(1982) 09 DEL CK 0047

In the Delhi High Court

Case No : Criminal Writ Appeal No. 46 of 1982

Suresh Kumar Jain APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 02-09-1982

Acts Referred:

Citation : (1983) 1 Crimes 950 : (1983) 23 DLT 8

Hon'ble Judges : Leila Seth, J

Bench : Single Bench

Advocate : A.K. Sen, Harjinder Singh, M.M. Lodha, M.C. Bhandare, U.L. Watwani and C.K. Sucharita, for the Appellant;

Judgement

Leila Seth, J.

(1) By this petition Suresh Kumar Jain has prayed for a writ habeas corpus and for quashing the order dated 30th April, 1982 detaining him. Rule was issued on 31st May, 1982. On 30th June. 1982, the Vacation Judge released the petitioner on parole pending the decision of this habeas corpus petition, as it was not possible to hear the matter due to paucity of time.

(2) The petitioner who is a businessman was detained on 23rd January, 1982 by an order u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "COFEPOSA Act"). The grounds of detention were also served on him. On 10th February, 1982 the petitioner made a representation to the Advisory Board and as a result of the Advisory Board''s order dated 8th April. 1982 he was released on 12th April, 1982.

(3) Subsequently, on 30th April, 1982 the present impugned order was passed and the petitioner was re-arrested on 2nd May, 1982. The detention order served on him was identical to the earlier detention order dated 23rd January, 1982, except for the first two paragraphs. The petitioner again made a representation to the Advisory Board and the matter was heard on 12th July, 1982. However,

this time the Advisory Board confirmed the order of detention. Thereafter, the Central Government confirmed the detention order on 28th July, 1982 for a period of nine months with effect from 2nd May, 1982 i.e. the date of detention.

(4) The grounds of detention as indicated in the order are as follows : "2.1 On 23-2-1981, an information was received by the Delhi Zonal Office of the Enforcement Directorate that Shri Santosh Kumar Jain, resident of F-136, Lajpat Nagar, New Delhi was engaged in racketeering in foreign exchange. This information, inter alia, mentioned that he was operating under the guidance of his father, Shri Nanak Chand Jain and you. On the morning on 23-2-1981, a specific information was received to the effect that Shri Santosh Kumar Jain had collected huge foreign currency for supply to some person in Okhla Industrial Area. Pursuant to this information, a surveillance was kept outside his office in Connaught Circus and at about 9.30 P.M. he was apprehended by the officers of the Delhi Zonal Office of the Enforcement Directorate on 23-2-1981 just outside Sachin Tea House, at N-331A. Connaught Circus. New Delhi. His person was immediately searched by the officers in the presence of independent witnesses in the course of which foreign currencies as detailed below were seized from the inner pocket of his coat which he was wearing at that time ; Us s 4480 Saudi Rials 1000 Canadian s 115 Stg.Pound 190 Uae Dirhams 930 Singapore s 60 Kuwait Dinars 351 Immediately after the personal search of Shri Santosh Kumar Jain, he was interrogated and he-told the officers of the Enforcement Directorate that he knew one R. N. Sharma staying in room No. 12-A, Regal Hotel, Chandni Chowk. Delhi. In a statement deposed before the Enforcement Officers on 24-2-1981, Shri Santosh Kumar Jain stated that he had gone to the above said Shri R. N. Sharma on the evening of 23-2-81 at about 5.15 P.M. and. had left his brief case and two small boxes containing two speakers and cassette deck of foreign origin and had requested him to keep the same in his custody till the morning of 24-2-81 when he was to go to him and collect the same to carry to his village, Ludnun. As a follow up action, officers of the Delhi Zonal Office of Enforcement Directorate searched the premises at room No. 12-A. Regal Hotel, Chandni Chowk Delhi on 24-2-81 as a result of which following foreign and Indian currencies were seized from a Vip Travellite brief case left by Shri Santosh Kumar Jain : Italian Li"as 7,22,500 France Cents 100 Oman currency 100 Deutsch Marks 60 Belgian France 40 Netherland Guilders 5 U. S. $. 1 Indian currency 27,600 Besides the aforesaid currencies, some imported items like electronic watches, cameras, tapes etc. were also recovered from the two boxes lying at room No. 12-A, Regal Hotel, Chandni Chowk, Delhi. These goods were seized by Customs Officers under the Customs Act, 1962. The brief case from which currencies ,as mentioned above, were seized also contained documents including loose sheets, notebooks and diaries as stated in the relevant panchnama. These documents were also seized by the Enforcement Officers. In his statement dated 24-2-81 recorded by the Enforcement Officers, Shri Santosh Kumar Jain has fully owned the foreign exchange seized from his person as well as the foreign exchange and documents seized from room No. 12-A, Regal Hotel,

