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**(1995) 09 CAL CK 0025**  
**In the Calcutta High Court**  
**Case No : C.O./C.R. No. Nil of 1995**

Tapas Chowdhury

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 05-09-1995

**Acts Referred:**

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)  
Constitution of India, 1950 — Article 22, 22(5), 226  
Customs Act, 1962 — Section 108

**Citation :** (1996) CriLJ 579

**Hon'ble Judges :** Gitesh Ranjan Bhattacharjee, J; Basudeva Panigrahi, J

**Bench :** Division Bench

**Advocate :** B.C. Roy, Milan Mukherji, J. Bagchi and P. Sinha, Poddar, for the Appellant; P.R. Roy and Paritesh Mukherji, for the Respondent

**Final Decision :** Allowed

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## Judgement

Gitesh Ranjan Bhattacharjee, J.—This is an application under Article 226 of the Constitution of India challenging the order of detention of one Shri Mukti Prasad Dutta passed in exercise of the power conferred by Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act, for short). The petitioner who is the son-in-law of the said Shri Mukti Prasad Dutta has filed this writ petition on behalf of the detenu. The order of detention was passed by the Joint Secretary to Govt. of India, Ministry of Finance, Department of Revenue on 5th January, 1995. Pursuant to that order the detenu Shri Mukti Prasad Dutta was arrested on 11th January, 1995. The detention, as the order purportingly announces, was considered necessary with a view to preventing the detenu from abetting the smuggling of goods in future. The detenu is a partner of M/s. N. Dutta Agency holding customs house clearing agency license and he worked as the clearing agent of the importers, M/s. R.N.J. Exports Pvt. Ltd. and M/s. R.S.I. Eng. (P) Ltd.

2. The case of the respondents, Union of India and others, in short, is described

below. The importers M/s. R.N.J. Exports Pvt. Ltd., being a "Buty-Exemption Entitlement Certificate" Holder, had been violating the conditions of VABAL (Value Based Advance Licence) Scheme. R.N.J. Exports obtained Value Based Advance Licence No. P/K/3389877/C dated 8-7-1993 and DEEC Book Serial No. 087496/Cal. dated 8-7-1993 for the import of Polystyrene/ Polyethylene/Polypropylene Moulding powder, ball pen tips and writing ink valued at Rs. 45,31,215.00 free of customs duty with the condition that the importers shall export 15 lakhs pcs. ball point pens and parts thereof including refills for FOB value of U.S. 2,32,000 within twelve months from the date of the issue of the license and that the goods imported against the Advance License shall be utilised in accordance with the provisions of the customs notification No. 203/92 dated 19-5-1992. The said licence was issued with Actual Users" Conditions upon declaration by the importers that M/s. Line Writing Aids Pvt. Ltd., M/s. Chemplast India Pvt. Ltd. and M/s. Bandana Pen Industries were supporting manufacturers of the resultant export products of the importers which names were endorsed on the DEEC Books of the importers. One of the conditions of the scheme is that the imported exempt material shall not be disposed of in any manner before the export obligation is fulfilled in full, the export proceeds realised and the bank guarantee/ L.U.T. is redeemed and that the merchant exporter shall export the products manufactured by the supporting manufacturers as endorsed in the DEEC Book, towards fulfilment of the prescribed obligation. Enquiries revealed that 255 Mts. Polystyrene raw materials collectively valued at Rs. 45,97,425 (CIF) were imported by the importers under five bills of entry Nos. IF-371 dated 30-12-1993, IF-232 dated 24-1-1994, IF-266 and 267 dated 27-1-1994 and IF-268 dated 7-2-1994 free of customs duty claiming benefit of customs notification No. 203/92 dated 19-5-1992 against the said advance licence and the DEEC book. The said goods were cleared from the dock on 1-1-1994, 29-1-1994, 8-2-1994 and two consignments on 14-2-1994 and the goods were handed over to one Shri Narendra Surana who, in turn, admitted to have received 75 Mts. of goods relating to the aforesaid bills of entry on different dates and times from the dock and sold them to different parties directly from the docks at the request of the importers and the payment for such sale was made directly to the importers by the respective buyers. The importers admitted to have received only 153 Mts. of the materials imported by them and denied having knowledge about the balance quantity of 102 Mts. The importers categorically stated that they did not have any stock of the raw materials imported by them and they produced sale bills of 85 Mts. and for the balance 68 Mts., though sold by them as admitted, they could not produce any stock/ disposal particulars. The importers could not offer any explanation in respect of the 102 Mts. of the imported materials which were cleared out of custom control by the clearing agent. At the material time of causing the enquiry with the importers on 14th/15th February, 1994, the importers failed to show any stock of the exempt materials with them or with their supporting manufacturers. Shri L.K. Jhunjhunwalla one of the Directors of M/s. R.N.J. Exports made statement u/s 108 of the Customs Act, 1962 on 14-2-1994 to the effect that out of the total

