
(1996) 10 GUJ CK 0036
In the Gujarat High Court

Urmila Naresh Mittal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-10-1996

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1), 3(3)
Constitution of India, 1950 — Article 21, 22, 22(5)
Criminal Procedure Code, 1973 (CrPC) — Section 161
Customs Act, 1962 — Section 108
National Security Act, 1980 — Section 8, 9

Citation : (1998) 3 GLR 2438

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Judgement

M.R. Calla, J.—These three Special Civil Applications have been filed on behalf of the detenu concerned in each of these three cases, i.e., Shri Naresh Ramkumar Mittal, Surendra Ramkumar Mittal and Rajesh Ramkumar Mittal, through their wives, namely, Ms. Urmila N. Mittal, Ms. Manju S. Mittal and Ms. Priti R. Mittal respectively. These three petitioners have challenged the detention orders passed against their husbands separately in each of these three petitions on 15th January, 1996, 15th January 1996 and 12th January 1996 respectively by the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, as specially empowered u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, which will be hereinafter referred to as "the COFEPOSA Act". All these three orders have been signed by Shri K.L. Verma, Joint Secretary to the Government of India. The detention orders against the three detenus residing at Mittal House, Behind Goyal Tower, ATIRA Road, Ahmedabad, were executed on 17th January, 1996. Initially, while under detention the three detenus were detained and kept in custody in the Central Prison, Nasik, Maharashtra, as ordered by the concerned authority in the detention orders itself. Thereafter, under order dated 2nd July, 1996 they were shifted to Central Prison, Sabarmati, Ahmedabad. While the three detenus

were under detention in Sabarmati Central Jail, Ahmedabad, these three petitions were filed on their behalf through their respective wives named above on 19th July, 1996, 19th July, 1996 and 25th July, 1996 and on 23rd July, 1996, 23rd July, 1996 and 26th July, 1996 respectively rule returnable was issued for 8th August, 1996 in all these three matters. It may also be mentioned that prior to the filing of these petitions, petitions were also filed on behalf of these three detenus challenging the detention orders before the Bombay High Court being Cri. Writ Petition Nos. 238, 239 and 240 of 1996 and all these three petitions were withdrawn with a liberty to file fresh petitions on 10-7-1996. All these three petitions are based on identical facts and involve common questions of law and therefore, these three petitions are decided by this common judgment and order.

2. Articles 21 and 22 of the Constitution of India and the provisions of the COFEPOSA Act, 1974 are pivotal provisions of these three cases. For the purpose of challenge to the detention orders and to support the detention orders, the authorities have relied upon the pleadings available in each and any of the three cases. While the detention orders dated 15th January, 1996, 15th January, 1996 and 12th January, 1996 were served upon the petitioners in these three cases on 17th January, 1996, the grounds in support of the detention orders dated 15th January, 1996, 15th January 1996 and 12th January, 1996 were supplied to the detenus on 17th January, 1996 itself, the documents enumerated in the Annexure-K at serial Nos. 1 to 53 and those contained in the addendum to the Annexure-L item Nos. 54 to 73 were supplied on 20th January, 1996 in all these three cases. The grounds of detention show that certain intelligence reports had been received with regard to the large-scale fraud committed by certain exporters of polyester fabrics under DEEC Scheme, i.e., Duty Exemption Entertainment Certificate Scheme. Pursuant to these reports, the premises of M/s. Roopmohan Enterprises were searched by the Customs Officers of Bombay and it was found that the name of the agency which masterminded the fraud was M/s. Amol Shipping Agency of Bombay. During the course of further investigation, the premises of M/s. Amit Warehousing Corporation, Bombay and the residential premises of Shri Ashok Pokharkar were searched on 28th July 1995 and 29th July, 1995 and large number of documents were recovered and taken over under the provisions of the Customs Act. Amongst the documents seized/ taken over from the above premises, there were large number of blank forms of SASMIRA Test Reports, several rubber stamps of exporters, Customs Officers, Customs endorsements etc., and thereafter, statements of Shri Ashok Pokharkar of M/s. Amol Shipping Agency were recorded on various dates in August 1995, September 1995 and October, 1995 u/s 108 of the Customs Act, 1962. Investigations were conducted against the parties whose exports were handled by M/s. Amol Shipping Agency and therefore, investigations were also made against the firms, namely, M/s. R.K. Exports, M/s. Unique Processors Ltd., M/s. Rajat International, M/s. N.V. Exports, M/s. R.S. Exports which were owned by the detenus and their brothers. Searches were then conducted at the office premises of the concerned firms located at Bombay and Ahmedabad and various

documents were taken over and statements were also recorded u/s 108 of the Customs Act, 1962. The grounds of detention further show that the licences which were obtained permanently were used for duty free import of goods causing loss to the Government revenue and it has been mentioned that in the case of M/s. R.K. Exports the loss was to the tune of Rs. 18.92 crores, in the case of M/s. Unique Processors Pvt. Ltd., it was around Rs. 3.12 crores. On behalf of the detenus five cheques of Rs. 50,000/- each, i.e., Rs. 2.5 crores (sic.) were voluntarily deposited but these cheques were not honoured and the firms with which the detenus are concerned had sent demand drafts for a total amount of Rs. 50 lakhs only. It is also mentioned in para 14 of the grounds of detention that the actions on the part of the detenus had led to evasion of large amount of import duty and the evasion of the duty to the extent of Rs. 5 crores had been admitted and initially the firms had voluntarily paid upto Rs. 3 crores towards the duty/penal liability and against the cheques of Rs. 2.5 crores which were dishonoured a sum of Rs. 50 lakhs had been given through bank drafts. The detaining authority felt satisfied that the detenus carried out smuggling activities by way of bringing into India goods without any import duty and caused substantial revenue loss to the Government. It has been further mentioned that the detenus were likely to continue such activities unless detained and therefore, notwithstanding the prosecution proceedings under the Customs Act, 1962 likely to be initiated against them, the detaining authority felt satisfied that they must be detained under the provisions of the COFEPOSA Act with a view to prevent them from smuggling goods in future. It has also been mentioned in para 17 of the grounds of detention that he considers it against the public interest to disclose the source of information placed before him and referred to in the grounds and he also considers it against the public interest to disclose further facts contained therein. Accordingly, the detenus were communicated that they were required u/s 3(3) of the COFEPOSA Act, 1974 read with Article 22(5) of the Constitution of India, the grounds on which the detention orders had been passed with the further mention that the copies of the statements and documents placed before him as mentioned in the accompanying list were enclosed. It was mentioned in para 19 of the grounds of detention that the detenus had a right to make a representation before the Advisory Board against the detention order. Although, it is clearly mentioned in the end of para 18 of the detention order that copies of the statements and documents as mentioned in the accompanying list were enclosed, there is no dispute on the factual aspect that while the grounds of detention were served upon the detenus on 17-1-1996, the documents as mentioned in the accompanying list including the addendum, i.e., item Nos. 1 to 53 and 54 to 74 were supplied to each of the detenus on 20th January, 1996, i.e., within the period of five days from the date on which the detention order was served.

3. The detention orders have been challenged on various grounds and before I deal with the grounds, it will be appropriate to first consider the approach and orientation to be followed by the Court in such cases while dealing with the

validity of the detention orders passed in this type of case.

Approach and Orientation:

4. The COFEPOSA Act is an Act to provide for preventive detention in certain cases for the purpose of Conservation and Augmentation of Foreign Exchange and Prevention of Smuggling Activities and for matters connected therewith. Whereas, violation of Foreign Exchange Regulations and Smuggling Activities have increasingly deleterious effect on the national economy and thereby a serious adverse effect on the security of the State and whereas the manner in which such activities or violations are organised and carried on and whereas certain areas are highly vulnerable to smuggling, and smuggling activities are of a considerable magnitude and are organized and carried on clandestinely, the legislature thought it fit that an Act be enacted to effectively prevent such activities and the violations so as to provide for detention of persons concerned in any manner therewith. Thus, the legislative intent providing for the detention in appropriate Cases to take care of deleterious effect on the national economy in the context of violation of Foreign Exchange Regulations and Smuggling Activities is very clear in the enactment of COFEPOSA Act by the Parliament. On the other hand, the Constitution of India which is the fountain source of the laws provides in Article 21 of the Constitution of India that no person shall be deprived of his life or personal liberty except according to the procedure established by law and through Article 22 the protection has been provided against arrest and detention in certain cases and accordingly no person is to be detained in custody without being informed at the earliest possible opportunity of the grounds of such arrest and he is not to be denied the right to consult and defend. While providing further safeguards against the preventive detention, the authority making the detention order has been charged with the obligation under Article 22(5) of the Constitution of India to communicate the grounds on which the detention order is based at the earliest possible opportunity and a right to representation against such detention has been given to the detenu. Accordingly, when an order is made with regard to the preventive detention and if it comes to challenge before the Court, the validity of such order of preventive detention is to be decided with reference to the Act under which the detention order has been passed with due regard to the provisions contained in Articles 21 and 22 of the Constitution of India and the validity of the detention orders have been examined by the Courts in various cases on the basis of the clear test as to whether the order has been passed in conformity with the provisions of the Act and as to whether the due safeguards provided under the law and under the Constitution of India have been violated or not.

5. In this context, I may first refer to the case of *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, in which the judgment was rendered by a Bench of six Judges. In this judgment the Supreme Court was concerned with the preventive detention under the Preventive Detention Act (IV of 1950). As per the judgment rendered by Hon''ble Kania, C.J., on behalf of himself and Hon''ble Fazl Ali,

Hon''ble Mukherjee and Hon''ble Chandrasekhara Aiyar, JJ., the powers of detention are in addition to those contained in Criminal Procedure Code where the detention is followed by an inquiry or trial. By its very nature preventive detention is aimed at preventing the commission of offence or preventing the detained person in achieving a certain end. The satisfaction for passing an order of preventive detention has to be based on certain grounds, and the grounds should be such as a rational human being can consider them to be connected in some manner with the objects which were to be prevented from being achieved, and it is not for the Court to sit in the place of Central or State Government and try to determine if it would have come to the same conclusion or not as it is a matter of subjective satisfaction of the Government and that cannot be substituted by an objective test in the Court of law. It has been then considered that the first part of Article 22(5) gives a right to the detained person to be furnished with the grounds on which the orders have been made and that is to be done as soon as may be. Further the right given to such person is of being afforded the earliest opportunity of making a representation against order. The grounds of detention must be in existence when the order is made. By very nature, the grounds are conclusions of facts and not total recital of the facts. Such conclusions are the grounds and they must be supplied; no part of such grounds can be held back, nor can any more grounds be added thereto but it does not mean that all facts leading to the conclusion mentioned in the grounds must be conveyed to the detained person at the same time when the grounds are conveyed to him. The facts on which the conclusions mentioned in the grounds are based must be available to the Government, but there may be cases where there is delay or difficulty in collecting the exact data or it may not be convenient to set all the facts in the first communication. The Supreme Court in this decision opined that while there is a connection between the obligation on the part of the detaining authority to furnish the grounds and the right given to the detained person to have an earliest opportunity to make the representation; the test to be applied in respect of the contents of the grounds for the two purposes is quite different. As regards to the obligation cast on the detaining authority, the test is whether there was material to satisfy the authority to form the opinion that the detention was necessary and as regards to the right of detenu's representation the test is whether it was sufficient to enable the detained person to make the representation at the earliest opportunity. It has been ultimately opined that the proposition that all materials in all circumstances must be furnished to the detenu when the grounds are first communicated, is not sound.

