

(1995) 06 BOM CK 0027

In the Bombay High Court

Case No : Criminal Writ Petition No. 1467 of 1994

Smt. Satmabegum Mohammed Razak Khan

APPELLANT

Vs

Shri Satish Sahney and Others

RESPONDENT

Date of Decision : 30-06-1995

Acts Referred:

Constitution of India, 1950 — Article 22(5), 22(6)
National Security Act, 1980 — Section 3(2)

Citation : (1996) 1 BomCR 166 : (1995) 97 BOMLR 745

Hon'ble Judges : A.S. Venkatchala Moorthy, J;A.C. Agarwal, J

Bench : Division Bench

Advocate : M.S. Mohite, for the Appellant; S.G. Page, Public Prosecutor for Respondent Nos. 1, 2 and 4 and J.C. Satpute, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Agarwal, J.—The petitioner who is the mother of Shri Jaffer Ahmed alias Jaffer Fantoos, son of Mohammed Razak Khan, has filed the present habeas corpus petition seeking to challenge the order of detention bearing D.O. No. 79/PCB/Zone-I/94 dated 1st November, 1994 passed by Shri Satish Sahaney, The Commissioner of Police, Greater Bombay u/s 3(2) of the National Security Act. The said order alongwith the grounds of detention were served on the latter (detenu) on 5th November, 1994 and the detenu was incarcerated. The order of detention and the consequent detention of the detenu is impugned in the present petition. The grounds of detention inter alia provide that the detenu is a person of violent character. He indulges in terrorising activities and accepts assignments on contract basis to settle disputes by resorting to illegal ways and means whereby he has become a potential danger to the society at large. He being weapon welding and dangerous criminal has created terror in the minds of peace loving and law abiding citizens residing in the area and localities following in the jurisdiction of J.J. Marg Police Station, Bombay.

2. The detenu and his associates are always moving about armed with deadly

weapons such as knives etc. and they do not hesitate to use the same while committing offences such as extortions, robbery, criminal intimidation etc.

3. The grounds further recite that Shri Shahalam Abdulla Qureshi, a resident of Chowkie Moholla, Building No. 83 is a proprietor of "Alam Hotel" situate at Hujaria Cross Lane, Mastan Talao, Nagpada, Bombay. He has seven employees who work in the said hotel. The said Shahalam Qureshi knows the detenu and his two associates viz., Nasir and Ayub as Goondas who move about idly in the localities of Hujaria Cross Lane, Nagpada. The said Shahalam Qureshi has a fruit stall at Mataka Galli, Null Bazar. While Shri Shahalam remains occupied with his hotel business he has deputed his cousin Shri Rashid Loquin Qureshi to conduct the said fruit stall. Of late there exists a dispute between Shahalam and Rashid over transferring the fruit stall in the name of the latter.

4. On 12th April, 1994 at about 10.00 hrs. while Shri Shahalam was present in his hotel the detenu accompanied by his associates, Nasir and Ayub suddenly came there and started coercing Shahalam to transfer the fruit stall in the name of Rashid, and started pressuring him to sign the stamp paper. When Shahalam refused the detenu threatened him in harsh tone as :

"Stamp paper pe Sahee karo, yaa 50,000 Rupaiya do, nahee to hum tumko jaan se maar daalengaa. Ham abhee jail se chhoot kar aayaa hai".

Shri Shahalam who was terribly scared managed to get himself rescued from the detenu's clutches by promising "Paisa baad me detan hoon". On seeing this fearful and noisy scene, the customers, who were in the hotel became panicky and took to their heels. The servants of the hotel, who too were scared, watched the incident helplessly and because of detenu's dread, none dared to come to their rescue. While leaving the detenu again threatened Shri Shahalam as :

"Ham baad me aate hai, Paisa tayaar rakho".

and left the place. Shri Shahalam was frightened and shocked so much so that he closed down his hotel business immediately. In this connection Shri Shahalam filed a complaint and a case has been registered against the detenu and his associates u/s 387 read with section 34 of the I.P.C. vide C.R. No. 136 of 1994, of the J.J. Marg Police Station.