Chandni Chowk, Delhi. 2.2 Among the various documents seized by the officers of the Enforcement Directorate, as mentioned above, from the premises at room No. 12-A, Regal Hotel, Chandni Chowk, Delhi is a statement of accounts under the heading "Suresh Account" as available at page 2 of the document marked ''A. The statement of accounts contained on this page shows transactions of certain amounts expressed in Hongkong dollars and U.S. dollars and their conversions into Indian rupees. With reference to this document, your brother Shri Santosh Kumar Jain stated, inter alia, in his statement dated 24-2-81 before the Enforcement Officers that "I have been shown the document left by me with Shri R. N. Sharma in brief case (my). I have seen page 2 of the bundle marked A. This is in my handwriting and containing the account of Mr. Suresh; my elder brother. This is the account of the foreign currency transactions." In your statement dated 6-10-81 before the Enforcement Officers, you denied that the statement of accounts contained in this document is your account and that it may be some other Suresh, friend of Ashok Narain and that you do not recognise his handwriting. In the course of the search of the residential premises of Shri Ashok Narain, resident of B-40, base Ii Sheikh Sarai, New Delhi on 25-2-81, Enforcement Officers recovered a number of documents out of which those marked ''D'' and F contain details on pages I and 12 of document marked ''0'' and page I of document marked ''F which inter alias cover the transactions as mentioned on page 2 of document marked A stated hereinbefore. The above said Shri Ashok Narain deposed in his statement dated 25-2-81 before the officers of the Enforcement Directorate that these documents contained an account of the foreign exchange of Hongkong dollars 12,591.80 acquired by him from one Dr. An and in Hongkong during his visit there in July 1980 on your instructions. While explaining subsequent entries, Shri Ashok Narain had admitted having transferred U.S. $ 1500 equivalent to Hongkong $ 7,429.80 out of the above mentioned H$ 12,591.80 to one Shri Subhash Sehgal of New York, whose account number and address were given to him by you. He further stated that he deposited H$ 1,700 to your account with American Express International Banking Corporation, Hongkong under your instructions. The maintenance of a bank account by you with Mis. American Express International Banking Corporation, Hongkong was also admitted by you in your statement dated 24-2-81 given before the Enforcement Officers. In this statement you have stated that "... .. I am having an account in Hongkong branch of American Express Banking Corporation, Falic Road Branch. My account No. 2284359. This account was opened by me in 1978. . . .". In this statement you also mentioned that "balance in the above said account is H $ 1,700 approx. aa on date .... ". The above facts clearly establish that the statement of accounts in foreign currency at page 2 of the document marked ''A'' seized from room No. 12-A, Regal Hotel, Chandni Chowk, Delhi is your account of the illegal transaction in foreign exchange indulged in by you with the active assistance of Shri Ashok Narain. The documents seized from room No. 12-A, Regal Hotel, Chandni Chowk, Delhi during the course of search by Enforcement Officers also include an account book marked ''N Page 5 of this document contains details of various transactions in foreign exchange indulged in by you. Your brother, Shri Santosh Kumar Jain in his statement dated 24-2-81 before the Enforcement Officers stated ''T have been shown page 5 of diary marked "N''. It is account of Suresh Jain. This is foreign currency acc5unt pertaining to sale and purchase of foreign currency. Details are reflected -at this page. This is in my handwriting and this Suresh Jain is from Vikram Hotel having book shop". When you were confronted with this document, you, inter alia, stated in your statement before the Enforcement Officers on 24-2-81 ....""..I have been shown exercise book marked ''N''. At page 5 of this exercise book there is certain account in my name." These facts establish that the entries on page 5 of the document marked ''N'' referred to above relate to transactions of sale and purchase of foreign currency. Details, are reflected at this page. This is in my handwriting and this Suresh Jain is from Vikram Hotel having book shop". When you were confronted with this document, you, inter alia, stated in your statement before the Enforcement Officers on 24-2-81. "......I have been shown exercise book marked ''N''. At page 8 of this exercise book, there is certain account in my name." These facts establish that the entries on page 5 of the document marked ''N'' referred to above relate to transactions of sale and purchase of foreign currency indulged in by you. Similar statement of accounts in your name relating t0 various foreign currency transactions indulged in by you is also "available on page 55 of document N and page 54 of the document marked P sized from room No. 12-A, Regal Hotel, Chandni Chowk, Delhi. The officers of the Enforcement Directorate examined you on 24-2-81 and recorded your statement. Thereafter, you were summoned on various dates but you failed to turn up. It was reported that you were out of station all- through. Consequently an application was. moved in the Court for the cancellation of your bail on 22-9-81. The court ordered on 1-10-81 that you should appear in the office. Accordingly you appeared before the Enforcement Officers on 6-10-81. Subsequently, you also appeared before the court on 12-10-81 when the Addl. Sessions Judge, New Delhi ordered you to join the investigation suit not to leave Delhi without informing Enforcement Directorate. The Officers of the Enforcement Directorate were ultimately able to record your statement in respect of the various foreign exchange transactions indulged in by you only on 6th October, 1981, 12th October and 14th October, 1981. In your statement dated 6th October, 1981 you admitted that you are very friendly with Shri Ashok Narain but denied that you gave any foreign exchange to him or arranged any foreign exchange to the delivered to him in Hongkong. However, in view of the materials contained in the various documents referred to in paragraph 2.2. hereinbefore and the statement dated 24-2-81 of your brother Shri Santosh Kumar Jain and the statement dated 25-2-81 of Shri Ashok Narain and your statement dated 24-2-81, it is clearly establish ed that you have been indulging in activities prejudicial to the augmentation of the country''s foreign exchange resources. You were arrested on 25-2-81 and released on bail on 20-4-81. Even though adjudication and prosecution proceedings under the Foreign Exchange Regulation Act, 1973 are likely to be launched against you in due course, I am convinced that in view of the materials referred to hereinbefore, it is necessary to detain you under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing you from indulging in any activities prejudicial to the augmentation, of the country''s foreign exchange resources."