6. In the case of Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, the Supreme Court was concerned with the case of preventive detention under COFEPOSA Act, 1974. In this case the matter was decided by a Bench of four Judges. With reference to the objects and reasons of the Amending Act of 1975, it was noticed that the foreign racketeering and related activities have a deleterious effect on the national economy. It was

observed that the society must be protected from the social menace by immobilising the persons through detention so as to disrupt the machinery established for furthering smuggling and foreign exchange manipulations. The Supreme Court considered the question of prevention vis-a-vis punitive detention and has observed that the preventive detention unlike punitive detention which is to punish for the wrong done, is to protect the society by preventing wrong being done. Such powers of detention have to be exercised very cautiously not to undermine the fundamental freedoms guaranteed to the people and the procedural safeguards are to ensure that, yet, these must be looked at from a pragmatic and common sense point of view. The exercise of power of the preventive detention must be strictly within the safeguards provided. The purpose of exercise of such powers by the Government must be to promote common well-being and must be to subserve common good but it is necessary to protect the rights insofar as practicable which are not inconsistent with the security and well-being of the society. The Supreme Court has noticed that the grant of power imposes limitation on the use of power and there are various procedural safeguards and they must be construed in proper light and from pragmatic common sense point of view. It has to be remembered that the observance of written law about the procedural safeguards for the protection of the individual is normally the high duty of the public official but in all circumstances not the highest and the law itself is of protection and self-preservation of the country and national security may claim higher priority. While referring to Thomas Jefferson. Writings (Washington Ed.) v. 542-545 the Constitution between Friends by Louis Fisher 47 the Supreme Court has quoted that "To lose our country by a scrupulous adherence to written law would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means". The Supreme Court has thus concluded that both justice and power can be brought together and whatever is just may be powerful and whatever may be powerful may be just.

7. In Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others, which is a decision rendered by a Bench of five Judges, the Supreme Court considered the submission of the Additional Solicitor-General that some of the detenus had been indulging in illicit smuggling of Narcotic Drugs and Psychotropic Substances on the large-scale and were involved in other anti-national activities which were very harmful to the national economy and further having regard to the nature of the activities of the detenus no interference was justified with the detention orders. While dealing with this point, in para 49 of the judgment the Supreme Court Judges observed that they were not unmindful of the harmful consequences of the activities in which the detenus are alleged to be involved. The Supreme Court has observed as under:

We are not unmindful of the harmful consequences of the activities in which the detenus are alleged to be involved. But while discharging our constitutional obligation to enforce the fundamental rights of the people, more especially the right of personal liberty, we cannot allow ourselves to be influenced by these

considerations. It has been said that history of liberty is the history of procedural safeguards. The Framers of the Constitution being aware that preventive detention involves a serious encroachment on the right to personal liberty, took care to incorporate, in Clauses (4) and (5) of Article 22, certain minimum safeguards for the protection of persons sought to be preventively detained. These safeguards are required to be "zealously watched and enforced by the Court". Their rigour cannot be modulated on the basis of the nature of the activities of a particular person. We would, in this context, reiterate what was said earlier by this Court while rejecting a similar submission:

May be that the detenu is a smuggler whose tribe (and how their numbers increase) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them and if freedom and liberty are to have any meaning in our democratic set-up, it is essential that at least those safeguards are not denied to the detenus.

While this passage has been quoted from *Rattan Singh Vs. State of Punjab and Others*, it may be stated that in para 6 of the judgment, the Hon'ble Justice S.C. Agarwal while delivering the judgment of the Court has also considered the case of *State of Bombay v. Atma Ram Shridhar Vaidya* (supra) and while referring to Article 22(5) of the Constitution of India it has been held that the provision has same force and sanctity as any other provision relating to fundamental rights. Article 22(5) imposes a dual obligation on the authority making the order of preventive detention: (i) to communicate to the person detained as soon as may be the grounds on which the order of detention has been made and (ii) to afford the person detained the earliest opportunity of making representation against the order of detention.

8. Thus, in light of the discussions and observations made in the aforesaid cases the following principle is clearly discernible in the matter of orientation and approach to be followed while dealing with the cases of preventive detention.

While the importance of national economy in the context of organized smuggling activities cannot be undermined rather it has been given a prime importance, while dealing with the cases of preventive detention a balance has to be struck with regard to constitutional safeguards because the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law and at the same time care has to be taken that the purpose and the object of the Act is not defeated on the basis of a hypertechnical approach to the observance of the procedure and unless and until it is found that the right of effective representation has been invaded to an extent so as to make it defeasible, the interference with the detention would be unwarranted.

Cherished Values and Objects of the Act with Reference to National Economy:

9. Cherished values and objects of the Act with reference to national economy

are not to be defeated but at the same time the constitutional safeguards and the rights conferred under Articles 21 and 22 of the Constitution of India cannot be sacrificed at the altar of the preventive detention under the Act. In my opinion, this distinct test based on the observations made by the Supreme Court must take care of the object of the Act enacted by the Parliament, command of the Constitution which we, the people of India, have given it to ourselves.

10. The COFEPOSA Act being enactment passed with the orientation to protect the national wealth and to check the violation of Foreign Exchange Regulations and Smuggling Activities and for that purpose in appropriate cases the detention has to be ordered. At the same time, it is postulated under Articles 21 and 22(5) of the Constitution of India that there cannot be any detention except in accordance with law. In this view of the matter, neither the interest of the national economy can be undermined nor the Constitutional safeguards can be given a go-bye and this is the approach with which the challenge to the detention orders needs to be examined and adjudicated.

11. In the facts of the present cases, the impugned detention orders have been challenged on number of grounds which may be enumerated as under. I will be dealing with these points ad seriatum.

(i) That there is a considerable unexplained delay in deciding the petitioners' representation dated 16-2-1996, which was rejected on 29-3-1996, as per the memorandum issued by the Under Secretary to the Government of India and thus the petitioners' right under Article 22(5) of the Constitution of India has been violated.

(ii) Documents referred to and relied upon by the detaining authority in the grounds of detention were not supplied along with the grounds of detention, i.e., *pari passu* the grounds of detention and therefore, there is violation of Article 22(5) of the Constitution of India.

(iii) Necessary particulars regarding import of goods on which the detenus have evaded Customs duty are not mentioned in the grounds of detention and therefore, the grounds are vague. The necessary documents pertaining to the evasion of Customs duty alleged to have been committed by the detenus in the grounds of detention are not placed before the detaining authority and are not supplied to the detenus and therefore, there is violation of Article 22(5) of the Constitution of India.

(iv) Retraction of Ashok Pokhakar dated 3-8-1995 is not placed before the detaining authority and not supplied to the detenus, and therefore, there is violation of Article 22(5) of the Constitution of India.

(v) Retraction of detenu Rajesh Ramkumar Mittal though placed before the detaining authority is not considered by the detaining authority.

(vi) Retraction made by Surendra Ramkumar Mittal, co-detenu on 2-9-1995 in his statement dated 1-9-1995 was not placed before the detaining authority and

was not supplied and therefore, the subjective satisfaction arrived at by the detaining authority is vitiated and there is violation of Article 22(5) of the Constitution of India.

(vii) The statement of the employee of Ashok Pokharkar though being a vital document, was not placed before detaining authority and was also not supplied and therefore, the subjective satisfaction arrived at by the detaining authority is vitiated.

(viii) The detaining authority has referred to and relied upon the fact that the detenu along with Ashok Pokharkar were engaged in forging various statutory documents like test reports and other documents, but copies of such forged test reports and other statutory documents were not supplied along with the grounds or at any point of time and therefore, there is violation of Article 22(5) of the Constitution of India.

(ix) Reverse side of certain documents enumerated in ground xxiv of paragraph 15 were not supplied, though placed before the detaining authority and considered and relied upon by the detaining authority and therefore, Article 22(5) of the Constitution of India is violated.

(x) Documents supplied as per Addendum serial Nos. 54 to 73 were not placed before the detaining authority and were not referred to and relied upon by the detaining authority in the grounds of detention and in spite of that it is stated that they have been referred and relied upon by the detaining authority.

(xi) Documents enumerated in ground Nos. xxvi of paragraph 15 are illegible and therefore, there is violation of Article 22(5) of the Constitution of India.

(xii) In relation to Special Civil Application Nos. 5274 of 1996 and 5320 of 1996, bail applications of detenus Naresh Ramkumar Mittal and Surendra Ramkumar Mittal dated 10-12-1995 were not placed before the detaining authority and not supplied to the detenus.

First Point:

12. From the documents dated 29th March, 1996 it is clear that the representation had been made on 16-2-1996 and the same was rejected on 29th March, 1996. The period which has been taken for the purpose of consideration and decision on this representation has been sought to be explained through affidavit-in-reply dated 10th September, 1996 filed by Shri K.L. Varma, Joint Secretary to the Government of India - Para 11, additional affidavit-in-reply to the petition dated 21-9-1996 filed by Shri J.S. Sarshanwal, Appraising Officer - Para 4 and yet another additional affidavit-in-reply dated 5th October, 1996 - Para 4.1. The arguments in this case had commenced on 26th September, 1996 and the additional affidavit-in-reply to the petition dated 5th October, 1996 had been filed while the matter was being heard. On the basis of these three affidavits-in-reply, the position which emerges to explain the delay is as under:

16th February, 1996 - date of representation.

On 17th February, 1996 - representation was forwarded by the Superintendent of Central Prison, Nasik.

On 19th February, 1996 - it was received by the COFEPOSA Unit, at Delhi.

20th February, 1996 - Parawise comments of the Sponsoring Authority were called for on 22nd February.

(21st February, 1996 being holiday on account of Id-ul-fitr as per the contents of para 11 of the affidavit-in-reply dated 10th September, 1996).

On 23rd February, 1996, a letter dated 20th February, 1996 calling for parawise comments was received in the office of the Sponsoring Authority, i.e., Commissioner of Customs (Prev.) at Bombay.

24th February and 25th February, 1996 were holidays.

On 26th February, 1996 the letter calling for the comments was forwarded to the COFEPOSA Department and in turn to the Investigation Department for their comments on 27th February, 1996 at Bombay.

On 1st March 1996 the comments were forwarded by the Investigation Department to the COFEPOSA Cell at Bombay.

3rd March, 1996 and 5th March 1996 were holidays.

(As per the contents of para 4 of the additional affidavit-in-reply dated 21st September, 1996, 4th March 1996 was also mentioned to be closed but an affidavit was filed on 30th September, 1996 by one Shri Vijender Ramkumar Mittal, brother of the detenu pointing out that 4th March, 1996 was not a holiday. It was stated inter alia in the other additional affidavit-in-reply dated 5th October, 1996 that 2nd, 3rd March 1996 were closed holidays on account of Saturday and Sunday respectively and 5th March, 1996 was a holiday on account of Holi).

On 8th March, 1996 - opinion of Ms. Ranjan Desai, the then Government Counsel was received as the same had been sought because certain questions needed legal advice.

9th March and 10th March, 1996 were closed holidays.

11th March, 1996 letter giving parawise comments was received in COFEPOSA Cell, at New Delhi on 13th March, 1996. (As per the additional affidavit-in-reply dated 21st September, 1996 but as per the additional affidavit-in-reply dated 5th October, 1996 the comments were forwarded to the COFEPOSA Unit, Mumbai on 11th March 1996 and thereafter consolidated comments were forwarded to the Ministry by Speed Post on 11th March, 1996 and the same was received in the COFEPOSA Unit of the Ministry on 12th March, 1996).