6. During the investigation of the aforesaid crime statements of several witnesses have been recorded. In their statements witnesses have stated that they know the detenu very well for the last many years as a notorious Goonda of localities indulging in activities of extortion of money from shop keepers, hawkers and other businessmen and also threatening people in order to recover regular "haftass" from them and thereby having created terror in the locality. The said witnesses have corroborated the aforesaid incident which is the subject matter of the complaint in C.R. No. 136 of 1994. In respect of the said offence the detenu was arrested on the 1st April, 1994. On 15th April, 1994, the detenu was produced before the learned Metropolitan Magistrate, 17th Court Mazgaon when

despite the objection by the Police an order of bail was passed and accordingly the detenu was released on bail.

7. During enquiries it was learnt that the number of persons in the localities of Mastan Talao, Hujaria Moholla, Moulana Azad Road, J.J. Marg, Nagpada and areas adjoining thereto falling in the jurisdiction of J.J. Marg Police station, Bombay have suffered at the hands of detenu but he being a weapon wielding desperado they dare not speak openly against him and his associates as they are mortally afraid to do so. However on assurances given to them that they would not be called upon to give evidence against the detenu openly in Court or any other open forum and that their names and identities would be kept secret and would not be disclosed to the detenu and his associates the following victims described vividly the atrocities committed by the detenu and his associates before the police. Their statement have therefore been recorded in camera a gist of which is as follows :---

"Witness "A" is a resident of Hujaria Moholla, Mastan Talao, Nagpada, Bombay - 400 008. In his statement dated 1-8-1994 he has stated that he knows you and your associates viz., Nasir and Ayub as jobless and weapon wielding desperados, goondas affiliated to notorious "Dawood Gang". You and your associates move about idly in the localities of Mastan Talao, Hujaria Moholla, Nagpada and extort "Khandani" (a forced payment) from the shopkeepers, stall keepers, businessmen and vendors etc. by threatening them at the point of deadly weapons. You and your associates also molest the ladies and young girls from the aforesaid localities. As a result, the peace loving and law abiding citizens from the aforesaid localities feel insecure and hesitant to carry out their daily avocations fearlessly. You and your associates have thus unleashed a reign of terror in the aforesaid localities. In the last week of June, 1994 at about 17.00 hrs. while this witness was busy with his business of cutlery articles, you accompanied by your two associates viz., Ayub and Nasir suddenly approached him and after pointing a knife at him threatened in a harsh tone as:

"Main Yahaan Kaa Daadan Hoon, Agar Aapko Yahaan Dhandaa Karnekaa hai to tereko hamaara hafta denaa padegaa. Agar naheen degaa to aapko main Jaanse maar daalongaa".

Saying so, you forcibly removed Rs. 200/- from his pant pocket. On seeing this dreadful scene, the vendors, hawking nearby, got scared and whisked away after winding up their business, while the passerby ran away out of fear. While leaving, you threatened this witness to kill him if he reported the matter to police and accordingly he did not report the matter to the police out of fear.

"Witness "B" is a resident of Mastan Talao, Nagpada, Bombay - 400 008. In his statement dated 3-8-1994 he has stated that he knows you and your associates viz., Nasir and Ayub as weapon wielding desperados and "goondas" connected with "Dawood Gang". You and your associates are jobless and move about in the localities of Mastan Talao, Moulana Azad Road, Nagpada, and extort

"Khandani" (a forced payment) from the shop-keepers, stall-keepers, businessmen and vendors etc. by threatening them at the point of deadly weapons. You and your associates also molest the ladies and young girls from the aforesaid localities. You and your associates have created a reign of terror in the aforesaid localities and peace loving and law abiding citizens are experiencing a sense of insecurity and they are hesitant to carry out their daily avocations fearlessly. In the last week of May, 1994, at about 19.00 hrs. while this witness was busy selling the meat, you accompanied by your associates viz., Ayub and Nasir suddenly came there, whipped out a knife and said in a threatening tone as:

"Gaandoo Mahine Kaa Haftaa Abhee tak nahee diyaaan, tereko dhandaa karnekaa hai to abheeke abhee hafteka paisa de do, naheen to kalse dhandaa nahee chalegaa".

saying so you forcibly removed Rs. 1,500/- from the case-box of his shop. On seeing this incident, the neighbouring shop-keepers downed their shutters, while the passerby ran away out of fear. This witness did not report the matter to the police due to fear of reprisal at your hands.