export obligation of 15 lakhs pcs. of plastic ball pen, his company had already exported till that date 8.55 lakhs pcs. of ball pen. S.K. Jhunhunwalla, another Director of M/s. R.N.J. Exports made statement u/s 108 of the Customs Act, 1962 that their company had imported 153 Mts. of plastic raw materials as on 16-2-1994 and M/s. N. Dutta Agency were their clearing agents and further that the balance quantity of the consignments 34 Mts. and 68 Mts. were yet to be cleared. He further stated that till 16-2-1994 their company had exported four consignments of ball point pens for a total quantity of 8.55 lakhs pcs. He stated that the aforesaid exported goods were purchased from the four firms of Calcutta to whom they did not supply any raw materials imported under their advance license and the goods exported were purchased from the local traders. He also stated about sale of imported materials to different Parties and that the goods were delivered to the different parties against their delivery challans, directly from the docks after clearance by their clearing agent M/s. N. Dutta Agency. He also admitted to have signed all the five bills of entry covering the total import quantity of 255 Mts. of Polysterene raw materials. His further statement is that though all the goods were cleared in the name of R.N.J. Exports Pvt. Ltd. they however had received only 153 Mts. of the goods and the balance quantity of 102 Mts. of goods were not received by them from their clearing agents M/s. N. Dutta Agency. He stated that out of ignorance and in anticipation that they had exported 8.55 lakhs of their export obligation they disposed of the materials and that the goods exported were not manufactured by their supporting manufacturers excepting two lakhs pcs. of ball pen manufactured and supplied by M/s. Line Writing Aids Pvt. Ltd. Shri Pradip Kr. Poddar, President (Marketing and Sales) of M/s. R. N. J. Exports made statement u/s 108 of the Customs Act to the effect inter alia that he along with the Director L. K. Jhunhunwalla had gone to the residence of the detenu on 18-2-1994 asking for the license of the DEEC book but the detenu refused to hand over the same unless the importers gave him the receipt of the balance quantity of 102 Mts. of raw materials. The detenu made statement u/s 108 of the Customs Act on 17-2-1994 to the effect that his firm had cleared 255 Mts. polysterene on A/c of M/s. R.N.J. Exports under duty free advance license and DEEC book from the dock on 1 -1 -1994, 14-2-1994 and two consignments on 8-2-1994 and that after clearance the goods were given to one Shri Narendra Surana and all the documents for the clearance of the goods were given to the detenu by the said Shri Surana and Shri Surana made the arrangement of placing the vehicles near CWC godown for loading into the vehicles from the containers and took delivery of the goods and the detenu did not insist on the delivery/receipt challans and/or letter of authority from the importers. The detenu further stated that the documents for clearance were given to him by Shri Surana to whom the goods were delivered. The detenu also described his act as mistake. Follow up actions were initiated to find out the whereabouts of the parties to whom the raw materials were stated to have sold by Shri (sic) & Narendra Surana disclosed by him in his voluntary statement dated 17-2-1994 in course of which it revealed that the said parties were either fictitious or non-existing excepting M/s. Shree Plastics but the

proprietor of Shree Plastics categorically stated that he never dealt with R.N.J. Exports or Narendra Surana and that he did not know them nor did he receive any raw materials from them. It was also found that the importers violated the stipulations of the customs notification No. 203/92 as amended as well as the advance license and had wilfully submitted false declaration on the export shipping bills before the customs. The submission on the part of the importers pertaining to their receipt of 153 Mts. of imported materials was not supported by any documentary evidence such as delivery challans or receipt ehallans and it was also not explained as to how no communication was received by the importers from the detenu with regard to the clearance of the balance 102 Mts. of the imported goods which were actually cleared out of the customs control by the detenu's clearing firm. The imported exempt materials were disposed of in full in the home/local market by the importers instead of utilising the said materials for discharge of the export obligation and such disposal on the part of the importers was carried out before the export obligation to be fulfilled by the importers under the subject licence was discharged in full, export proceeds realised for the L.U.T. redeemed. It was distinctly clear that the importers connived with Narendra Surana and the detenu for unlawful gain by way of diverting the exempt materials imported duty free against the advance license to the home market in contravention of the provisions of the Policy and the customs notification thus resulting in the evasion of customs duty to the extent of Rs. 49.62 lakhs app. on the part of the importers M/s. R.N.J. Exports. As regards the matter relating to M/s. R.S.I. Eng. (P) Ltd. it is the case of the respondents that the said importers had been violating the condition of Value Based Advance License Scheme by disposing of the exempt materials without fulfilling the export obligation. A truck loaded with 170 bags of plastic granules of 25 kgs. each, made in Korea, was intercepted near the godown of a transport company, namely, M/s. Raipur Calcutta Road Carriers at 14A, Gangadhar Babu Lane on 14-2-1994 by the officers of the concerned department. 30 bags of the same brand were also found in the godown of the said transport company and on demand neither the driver of the truck nor the representative of the transport company could produce any licit documents in support of legal importation/possession and/or acquisition of the goods of foreign origin so recovered from the said truck and the said godown of the transport company excepting a road challan dated 14-2-94 of M/s. B. D. Mai addressed to M/s. S. K. Agrawal covering 200 bags plastic granules. On enquiry at the respective given addresses appearing in the road challan both M/s. B. D. Mal and M/s. S.K. Agrawal were found fictitious. The goods covering the 200 bags recovered from the truck and the godown collectively valued at Rs. 1,30,000 were seized on the reason to believe that these were smuggled into India and were liable to confiscation under Customs Act. The driver of the vehicle stated that 200 bags of plastic granules were loaded by him from a godown at Hide Road at the request of a person whose name and address were not known to him and the said person gave the road challan and accompanied him to the godown at 14A, Gangadhar Babu Lane but disappeared before the customs intercepted the truck. He also stated that 30