On 13th March, 1996 the officers in the Ministry left for Pune with records for the meeting of the Advisory Board in this case which was fixed on 15th March, 1996.

16th and 17th March were closed holidays

(After the meeting on 15th March, 1996, the officers started back from Pune on 16th March 1996 reaching Delhi on 17th March 1996 as per the additional affidavit-in-reply dated 21st September, 1996 but as per the additional affidavit-in-reply dated 5th October, 1996 the officers started back from Pune on 17th March, 1996 and reached Delhi on 18th March, 1996.

On 19th March, 1996 the file was examined by the concerned officer for further submission to the Joint Secretary and the same was submitted by the concerned officer on 20th March, 1996.

On 22nd March, 1996 the meeting of the Advisory Board was fixed at Delhi and therefore, the file was withheld for the meeting of the Advisory Board.

23rd and 24th March, 1996 were closed holidays.

On 25th March, 1996 the file was cleared by the Additional Secretary (Admn.) and was submitted to the Secretary (Revenue). The Secretary (Revenue) being on tour, file was submitted to the Minister of State.

On 27th March 1996 the file was cleared by the Minister of the State (R & E) and was then submitted for further consideration by the Finance Minister.

On 27th March, 1996 the Finance Minister rejected the representation. 28th March 1996 was holiday on account of Ram Navmi.

On 29th March, 1996 the file was received back in the COFEPOSA Unit and the memorandum intimating the detenu about the rejection of the said representation by the Central Government was issued on the same day, i.e., on 29th March 1996.

13. The matter has been argued on behalf of both the sides with equal vigour and vehemence including sermons and sarcasm. Mr. B.B. Naik has submitted that the delay cannot be said to have been explained in the facts of the case and he has submitted that even if the holidays falling in between are taken note of, the time which has been taken in calling for the comments and in seeking the legal opinion, which according to him, was not called for, and the officers being out of station for the Advisory Board's meeting in the movement of file from one table to another table in the branches of the same office situated in the same building cannot be said to be explained and thus, the delay between 16th February, 1996 to 29th March, 1996 in considering and deciding the representation has seriously violated the petitioners' right of effective representation under Article 22(5) of the Constitution of India. On the other hand, Mr. Mehta appearing on behalf of the respondents has submitted that the respondents have been able to explain the delay and he has submitted that admittedly there were as many as 11 holidays at different intervals of time during this period and further that looking

to the bulk of the documents and the issues raised in the representation, large number of documents were required to be considered, the parawise comments had to be called and it was also necessary to seek legal opinion. He has also submitted that if the meeting of the Advisory Board was fixed, the officer had to go to attend the meetings of the Advisory Board where the case of the petitioners had also been placed for consideration and naturally the officers could not have attended this meeting without the relevant record and the relevant record could not be withheld from the Advisory Board so as to consider the petitioners' representation. According to Mr. Mehta there has been no lethargy or inaction on the part of the respondents in considering and deciding the representation and on the basis of the contents of three affidavits the period which has been taken and the day- to-day account which has been given in the reply for that period fully explains the time taken in deciding the representation.

14. Mr. B.B. Naik, on behalf of the petitioners, has cited the following cases on the question of delay:

Harish Pahwa Vs. State of U. P. and Others, decided by a Bench of two Judges.

Raj Kishore Prasad Vs. State of Bihar and Others, , a case decided by a Bench of two Judges.

Mahesh Kumar Chauhan alias Banti Vs. Union of India and others, decided by a Bench of two Judges.

Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others, decided by a Bench of two Judges.

Kundanbhai Dulabhai Shaikh v. Dist. Magistrate : 1996CriLJ1981 decided by a Bench of two Judges.

Special Criminal Application No. 1496 of 1993 decided on 4-4-1994 by a Division Bench of Gujarat High Court.

Special Criminal Application No. 883 of 1993 decided on 14-2-1994 by a Division Bench of Gujarat High Court.

Special Criminal Application No. 1628 of 1993 decided on 11-10-1994, by a Bench of two Judges of Gujarat High Court.

15. Mr. H.M. Mehta, on behalf of the respondents, has relied on the following cases on the question of delay:

Raisuddin alias Babu Tamchi Vs. State of Uttar Pradesh and Another, - decided by a Bench of two Judges.

Smt. Pushpa Vs. Union of India (UOI) and Others, decided by a single Bench.

Jayanarayan Sukul Vs. State of West Bengal, decided by a Bench of five Judges.

State of U.P. Vs. Shakeel Ahmed, decided by a Bench of two Judges.

Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, decided by a Bench of three Judges.

B.B. Pitaliya v. District Magistrate reported in 1994 (1) GLR 843 decided by a Division Bench of this Court.

Special Criminal Application No. 1515 of 1992 decided on 23-2-1994 by a Bench of two Judges of this Court.

K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, decided by a Bench of five Judges.

N. Meera Rani Vs. Government of Tamil Nadu and Another, decided by a Bench of three Judges.

Kamlabai (Smt) Vs. Commissioner of Police, Nagpur and Others, decided by a Bench of two Judges.

Navalshankar Ishwarlal Dave and another Vs. State of Gujarat and others, decided by a Bench of two Judges.

State of Tamil Nadu and another Vs. C. Subramani and Others, decided by a Bench of two Judges.

Vijay Champaklal Shah Vs. Addl. Secy. to Govt. of India, Ministry of Finance, Dept. of Revenue and Others, decided by a Division Bench of Gujarat High Court.

Bharatkumar Ishwarbhai Patel Vs. District Magistrate and Others, decided by a Division Bench of Gujarat High Court.

16. I have considered the submissions made on behalf of both the sides with reference to the cases relied upon by them on the question of delay.

17. In the case of Harish Pahwa Vs. State of U. P. and Others, the representation made on 3rd June, 1980 from jail was received by the State Government on 4th June, 1980 but for two days no action was taken. On 6th June, 1980, comments were called for from the Customs Authorities with regard to the allegations and the comments were received on 13th June, 1980. On 17th June, 1980 the State Government referred the representation to Law Department for its opinion which was furnished on 19th June, 1980 and the representation was rejected on 24th June, 1980. The case of the State was that the representation was with the Customs authorities who were formulating the comments from 7th June, 1980 to 12th June, 1980 and that the representation was under the consideration of the Government for four days from 13th June, 1980 to 16th June, 1980, of its Law Department from 17th June, 1980 to 19th June 1980 and then again under its own consideration for six days from 19th June, 1980 to 24th June, 1980. Thus, the Supreme Court found there was no explanation at all as to why no action was taken in reference to the representation on 4th, 5th and 25th June, 1980 and that the manner in which representation made by the appellant was dealt with reveal a sorry state of affairs in the matter of consideration of representation

made by persons detained without trial. It was further considered that it was not clear as to what consideration was given by the Government to the representation made on 13th June, 1980 to 16th June, 1980 and that it culminated only in a reference to the Law Department and it was not apparent as to why the Law Department has to be consulted at all. The Court further observed that it has failed to understand as to why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. The Supreme Court observed that this Court does not look with equanimity upon such delays when the liberty of a person is concerned and calling comments from other departments, seeking opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. The Supreme Court also observed that it was the duty of the State to proceed to determine representations of the character abovementioned with utmost expedition which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously unless it is absolutely necessary to wait for some assistance in connection with it, until a final decision is taken and communicated to the detenu. The detention was held to be unconstitutional.

18. Raj Kishore Prasad Vs. State of Bihar and Others, , a case decided by a Bench of two Judges, was a case of detention under National Security Act. In this case, the detention order dated 23rd September, 1981 was served upon the detenu on 25th September, 1981 and he was taken into custody. The detention order was approved on 22nd October, 1981 by the State Government and the representation had been made before the detaining authority for quashing the detention order. In the meantime, the case of the detenu was referred to the Advisory Board on 5th October, 1981 and the representation made by the detenu was rejected by the Chief Minister on November 16, 1981. In view of the Advisory Board's report there was sufficient cause for detention, the detention order was confirmed by the appropriate Government. While considering the question of contravention of Article 22(5) of the Constitution of India, the Supreme Court has observed in para 6 at page 322 that Article 22(5) enjoins a duty on the detaining authority to communicate the grounds of detention to the person detained and to afford him earliest opportunity of making a representation. This constitutional obligation has been statutorily recognised in Section 8 of the Act. While noticing the contention that constitutionally speaking a duty is cast on the detaining authority to consider the representation but in view of the scheme of the Act, Parliament now had made it obligatory on the appropriate Government to consider the representation in such cases under the National Security Act, 1980.

19. In para 7 it has been observed that in view of specific provision contained in Section 8 of the National Security Act requiring that the detaining authority shall afford earliest opportunity to make a representation to the appropriate Government, it follows as a corollary that the appropriate Government must

consider the representation. The question was considered in para 8 and it has been noticed that the representation was made on 19th October 1981 and it was rejected on 16th November, 1981, i.e., the very date on which the report of the Advisory Board was received. There was delay of 28 days in considering the representation. The representation was received by the State of Bihar on 20th October, 1981 and on the same day a copy thereof had been sent to the District Magistrate, Gopalganj, i.e., the detaining authority. The District Magistrate returned the representation with his comments on 31 st October, 1981 and it was received in the Department of Home (Special) on 4th November, 1981. On 5th November, 1981 it was examined by the Deputy Secretary, Home (Special) and on 6th November, 1981 it was received in the Special Secretary, Home (Special) Department who endorsed it to the Chief Minister on 10th November, 1981. The District Magistrate took more than 9 days in examining the representation and in forwarding his comments, for which period there was no explanation. The Supreme Court found that the detaining authority having received representation on October 22, 1981 took 9 days in forwarding his comments which were forwarded on 31st October, 1981. It was noticed that there was not a slightest explanation for the delay by the District Magistrate as also the State Government and even rotating of the files from the Deputy Secretary to the Special Secretary and then the Chief Minister has taken unusually long time and on the whole the Supreme Court found that in the facts and circumstances of the case, the delay of 28 days in disposing of the representation was inordinate delay so as to vitiate the order and on this short ground the detention order was quashed and set aside.

20. In Mahesh Kumar Chauhan alias Banti Vs. Union of India and others, , decided by a Bench of two Judges, the representation was made on 21st August, 1989 and it was received in the Department on 23rd August, 1989. The comments from the concerned sponsoring authority was received on 11th September, 1989. The Supreme Court has observed that there was absolutely no explanation as to why such delay had occurred and the same was held to be violative of Article 22(5) of the Constitution of India rendering the detention order invalid.