(5) Mr. A. K. Sen, appearing for the petitioner, urged these points, in pursuance of his plea that the detention order be quashed.

(6) First, that the grounds were State and there was no "live link" between the grounds of detention and the detention order; and there was inordinate delay rendering the detention irrelevant.

(7) Second, the non supply of the documents, e.g. the Advisory Board''s report, referred to and relied on in the detention order, pari passu the order to the petitioner was fatal.

(8) Third, the non-consideration of the petitioner''s representation, dated 20th May, 1982 to the Central Government, invalidated the detention. But, when it was shown from the record that only an unsigned copy of a representation. dated 20th May, 1982 to the Central Government, learned counsel did not press this point.

(9) Mr. M. C. Bhandare, appearing for the respondents submitted that there was neither staleness in the grounds nor tardiness in issuing the detention order.

(10) With regard to the second point he contended that the non-supply of the report of the Advisory Board cannot invalidate the detention, especially as it is only referred to in the preamble and not in the grounds of detention.

(11) I shall first take up the question of delay and staleness of grounds. From the grounds set out above. It is apparent that the allegations pertain to maintenance of a foreign bank account, as also some entries in a statement, maintained by Satish Kumar, the petitioner''s brother, entitled "Suresh a/c", and certain transaction indulged in by one Ashok Narain on behalf of the petitioner,

(12) The maintenance of a foreign bank account No. 2204339 with American Express Banking Corporation, Fallic Road, Hongkong, was admitted by the petitioner in his statement on 24th February, 1981. The entries in the "Suresh a/c" admittedly mainly relate to the period 1975-76. The transactions relating to the dealings with Ashok Narain relate to July 1980. The assertion being that 12,591.80 dollars (Hongkong) had been acquired by Ashok Narain in Hongkong from one Mr. Anand In July, 1930 on the basis of the petitioner''s instructions. Thus, admittedly the last transaction as mentioned in the grounds pertains to July, 1980.

(13) The question is, is this proximate or pertinent activity to lead the detaining .authority to come to the conclusion on 30th April, 1982 that it is necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the augmentation of the foreign exchange resources of

the country ? The clear distinction between punitive and preventive detention has to be kept in mind. Admittedly, adjudication proceedings are pending under the Foreign Exchange Regulation Act, 1973, and if the petitioner is found guilty he will be punitively detained; the petitioner was arrested in connection with the violation of the foreign Exchange Regulation Act, on 25th February, 1981 and was released on bail on 20th April, 1981.