bags out of 200 bags were offloaded in the godown at Gangadhar Babu Lane when the customs officers did arrive. It revealed that the importers M/s. R.S. I. Engl. (P) Ltd. obtained Value Based Advance Licenses dated 14-9-1992, 24-3-1993, 24-3-1993 and 19-4-1993 with corresponding DEEC Books for import of certain materials free of customs duty with the conditions that the importers shall export certain specific manufactured goods within 12 months from the date of issue of license and that the goods imported against the advance license shall be utilised in accordance with the provisions of the Export and Import Policy, Hand book of Procedures and related customs notifications as amended from time to time. The licences were issued with Actual Users Condition. The DEEC Books of the importers were endorsed with the names of certain firms as supporting manufacturers of the resultant export products of the importers. G. D. Bhiya, one of the Directors of M/s. R.S.I. stated inter alia that the company had been possessing several advance licences with the condition that the company would export goods of certain value but till 18-2-1994 they had not made any shipment to that effect and he expressed his inability to produce the stock register with the plea that the same were not updated. He also gave particulars of imports made and stated that the stock position of the goods lying with them including the quantity of the goods already delivered to their supporting manufacturers out of the imported quantity was not available with them and that a letter dated 11-4-1994 was issued, as per the instruction of Shri Anand Damani of 18 R.N. Mukherjee Road and was addressed to M/s. Jaipur Calcutta Road Carrier with a request to deliver 200 bags of polypropylene 1088-B from the godown of the Central Warehousing Corporation to M/s. S. K. Plastic Industries (P) Ltd. of Raipur and that the letter was issued without verifying authenticity of the said M/s. B.D. Mal and they did not have any stock of the raw materials imported except in the Central Warehousing Corporation and the materials were stored by them in no other godown. He failed to furnish the details pertaining to stock, delivery to supporting manufacturers and their shipment particulars till 1-3-1994 out of the raw materials imported against four duty free advance licenses issued to R.S.I. Eng. (P) Ltd. He failed to give satisfactory reply regarding the inclusion of the additional supporting manufacturers, namely, M/s. Padmini Polymers Ltd. and M/s. Utkal Poly weave (P) Ltd. and the quantity of the duty free raw materials supplied to the said two firms. Subsequent to the undertaking of the investigation in the instant case, that is, after 18-2-1994 M/s. R.S.I. effected seven shipment under seven shipping bills in respect of which the supporting manufacturers were declared to be M/s. Padmini Polymers Ltd, New Delhi and M/s. Moleplast Polymers Ltd. Calcutta. The name of the supporting manufacturers M/s. Padmini Polymers Ltd. was endorsed in the DEEC Book only after the enquiries had been initiated by the Department and the name of Moleplast Polymers Ltd. was not included in the DEEC Book. None of those supporting manufacturers did receive any exempt materials from the importers. Three more shipments were effected through the port of Kundla by M/s. R.S. I. in the last week of July 1994 which had also distinctly indicated that the aforesaid shipments were effected by the importers after expiry of the requisite period of

export obligation and also after the enquiry had been started by the Department pertaining to the diversion of the exempt import materials into the domestic market. M/s. R.S.I. did violate the stipulations of the customs notification 203/92 as amended as well as of the Advance License and had wilfully submitted false declaration on the export shipping bill before the customs. Shri Aloke Kumar of M/s. R.S.I. limited stated that he was not instantly aware of any supply of any raw materials to M/s. Padmini Polymers and M/s. Utkal Polyweave Industries Ltd. and that the import consignments were looked after by detenu's agency and he expressed inability to furnish any details regarding the quantity of imported materials lying in their godown as the importers were unable to maintain proper stock register. The detenu made statement to the effect that the customs clearance for M/s. R.S.I. Eng. (P) Ltd. was looked after by him and an import of 6,200 bags (155 Mts.) of polypropylene film grade 1088-B was made by M/s. R.S.I. and that the goods being cleared were stored in the godown of the Central Warehousing Corporation as per the instruction of the importers (though the said instruction copy could not be produced) and that the instruction for the delivery of the goods from the godown were received by the detenu from the importers from time to time and accordingly the goods were cleared from the godown of the Central Warehousing Corporation and that delivery of 1440 bags on 14-2-1994 and also the bags prior to 14-2-1994 was taken on behalf of the detenu's firm by Shri Chandan Ghosh and the goods were delivered to one Shri Kishor Damani, one of the Directors of M/s. Utkal Polyweave (P) Ltd. at 18, R. N. Mukherjee Road as per the instructions from R.S.I. Eng. Ltd. The detenu further stated that he knew that the imported materials were not put to use as intended in DEEC Scheme and those were fraudulently diverted to M/s. Utkal Polypack (P) Ltd. with clear knowledge and instruction to his Jetty Sircar taking delivery from Central Warehousing Corporation and it was pointed out by the detenu that though Chandan Ghosh was deputed by him for making delivery to Shri Anand Damani said Shri Chandan Ghosh was not in the pay roll of the detenu's firm. The detenu further stated that no receipts or delivery challans were prepared for those unauthorised disposal/diversion of the duty free goods and that Shri Chandan Ghosh did not have any authorisation from the detenu's agency but he used to take delivery of the goods on behalf of the detenu's firm from Central Warehousing Corporation and used to deliver goods to different Parties at the instructions of Anand Damani and that the delivery of the goods was effected through Chandan Ghosh with the intention that the diversion of the duty free goods would not be made known to the detenu's other staff. The statement of the detenu made it clear that the exempted materials cleared by the detenu under the bill of entry dated 18-1-1994 were delivered to Shri Damani as per the instruction of the importers and that knowing it fully well that the goods cleared by the detenu on behalf of the importers were duty free, the detenu took all initiatives in delivering them to different parties and allowed Sri Ghosh, though not an employee of the detenu's agency to sign and take delivery of the duty free goods from the godown of Central Warehousing Corporation coupled with the fact that the delivery challans/orders were signed by Shri Ghosh on the