21. In fact, the case of Mahesh Kumar Chauhan (supra) is based on Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others, . In this case the delay from 17th October to 27th October, 1988 in deciding the representation dated 26th September, 1988 was sought to be explained on the lines that 18th, 20th, 22nd and 23rd October, 1988 were closed holidays but no explanation was given as to why the representation was not attended to and disposed of on 17th, 19th, 21st, 24th and 26th October, 1988. It was also considered that the decision has been taken on 27th October, 1988 and 29th October and 30th October, 1988 were holidays but the affidavit was silent as to why that decision had not been communicated to the detenu either on 27th October or 28th October, 1988. In reply it had been held out that the comments on the representation of the detenu were received on 12th October, 1988. The detaining authority has stated

that the officer was out of station and was attending the Advisory Board on 7th and 11th October, 1988 and delay of seven days had occurred in forwarding the parawise comments to the 2nd respondent. This explanation was not found satisfactory and the Court formed an impression that the information had not been collected diligently and thereby a considerable delay was caused which had further delayed the consideration. After noticing several other decisions, in para 21 of the judgment the Supreme Court observed that there was no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of the words "as soon as may be" occurring in Article 22(5) of the Constitution of India reflected that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay. What is reasonable period depends on the facts and circumstances of each case and no hard and fast rule can be made in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority was unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention. On the facts of this case, the Supreme Court found that the gap between the receipt and disposal of the representation was 28 days but upto the date of service of the order of rejection on the detenu it was 32 days. The only explanation offered by the third respondent was that further information required from the State Government was received on 17th October, 1988 after a delay of nearly 14 days and then the representation of the detenu was disposed of on 27th October, 1988 within which period there were certain holidays. This delay when scrutinised in the light of the proposition of law, enumerated above, the Supreme Court had held that there was an inordinate and unreasonable delay, the explanation was not found to be satisfactory and acceptable and it was held to be a case of breach of Article 22(5) of the Constitution of India.

22. In *Kundanbhai Dulabhai Shaikh v. District Magistrate* reported in : 1996CriLJ1981 the two Judges of the Supreme Court, in a case of preventive detention under Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, considered that the representation dated 23rd August, 1995 made by the wife of the detenu was received by the Chief Minister's office on 25th August, 1995 and was sent to the office of the Secretary, Food and Civil Supplies Department where it was received on 29th August, 1995. It was then sent to the Special Branch of Food and Civil Supplies Department and was received by the concerned branch on 1st September, 1995. The Special Branch put up a note on the said representation on 6th September, 1995 as there were around 40 to 50 representations pending for disposal during the said period and they were taken up chronologically and therefore, the said representation came to be put up for disposal on 6th September, 1995 as 5th September, 1995 was a holiday. The file was cleared by Section Officer on 7th September, 1995 and submitted by the branch on the same day to the concerned department which also cleared the file on 7th September 1995 and it was put up before the Deputy

Secretary who in turn cleared it on 8th September, 1995 and submitted before the Secretary who also cleared on the same day and the matter was then submitted before the Minister for Civil Supplies for his orders. The file was cleared by the Hon"ble Minister on 12th September, 1995 as 9th September and 10th September, 1995 were Government holidays. The Minister for Food and Civil Supplies rejected the request of the petitioner and confirmed the detention order and thereafter the file was received back by the Special Branch from the Minister concerned and by a letter dated 14th September, 1995 the detenu was informed about the decision taken on the said representation. In para 22 of the judgment, the Supreme Court has observed that inactivity in taking up the representation for six days from 1st September, 1995 to 6th September 1995 was sought to be explained on the ground that 40 to 50 other representations were pending and the same were taken chronologically and it was indicative of the fact that the representation was placed in a queue and was not given precedence over the other representations, which are not said, in the counter-affidavit, to relate to detention orders and even if they related to preventive detention, such of those which were ready for disposal and in respect of which comments from various departments had been gathered and other formalities completed, should have been disposed of immediately and should not have been kept pending on the ground of chronological disposal. The Supreme Court has observed that the chronology must be broken as soon as a representation was ready for disposal.

23. In para 25 it is observed by the Supreme Court that "black-marketing is a social evil. Persons found guilty of economic offences have to be dealt with a firm hand but when it comes to fundamental rights under the Constitution, this Court, irrespective of enormity and gravity of allegation made against the detenu, has to interfere as was indicated in Mahesh Kumar Chauhan case (supra) and in an earlier decision in Prabhu Dayal Deorah v. Dist. Magistrate, in which it was observed that the gravity of the evil to the community resulting from anti-social activities cannot furnish sufficient reason for invading the personal liberty of a citizen, except in accordance with the procedure established by law particularly as normal penal laws would still be available for being invoked rather than keeping a person in detention without trial.

24. In para 26 of the judgment the Supreme Court has also considered the contention which was raised with reference to Supreme Court's decision in the case of State of U.P. Vs. Shakeel Ahmed, and the contention that in the aforesaid case of Shakeel Ahmed (supra) 23 days" delay for disposal of the representation was ignored. The Supreme Court found that in Shakeel Ahmed's case (supra) all that has been said is that "in the facts and circumstances of this case, the delay in disposal of the representation of about 23 days is not fatal". Moreover, the period of detention had already expired and therefore, what was laid down therein would be of no assistance to the respondents.

25. It was argued with reference to Special Criminal Application No. 1496 of 1993 decided by the Division Bench on 4th April, 1994 that in this case even the

delay of 2 days was held to be unreasonable and even in the other two unreported decisions rendered by the Division Bench on 14th September, 1994 and 29th September, 1994 in Special Criminal Application No. 883 of 1993 and 1628 of 1993 it was held to be unreasonable.

26. On the question of delay, the first authority on which reliance has been placed by Mr. Mehta is Raisuddin alias Babu Tamchi Vs. State of Uttar Pradesh and Another, . The Supreme Court was concerned with the provisions of the National Security Act in this case to examine the question of preventive detention. In this case the petitioner was detained on 8th November, 1982 and the detention order was approved by the State Government on 12th November, 1982 and on 18th November, 1982 the case was referred to by the State Government to the Advisory Board u/s 9 of the National Security Act, 1980. On 24th November, 1982 the petitioner submitted his representation against the order of detention. The representation was addressed to the District Magistrate, Moradabad who forwarded it on the same day to the Senior Superintendent of Police, Moradabad, for his comments. The comments were furnished by the Senior Superintendent of Police on 27th November, 1982 to the District Magistrate and thereafter on 3rd December, 1982 the District Magistrate sent a report to the State Government. The papers dispatched from Moradabad were received by the State Government on 6th December, 1982. The State Government considered the representation and rejected the same on 9th December, 1982. Simultaneously, on the same day, the State Government forwarded the representation of the petitioner to the Advisory Board which met on 10th December, 1982 and after affording a hearing to the detenu, it was held that there was sufficient cause for detention and the petitioner was informed accordingly on 24th December, 1982. The Supreme Court considered the contention on behalf of the petitioner that six days had elapsed between the receipt of the comments from the Senior Superintendent of Police in the office of the District Magistrate and the submission of the report to the State Government and the Supreme Court has observed that it is seen that during the period from 28th November, 1982 to the evening of the 1st December, 1982 the District Magistrate had to emergently leave his headquarters because of the disturbances that had occurred in other localities where his presence was urgently needed to tackle the explosive situation and after his return to the headquarters on the evening of 1st December, 1996 the District Magistrate without losing any further time forwarded the representation to the State Government on 3rd December, 1982 with his report. In the end of para 4, the Supreme Court has emphasised that the question whether the representation submitted by the detenu has been dealt with reasonable promptness and diligence is to be decided not by the application of any rigid or inflexible rule or set formula nor by a mere arithmetical counting of dates, but by a careful scrutiny of the facts and circumstances of each case; if on such examination it is found that there was any remissness, indifference or avoidable delay on the part of the detaining authority/ State Government in dealing with the representation, the Court will undoubtedly

treat it as a factor vitiating the continued detention of the detenu; on the other hand if the Court is satisfied that the delay was occasioned not by any lack of diligence or promptness of attention on the part of the party concerned, but due to unavoidable circumstances or reasons entirely beyond his control, such delay will not be treated as furnishing a ground for the grant of relief to the detenu against his continued detention. On the facts of the case, the Supreme Court found that the case fell under the latter category and the Supreme Court was satisfied that there was no avoidable delay on the part of the District Magistrate.

27. In the case of Smt. Pushpa Vs. Union of India (UOI) and Others, the Supreme Court was dealing with the case under COFEPOSA Act. In this case, the first representation made on 23rd February 1979 was rejected on 21st March, 1979 and it was submitted that there was delay of nearly one month in applying mind to the representation of the detenu. While referring to the observations made in Jayanarayan Sukul Vs. State of West Bengal, the Bench of 5 Judges of the Supreme Court has observed that there is no hard and fast rule as to the measure of time taken by the authority for consideration of the representation. The Government should be vigilant in the governance of the citizens and in the facts of this case it could not be said that there was such delay in complying with the request for copies of the documents and in examining the representation as it manifests a deliberate inaction on the part of the concerned authority so as to vitiate the order. The Supreme Court also found that there was long list of documents and preparation of copies of a number of documents was bound to be time-consuming and the time taken in considering the representation did not appear to be unreasonable. No doubt, in Jay Narayan v. State of West Bengal (supra) which is a decision rendered by a Bench of 5 Judges of Supreme Court, the Supreme Court had considered its several decisions and it laid down that the appropriate authority was bound to consider the representation of the detenu as early as possible and in para 19 it was observed that no definite time can be laid down within which a representation of a detenu should be dealt with save and except that it is a constitutional right of a detenu to have his representation considered as expeditiously as possible. In para 20, out of the four principles to be followed in such cases the third principle is that there should not be any delay in the matter of consideration and it has been then observed that no hard and fast rule can be laid down as to measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Now these words of caution on the point of delay expressed by a Bench of 5 Judges of the Supreme Court in the case of Jay Narayan v. State of W.B. (supra) have been taken note of in the case of Smt. Pushpa v. Union of India (supra) decided by a single Bench of the Supreme Court and thereafter the delay of nearly one month stood explained and it was found that the time taken in considering the representation was not unreasonable. In this regard the principle enunciated in R.D. Borade v. V.K. Saraf (supra) decided by a Bench of two Judges has already been discussed in the earlier part of this

order, which also lays down the principle that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with the sense of urgency and without avoidable delay and what is the reasonable delay depends on the facts and circumstances of each case.

28. In *State of U.P. Vs. Shakeel Ahmed*, (decided by a Bench of two Judges) the Supreme Court was concerned with a case under COFEPOSA Act. The detention order had been set aside by the High Court on the ground of delay in non-consideration of representation for one month, i.e., from 20th February 1990 to 15th March, 1990 which was not explained. The Supreme Court held that the High Court was not right in setting aside the order of detention. However, in this case, the details with regard to the explanation are not mentioned for the period 20th February, 1990 to 15th March, 1990 and the Supreme Court also considered that the supply of the report of the sponsoring authority was not mandatory and in the facts of this case the delay of 23 days in disposal of the representation was not held to be fatal. In *L.M.S. Ummu Saleema v. B.B. Gujaral* reported in AIR 1981 SC 1191, a case decided by a Bench of 3 Judges of the Supreme Court at page 1195 in para 7 while dealing with the question of delay the contention was examined that the detaining authority was under an obligation to adequately explain each day's delay and earlier cases, i.e., *Pritam Nath Hoon Vs. Union of India (UOI) and Others*, and *Shanker Raju Shetty v. Union of India W.P. No. 640 of 1980* decided on 26-6-1980 were also considered. It was observed and held by the Supreme Court that while the representation has to be considered with utmost expedition as observed in *Frances Coralie Mullin Vs. W.C. Khambra and Others*, "the time imperative can never be absolute or obsessive". The occasional observations made by this Court that each day's delay in dealing with the representation must be adequately explained are meant to emphasise the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release of the detenu. There are no invariable absolutes. Neither life nor law can be reduced to mere but despotic formulae. While advertent to the facts in this case, the Supreme Court observed and noted that the representation was despatched on 5th February, 1981 and was received in the office of the detaining authority on 13th February, 1981 and thus, it was in postal transit from 5th February to 13th February, 1981. It was put up before the detaining authority on 19th February, 1981 and disposed of on that very day. It was also noticed from the records that the detaining authority was not available from 13th February to 16th February, 1981 as he had gone abroad. He returned on 16th and considered the matter on 19th. The Supreme Court considered the argument that the absence of the detaining authority from India cannot be allowed to violate the fundamental rights of the detenu to have his representation considered. The Supreme Court has observed that in such cases appropriate arrangements must be made for considering the detenu's representation but in the facts of this case since the detaining authority returned on 16th itself, i.e., within a few days and after 16th the delay was that of a period of 3 days only which could not be described as

delay though one wishes there was no room even for that little complaint. The Supreme Court held that there was no unaccountable or unreasonable delay in the facts of this case.