(14) The matter, however, has to be looked at in the light of the decision of the Supreme Court in the connected case of Ashok Narain v. Union of India and others, (1982) 25 S.C.C. 437. As noticed there, as a result of infoiination received by the Enforcement Directorate of the Ministry of Finance, Satish Kumar Jain was apprehended on 23rd February, 1981. The infonnation was that Satish Kumar Jain was engaged in foreign exchange operations under the guidance of his father Manak Chand Jain and brother Suresh Kumar Jain. On the basis of certain raids conducted as a result of this information and recovery of documents, Ashok Narain was apprehended as it was discovered that he was indulging in certain foreign exchange transactions on behalf of Suresh Kumar Jain. As a result, Ashok Narain was detained by an order dated 14th October, 1981. The Supreme Court opined :

" We''re satisfied that the matter was examined thoroughly at various levels and the detaining authority applied his mind fully and satisfactorily to the question whether the petitioner should be detained under the COFEPOSA. The passage of time from the date of initial apprehension of the detenu and the making of the order of detention was not occasioned by any laxity on the part of the agencies concerned, but was the result of a full and detailed consideration of the facts and circumstances of the case by the various departments involved. We find from the file that the very question whether the passage of time had made it unnecessary to order the detention of the detenu was also considered by the detaining authority. We are unable to held in the circumstances of this case that there was any tardiness on the part Of any one or that the detention is in any manner illegal."

(15) But can it be inferred from this, that if there was no tardiness in issuing the detention order of Ashok Narain on 14th October, 1981 there is no delay in issuing the detention order of the petitioner on 23rd January, 1982, 30th April, 1982 ?

(16) To me, it would appear not. In SK. Abdul Munnaf Vs. The State of West Bengal, , Khanna, J. speaking for the court opined :

" THE past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is indeed largely from prior events showing tendencies or inclinations of a person that an inference can be drawn whether h eis likely in the future to act in a manner prejudicial to the maintenance of public order or to the maintenance of supplies and services essential to the community. But in order to justify such an inference it is necessary to bear in mind that such past conduct or antecedent history should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary (see Madan Burmu v. State of West Bengal, (1973) 3 Scc 62. No doubt, it is both inexpedient and undesirable to lay down any inflexible test as to how for instant the past conduct or the antecedent history should be for reasonably and rationally justifying the conclusion that the person concerned if not detained may indulge in prejudicial activities. If in a given case the time lag between the prejudicial activity of a detenu and the detention order made because of that activity is ex facie long, the detaining authority should explain the delay in the making of the detention order with a view to show that there was proximity between the prejudicial activity and the detention order. If the detaining authority fails to do so, in spite of an opportunity having been afforded to it, a serious infirmity would creep into the detention order."

(17) A delay of nine months in that case was held to have invalidated the detention and a delay of seven months invalidated the detention, in Lakshman Khatik Vs. The State of West Bengal, .

(18) In Ajaib Singh v. The State of Punjab and others Ixxx 1978 P.L.R. 627, a case under Cofeposa Act. an unexplained delay of one year and two months in passing the detention order was held fatal. This aspect has also been discussed in Govind Shiv Shankarlal Gupta v. M.G. Mugwe, 1974 B.L.R.I. (5).

(19) It is settled law, as opined in Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, that delay ipso facto is not fatal especially if unavoidable and reasonable.

(20) In the light of these observations, the paint for consideration is, the past conduct of the petitioner proximate , relevant or State and irrelevant to the object of detention; and has the delay been satisfactorily explained.

(21) It is, thus necessary to examine the facts. Satish Kumar Jain was apprehended on 23rd February, 1981. His statement as also that of the petitioner was recorded on 24th February, 1981. Room No. 12A, Regal Hotel, Chandni Chowk, Delhi was raided on 24th February, 1981 and the premises of Ashok Narain on 25th February, 1981 - Ashok Narain and Suresh Kumar Jain, the petitioner, were arrested on 25th February, 1981. The statement of Ashok Narain was. recorded on the said date. The statement of Satish Kumar and Ashok Narain linked the petitioner with certain foreign exchange transactions. The mention of a bank account by the petitioner with Mis. American Express International Banking Corporation, Hongkong was admitted by the petitioner in his statement on 24th February, 1981. The petitioner was released on bail on 20th April, 1981. He has been in jail from 25th February, 1981 to 20th April, 1981. and again from 23rd 25th'' January, 1982 to 12th April, 1982: and once again from 2nd May, 1982 to 30th June. 1982.