"Witness 'C' is a resident of Hujaria Mohalla, Nagpada, Bombay - 400 008. In his statement dated 6-8-1994 he has stated that he knows you and your associates viz., Nasir and Ayub as weapon wielding desperados and "goondas" connected with "Dawood gang". You and your associates, who are jobless, move about in the localities of Mastan Talao, Hujaria Moholla, Nagpada and extort "Khandani" (a forced payment) from the shop-keepers, stall-keepers, businessmen and vendors etc. by threatening them at the point of lethal weapons. You and your associates also molest the ladies and young girls from the locality. As a result the peace loving and law abiding citizens from the aforesaid localities feel insecure to carry out their daily avocations fearlessly, as they are gripped by a perpetual fear complex. You and your associates have thus unleashed a reign of terror in the aforesaid localities. In the first week of June 1994 at about 10.00 hrs. while this witness was selling bananas, as usual, on his handcart, you accompanied by your associates viz., Nasir and Ayub suddenly came there, picked up one dozen bananas and started walking away. This witness, mustered courage somehow and asked for the money whereupon, you infuriated and said in a threatening tone as :

"Maadarchod, too kiske pass paisa mangtaa hai, too nahee jaantaa mein kaun hoon? Main yahaankaa daada hoon, yaad rakh".

Saying so, you overturned his handcart. On seeing this fearful scene the customers, present there to buy bananas whisked away while the passerby took to their heels. While leaving, you threatened this witness in Marathi as:

"Police saat takraar dilaas dhandaa band karen. (i.e. if you would complain to police, your business will be closed (by him))".

and left the place. Accordingly, this witness did not report the matter to the

police out of fear".

8. Based on the aforesaid material the detaining authority has arrived at the following subjective satisfaction.

"I am subjectively satisfied that you are a weapon wielding desperado, a "goonda" and a gangster and thereby a perpetual danger to the society at large. Because of your above mentioned activities, the peace loving and law abiding citizens of the localities of Mastan Talao, Hujarai Moholla, Moulana Azad Road, J.J. Marg, Nagpada and area adjoining thereto within the jurisdiction of J.J. Marg Police station in Greater Bombay, are experiencing a sense of in security and living and carrying out their daily avocations under a constant shadow of fear, whereby the even tempo of life of the society is disturbed. The action taken against you under the ordinary law of the land is found to be inadequate. Thus your aforesaid activities are prejudicial to the maintenance of public order in the said localities and areas in the Greater Bombay.

"I have carefully gone through the material placed before me and I am subjectively satisfied that you are acting in a manner prejudicial to the maintenance of public order. In view of your tendencies and inclinations reflected in the offences committed by you, as stated above, I am further satisfied that after having availed of the bail facilities and becoming a free person and thereafter if remaining at large, you are likely to revert to the similar activities, prejudicial to the maintenance of public order in future and that it is necessary to detain you under the National Security Act, 1980, to prevent you from acting in such a prejudicial manner in future."

Based on the aforesaid subjective satisfaction arrived at by the detaining authority impugned order of detention has been issued and the detenu has been taken in detention.

9. Shri Mohite, learned Advocate appearing in support of the petition has raised 3 contentions in order to assail the order of detention. He has firstly contended that there has been an inordinate and unexplained delay in issuing the order of detention. He has pointed out that the detenu was granted bail in C.R. 136 of 1994 on 15th April, 1994 and he has availed of the same on the same day. However, the impugned order of detention has been passed belatedly on the 1st November, 1994, i.e. after a delay of about 61/2 months from the date of release of detenu. This, according to him, indicates that there was no pressing necessity in the mind of the detaining authority to pass the order of detention with a view to maintaining public order. The said delay has therefore snapped the live link between the commission of the offence and the necessity to prevent the detenu from acting in prejudicial manner. The said case therefore could not have been considered for the purpose of passing the impugned order of detention.