29. In *B.B. Pitaliya v. Dist. Magistrate* reported in 1994 (1) GLR 843, a Division Bench of the Gujarat High Court has observed at page 854 that the ultimate objective of this provision is most speedy consideration of the representation and after considering the several cases it has been held that the Court in each case has to consider the available material, if the gap between the receipt of the representation and its consideration by the concerned authority is so unreasonably long and the explanation for the delay offered by the concerned authority so unsatisfactory as to render the detention order thereafter illegal. At page 855 a pointed reference has made to the case of *Rashid Sk. Vs. State of West Bengal*, and while relying upon *Smt. Masuma Vs. State of Maharashtra* and Another, in para (J) at page 858 the Division Bench held that the Supreme Court did not find period of four to five days consumed by the Customs Authorities in furnishing their parawise comments on the representation, to be unreasonable so as to invalidate the continued detention. The Division Bench while deciding this case has also considered the submission which was raised on behalf of the petitioner that the submission was based on the earlier decisions of the Division Bench and it was observed as under at page 862:

We may at once state that all the decisions are of one Division Bench only and, i.e., of G.T. Nanavati & N.B. Patel, JJ. In Special Criminal Application Nos. 717 of 1988, decided on 6-2-1989, in Special Criminal Application No. 865 of 1988 decided on 15-2-1989 and in Special Criminal Application No. 1058 of 1989 decided on 23-12-1989 this very Division Bench has made following observations:

When a person is put behind the bars, without a trial, each day's delay is required to be justified and he cannot be kept under detention for a day more than it is necessary. If this is the correct legal position, then it would necessarily follow that as soon as an application for revocation, or a representation of the detenu, is received by the Central Government it must consider the same with reasonable expedition. This duty to consider the representation with reasonable expedition further obliges the authority to explain, when the detention is challenged, why it could not deal with the representation earlier. It is really for this reason that it has been held that if there is a delay in considering the representation of the detenu, then it is required to be explained and if it is not explained, then the delay should be regarded as unreasonable. We cannot go by number of days and say that these many days should be regarded as reasonable or unreasonable for considering the representation of the detenu. Even a smaller period may be regarded as unreasonable, if no explanation is coming forth as to why the detenu's representation could not be considered earlier. With a proper explanation, even a longer time taken for consideration of the representation of the detenu may be regarded as reasonable.

At page 863 Hon'ble Justice S.D. Shah, speaking for the Division Bench, has

observed as under:

However, in our opinion, the Division Bench was not absolutely right in observing that the officer authorised to deal with representation alone can decide whether parawise comments or translation should be called for from the sponsoring authority. Consultation of sponsoring authority, calling for remarks of the sponsoring authority are held to be permissible exercise by the Supreme Court and time consumed in said exercise is excused by the Supreme Court.

30. Special Criminal Application No. 1515 of 1992 decided by a Division Bench of this Court was a case in which there was 19 days' delay in sending the parawise remarks and the Division Bench observed that certainly it takes time with the State Government and the State Government will take time in sending parawise remarks and on 12th October, 1993 the Central Government had already received the parawise remarks and therefore, it must have been despatched some time prior to 12th October, 1993 and in view of this fact, it was held that it could not be said that there was undue delay in sending the parawise remarks and hence the ground of delay was not found to have any impact and the same was rejected. Mr. Mehta placed reliance on K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, which is a case decided by a Bench of 5 Judges of the Supreme Court. In this case also the Bench of 5 Judges after considering several earlier decisions of the Supreme Court has held that there should be no hard and fast rule in this regard and it depends upon the facts and circumstances of each case. There is no period prescribed either in the Constitution or under the concerned detention law, within which the representation should be dealt with and the requirement, however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. Thus, time imperative for consideration can never be absolute or obsessive.

31. In N. Meera Rani Vs. Government of Tamil Nadu and Another, good number of earlier cases decided by the Supreme Court were considered on the point of delay and while referring to the decision of the Constitution Bench in Rameshwar Shaw Vs. District Magistrate, Burdwan and Another, it was observed that all subsequent decisions have to be read in light of this Constitution Bench decision since they are decisions by Benches comprised of lesser number of Judges and it has been noticed that it is obvious that none of these subsequent decisions could have intended taking a view contrary to that of the Constitution Bench in Rameshwar Shaw's case (supra). In para 21 it has been laid down that the conclusion about validity of the detention order in each case was reached on the facts of the particular case and the observations made in each of the cases have to be read in the context in which they were made. None of the observations made in any subsequent case can be construed at variance with the principle indicated in Rameshwar Shaw's case (supra) for the obvious reason that all

subsequent decisions were by Benches comprised of lesser number of Judges.

32. In *Kamlabai (Smt) Vs. Commissioner of Police, Nagpur and Others*, it was held that the delay by itself is not a ground which proves to be fatal, if there is an explanation. However, the short delay cannot be given undue importance having regard to the administrative actions and in the facts of that case it was held that the delay was not so inordinate as to warrant interference. The representation dated 11th May, 1992 was received in the department on 14th May, 1992, later it was sent to the Home Minister and reply was given to the detenu on 26th May, 1992. It has been stated that the Government of India had sent wireless message on 19th May 1992, asking certain information which was sent on 21st May 1992, and again a wireless message was given on 13th July, 1992 and on 15th July, 1992 the matter was concluded by the Government of India and therefore, the submission was that from 18th June 1992 to 13th July, 1992 there was no explanation.

33. In *Navalshankar Ishwarlal Dave and another Vs. State of Gujarat and others*, it is mentioned that the expression "forthwith" was held to mean "as soon as may be" and it is observed in para 8 that the action should be performed by the authority with reasonable speed and expedition, with a sense of urgency without any unavoidable delay. No hard and fast rule could be laid nor a particular period can be prescribed. That there should not be any indifference or callousness in consideration and disposal of the representation. It depends upon the facts and circumstances of each case. Any delay in consideration of the representation should be satisfactorily explained. If no satisfactory explanation has been given or found to be wilful or wanton or supine indifference it would be in breach of the constitutional mandate of Article 22(5) of the Constitution of India.

34. In *State of Tamil Nadu and another Vs. C. Subramani and Others*, it was held that in the case of preventive detention while dealing with the question of delay in considering the representation inference of delay cannot be drawn unless it is shown that the authorities dealing with the representation have adopted an attitude of leisureliness, supine indifference, slackness, unduly protracted procrastination or callous attitude.

35. In *Vijay Champaklal Shah Vs. Addl. Secy. to Govt. of India, Ministry of Finance, Dept. of Revenue and Others*, after considering the explanation, in para 11 it has been observed that lapse of a few days, particularly when the inroad of matters is very high, it is inevitable and that when number of such matters are on the anvil, it is but natural that some time will be required to be devoted to each of those cases individually.

36. In *Bharatkumar Ishwarbhai Patel Vs. District Magistrate and Others*, while placing reliance in *Mst. L.M.S. Ummu Saleema v. B.B. Gujaral* (supra) the Division Bench has observed that while examining the question with regard to delay in considering the representation one has to be pragmatic and one must have an eye on the realities of life. When it is stated that every day's delay

should be explained if it is required to be understood in pragmatic manner. Otherwise one may ask why not explain the delay of every hour and why not explain the delay minute by minute. All that is required to be seen is as to whether the concerned authority has shown due promptness. Even while judging due promptness on the part of the authorities concerned, the fact that the authority concerned is working in the system where to work in tardy and prolonged fashion has become the rule of life. Unfortunately, many a times promptness and quick despatch of work are considered to be undue haste and while quoting from *Francis Coralie Mullin v. W.C. Khambra* (supra) that time imperative can never be absolute or obsessive, it has been quoted that the observations that each day's delay in dealing with the representation must be adequately explained, are only meant to emphasise the expedition and in the facts of this case the Division Bench held that there was no delay in considering the representation either at the level of the detaining authority or the State Government.

37. Thus, there are large number of cases in which the question with regard to delay in considering the representations has been considered by the Supreme Court and this Court, and it is found that each case has been decided on its own facts and the ratio of these cases in context of preventive detention vis-a-vis punitive detention is that the representation made by the detenus is to be decided with utmost expedition and promptitude but there is neither any upper limit nor lower limit fixed under the Constitution or under the preventive detention law and where the delay in a case is vital to the Constitutional right under Article 22(5) of the Constitution of India the question will have to be decided on facts of each and every case and no hard and fast rule of universal application can be laid down in this regard. The principle is clearly discernible that in cases where the delay is explained and it is found that the detaining authority or the appropriate Government has dealt with the matter in a reasonable manner and it has not shown any supine indifference or callousness and the time which has been taken in considering the representation was essential in the facts of a particular case, the number of days taken cannot be a decisive factor. In cases where there is a bulk of record, the complicated questions are involved and the authorities concerned consider that taking of legal opinion is necessary, the legal opinion may also be sought and it may certainly take some time and for that purpose the detaining authority or the appropriate Government has also to depend upon the reasonable period taken by the Government functionaries to advise them on the question on which the opinion is sought. Calling of the parawise comments may also be an understandable necessity and looking to the importance of the matter, the examination of the record and the documents also takes some time and in case the matters are required to be considered by the Advisory Board, the papers cannot be withheld by the detaining authority on the ground that it was considering the representation or else it would render the concerned authority vulnerable to the allegation that the matters were not allowed to be considered by the Advisory

Board. The officers who have to deal with the matter or the functionaries at the helm of affairs may be the Secretary or the Minister or the Chief Minister cannot be present in attendance so as to give a decision on the representation like a computer and the computerised decisions cannot be expected in such matters. I am conscious of the principle that what to talk of detention matters in every aspect where the right of any party is to be affected the concerned functionaries must act with promptitude as Chanakya has said in the Chanakya Sutra that "In all tasks one should not delay even for a moment."

Khsanam Prati Kaalvikshepam Na Kuryat Sarvriteyushu. Original is in Sanskrit.