rubber stamp of the detenu's agency. Scrutiny of the facts and verification of the statements of documents revealed that the detenu along with his other concerned accomplices, were deeply engaged in the act of smuggling goods of foreign origin into India and it came to light that syndicate was formed and a conspiracy was hatched up to sell and/or dispose of the goods imported under DEEC and Value Based Advance Licence Scheme, to other parties in contravention of the terms and conditions and of the exemption notification.

3. I have described above only some portions of the averments contained in the grounds on the basis of which the detention order has been passed. I must however mention that the grounds stated therein are far more elaborate with more detailed particulars on various other factual aspects and I have only collected some portions to describe what I have noted above leaving aside many other relevant facts not mentioned in my description of the respondents' case as appearing in the grounds in support of the order of detention.

4. It has been argued by the learned Advocate for the petitioner that the impugned order of detention is bad due to non-application of mind and vague grounds. I have described above, by collection from the grounds of detention served upon the detenu, the facts and circumstances leading to the passing of the detention order. In the detention order, we have seen, facts and circumstances have been described in details and there is no scope for holding that the grounds are vague or are bad for non-application of mind. The learned Advocate for the petitioner has referred to certain decisions in support of his proposition that the impugned order of detention is bad due to non-application of mind and vague grounds. The proposition of law is indeed settled and undisputed that non-application of mind or detention on vague grounds will vitiate the detention order. The question whether there has been non-application of mind or whether the grounds are vague in a case will have to be considered in the back grounds of the facts and circumstances obtaining in the particular case. In the present case the detaining authority has seemingly applied his mind to the relevant facts and circumstances as reflected in the statement of grounds of detention containing specific and elaborate grounds free from any vagueness and consequently there is no scope of holding that the impugned order is vitiated due to non-application of mind or vagueness of grounds. It has been pointed out on behalf of the petitioner that somewhere the detaining authority has described that the detenu has been detained with a view to preventing him from "abating" the smuggling of goods. I would however say in this connection that on a reading of the whole of the grounds of detention it will be seen that "abating", even if such expression has been used in one place in place of "abetting", is nothing but a simple case of spelling mistake. Such spelling mistake cannot be an illustration of non-application of mind to the substantial aspect of the matter, particularly when in many other relevant places the correct spelling "abetting" has been used. It is pointed out on behalf of the petitioner that in paragraph 11 of the grounds of detention it has been stated that Shri Surana was very well-connected to Delhi party M/s. K.S. Plastics and M/s. Surana Plastic Industries

who sold the goods to the importers on high sea sales basis and that again in paragraph 13 it has been stated inter alia that Shri Narendra Surana stated that the documents of 68 Mts. were retired by him (K. S. Plastics) in all good faith and understanding and the goods were sold to the importers on high sea sales basis. I do not find any incompatibility between the statements in paragraph 11 and paragraph 13 of the grounds and the idea that is sought to be conveyed is that the firm with which Shri Surana was connected sold the goods to the importers on high sea sales basis. The idea that is projected is that such high sea sales basis transaction took place earlier by which the importers came to own the concerned goods. The contention that the statement to the effect that M/s. R.N.J. Exports received supply of ball point pens from M/s. Line Writing Aids on the basis of purchase order from M/s. R.N.J. Exports is not compatible with the statement that 2 lakhs pcs. of ball pens were manufactured and supplied by M/s. Line Writing Aids, is also without merit as there is no inconsistency in the matter. Line Writing Aids manufactured and supplied the materials without obtaining any raw materials from the importers. It has been pointed out by the learned Advocate for the petitioner that in paragraph 67 of the grounds of detention it has been stated that the detenu along with other concerned accomplices are deeply engaged in the act of smuggling goods of foreign origin into India and in paragraph 71 thereof reference has been made to the detenu's inclination towards the smuggling activities, while the petitioner has been detained with a view to preventing him from abetting the smuggling of goods, in future. The grounds of detention read as a whole will clearly indicate that there is no question of non-application of mind on this score. The detaining authority has described in details all relevant facts and circumstances including the involvement of the detenu in the concerned acts and he was satisfied that the petitioner was abetting the smuggling of goods. It is needless to mention that a person who is involved in abetting the smuggling is obviously covered by the expression "engaged in the acts of smuggling of goods". The expression "engaged in the acts of smuggling of goods" as distinct from the mere expression "engaged in smuggling of goods" obviously includes within its sweep the whole range of smuggling activities including both smuggling and abetment of smuggling in relation to any particular transaction or transactions. Similarly a person abetting smuggling of goods as a pattern of his activity very well betrays his inclination towards the smuggling activities. Consequently I find nothing wrong nor any non-application of mind on the part of the detaining authority by reason of those observations of the detaining authority regarding the petitioner's involvement in the acts of smuggling of goods and regarding his inclination towards the smuggling activities which by no stress of imagination can be said to be incompatible with the satisfaction of the detaining authority that the detention was necessary with a view to preventing detenu from abetting the smuggling of goods.