10. In our judgment, the above contention is devoid of merit. The said contention overlooks the fact that after the aforesaid incident which gave rise to C.R. No. 136 of 1994 the police have investigated into the said crime and have

recorded statements of 3 witnesses whose names find place in the grounds of detention. They are Shri Mubarak Allauddin Qureshi, Mohd. Sayed Ali Shaikh and Salim Ibrahim Punjabi. They have corroborated the complaint filed by the complainant Shri Shahalam. Further investigation has revealed that the detenu and his associates are Gundaas operating in various localities and unleashing terror in the minds of traders, businessmen and public at large. It was found that the detenu and his associates move about armed with deadly weapons. They indulge in terrorising activities. They accept assignments, on contract basis to settle the disputes by resorting to illegal ways and means. They have become potential danger to the society at large. They being a weapon wielding and dangerous criminals they have created terror in the minds of peace loving and law abiding citizens. They have been indulging in offences of extortion, robbery and criminal intimidation at the point of knife and other deadly weapons. It was further found that witnesses were unwilling to come forward to give evidence openly either in a Court of law or anywhere else. It was only after an assurance was given to them that they would not be called upon to give evidence against the detenu and his associates in Court or any other open forum and that their names and identities and other particulars would be kept secret and would not be disclosed to the detenu and his associates that certain victims have vividly described atrocities committed by the detenu before the police.

11. Police have in the aforesaid circumstances recorded three in camera statements. In camera statement of August 1, 1994 of witness A pertains to a incident which has taken place in the last week of June, 1994. In camera statement of witness B is recorded on August 3, 1994 and the said pertains to an incident of last week of May, 1994. In camera statement of witness "C" recorded on August 6, 1994 pertains to the incident of first week of June, 1994. After recording of the aforesaid statements the sponsoring authority has on 2nd September, 1994 forwarded its proposal to detain the detenu to the detaining authority. The detaining authority has on the 1st November, 1994 issued the impugned order of detention. On the question whether the impugned order of detention is liable to be quashed on the grounds of delay in issuing the same a reference to the following decisions will be useful. In the case of *Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others*, , this is what the Apex Court has observed :

"In the enforcement of a law relating to preventive detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 there is apt to be some delay, between the prejudicial activities complained of u/s 3(1) of the Act and the making of an order of detention. When a person is detected in the act of smuggling or foreign exchange racketeering, the Directorate of Enforcement has to make a thorough investigation into all the facts with a view to determine the identity of the persons engaged in these operations which have a deleterious effect on the national economy. Quite often these activities are carried on by persons forming a syndicate or having a wide network and therefore this includes recording of statements of persons involved,

examination of their books of accounts and other related documents. Effective administration and realisation of the purposes of the Act is often rendered difficult by reason of the clandestine manner in which the persons engaged in such operations carry on their activities and the consequent difficulties in securing sufficient evidence to comply with the rigid standards, insisted upon by the Courts. Sometimes such investigation has to be carried on for months together due to the magnitude of the operations. Apart from taking various other measures i.e. launching of prosecution of the persons involved for contravention of the various provisions of the Acts in question and initiation of the adjudication proceedings, the Directorate has also to consider whether there was necessity in the public interest to direct the detention of such person or persons u/s 3(1) of the Act with a view to preventing them from acting in any manner prejudicial to the conservation and augmentation of foreign exchange or with a view to preventing them from engaging in smuggling of goods etc. The proposal has to be cleared at the highest quarter and is then placed before a Screening Committee. For ought we know, the Screening Committee may meet once or twice a month. If the Screening Committee approves of the proposal it would place the same before the detaining authority. Being conscious that the requirements of Article 22(5) would not be satisfied unless the "basic facts and materials" which weighed with him in reaching his subjective satisfaction, are communicated to the detenu and the likelihood that the Court would examine the grounds specified in the order of detention to see whether they were relevant to the circumstances under which the impugned order was passed, the detaining authority would necessarily insist upon sufficiency of the grounds which would justify the taking of the drastic measure of preventively detaining the person.