Thus, there should not be delay even for a moment in any task except when the time is required by the very nature of the task itself, lest the decision would be vulnerable to allegations of no consideration or mechanical consideration in eye of law. In such exceptional cases the requisite time has to be given because the rashness in any act does not accomplish the task. Although, Mr. Naik has cited cases in which the officials or the concerned functionaries being not available or being busy otherwise has been considered to be a ground to constitute delay; even the officers going for the meeting has been considered as a ground for delay and several other aspects which have been considered to constitute delay and Mr. Naik tried to show from one or the other decisions that such aspects were taken into consideration and he had submitted that Durga Pada Ghosh Vs. State of West Bengal, a case decided by a Bench of 3 Judges and Ahmed Hussain Khan Vs. State of Andhra Pradesh, are cases having a close similarity to the facts of the present case so as to treat the present case as a case of delay in deciding the representation and the consequential violation of Article 22(5) of the Constitution of India; I find that the explanation which has been given in the three affidavits by the respondents for the period 16th February, 1996 to 29th March, 1996 shows that there were as many as 11 holidays falling in between this period which was sufficient to put the brake in the exercise of the consideration of the representation, calling for the comments and the time taken for that purpose cannot be held to be unwarranted or uncalled for nor it can be said in the facts of the case that calling of the legal opinion was not necessary or unwarranted and if the officers were required to attend the Advisory Board's Meeting at Pune where the cases of the present petitioners were required to be considered by the Advisory Board and for that purpose if some time was taken, it is not a case in which a view can be taken looking to the matrix set out hereinabove that there were any remissness on the part of the authority to consider the representation of the petitioners or that they have acted with a supine indifference or that they have acted with such a negligence which is inexcusable. I just do not find any force in that submission of the learned Counsel for the petitioners that the petitioners' right of making effective representation under Article 22(5) of the Constitution of India has been violated and thus the first contention raised on behalf of the petitioners is hereby rejected.

Second Point:

38. The next contention which has been raised on behalf of the petitioners is that the documents referred to and relied upon by the detaining authority in the grounds of detention were not supplied along with the grounds of detention, i.e., *pari passu* and therefore, there is violation of Article 22(5) of the Constitution of India. The relevant pleadings in this regard are contained in para 15, ground No. III. For this purpose I may straightaway make reference to Section 3(3) of the COFEPOSA Act, 1974 - according to which, for the purpose of Clause (5) of Article 22 of the Constitution the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention but ordinarily not later than 5 days and in exceptional circumstances and for reasons to be recorded in writing not later than 15 days from the date of detention. Thus, normally the limit for supplying the grounds of detention is 5 days. In the facts of the present case, the detention order was served on 17th January, 1996 and the admitted position is that the grounds were supplied on the same day, i.e., 17th January, 1996 whereas the documents were supplied on 20th January, 1996. The contention, therefore, has been raised that the supply of the documents on 20th January 1996 itself cannot be said to be *pari passu* with grounds. Great stress has been laid that once the documents are to be supplied along with grounds as part and parcel of the grounds, the supply of the documents on 20th January, 1996 after the service of the grounds on 17th January, 1996 does not meet with the requirements of the supply of the documents *pari passu* with the grounds. This is a submission for which there is no dispute with regard to the factual position. The contention is purely legal. A number of cases have been cited by both the sides on this point also.

39. In *Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others*, it was held that the grounds of detention have to be communicated to the detenu within 5 days or 15 days as the case may be. What is meant is that the grounds of detention must in the entirety be furnished to the detenu. If there are any documents, statements or other material relied upon in the grounds of detention they must also be communicated to the detenu because being incorporated in the grounds of detention, they formed part of the grounds and the grounds furnished to the detenu cannot be said to be complete without them and it would not, therefore, be sufficient to communicate to the detenu bare recital of the grounds of detention but copies of documents, statements, and other materials relied upon in the grounds of detention must also be furnished to the detenu within the prescribed time subject, of course, to Clause (6) of Article 22 of the Constitution of India in order to constitute compliance with Clause (5) of Article 22 read with Section 3(3) of the COFEPOSA Act. In cases where this requirement is not satisfied the continued detention would be void. Now, in the facts of the present case even there is no dispute about the facts that the documents have been supplied. However, the question is as to whether the documents were supplied simultaneous to the point of time of the supply of the grounds because grounds are supplied on 17th January, 1996, the documents are supplied on 20th

January, 1996 and therefore, whether the non-supply of the documents along with the grounds of detention but supply within 5 days of the date of the service of the detention order can be said to be violation of Article 22(5) of the Constitution of India read with Section 3(3) of the COFEPOSA Act. In *Icchu Devi v. Union of India*'s case (supra) before the Supreme Court detention order was passed on 27th May, 1980 and on 4th June, 1980 the detenu was detained. On the date of detention he was also served with the grounds of detention. These grounds of detention referred to several documents and statements including two, tape recorded conversations, one between the detenu and one Ahluwalia and the other between the detenu, Ahluwalia and an Advocate by the name of Kumar Mehta. Having been put under detention on 4th June, 1980 the detenu addressed a letter on 6th June, 1980 to the Deputy Secretary to the Government of Maharashtra to send all statements, documents, and materials to enable him to make an effective representation. He had also sent a representation on 9th June, 1980 reiterating his request for the supply of the documents immediately with the further request to furnish him transcripts of the tapes and to produce the original tape for inspection. Copies of the statements, documents and material relied upon in the grounds of detention were asked for as back as on 6th June, 1980 but the same were not supplied until 11th July, 1980. Thus, on facts, it was a case in which the documents had been supplied much after the expiry of the period of 5 days after the date on which the detention order was served. Such a factual position is not available in the case at hand. In para 7 it is observed by the Supreme Court that it is clear from the discussion that the detaining authority was bound to supply copies of the documents, statements and other materials relied upon in the grounds of detention to the detenu within 5 days from the date of detention, i.e., on or before 9th June, 1980 and in any event, even if we assume that there were exceptional circumstances and reasons for not supplying such copies within five days were recorded" in writing, such copies should have been supplied to the detenu not later than 15 days. Thus, this case is entirely distinguishable, on facts, inasmuch as in this case the documents were supplied even beyond the period of 15 days after the service of the grounds of detention. Besides this, the observations in para to the effect that the documents, statements and other materials relied upon in the grounds of detention should have been supplied within 5 days, i.e. on or before 9th June, 1980 clearly go to show that such documents could be supplied upto 9th June, 1980 after the service of the grounds on 4th June, 1980. Thus, the expiry of the period of 5 days after the date of the service of the grounds of detention is normally the outer limit for the supply of the documents and this by itself is sufficient to negative the ground raised by the petitioners that the documents ought to have been supplied along with documents and even if the documents have been supplied within a period of 5 days, it would still vitiate the detention order because the same were not supplied *pari passu* with the grounds. Mr. Naik has cited decisions in *Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others*, , *Mangalbhai Motiram Patel Vs. State of Maharashtra and Others*, , *Kamla Kanyalal Khushalani Vs. State of Maharashtra and another*, , *Virendra Singh Vs.*

State of Maharashtra, , Kirit Kumar Chaman Lal Kundaliya Vs. Union of India (UOI) and Others, in support of his contention and he has submitted that the Supreme Court has held that the documents are to be supplied *pari passu* and the very use of the word "*part passu*" meant that these documents must be supplied along with the grounds. In Shalini Soni's case (*supra*) the order of detention as well as the grounds of detention were served on the same day, i.e., on 27th July, 1980 but the copies of the documents were furnished on 6th August, 1980 after the petitioner's representation dated 27th July, 1980. In the meantime, the Advisory Board met on 30th July, 1980 and the order of detention was confirmed on 9th August, 1980. In this case also Icchu Devi's case (*supra*) was considered in para 8 of the judgment and the observations made in Icchu Devi's case (*supra*) have been quoted and thereafter the observations were also quoted from Khudiram Das Vs. The State of West Bengal and Others, . It has been observed that what was held in Icchu Devi's case (*supra*) was nothing but a further development and elaboration of what was said earlier in Khudiram Das's case (*supra*). Thus, in the facts of Shalini Soni 's case (*supra*) also the documents were supplied much after the expiry of 5 days rather 15 days and according to the principle laid down in Icchu Devi's case (*supra*) which has been relied upon in Shalini Soni's case (*supra*) the documents could be supplied within the outer limit of 5 days from the date of service of the detention order. In the next case, i.e., M.M. Patel v. State of Maharashtra (*supra*) while holding that where certain documents are relied upon in the grounds of detention the grounds would be incomplete without such documents. Reliance has been placed on the decisions referred to hereinabove and it has been held that the detenu has a right to be furnished with the grounds of detention along with the documents relied upon. In this case the detention order under COFEPOSA Act was served on 12th February, 1980 along with grounds of detention and on 8th March 1980 the petitioner addressed a letter making a request for the supply of the documents. This letter dated 8th March, 1980 was received in the Home Department on 10th March, 1980 and it was on 18th March, 1980 that the Assistant Director, Revenue Intelligence, wrote a letter to the Assistant Collector of Customs conveying the decision of the Director of Revenue Intelligence to supply the detenu with copies of the documents on which the order of detention is based and the documents were forwarded for onward transmission to the Home Department. This letter was received by the Assistant Collector of Customs on 19th March, 1980 and on the same day, i.e., on 19th March, 1980 the Assistant Collector of Customs sent a letter to the Joint Secretary, Home Department (Special) conveying the decision of the Directorate of Revenue Intelligence to supply the copies and forward a set of documents for being supplied to the detenu. The case was put up before the Secretary to the Home Department (Transport) on 25th March, 1980 and on 26th March, 1980 the Secretary directed that the detenu be furnished with the documents on which his order of detention was based. Eventually, the documents were sent to the detenu's Solicitors on 27th March, 1980 by registered post and the same were received by them on 1st April, 1980. Thus, in the facts of this case also the documents were supplied much beyond

the outer limit of 5 days rather than 15 days. This case, therefore, does not help or support the argument raised on behalf of the petitioners.

40. In *Kamla v. State of Maharashtra* (supra) the cases of *Icchu Devi* and *Shalini Soni* (supra), were considered and it was held 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. If the documents and materials are supplied later, the detenu is deprived of an opportunity of making an effective representation against the order of detention. In the facts of this case detenu was arrested on 20th October, 1980 and the grounds of detention were served upon him on the very same day. The documents and materials on the basis of which the detention order was passed were supplied on 5th November, 1980, i.e., after a period of 5 days rather than 15 days and the continued detention was held to be void. While holding in para 7 that it is well settled that the Court frowns upon the preventive detention without trial because the detenu is deprived of the right of proving his innocence in a trial by a Court of law and that the liberty of a citizen is highly precious right and a prized possession and has to be protected unless it has become absolutely essential to detain a person in order to prevent him from indulging in anti-national activities like smuggling etc. Thus, this case, on facts, is distinguishable although the word "*pari passu*" has been used.