5. The learned Advocate for the petitioner has also attracted our attention to certain official circulars by which, as submitted by him, the rigours of the



customs exemption notification No. 203/92 dated the 19th May, 1992 have been liberalised. It is submitted on behalf of the petitioner that in view of such subsequent clarifications by the concerned authorities it is now not necessary that the imported raw materials should be incorporated in the export goods or that the importer is bound to get the export goods only from the declared supporting manufacturers. It is also submitted on behalf of the petitioner that now the importer is free to dispose of imported raw materials by sale or otherwise in the local/ domestic market. It is however not correct, as I find, to say that the detaining authority did not apply mind to those subsequent departmental clarifications. In the clarification it is stated thus:-

"It is therefore, clarified that even though exempted materials are imported before discharge of export obligation, they need not be necessarily used in the manufacture of export product. However, the same cannot be disposed of in any other manner before discharge of export obligation."

(Emphasis supplied.)

The crux of the point is that the importer need not utilise the imported raw materials for its being used in the manufacture of the export product. But the importer may also use the imported raw materials for the purpose of manufacture of the export product. The clarification however makes one point clear that except for the purpose of getting the imported raw materials used for the manufacture of the export product, the importer will not be entitled to dispose of the imported raw materials without discharging or before discharging the importer's export obligation. While the detaining authority has noted and described various acts and facts as to how the imported raw materials were disposed of, the resultant act of violation which the detaining authority took into consideration was the fact that the importers disposed of the imported raw materials in the local/ domestic market before discharging the export obligation. Such act in spite of all clarifications is very much violative of law and the petitioner's activities in rendering effective assistance to such violative acts with full knowledge of the state of affairs and with manipulation as described in the grounds of detention have led the detaining authority to be satisfied that with a view to preventing the detenu from abetting the smuggling of goods in future it was necessary to make the order of detention. The detaining authority had before him not only an isolated act on the part of the detenu but a number of acts described in the grounds not only in respect of one importer but in respect of two importers for whom the detenu was acting as clearing agent. It has been submitted on behalf of the petitioner that the detenu's responsibility ended as soon as he cleared the goods as clearing agent on behalf of the importers and thereafter he is not responsible for any subsequent act regarding smuggling of goods. What the detaining authority has described in the grounds would however show that the detenu involved himself in activities which were not confined to the mere role of a clearing agent but were conducive to a subjective satisfaction of the detaining authority that his activities constituted participation in smuggling

activities in the form of abetment and accordingly the detaining authority took action as warranted on the basis of his subjective satisfaction. In the circumstances, I find that there was nothing wrong in passing the order of detention nor can I find that there was any non-application of mind in the matter on the part of the detaining authority.

6. It has been next argued by the learned Advocate for the petitioner that there has been much delay in passing the impugned order of detention after the alleged involvement of the detenu in the matter was detected. The learned Advocate for the petitioner has also relied upon certain decisions in support of his submission that the order of detention will be bad due to unnecessary delay if the chain of connection or the live link between the prejudicial activity and the order passed has been snapped. Indeed there is no dispute with the proposition. The question is whether there has been any undue delay in the matter of passing the order. Then again the question whether there has been any undue delay is a question that has to be decided in the back-ground of the facts and circumstances obtaining in the particular case. In the present case there are a huge number of ramifications of facts and circumstances which needed inquiries in different quarters and corners as will appear from the statement of the grounds itself and the voluminous documents annexed therewith. The three shipments effected by M/s. R.S.I. in the last week of July 1994 indicating shipment after the expiry of the requisite period within which the export obligation was required to be discharged was also taken into consideration and obviously had to be inquired into. Those shipments were made through the port of Kundla. The vast canvas of facts and the enquiries required to be made in respect of each such fact as disclosed in the grounds of detention clearly indicate that the matter was not such as could be dealt with in any cryptic manner either at the stage of enquiries and collection of materials or at the stage of consideration of the vast panorama of the collected materials by dispassionate application of mind. Margin of time was therefore indispensable. In the grounds, in the paragraph 70, the detaining authority has also referred to the memo of the detenu dated 1-11-1994 and also the application under Article 226 of the Constitution which was moved by the detenu and in which an order was passed on 6-12-1994 by a learned Judge of this Court. In view of all these facts and circumstances it cannot be said that there was unnecessary delay on the part of the detaining authority in passing the impugned order of detention on 5-1-1995. In paragraph 15 of the affidavit-in-opposition affirmed on behalf of the respondents it has been inter alia stated that the order of detention and the relevant grounds were all prepared by the office of the detaining authority and it was the detaining authority himself who had gone through the grounds of detention and thereafter approved and signed the same. It has been stated there that there was no delay in passing the detention order against the detenu and subsequent service of the same on the detenu. It is also stated there that the detaining authority had to check and verify every antecedent, facts and figures and to be conversant with each and every sort of development with a view to