"Viewed from this perspective, we wish to emphasise and make it clear for the guidance of the different High Courts that a distinction must be drawn between the delay in making of an order of detention under a law relating to preventive detention like the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution. It has been laid down by this Court in a series of decisions that the rule as to unexplained delay in taking action is not inflexible. Quite obviously, in cases of mere delay in making of an order of detention under a law like the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence have been posing a serious threat to the economy and thereby to the security of the nation, the Courts should not merely on account of delay in making of an order of detention assume that such delay, if not satisfactorily explained must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached. Taking of such a view would not be warranted unless the Court finds that the grounds are "stale" or illusory or that there is no real nexus between the grounds and the

impugned order of detention. The decisions to the contrary by the Delhi High Court in *Anil Kumar Bhasin Vs. Union of India (UOI) and Others*, , *Bhupinder Singh Vs. Union of India and Others*, , *Anwar Esmail Aibani v. Union of India*, (Crl. W.No. 375 of 1986 dated 11-12-1986), reported in (1987)3 L.J. Rep. 383, *Surinder Pal Singh v. M.L. Wadhawan*, (Crl. W.No. 444 of 1986 dated 9-3-1987) 1987(2) Crimes 449 and *Ramesh Lal v. Delhi Administration*, Crl. W.No. 43 of 1984 dated 16-4-1984 and other cases taking the same view do not lay down good law and are accordingly overruled.

"In the present case, the direct and proximate cause for the impugned order of detention was the importation in bulk of Indian made foreign liquor by the appellant acting as a broker from across the border on the night between 29/30th December, 1986. The District Magistrate in the counter affidavit has averred that it was revealed from the statements of the witnesses recorded on 4th January, 1987 that the appellant was the person actually involved. Apprehending his arrest the appellant applied for anticipatory bail on 21st January, 1987. It appears that on the same day the appellant (sic) appears to have made a statement that there was no proposal at that stage to arrest the appellant. However, later it was discovered that there was no trace of the appellant. He was arrested on 2nd February, 1987 and on the same day he made a statement admitting these facts. Meanwhile the proposal to detain the appellant was placed before the District Magistrate. It is averred by the District Magistrate that on a careful consideration of the material on record he was satisfied that it was necessary to make an order of detention of the appellant u/s 3(2) of the Act and that accordingly on 28th May, 1987 he passed the order of detention. The appellant was taken into custody on 30th May, 1987. He had forwarded the report to the State Government on the 28th and the Government accorded its approval on the 31st.

"Even though there was no explanation for the delay between 2nd February and 28th May, 1987, it could not give rise to a legitimate inference that the subjective satisfaction arrived at by the District Magistrate was not genuine or that the grounds were stale or illusory or that there was no rational connection between the ground and the impugned order of detention. There is a plethora of decisions of this Court as to the effect of unexplained delay in taking action. These are admirably dealt with in *Durga Das Basu's Shorter Constitution of India*, 8th Edn. at page 154. We will only notice to a few salient decisions. In *Olia Mallick alias Oliruddin Mallick Vs. The State of West Bengal*, , it was held that mere delay in making the order was not sufficient to hold that the District Magistrate must not have been satisfied about the necessity of the detention order. Since the activities of the detenu marked him out as a member of a gang indulging systematically in the cutting of aluminium electric wire, the District Magistrate could have been well satisfied even after the lapse of five months that it was necessary to pass the detention order to prevent him from acting in a manner prejudicial to the maintenance of the supply of electricity. In *Golam Hussain alias Gama Vs. The Commissioner of Police Calcutta and Others*, , it was

held that the credible chain between the grounds of criminal activity alleged by the detaining authority and the purpose of detention is snapped if there is too long and unexplained an interval between the offending acts and the order of detention. But no "mechanical test by counting the months of the interval" was sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. The Court has to investigate whether the casual connection has been broken in the circumstances of each case. In *Odut Ali Miah Vs. The State of West Bengal*, where the decision of the detaining authority was reached after about five months, Krishna Iyer, J., repelled the contention based on the ground of delay as a mere "reed of straw" and it was held that the "time lag" between the dates of the alleged incidents and the making of the order of detention was not so large that it could be said that no reasonable person could possibly have arrived at the satisfaction which the District Magistrate did on the basis of the alleged incidents. It follows that the test of proximity is not a rigid or mechanical test to be blindly applied by merely counting number of months between the offending acts and the order of detention. In *Vijay Narain Singh Vs. State of Bihar and Others*, , one of us Sen J., observed :

"On merits the impugned order cannot be said to be vitiated because of some of the grounds of detention being non existent or irrelevant or too remote in point of time to furnish a rational nexus for the subjective satisfaction of the detaining authority. It is usually from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely, in the future, to act in a manner prejudicial to the maintenance of public order".