41. Mr. Naik has placed strong reliance on the decision in the case of *Virendra Singh v. State of Maharashtra* (supra) in which case the detention was passed on 9th October, 1980, the grounds were supplied to the detenu on 1st November, 1980 when he was arrested but the documents and materials were supplied on 5th November, 1980. In this case which was decided by a Bench of two Judges of the Supreme Court, the facts show that the grounds were supplied on 1st November, 1980 and the documents were supplied on 5th November, 1980, i.e., within a period of 5 days, as are the facts in the case at hand because in the present case the grounds were supplied on 17th January, 1996 and the documents were supplied on 20th January, 1996, i.e., within a period of 5 days. Mr. Naik, therefore, submitted that the facts of the present case are identical to test the requirement of supply of documents and materials *pari passu* with the grounds. He has submitted that in *Virendra Singh's* case (supra) it is clearly observed by the Supreme Court that the documents and materials forming the basis of the order of detention had not been supplied to the detenu along with the order of detention when the same was served on him, the order is rendered void and therefore, on the basis of *Virendra Singh's* case (supra) the detention order, in the present case, should also be held void. It is a fact that, the facts in the present case and the facts in the case of *Virendra Singh* (supra) decided by the Supreme Court, the documents and the materials were not supplied along with the documents and the same fact situation is obtaining in the present case and therefore, *Virendra Singh's* case (supra) undoubtedly supports and lends strength to the arguments of Mr. Naik, but I find that while holding that the detention order was void because the documents and materials had not been

supplied along with the grounds although within a period of 5 days, the date of service of the order being 1st November, 1980 and the date of supply of the documents and materials on 5th November 1980, the Supreme Court has said that the detention order is rendered void as held by the Supreme Court in *Ichhu Devi and Shalini Soni*'s cases (supra). Mr. Mehta has submitted that in the cases of *Ichhu Devi and Shalini Soni* (supra) the documents had been supplied separately after the expiry of the prescribed time-limit of 5 days and therefore, even if in the case of *Virendra Singh* (supra) the detention order has been held void, the case of *Virendra Singh* (supra) cannot be considered as an authority laying down the law of the land to the effect that the documents and materials must be supplied along with grounds and it should be considered as sufficient compliance of the requirement of the law and the Constitution - in case the documents and materials are supplied within time limit of 5 days and in case the grounds are supplied separately than the documents and materials, but within the period of 5 days, it cannot be said to be the proposition laid down by the Supreme Court that invariably documents must be supplied along with the grounds. In this context, apart from the decisions interpreting the word "pari passu" in several cases discussed above, the question which has to be seen is whether the word "pari passu" with grounds would mean the supply of the documents along with the grounds or it could be supplied even later on within the outer limit of 5 days.

42. Mr. Mehta has referred to the meaning of the word "pari passu" as given in *Law Dictionary* by P.H. Collin, a U.B.S. Publication of 1986 (Seventh Indian Reprint 1993) and as per this law dictionary the meaning of the word "pari passu" is "equally" or "with no distinction between them". On the other hand on behalf of the petitioners reference was made to the meaning of the word "pari passu" as given in the dictionary of *Modern Legal Usage* (Bryan A. Garner) at para 403 and as per this dictionary the meaning of the word "pari passu" is "with equal pace"; "equally"; "at the same time". On behalf of the petitioners reference was made to *Law Lexicon with Legal Maxims*, 2nd Edition, Vol. III according to which "pari passu" means "with equal step", "at the same time" and "equally". Reference has also been made to the *Concise Oxford Dictionary of Current English*, 8th Edition, wherein the meaning of the word "pari passu" has been given as "with equal speed", "simultaneously and "equally".

43. Taking into consideration the principle as laid down in the aforesaid decisions and the scope of Article 22(5) and the provision of Section 3(3) of the COFEPOSA Act, it is clear that the communication to a person detained in pursuance of detention order, the grounds on which the order has been made, has to be rendered as soon as may be after the detention but ordinarily not later than 5 days and in exceptional circumstances for the reasons to be recorded in writing, not later than 15 days from the date of detention. Thus, in ordinary cases the outer limit is 5 days for communication of the grounds. It is, therefore, clear that the grounds of detention can be communicated within a period of 5 days and if that be so, in case the documents are supplied after the supply of the grounds

within a period of 5 days, it cannot be said to be violation of Article 22(5) of the Constitution or Section 3(3) of the COFEPOSA Act. In *Icchu Devi* as well as *Shalini Soni*'s cases (*supra*) it has been held that the documents have to be supplied within the prescribed time. The prescribed time under law is 5 days. I fail to understand that what difference can it make to the effective right of representation when the grounds could be supplied on the date of the detention or at any time within 5 days. If the grounds can be supplied within the outer limit of 5 days, the documents and materials could also be supplied within the outer limits of 5 days. In such matters a hyper-technical view cannot be taken that the supply of documents along with the order of detention would only mean the supply at the same point of time. It is not advisable to go with the principle that the dictionaries are the dictators of the statute or the principle, that the observations made in the judgments are to be read like a statute, but this principle is clearly discernible that the meaning of the word "pari passu" would mean that the requirement of the communication of the grounds and the supply of the documents and materials should be treated at par, i.e., at the same level. I find ample force in the submission of Mr. Mehta that the requirement of communication and supply of the documents and materials must be treated at par and at the same level. If this is the correct interpretation of the word "pari passu" and the grounds can be supplied within the period of 5 days, the supply of the documents and materials within the outer limit of 5 days will be at par and at the same level. There is no charm in the use of the word "along with" so as to stretch the supply of documents enclosed with the grounds and it cannot be said that the enclosure of the documents and materials along with the grounds is a condition precedent or a prerequisite for the supply of the grounds. Therefore, the outer limit for the supply of the grounds being 5 days and the principle which has been enunciated by the Supreme Court in several decisions that the documents and materials forming an integral part of the grounds, the supply of the documents and material not with the grounds but separately and yet within a period of 5 days would be sufficient to meet the requirement of Section 3(3) and merely because the grounds are supplied on an earlier date and the documents and materials are supplied on a later date would, in my opinion, not infringe upon in any manner whatsoever, the right of effective representation under Article 22(5) of the Constitution and hence on the correct meaning of the word "pari passu" and the interpretation of this requirement as has been given in the several decisions of the Supreme Court, it would not be correct to use this as lever to render the detention order as void if the grounds are supplied on an earlier date and the documents and materials are supplied on a subsequent date though within the outer limit of 5 days. Accordingly, I do not find that there is any substance in the second submission which has been raised on behalf of the petitioners and the same is hereby rejected.

Third Point:

44. Mr. Naik next submitted that the necessary particulars regarding import of goods on which the detenus have evaded the customs duty are not mentioned in

the grounds of detention and therefore, the ground is vague and that the necessary documents pertaining to evasion of customs duty alleged to have been committed by the detenu in the grounds of detention are not placed before the detaining authority and are not supplied to the detenus and therefore, Article 22(5) of the Constitution of India has been violated is concerned, it may be mentioned that this contention is based on the ground Nos. XIV and XV of para 15 of the petition. I have gone through the detention orders and the reply of the respondents to the ground Nos. XIV and XV of para 15. I find that a detailed order has been passed giving the entire background as also the modus operandi through which the evasion of customs duty has been caused and the necessary details have been duly incorporated in the grounds of detention, in my opinion, while it is not necessary to supply the evidence, the only requirement is to supply the ground. Insofar as the details of evidence in support of the grounds are concerned, it is not the requirement of the law to supply the same. Mr. Naik has placed reliance on *Fogla and Another Vs. The State of West Bengal*, *Jahangirkhan Fazalkhan Pathan Vs. Police Commissioner, Ahmedabad and Another*, *Ahmedhussain Shaikhhussain @ Ahmed Kalio Vs. Commissioner of Police, Ahmedabad and Another*, *Vashisht Narain Karwaria Vs. State of U.P. and another*, *Gulab Mehra Vs. State of U.P. and Others*, *Abdul Razak Nannekhan Pathan Vs. Police Commissioner, Ahmedabad and Another*, *Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others*, .

45. In *Fogla & S.K. Jalil v. State of W.B.* (supra) the Supreme Court found that one of the reasons of detention had not been communicated and the particulars furnished did not at all refer to the incident of wagon breaking and therefore, the detention order was set aside being violative of Article 22(5) of the Constitution of India.

46. In *Jahangirkhan v. Police Commissioner, Ahmedabad* (supra) the detention order earlier passed had been set aside by the Court as the averments in the grounds of detention were found to be vague, on the question that the detenu and his companion were found to be indulging in bootlegging because the particulars as to the place and names of the persons, had not been given and it was also considered that the grounds of the earlier detention which had been set aside by the Court had also been taken into consideration although the impugned detention order is alleged to have been based on fresh facts.

47. In *Ahmedhussain v. Police Commissioner, Ahmedabad* (supra) also the Court found that the material disclosing the grounds was vague with reference to the persons affected or victimised as also the time and place of such victimisation.

48. In *Vashisht Narain Karwaria v. State of U.P.* (supra) the Court found that the detention was based on a single ground and some extraneous matter had also been taken into consideration by the detaining authority, there was absence of particulars and details regarding many cases of public offences as well as the other allegations against the detenu made in the documents furnished along with the sole ground and as a question of fact, the Supreme Court came to the

conclusion that the allegations were vague and thereby the detenu is prevented from making effective representation.

49. In *Gulab Mehra v. State of U.P.* (supra) the Supreme Court found that the detention was made on the basis of the police report and the police complaint. The report did not disclose any particulars about the shopkeepers who had been terrorised and threatened for payment of money nor the names of any of the witnesses in whose presence the threat was given or terror was created and money was demanded were mentioned. The report was found to be absolutely vague and it is not possible for the detenu to give an effective representation.

50. In *Abdul Razak Nannekhan Pathan v. Police Commissioner, Ahmedabad* (supra) the ground did not refer to any dangerous, harmful or adverse act or alarm giving rise to a feeling of insecurity and in absence of particulars regarding the victims and place of the alleged offence, the Supreme Court held, on facts, that the grounds are vague and therefore, the detention order was held to be invalid.

51. In *Mohd. Yousuf v. State of J. & K.* (supra) it has been held by the Supreme Court that the vague grounds amount to not affording opportunity to make effective representation.

52. There cannot be any quarrel with any of the propositions of law laid down in any of these cases but the question whether the grounds in a given case are vague or not and as to whether on that account the right under Article 22(5) has been violated or not is a question which is to be decided on the basis of the contents of the grounds supplied in each case. In the case at hand the grounds including the particulars with regard to the evasion of customs duty, the person through whose agency the petitioners were alleged to be operating, what is the modus operandi which was applied etc., had all been furnished and these grounds of detention are to be read along with the documents which have been supplied and in my opinion, the grounds of detention coupled with the documents which have been supplied to the petitioners on 20th January, 1996 leave no scope to say that the grounds supplied in the instant cases are vague. Obviously, the petitioners were not entitled to supply of the evidence and therefore, in my opinion, none of the decisions relied upon by the petitioners in this regard are of any help to the petitioners so as to hold that the grounds are vague and therefore, the third contention raised on behalf of the petitioners also fails and the same is hereby rejected.

Fourth, Fifth and Sixth Points:

53. The fourth, fifth and sixth points are with regard to retraction. In this regard the following grievances have been made:

(i) The retraction of Ashok Pokharkar dated 3rd August, 1995 was not placed before the detaining authority and not supplied to the detenu.

In this regard I may first refer to the pleadings in ground XXIII of para 15

wherein it has been stated that the sponsoring authority had placed the statement of Ashok Pokharkar before the detaining authority, the detaining authority had referred and relied upon it and therefore, it was incumbent upon the sponsoring authority to have asked to place before the detaining authority the retraction dated 3rd August, 1995 made by said Shri Ashok Pokharkar. Thus, it was a document of vital nature which could have influenced the mind of the detaining authority one way or the other and the non-placement of this vital document before the detaining authority and the consequential non-consideration of the same before the detaining authority has severely impaired the satisfaction arrived at by the detaining authority. In the parawise reply dated 10th September, 1995 filed by the respondents the reply of paragraphs 15(xxii) and 15(xxiii) has been given in para 31. It has been stated in this regard that the retraction of Shri Ashok Pokharkar dated 3rd August, 1995 was in respect of his statements dated 1st August, 1995 and 2nd August, 1995 and 3rd August 1995 and further that assuming for the sake of argument that the said retraction was the vital and material document, by reason of the non-placement of the same, only the statements of 1st, 2nd and 3rd August, 1995 might have been left out of consideration. It has been, then stated that Shri Ashok Pokharkar has not retracted to the knowledge of the Customs Department and the later statements which are still good and sufficient material remained for the purpose of detention. In the end of this para it has been clearly replied as under:

Since the said retraction was not placed before me, there was no question of supplying the copies thereof to the detenu.

