law there is an obligation on the detaining authority to furnish those grounds to the detenu, Otherwise it is likely that a detenu who may not be aware of his right to ask for such documents may be denied the right to make as effective-representation which is the fundamental right under Article 22(5) of the Constitution. In the instant case that right has been denied to all the seven detenues before us and on this ground alone we strike down the seven orders of detention passed against the respective detenu concerned.

23. Mr. Mehta for the petitioner also urged before us that there was a delay of nearly two months in passing the order of detention and that the different stages of delay have not been properly explained in this batch of cases. He has urged that the truck carrying the silver bars was seized on November 30, 1979 and the statements of most of the detenues were recorded either on November 30, 1979

or December 1, 1979. He has further contended that from the statements of Jashwant Chandulal Patel in which it is alleged that there was a confessional statement made by Jashwant, from the statement of Narendra Patel recorded on 30th November 1979 and from the statement of Rashmikant which was recorded on December 7, 1979 and December 10, 1979 the conspiracy to export silver bars stood exposed and the statement was recorded on December 22, 1979 which went to confirm the statement of Jashwant Chandulal, Narendra Patel and Rashmikant. It was contended that though this conspiracy stood exposed, no orders of detention were passed till January 30, 1980. In connection with this submission, Mr. J.R. Nanavati, the learned Public Prosecutor appearing on behalf of the respondent-State, has pointed out from the affidavit of P. M. Shah, being an affidavit dated April 30, 1980, that in paragraph 18 the time taken up by the detaining authority has been explained. It has been pointed out that the papers were received by the State Government on January 2, 1980 and there is also the affidavit of S.K. Pali, Assistant Collector of Customs (Preventive), Ahmedabad, being affidavit dated May 1, 1980 and in that affidavit it has been pointed out that the silver slabs were seized on November 30, 1979, the investigation of the case was under progress upto December 27, 1979 on which date the statement of Yaduvendrasing Dhillon was recorded and efforts were in progress to interrogate Lallu Jogi and to record his statement but said Lallu Jogi's advocate informed the customs authorities on December 27, 1979 that Lallu Jogi had to go to some religious place for after-death-ceremony of his mother and was unable to appear before the customs officers and that he would return only after December 31, 1979. In the meanwhile, the papers were scrutinized and placed before the Screening Committee on December 29, 1979 and the same were forwarded to the State Government on January 1, 1980. Certain additional material and information regarding the case was supplied to the State Government on January 3, 1980; January 8, 1980; January 19, 1980 and January 22, 1980 and thereafter the impugned order has been issued by the Government on January 30, 1980. Going back to the affidavit-in-reply of P.M. Shah, he has pointed out in paragraph 18 of his affidavit that there is a cell in the Home Department to deal with COFEPOSA cases and the cell consists of one Section Officer, one Assistant and one General Duty Clerk. The proposal for the detention of Jashwant along with others was received from the sponsoring authority on January 2, 1980. Sponsoring Authority had sent a combined proposal for the detention of 12 persons with relevant material containing facts relating to the case with other relevant documents. Immediately on receipt of the proposal, the same was submitted to the Principal Secretary for his perusal and thereafter the papers were sent to the COFEPOSA cell for preparing the proceedings of the case. The material sent by the sponsoring authority was voluminous which contained as many as 691 pages. The Section Officer had started the factual scrutiny and noted down points for further clarification from the sponsoring authority. Thereafter the sponsoring authority sent further material for consideration of the detaining authority, with his letters dated January 3 and January 8, 1980 which was received in the Home Department on