See also : *Gora Vs. State of West Bengal*, ; *Raj Kumar Singh Vs. State of Bihar and Others*, and *Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another*, .".

12. In the case of *Pradeep Nikanth Paturkar Vs. S. Ramamurthi and others*, , the Supreme Court after considering various decisions has observed :

"A perusal of the various decisions of this Court on this legal aspects shows that each case is to be decided on the facts and circumstances appearing in that particular case".

13. We have in the preceding paras reproduced the allegations which are levelled against the detenu for the purpose of passing the impugned order of detention. We have found that the in camera statements pertain to incidents that have occurred in last week of May, first week of June and last week of June, 1994 and the sponsoring authority has sent its proposal to the detaining authority to pass an order of detention. The detaining authority has accordingly passed the order of detention on 1st November, 1994. We do not find that the order suffers from undue latches so as to render the same illegal. Having regard to the seriousness

of the allegations and all the facts and circumstances of the case we are constrained to hold that the delay if any in passing the order of detention has not rendered the same fatal. The first contention raised by Shri Mohite therefore is rejected.

14. Shri Mohite next contended that in camera statements relied upon by the detaining authority has not been verified by a Senior Police Officer. Moreover the names and other particulars of the witnesses whose statements have been recorded have not been furnished to the detenu. According to him merely because such witnesses are allegedly afraid of stating their names it cannot be a ground on the basis of which the respondents can withhold the names and other particulars of such witnesses as no public interest is involved in such matter and the issue of confidentiality cannot be allowed to be given more importance than the liberty of a citizen. The power to withhold the information in public interest is being issued by the respondents and ought to be dealt with seriously. By withholding names and addresses and particulars of the witnesses serious prejudice has been caused to the petitioner's son and thereby his constitutional right to make an effective representation has been infringed. In this context reliance is placed on a decision of the Gujarat High Court in the case of Bai Amina v. State of Gujarat and others, reported in 1982 Criminal Law Journal, 1531. Dealing with the point at hand the Court has observed:

"The second ground furnished to the petitioner would appear to be of a vague and general character. In general terms, it refers to the alleged behind-the-scene activities of the petitioner and alludes to her alleged indulgence in criminal and communal activities and on that basis records the requisite satisfaction. There is reference in the said ground to the statements of two persons recorded in the presence of the Divisional Police Officer, Godhra and those statements have been relied upon in support of the material allegations and conclusions. Copies of those statements were furnished to the petitioner. However, the identity of the persons who made those statements has not been disclosed. The reason for withholding such information, as stated in the ground, is that it was considered to be against the public interest to reveal the identity as the said persons had sought an assurance to that effect on the ground that the disclosure would endanger their lives. In the affidavit-in-reply dated July 17, 1981, the second respondent has stated that as she was satisfied that the feeling of fear of those two individuals was genuine and real and that it would be against the public interest to disclose the names, the identity of those persons was not revealed to the petitioner. The petitioner contended that on the facts and in the circumstances of the case, the power to withhold the disclosure has been exercised arbitrarily and on the grounds not germane to the exercise of such power and that the same has resulted in denying to her the constitutional right of making an effective representation against her detention. The question with regard to the claim of privilege to withhold disclosure, therefore, requires consideration.

"Article 22 Clause (5) provides 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 a representation against the order. Clause (6) provides that nothing in Clause (5) shall require the authority making any such order as is referred to in Clause (5) "to disclose facts which such authority considers to be against the public interest to disclose".

"Section 8(1) of the Act provides that when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government. Sub-section (2) provides that nothing in sub-section (1) shall require the authority "to disclose facts which it considers to be against the public interest to disclose".