arriving at a conclusion for the issuance of the detention order against the detenu. Having regard to the complexity of the facts and circumstances and the diversification of developments requiring multi-aced enquiries for unearthing the true and the whole state of affairs regarding the prejudicial activities, and having regard to the volume of the task which the respective authorities must have undertaken in making enquiries and in arriving at the required satisfaction about the necessity of the action to be taken, it cannot be said that there was any undue delay in passing the impugned order of detention. The complexity of the matter is evident from the fact that even the detenu in paragraph 6 of this writ petition makes a grievance about the service on the petitioner of complicated grounds along with 1,339 number of pages of documents preventing the detenu from making an effective representation against the order of detention as expeditiously as possible. Obviously some margin of time must have been legitimately taken for collecting and verifying materials and for taking a decision after studying such materials by proper application of mind and in that background it cannot be said that there was delay in passing the impugned order of detention. In view of the fact and circumstances there is also no question of any mala fide on the part of the detaining authority or of malice in law.

7. The learned Advocate for the petitioner has also urged that there has been undue delay in disposing of the representations made by the detenu after his detention. In this connection he also cited a number of decisions, such as, *Harish Pahwa Vs. State of U. P. and Others*, , *Kamla Kanyalal Khushalani Vs. State of Maharashtra* and another, , *State of Punjab Vs. Sukhpal Singh*, , *Mahesh Kumar Chauhan alias Banti Vs. Union of India and others*, , *Aslam Ahmed Zaire Ahmed Shaik Vs. Union of India and Others*, , *Rama Dhondur Borade Vs. V.K. Saraf, Commissioner of Police and Others*, and *Raj Kishore v. State of Bihar*, 1983 (3) SCC 10 (sic). On the other hand the learned Advocate for the respondents has submitted that there was no delay in considering the representations submitted by the detenu, and has relied upon the two decisions of the Supreme Court in this connection, namely, *U. Vijaya Lakshmi v. State of T.N.*, 1995 SCC (Cri) 176 and *Panna v. A. S. Samra*, 1995 SCC (Cri) 137. In the case of *U. Vijayalakshmi* (supra), after his detention the detenu made a representation dated 11-5-1992 against the impugned detention order and the representation was handed over to the jail authorities who forwarded the same to the State Government and the State Government received the same on 18-5-1992 and conveyed the rejection thereof on 23-6-1992 which was received by the detenu on 26-6-1992. In the case of *Panna* (supra) the representation of the detenu dated 24-4-1992 was received by the jail authority on the same date and the jail authority forwarded the same on 27-4-1992 to the Central Government. The Central Government received it on 1-5-1992. The Central Government after receiving the vital information from the State Government and after considering the vital information and the para wise comments took decision to reject the representation on 28-5-1992 and the decision was communicated to the jail authority by wireless message followed by a communication dated 4-6-1992. The

Supreme Court in both the cases found, in the back ground of the facts and circumstances of each case, that there was no delay in considering the representation. There is no doubt that the law is that if there is any undue or unexplained delay in considering the representation of the detenu the detention becomes illegal. However the question whether there was any delay in any particular case or for that matter whether there was any undue delay or any unexplained delay is a question which depends upon the facts and circumstances of each case. In the present case there were three representations. In this connection I may mention here that the learned Advocate for the respondents placed before us, during the hearing, certain particulars regarding the representations dealt with by the concerned authorities. One representation was received by the Finance Minister directly on 17-1-1995. Comments were obtained from the sponsoring unit and the representation was rejected by the Central Government, (Finance Minister) on 8-2-1995. Matter had to be dealt with by the under Secretary, Joint Secretary, Additional Secretary as well as by the Secretary and the Minister of State at the intermediate stages and there were Saturdays, Sundays and Holiday numbering seven within that period and on an overall consideration I do not think that there was any undue delay in the matter of disposing of this representation. There was another representation by the detenu dated 31-1-1995 to the concerned Joint Secretary. The representation was made by the detenu from Presidency Jail, Alipore, Calcutta. The 4th and the 5th February, 1995 were Saturday and Sunday respectively. The representation was received in the COFEPOSA Unit of the Ministry of New Delhi on 6-2-1995. The Ministry sent for comments from the sponsoring authority at Calcutta and the comments were sent by the sponsoring authority from Calcutta to the Ministry at New Delhi on 13-2-1995. On 15-2-1995 the Ministry asked for some clarifications from the sponsoring authority and the sponsoring authority forwarded the same to the Ministry. The Joint Secretary rejected the representation on 22-2-1995. There were six Saturdays and Sundays in between the date of making the representation and its disposal. Having regard to the volume of the matter it cannot be said that there was any undue delay in disposing of the representation. That some clarification was sought for by the Ministry from the sponsoring authority after receiving comments of the sponsoring authority, would also indicate bona fide on the part of the Ministry dealing with the matter and would further indicate that due consideration was being given to the representation. As regards the representation dated 31-1-1995 made to the Advisory Board at New Delhi by the detenu from the Presidency Jail at Calcutta, it appears, that the Advisory Board meeting was held and the representation was considered on 17-2-1995 and the opinion of the Advisory Board was rendered on 24-2-1995 and was received in the Joint Secretary's-Office on 28-2-1995 and ultimately the representation was rejected on 14-3-1995 after it passed through the Joint Secretary, Additional Secretary, Minister of State and Finance Minister. There were also a number of off days including Saturdays and Sundays during the intervening period. Having regard to the facts and circumstances including the volume of the matter it cannot be said that there was any undue delay in

dealing with any of the three representations. Accordingly, I find no merit in the argument advanced on behalf of the petitioner that there was undue delay in dealing with the representations filed by the petitioner. It has been submitted by the learned Advocate for the petitioner that all the three authorities are required to consider the representations filed by detenu. In this case we find that all the three authorities considered the representations of the detenu. The ground of undue delay in disposing of the representations of the detenu thus fails.