(22) The detention order of Satish Kumar was passed on 29th September, 1981

and that of Ashok Narain on 14th October, 1981. The Supreme Court in the case of Ashok Narain (supra) held that this; delay of about eight months in passing the detention order was not occasioned by any laxity, but was the result of a full and detailed consideration of the facts and circumstances by the various, departments.

(23) So it is clear that had the petitioner been detained on 14th October, 1981. the period of delay would have stood satisfactorily explained. But what happens thereafter ? The petitioner is not sought to be detained till. 23rd January. 1982130th April. 1982. Neither from the affidavit of Mr. B. S. Gujral nor from the record has this further delay been shown to be reasonable and unavoidable. All that is stated is that, the order of detention could not be made till 23rd January, 1982 as the petitioner''s statement could not be recorded till 6th October. 1981 in respect of some of the transactions which had come to the adverse notice of the authorities.

(24) From the record, it is apparent that no attempt had been made to examine the petitioner farther after 25th February, 1981 till 9th September, 1981. It is true that from 9th September, 1981 till 6th October, 1981 the petitioner was not available, as he was away in Bombay but thereafter he was examined on 6th, 12th and 14th October, 1981. Even than a detention order was not forthcoming till 23rd January, 1982.

(25) The purpose of detention is not punitive. It is to prevent prejudicial activity taking place. It is an emergent situation which prompts the detention. It is to stop the petitioner from indulging in immediate future mischief. Therefore, if there is a sluggishness in the action and a tack of urgency and no reasonable Explanation is forthcoming. it would lead to the inference that the live link has snapped and no detention is necessary to prevent the prejudicial activity. The object of the detention, as stated, is to prevent the petitioner from acting in a manner prejudicial to the augmentation of the foreign exchange resources of the country. A certain sense of speed is expected from the authorities in stopping this deleterious activity. This is lacking. No incriminating activity after July 1980 has been indicated in the grounds and even the discovery was between 23rd and 25th February, 1981. The inter connection between the past conduct and the likely future activity has become dormant. It would, Therefore, appear to me that the contention of Mr. A. K. Sen for the petitioner on this aspect must be accepted.

(26) In view of the decision in Smt. Manskhan v. Union of India, 2nd (1975) Ii Delhi 820 the order dated 30th April, 1982 issued u/s 11(2) has not been challenged on the ground of being a redetection on the same facts. However, ''as an aspect of delay, it has been submitted that even with regard to the period 12th April, 1982, when the first order dated 23rd January, 1982 was revoked, and 30th April, 1982, when the impugned detention order was passed, no Explanation is forthcoming. I need not dilate on this aspect in view of the decision I have taken with regard to even the earlier delay.

(27) Coming now to the next point of non supply of detentions, it has to be examined with a reference to Article 22(5) of the Constitution of India. The purport of supplying the grounds, as required under that provision, is that the detenu shall have the earliest opportunity of making an effective representation against the order. The obligation, Therefore, is to supply the grounds and the full particulars thereof i.e. the copies of documents etc. relied on or referred to in the grounds of detention. The history of liberty is the insistence on the observance of procedural safeguards as has been so aptly stated by Mathew, J. in Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others, . Therefore, all documents relied on or referred to in the grounds of detention must be supplied. The question is, has the Advisory Board''s report been referred to or relied on in the grounds of detention. Or is it only mentioned in the detention order as indicating the reason why a redetection order is being passed on the identical grounds ?

(28) It would appear to me that the latter is the position. The grounds have been set out in the detention order in paragraph 2. It is only by way of Explanation ,and in the nature of a preamble, that the report of the Advisory Board has been mentioned in the first paragraph of the detention order which reads :

"1.An order bearing F. No. 67313/82-Cus. Viii was passed by me on 23-1-1982 in my capacity as specially empowered officer of the Central Government u/s (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing you from acting in any manner prejudicial to the augmentation of the foreign exchange resources of the country. In puissance of this order, you were detamed on 23rd January, 1982. In terms of the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. .Your case was referred to the Central Advisory Board constituted under the above said Act. The Advisory Board considered your case and made the recommendation that your detention is void and you cannot be detained under the above said detention, order since some of the photostat copies of the documents relied upon in formulating the grounds of detention supplied to you, were not legible and thereby you were prevented from making an effective representation to the authorities against your detention. On the basis of the opinion of the Advisory Board, you were released from detention on 12-4-1982 and the detention order dated 23-1-1982 was revoked. 2. The grounds on which you are ordered to be redetained vide order F. No. 673|9|82-Cus.VIII dated 30-4-82 u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, are stated below : "

Thereafter the grounds as extracted earlier have been set out in paragraphs 2.1 to 2.3.