"It is settled law that Article 22, Clause (5) of the Constitution has two facets. (1) communication of the grounds on which the order of detention has been made and (2) an opportunity of making a representation against the order of detention. It is also settled law that "grounds" in Clause (5) of Article 22 do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. "Grounds" must be self-sufficient and self-explanatory. Therefore, the grounds communicated to the detenu should reveal the whole of the factual material considered by the detaining authority and they should comprise all the constituent facts and materials that went in to make up the mind of the statutory functionary. An opportunity to make a representation against the order of detention necessarily implies that the detenu is to be informed of all that has been taken into account against him in arriving at the decision to detain him (See Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, . It would thus appear that the detenu is to be informed not merely of the factual inferences and factual material which led to such inferences but also the sources from which the factual material is gathered. The disclosure of sources would enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources could be relied upon and used against the detenu on the facts and in the circumstances of the case".

"The right of the detenu to be furnished with material facts and particulars is, however, subject to the limitation mentioned in Article 22, Clause (6). The detaining authority is there under empowered to withhold such facts and particulars, the disclosure of which such authority considers to be against the "public interest". Both, the obligation to furnish material facts and particulars and the duty to consider whether the disclosure of any facts involved therein is

against public interest, are vested in the detaining authority and not in any other. When the privilege of withholding facts and particulars is exercised, the detenu cannot be heard to say that the grounds did not disclose the necessary facts and particulars or that in the absence of such facts and particulars, he is not in a position to make an effective representation, save and except when the exercise of privilege is challenged as mala fide, (see Lawrence Joachim Joseph D'souza Vs. The State of Bombay, and Puranlal Lakhanpal Vs. Union of India (UOI), . The mala fides required to be shown may be factual or legal, that is to say, it might be shown that the exercise of power was actuated by personal malice or that the power was exercised arbitrarily and capriciously or on the basis of grounds or materials which have no rational connection with public interest or on the basis of which it was not reasonably possible to be satisfied that the disclosure would harm public interest".

"Sub-sections (1) and (2) of section 8 of the Act substantially reproduce the provisions of Clauses (5) and (6) of Article 22 of the Constitution. What has been stated above in the context of the said constitutional provisions would therefore, apply proprio vigore to the obligation imposed and duty cast upon the detaining authority under the said statutory provisions.". "It is relevant to point out at this stage that the foundation of the law behind Clause (6) of Article 22 and sub-section (2) of section 8 is injury to the public interest. The reason for the exclusion from disclosure is that if the facts and materials are disclosed, the public interest would be injured. While withholding the disclosure of material facts and particulars to the detenu on the ground that it would harm the public interest, another public interest, which requires the disclosure of all relevant particulars and materials on which the order of detention is based, with a view to affording an effective opportunity of representation to the detenu against the order of detention, must be borne in mind. The delicate balance between the two must be maintained by the detaining authority upon whom is cast the obligation to furnish material facts and particulars and who is under a duty to withhold the disclosure of such facts and particulars under certain circumstances. It is only when the public interest likely to be subserved by non-disclosure outweighs or overrides the public interest intended to be served by disclosure that the relevant information must be withhold".

15. In this context a reference to Article 22(5) and 22(6) of the Constitution can usefully be made. Article 22(5) enjoins upon the detaining authority to communicate to detenu the grounds on which the detention order has been made. It further enjoins upon the detaining authority to afford him the earliest opportunity of making a representation against the detention order. Clause 6 of Article 22 is in the nature of a proviso to Clause 5 and the same provides that nothing in Clause 5 shall require the authority making an order of detention to disclose the facts which such authority considers to be against the public interest to disclose. Similar provision is to be found under the National Security Act. Section 8 of the Act provides that when a person is detained in pursuance of detention order, the authority making an order shall as soon as may be.....

communicate grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order..... Sub-section (2) of section 8 is similar to Article 22(6) and the same provides that nothing in sub-section (1) requires the authority to disclose facts which it considers to be against the public interest to disclose. The aforesaid provisions make it clear that the right of detenu to be informed of the grounds of detention is not unfettered or unqualified. Whereas the right is conferred upon the detenu to be furnished with information which would enable him to make an effective representation, the said right is a qualified right. Any information which may be required to be withheld for public interest is saved by the latter provision. There is no conflict between the aforesaid provisions as is sought to be suggested by Shri Mohite. The latter provision is in the nature of a proviso which qualifies scope, ambit and the extent of the facts which are required to be disclosed under the former provision. Any facts which in public interest are not desirable to be communicated, are saved.