8. The next point that has to be considered is regarding supply of illegible copies of certain documents and non-supply of certain document. It is alleged on behalf of the detenu that no copy of the road challan dated 14-2-1994 of M/s. B. D. Mal of 12, Pathuria Ghat Street addressed to M/s. S.K. Agrawal, 14A, Gangadhar Babu Lane as referred to in paragraph 32 of the grounds of detention has been supplied to the detenu. It is also alleged that amongst the copies of the documents supplied along with the grounds of detention a large number of the documents are not legible. The documents supplied to the detenu were produced before us and on a scrutiny it is found that although the allegation that all these documents are not legible is not found correct yet some of the documents are found to be substantially illegible, as for example, the import license at page 196 of the paper book, part of the import license at page 203 of the paper book, parts of the Registration Certificates at pages, 233, 238, 247 and 257, to mention a few. The attention of the learned Advocate appearing for the respondents was also drawn to the illegible portions of those documents as supplied to the detenu. The question is whether non-supply of the road challan of M/s. B. D. Mal as referred to in paragraph 32 of the grounds of detention and supply of certain illegible copies to the detenu along with the grounds of detention will vitiate the detention of the detenu. It is argued by the learned Advocate for the petitioner that supply of illegible copies itself amounts to non-supply of the concerned documents and that being so the detention becomes invalid for that reason alone. The learned Advocate for the petitioner also relies upon the decision of the Gujarat High Court in *Vikramsinh Pravinsinh Rana v. State of Gujarat*, 1989 Cr LJ 1576 and the decision of the Bombay High Court in *Chandra Sekhar Ojha v. A. K. Karnik*, 1982 Cr LJ 1642 in support of his proposition that non-supply of legible copies of documents vitiates the detention. Indeed there is no doubt that if legible copies are not supplied then the detenu is likely to be put to inconvenience in making an effective representation against the order of detention. There is no doubt that supply of illegible documents amounts to non-supply of the concerned documents. The learned Advocate for the respondents also, in his usual fairness, did not hesitate to acknowledge the correctness of this proposition.

9. Now let us study the position of law regarding effect of non-supply of documents (including supply of illegible copies) along with the grounds of detention served upon the detenu. I have already mentioned the decisions of a Division Bench of the Gujarat High Court in *Vikramsinh v. State of Gujarat* (supra) where it has been held that where the detenus were supplied with the

copy of the order but some of the pages of the order were not legible the same amounted to non-communication of the grounds of detention and therefore the order of detention and the continued detention were both vitiated. The decision of the Division Bench of the Bombay High Court in Chandrashekhar v. A.K. Karnik (supra) is also of similar import. In Bhupinder Singh v. Union of India, : (1987)2SCC234 , also the detention order was struck down by the Supreme Court by reason of supply of illegible copies of documents along with the grounds of detention. It was held that by reason of non-supply of legible copies of documents the detenu was clearly denied the opportunity of making a representation and there was therefore a clear contravention of the right guaranteed by Article 22 of the Constitution and the detenu was entitled to be set at liberty. In Manjit Singh Grewal v. Union of India, 1990 (Supp) SCC 59, also the Supreme Court found that by reason of the fact that the copies supplied to the detenu were illegible the safeguards provided by the Constitution had not been followed, and the order of detention was quashed. Apart from the question of supply of illegible copies, as we have seen, the petitioner's contention in the present case is that no copy of the road challan dated 14-2-94 of M/s. B. D. Mal of 20, Pathuria Ghat street addressed to M/s. S.K. Agrawal of 14A, Gangadhar Babu Lane as referred to in paragraph 32 of the grounds of detention has been supplied to the detenu and non-supply of the copy of the document referred to in the grounds of detention itself vitiates the detention. The learned Advocate for the respondents however argued in reply that the said road challan is not relevant. The fact however remains that in paragraph 32 of the grounds of detention the said road challan has been specifically referred to. In paragraph 33 of the grounds of detention it has also been stated that on enquiry both M/s. B. D. Mal and M/s. S. K. Agrawal at the respective given addresses appearing in the road challan were found fictitious and the concerned goods recovered from the truck and the godown were thereafter seized on the reason to believe that these were smuggled in India and were liable to confiscation. Therefore it is evident that the concerned road challan has not only been referred to in paragraph 32 of the grounds of detention, but it has also been mentioned in paragraph 33 that enquiries were made thereon and the firms mentioned in the road challan were found to be fictitious. The non-supply of the copy of the road challan of M/s. B.D. Mal has also been high-lighted by the detenu in his representations. It also appears from the copy of the seizure list dated 14-2-94 at page 85 of the paper book that the said road challan of M/s. B.D. Mal was seized under the said seizure list. The non-supply of the copy of the road challan referred to in the grounds of detention, in view of the consistent Supreme Court decisions on the point, is indeed fatal for the respondents' case. The question whether a document referred to in the grounds of detention is relevant or not is not for the Court to consider. In paragraph 11 of the decision in Kirit Kr. v. Union of India AIR 1982 SC 1621 the Supreme Court has observed that the question of relevance was not to be decided by the Court but by the detaining authority which alone had to consider the representation of the detenu on merits and then come to a conclusion whether it should be accepted or rejected. A question was