January 9, 1980. The Section Officer there after discussed with P.M. Shah several points which required verification of some documents which were not available in the materials sent to the Home Department. P.M. Shah and the Section Officer, therefore, went to the office of the sponsoring authority on January 11, 1980, verified the original documents and collected the same for consideration of the detaining authority. January 12, 1980 to January 14, 1980 were holidays. Thereafter the cell took a few days for the factual scrutiny of the voluminous material and the Assistant and the Section officer submitted the case on January 19, 1980 for consideration and orders of the Government through the Deputy Secretary and Principal Secretary (Home). As the detaining authority is the State Government, the relevant case papers with facts and materials were required to be placed before the Minister of Home for his consideration. After having gone through the case care fully, P M. Shah cleared it on January 20, 1980 which was a holiday and submitted on January 20, 1980 for onward submission with his note. A back reference to the sponsoring authority was found necessary as there was some ambiguity in the linking of the two silver incidents. The Section Officer was, therefore, deputed to the officer of the sponsoring authority on January 22, 1980 for collecting the clarification from them who brought replies from them on January 22, 1980 itself. The Section Officer resubmitted the case on January 25, 1980 after having rescrutinised the material. The case was sent to P.M. Shah's residence and he received the papers on the night of January 25, 1980. January 26 and 27, 1980 were holidays. P.M. Shah went through the case and cleared it during the holidays and the case papers were submitted to the Legal Department on January 28, 1980 as it was found necessary to have the considered view of the Department in redrafting certain portions in the notice of grounds for detention. The case was received back from the Legal Department on January 29, 1980. The case thereafter was submitted to the Home Minister for consideration on January 30, 1980. The Home Minister after careful consideration of the material containing facts of the case and having considered other document and on the grounds stated in the letter dated January 30, 1980 was satisfied as stated in the orders of detention and thereafter the impugned orders came to be passed on January 30, 1980.

24. This is the explanation set out by the customs authorities and the Deputy Secretary in the Home Department to the Government of Gujarat for the time taken between the seizure of the truck on November 30, 1979 and the passing of the orders of detention on January 30, 1980. in our opinion, the affidavit filed on behalf of the customs authorities clearly explains why time was taken between November 30, 1979 when the truck was seized and January 2, 1980 when the papers were submitted by the customs department as the sponsoring authority to the State Government. In our opinion, no fault can be found with the customs authorities for the time taken by them. Even some of the principal conspirators were to be contacted and the investigation was carried on at different places and facts were collected and statements were recorded at different centres. In view of the huge material which was required to be collected and considered, the time

taken by the customs department between November 30, 1979 and January 1, 1980 has been properly explained. So far as the State Government is concerned, the affidavit of P.M. Shah clearly reveals that firstly, the case papers were required to be gone into and then the papers were submitted to the Home Minister on January 30, 1980 and the orders of detention came to be passed on January 30, 1980. In our opinion, since the delay has been explained, it cannot be said that there is unexplained delay in passing the orders of detention or that the delay of two months between the seizure of the truck and the passing of the orders of detention vitiates the orders of detention in this case. The affidavits-in-reply, one of Pali and the other of P.M. Shah have to our satisfaction explained how the time was taken between November 30, 1979 and January 30, 1980.

25. Our conclusion, therefore, is that the fundamental right of the detainees before us was violated inasmuch as the right to make an effective representation under Article 22(5) was denied when copies of all the documents which were taken into account before the orders of detention were passed were not furnished and the right to make an effective representation could not be exercised. In our opinion, the fact that no demand was made by six of the detainees before us for such copies is totally irrelevant in the context of the right to make an effective representation under Article 22(5) of the Constitution. Under these circumstances, each of these Special Criminal Applications is allowed and the order of detention passed against the detenu concerned in each of these seven cases is quashed and set aside. Each of these detainees is directed to be set at liberty forthwith so far as these cases against them are concerned.

26. Mr. J.R. Nanavati on behalf of the State Government applies for leave to appeal to the Supreme Court under Article 133(1) of the Constitution. In our opinion, the point involved in this case has been decided in the light of the decisions of the Supreme Court referred to in the course of the judgment and hence it cannot be said that substantial question of law of general importance which is needed to be decided by the Supreme Court arises in these cases. Hence the application "for leave to appeal to the Supreme Court is rejected.