16. We have given our anxious thoughts to the aforesaid decision and we find ourselves unable to subscribe to the same fully. Whereas the right of a detenu of being furnished with facts and the grounds for the purpose of enabling him to make an effective representation cannot be undermined, the said right is not an unqualified right. If furnishing of certain information is not found to be desirable in public interest the same under the relevant provisions can justify to be withheld. Whether the detaining authority is justified in not disclosing a particular fact to the detenu and whether the same is in public interest would depend on facts of each particular case. No hard and fast rule can be laid down. We have considered the nature of the activities the detenu has been indulging in. We have considered the gravity of the offences with which he has been involved. We find that the apprehension on the part of the witnesses in making statements against the detenu in open is justified. If the prejudicial activities of such detenu is to be checked; if offences in which the detenu has indulged is to be properly investigated the assurances which the detaining authority has given to the witnesses of non-disclosure of their names and identity is just and proper. If the assurances given to the witnesses are not honoured the same will dispel the faith witnesses have reposed in the investigating agency and this will naturally have an adverse impact in future investigations to be carried out by the police. The withholding of such particulars on the ground of public interest in the circumstances is fully justified. We have perused the original in-camera statements and we have verified that the original statements of the witnesses bears the names and other particulars of the witnesses. They bear signature of a Police Inspector who has recorded the said statements. These statements further contain a verification made by an Assistant Commissioner of Police. Both the statement and the verification has been signed by the witnesses. Even in the statements the witnesses have expressed their apprehension of danger to their person and property in case their identity is disclosed. The aforesaid contention based on incomplete information supplied is devoid of merit and the same is

rejected.

17. Shri Mohite lastly contended that there is an undue and unexplained delay in the consideration of detenu's representation by the Central Government. Whereas the detenu has sent his representation on 6th December, 1994, the same has been rejected belatedly on 13th January, 1995. In this context it is to be noted that the representation of the detenu was received by the Central Government on 13th December, 1994. On 14th December, 1994 i.e. on the very next day a crash wireless message was sent to the State Government and to the Police Commissioner calling for the factual information and parawise comments. The said wireless message was received by the State Government and the Police Commissioner on 15th December, 1994. On 17th December, 1994 the State Government sent factual information through wireless. Since the State Government did not receive a copy of the representation sent to the Central Government the State Government called for a copy by speed post in order to enable it to send its parawise comments. A similar wireless message calling for a copy of the representation was sent by the State Government on 22nd December, 1994, 28th December, 1994 and on 30th December, 1994. A copy of the representation which the Central Government had already sent through post on 14th December, 1994 was received by the State Government on 30th December, 1994. The State Government in turn sent a copy of the representation to the Commissioner of Police on 2nd January, 1995. On 7th January, 1995 the Commissioner sent his parawise comments to the Central Government. The same were received by the Central Government on 10th January, 1995. They were placed and scrutinised before the Joint Secretary on 11th January, 1995. They were thereafter placed for further scrutiny before the Special Secretary on 12th January, 1995. The same was thereafter placed before the Home Minister on 13th January, 1995, who after considering the same rejected it by an order passed on the very same day i.e. 13th January, 1995. In our view the aforesaid facts cannot and do not lead to a conclusion that there is an undue and unexplained delay so as to snap the live link between prejudicial activities of the detenu and the need to detain the detenu in order to prevent him from re-indulging in prejudicial activities in future. As already observed the prejudicial activities of the detenu are of a serious nature and hence even if there has been some delay at some stage the same cannot snap the live link between the prejudicial activities and the need to prevent the recurrence of the same. The impugned order of detention therefore cannot be successfully assailed on the grounds of delay on the part of the Central Government in considering the representation of the detenu. The last point urged by Shri Mohite is also rejected.

17. For the foregoing reasons we find that the petition is devoid of merit and the same deserves to be rejected and the same is rejected. The impugned order of detention, in the circumstances is maintained. Rule is discharged.