raised in that case that the documents were merely referred to in the grounds of, detention but did not form the basis of the subjective satisfaction of the detaining authority at the time when it passed the order of detention. It was however observed in paragraph 12 of the said decision by the Supreme Court that once the documents are referred to in the grounds of detention it becomes the bounden duty of the detaining authority to supply the same to the detenu as part of the grounds or *pari passu* the grounds of detention and that there is no particular charm in the expressions "relied on", "referred to" or "based on" because ultimately all these expressions signify one thing, namely, that the subjective satisfaction of the detaining authority has been arrived at on the documents mentioned in the grounds of detention. In that paragraph the Supreme Court further observed thus :-

"thus, it is absolutely clear to us that whether the documents concerned are referred to relied upon or taken into consideration by the detaining authority they have to be supplied to the detenu as part of the grounds so as to enable the detenu to make an effective representation immediately on receiving the grounds of detention. This not having been done in the present case the continued detention of the petitioner must be held to be void."

It is therefore evident that by reason of the non-supply of the road challan of M/s. B.D. Mall referred to in the grounds of detention the detention becomes bad.

10. The imperative necessity of supplying the copies of the documents, statements and other materials relied upon in the grounds of detention has also been unequivocally emphasised by the Supreme Court in its decision in *Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others*, . In *Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others*, , it has been held by the Supreme Court that the grounds in Article 22(5) of the Constitution of India do not mean mere factual inferences but mean factual inferences plus factual materials which led to such factual inferences and the failure to communicate the factual material as a part of the grounds would amount to non-communication of grounds on which the order of detention has been made and would thus infringe Article 22(5). In this connection the following observation of the Supreme Court in paragraph 7 of the said decision may be noticed :-

"It means that the detenu is to be informed not merely, as we said, of the inferences of fact but of all the factual materials which have led to the inferences of fact. If the detenu is not to be so informed the opportunity to solemnly guaranteed by the Constitution becomes reduced to an exercise in futility.

Whatever angle from which the question is looked at, it is clear that "grounds" in Article 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The "grounds" must be self-sufficient and self-explanatory. In our view copies of documents to which reference is made in the "grounds" must be supplied to the detenu as part of the "grounds".

11. In *Kamla Kanhaiyalal v. State of Maharashtra*, AIR 1981 SC 814, it has been held by the Supreme Court in paragraph 4 that the documents and materials relied upon in the order of detention formed an integral part of the grounds and must be supplied to the detenu *pari passu* the grounds of detention and if the documents and materials are supplied later, then the detention is deprived of an opportunity of making an effective representation against the order of detention. Again in paragraph 6 of the said decision it has been observed by the Supreme Court thus:-

" \* \* \* \* \* the law of preventive detention has now to satisfy a two fold test; (1) that the protection and the guarantee afforded under Article 22(5) is complied with, and (2) that the procedure is just and reasonable. In this view of the matter unless the materials and documents relied on in the order of detention are supplied to the detenu along with the grounds, the supply of grounds *simpliciter* would give him not a real but merely an illusory opportunity to make a representation to the detaining authority."

12. In *Mehrunissa Vs. State of Maharashtra*, the detention was challenged on the ground that the copies of the material documents referred to in the grounds of detention were not supplied to the detenu and he was thus prevented from making an effective representation. It was held in that case by the Supreme Court that it was hardly an answer on the part of the detaining authority that the copies of the documents were not supplied to the detenu as the detenu was already aware of the contents of the documents. It was held that the failure of the detaining authority to supply copies of such documents vitiated the detention. In *Mohd. Zakir Vs. Delhi Administration and Others*, , the detenu was arrested on 29th November, 1980 and the grounds of detention were served on him on 1st December, 1980. A representation was made by the detenu on 30th December, 1980 which was rejected by the Government on 6th January, 1981. A prayer for further documents was made by the detenu on the 5th January, 1981 which were supplied to him on 5th January, 1981. The respondents tried to support the order of detention in that case on the ground that some documents had been supplied along with the grounds, but other documents were given to him only when the same were demanded by the detenu. The Supreme Court while setting aside the detention, however observed "that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention *pari 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". In view of the overwhelming decisions of the Supreme Court as discussed above this Court is now left with no other alternative but to hold, as is evident, that by reason of non-supply of the road challan of M/s. B. D. Mal referred to and dealt with in paragraphs 32 and 33 of the grounds of detention the continued detention of the detenu cannot be sustained. The ground of non-supply of legible copies of certain documents as discussed earlier is also there. We therefore allow this writ petition and direct the



detenu to be released forthwith unless his detention is required in connection with any other proceedings. The writ petition stands disposed of accordingly. No costs is however ordered.

Basudeva Panigrahi, J.

13. I agree.