(29) The non supply of the Advisory Board''s report cannot effect the petitioner''s right to make an effective representation. It is not every document referred to in the order of detention that must be supplied but every document referred to or

relied on the grounds of detention that must be supplied to the detenu pan passu. If the preamble contained a ground of detention, then irrespective of its nomenclature, the documents referred to therein would have to be supplied in compliance with, Article 22(5). In the mast recent case of Mohd. Zakir V.Delhi Administration and others, Air 1962 Sc 696(9), Th6 Supreme Court relying on its earlier decisions opined :

"IT is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pan passu the grounds of detention in order that the detenu may make an effective representation ''immediately instead of waiting for the documents to be supplied with."

(30) Clearly, the Advisory Board''s report is not the reason for the making up the mind of the detaining authority to detain the petitioner but pertains to the matters stated in the preamble which are de hors the grounds. They only indicate the circumstances ill which a redetection order is being issued.

(31) There is a clear distinction between the conclusions of fact on which the subjective satisfaction of the detaining authority is based and the object of detention. It .is the bounden duty of the detaining authority to supply all the factual material on which the conclusions of fact or grounds are based to provide a real and meaningful opportunity to the ''detenu to make a representation.

(32) In Naresh Chandra Ganguli Vs. The State of West Bengal and Others, , the Supreme Court has made a clear distinction between the order of detention containing the recitals as contemplated by the section and referred to this as the ''preamble''; whereas it refers to the conclusions of fact which have led to the passing of the detention order as "the grounds" Sinha, J. speaking for the Court opined :

"If the grounds do not contain all the particulars necessary for enabling the detenu to make his representation against the order of his detention, he may ask for further particulars of. the facts, and the authority which passed the order of detention is expected to furnish all that information, subject, of course, to the provisions of sub s. (2) of s. 7; that the to say, the person. detained shall not be entitled to the disclosure of such facts as the authority making the order, considers against public interest to disclose. Thus, the order of detention to be served upon the person detained would usually consist of the first two parts, namely, the preamble and the grounds, but it may also consist of the third part, namely, the particulars, if and when they are required or found to be necessary. But it has to be noted that the particulars referred to in sub ss. (3) and (4) of s. 4. would not be identical with the particulars which we have called the third part of the order. The State Government, as also the Central Government. would, naturally, be placed in possession of all the relevant facts and particulars on which the order of detention has been passed. But those particulars may contain such details of facts as may not be communicated, in public interest, to the person detained."

(33) In Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, , Chinnappa Reddy, J- while dealing with the above-mentioned. case has observed :

" THE distinction made in Naresh Chandra Ganguly''s case between the ''preamble'', meaning thereby the recital in terms of the statutory provision and the ''grounds'' meaning thereby the conclusions of fact which led to the passing of the order of detention does not justify any distinction being made between introductory facts, backgrounds-facts,, and grounds'' as such. All allegations, of fact which have led to the passing of the order of detention are grounds of detention''. If such allegallitons are irrelevant or vague the detenu is entitled to be released."

(34) It is not possible from this decision to come to the conclusion, as learned counsel for the petitioner contends, that what is stated in paragraph I of the detention order as above-mentioned are background facts on which the subjective satisfaction of the detaining authority is based. The severance of the detention order into preamble and grounds in the case is patent and there is. no assertion of factual allegations or background facts as in the case of Mohd. Yousuf Rather (supra). In this view of the matter, it is clear that the non supply of the report of the Advisory Board does not vitiate the order.

(35) Mr. M. C. Bhandare for the respondents also made a supplemental argument that ''it is in public interest not to disclose the report of the Advisory Board and/ or it is confidential in nature u/s 8(e) of the Cofeposa Act.

(36) Mr. A. K. Sen, however, submitted that if the detaining authority did not advert to the Advisory Board''s report, the report would be confidential. But once it referred to the report in the detention order, it could not claim the advantage of section 8(e) of the Cofeposa Act. The provisions in Article 22(6) entitling non-disclosure if it is against public policy could not be utilized, in such circumstances, as it prevented the petitioner from making an effective representation.

(37) I need not go into this aspect of the matter, in view of the fact that I have held that the report of the Advisory Board has not been referred to in the grounds of detention.

(38) However, in view of my decision on the first point, I hold that the detention of the petitioner is illegal and make the rule absolute.