Thus, on the basis of the pleadings the factual position which emerges with regard to the retraction of Shri Ashok Pokharkar dated 3rd August, 1995 is that the said retraction had not been placed before the detaining authority.

(ii) The other grievance with regard to the retraction is that the retraction of co-detenu Rajesh Ramkumar Mittal, though placed before the detaining authority, was not considered by the detaining authority. So far as this grievance is concerned, reference is made to the pleadings as contained in ground XVI of para 15 at pages 36 and 37 wherein it has been stated that the detaining authority while cataloging the various statements of the detenu and those of his brother Rajesh Mittal in a chronological order, has nowhere made any mention whatsoever about the statement of Rajesh Mittal recorded on 27th December, 1995 as well as other statements of Rajesh Mittal recorded on 18th December, 20th December, 21st December, 1995 and 10th January, 1996 and so also about the statements of the detenu recorded on 21st December, 1995, 4th January, 1996, 8th January, 1996 and 9th January, 1996 which figured in the Addendum (Annexure-L) at serial Nos. 54, 57 and 58 as having been placed before him. This para has been replied in the parawise reply of the respondents in para 26. In this regard the petitioners have taken a separate ground with regard to all the documents as contained in the Addendum from item Nos. 54 to 73 and therefore, this grievance (Point No. V) shall be considered along with the main point Nos. X

and XI on its turn.

(iii) The next grievance in the matter of retraction is with regard to the retraction made by Surendra Mittal, co-detenu on 2nd September, 1995 that it was not placed before the detaining authority and not supplied to the detenu. The pleadings in this regard are contained in ground No. VI of paragraph 15 wherein it has been stated that the detaining authority was kept in dark by the sponsoring authority about the retractions made by Shri Surendra Mittal, one of the partners of M/s. R.K. Exports on 2nd September, 1995 of his statement on 1st September, 1995. The list of the documents at Annexure-K from item Nos. 1 to 53 and Addendum Annexure-L from item Nos. 54 to 73 did not include the retraction made by Shri Surendra Mittal on 2nd September, 1995. The statements of Surendra Mittal are referred to at item No. 4 and again at item No. 10 but in none of these two items there is a reference to any retracted statement of Shri Surendra Mittal on 2nd September, 1995 though the reference to the statements made by him on earlier dates and later dates than 2nd September, 1995 is there. Thus, from the list itself it appears that such retracted statements of Shri Surendra Mittal made on 2nd September, 1995 was not placed before the detaining authority. It has been stated in the parawise reply in para 16 while replying to para 15(VI) of the petition that the retraction of Shri Surendra Mittal dated 2nd September, 1995 was not the vital document, the retraction was not available with the sponsoring authority and therefore, the same could not be submitted to the detaining authority. Thus, on the basis of the pleadings of the parties, as a question of fact it is clearly borne out that this retraction dated 2nd September, 1995 made by Shri Surendra Mittal was neither placed before the detaining authority by the sponsoring authority nor it was included in the list of the documents.

54. Thus, as a question of fact on the basis of pleadings it is established that neither the retraction of Ashok Pokharkar dated 3rd August, 1995 was placed before the detaining authority nor the retraction of Shri Surendra Mittal dated 2nd September, 1995 was placed before the detaining authority and further that the same were not supplied to the detenu and thus, on facts, the grievances raised with regard to point Nos. (IV) and (VI) stands established.

55. Now the question as to whether these documents were vital or not and as to whether it has impinged upon the petitioner's right under Article 22(5) or not are also connected with and involved in other grounds, I would be dealing with the question of the effect of non-supply and non-consideration of the vital documents simultaneously.

Seventh and Eighth Points:

56. The seventh and eighth points raised on behalf of the petitioners are that the statements of employee of Ashok Pokharkar were not placed before the detaining authority and not supplied to the detenu. The pleadings in this regard are contained in ground Nos. (XXII) and (XXIII) of paragraph 15 of the petition at

pages 53 and 54 that the detaining authority having drawn the aforesaid conclusion that Ashok Pokharkar along with his employee had played a major role in forging test reports it was incumbent upon the detaining authority to have furnished to the detenu the copies of the alleged statements of the employee of the said Ashok Pokharkar, namely, Saida Nizam Saiyed recorded on 2nd August, 1995 and 13th September, 1995 and alleged statements of Balchandra Vasant Jadhav recorded on 3rd August, 1995 and 9th August, 1995. It has been then stated that the detaining authority having failed to furnish to the detenu the copies of alleged statements of the employee of Ashok Pokharkar and such alleged forged test reports and such alleged forged statutory documents and as the statements and the documents, in law, formed a part and parcel of the grounds of detention, the grounds of detention themselves, as a result, in the eye of law, were not communicated to the detenu and he was thus denied the opportunity of making effective representation.

57. This ground No. XXII of para 15 has been replied in the parawise reply filed by the respondents in para 31 which is a common reply to grounds Nos. (XXII) and (XXIII). There is no specific denial to the averments contained in ground No. (XXII) and the respondents have rest content by saying that the conclusions mentioned in the detention orders were based on the various statements of Shri Ashok Pokharkar and other corroborative evidence and not on the basis of the statements of the employees of Shri Ashok Pokharkar as contended by the petitioners; that the copies of the said statements have been supplied to the detenus and further that the copies of the forged documents at serial No. 3 had also been supplied to the detenu. After considering the pleadings in this regard, I find from para 3 of grounds of detention where it has been stated at the top of page 2 of the grounds of detention while making reference to Ashok Pokharkar that "he along with his employees have played a major role in forging test reports and replacing samples, procuring forged copies of Bills of lading without exporting any goods, procuring forged S/Bill etc." It has not been stated that the statements of the employees of Ashok Pokharkar had not been recorded. If the statements of employees of Ashok Pokharkar had been recorded and a conclusion was arrived at in the detention order that Ashok Pokharkar along with his employees had played a major role in forging test reports and replacing samples, non-placement of such material before the detaining authority and the non-supply of such documents should have been explained by the respondents in the reply. There is no explanation worth the name in para 31 while replying the contents of para 15 (XXII) as to why the copies of such documents had not been supplied. Therefore, on the basis of the pleadings and materials available on record it is clear that the statements of the employees of Ashok Pokharkar had not been placed for consideration of the detaining authority nor copies of the same had been supplied to the petitioners, as has been stated in the earlier part of the order while dealing with the point No. (iv).

58. The grievance pertaining to the point No. (viii) is also based on the pleadings as contained in para 15 (XXIII) and the reply given thereof in the parawise reply.

With regard to non-supply of the forged statutory documents like test reports and other documents it may be stated that the copies of the shipping bills which were alleged to have been forged have been supplied and they were also part and parcel of the documents which have been forged. The copies of the forged test reports are concerned that is obviously a part of the evidence and therefore, the grievance with regard to non-supply of the test reports does not appear to be germane or of any consequence because the detenu is not entitled to the evidence part of it. If any detenu seeks to test the veracity of the test reports, he may have the opportunity as and when the question comes during the course of trial for the offence committed but so far as the passing of the detention order is concerned, if the documents in the form of the shipping bills are there to show the forgery and the same have been supplied, it cannot be said that he was also entitled to supply of the test reports with regard to the forgery nor such test reports can be said to be the statutory documents for the purpose of passing an order of detention. The order of detention as has been passed in the facts of the case incorporates the necessary grounds and details as have already been discussed by me in the earlier part of this order and the copies of the shipping bills with regard to which the forgery is alleged have been committed were supplied and hence the grievance raised in point No. (viii) cannot be sustained either on facts or in law.

Ninth Point:

59. The ninth point raised on behalf of the petitioners is that the reverse sides of certain documents enumerated in ground No. (XXIV) of para 15 have not been supplied, though the same were placed before the detaining authority and the same had been considered and relied upon by the detaining authority and hence there is a violation of Article 22(5) of the Constitution of India. The pleadings in this regard are contained in ground No. (XXIV) of para 15 wherein the petitioners have made reference to large number of shipping bills furnished to him, i.e., pages 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 111, 114, 117, 120, 121, 123, 127, 131, 135, 146, 177, 178, 179, 180, 192, 193, 194, 196, 198, 200, 205, 208, 211, 214, 217, 220, 223, 252, 271, 272, 274, 275, 277, 278, 280, 293, 295, 297, 321, 322, 323, 324, 325, 326, 327, 328, 329 & 330 of the compilation of the documents. Argument has been raised that these documents have been supplied but they are incomplete inasmuch as the reverse side of these documents has not been supplied and only the obverse side has been made available. The respondents while replying to this ground have not disputed the factual allegations that the reverse side of these documents have not been supplied. The argument has been raised that reverse side of these documents do not contain any vital information because the manipulations are alleged to have been done on the front side of the documents and the obverse, i.e., the front side of the documents have been furnished to the detenu and merely because the reverse side has not been supplied it cannot be said that the petitioners' right under Article 22(5) of the Constitution has been violated because he could explain the manipulations on the basis of the obverse side on

which the manipulations have been made. Thus, so far as the non-supply of the reverse side of documents is not disputed. What is to be seen will be the effect of non-supply of the reverse side of these documents. In order to explain, the modus operandi which was employed in forging the bills, Mr. Mehta submitted that the shipping bills are there in three forms as under:

(i) Shipping bills for export of duty free goods. On reverse of which there is nothing except the printed list of documents, i.e., No. 1 to 11 and this is the first copy of the shipping bill for export of duty free goods bearing signature of the exporter on the front side.

(ii) The duplicate shipping bill for export of duty free goods is also signed by the exporter on the front side and the reverse side of this duplicate contains list of the documents as in the first copy as also the signature of the Officer of Customs who allows the export and the shipment and again there are signatures of the master of vessel and the signature of the officer of customs and then examination order and report.

(iii) The triplicate is that the shipping bill for export of duty free goods which is meant for export promotion which also bears the signature of exporter on the obverse side and the reverse side of this triplicate provides for the signatures of officer of Customs under preventive supervision as mentioned on the left hand side of blank form and again there is signature of the officer who declares the shipment on this shipping bill with the date on which the air-freighted and then it was under preventive supervision in full/part (specify quantity air-freighted). The allegation is that for certain export bills of lading were forged in order to show exports when in reality no exports have taken place against such bills of lading; the exports handled were effected by grossly inflating the weight and blend of the fabric on the export promotion copy as well as in the DEEC Book for obtaining inflated advance licence for higher quantities of polyester filament yarn in some cases carbonised fabric was mis-declared as polyester fabric and the test reports in this regard were also fabricated. It is stated that under the provisions of DEEC Scheme raw materials which are required for manufacture of export products are permitted to be imported duty free in accordance with the standard input-output norms published in the Handbook of Procedures Vol. II under Export-Import Policy 1992-1997 and the exports of polyester fabrics comes under the category of quantity based Advance Licence Scheme where quantity of permissible raw materials such as polyester filament yarn, dyes etc. allowed duty free is directly in proportion to the quantity of exported fabric. By way of illustration, the reference may be made to page 293, 294, 295 and 296 of the compilation of the documents. It was submitted that by erroneous mention of the quality, quantity based advance licence under DEEC Scheme the quantity of permissible raw materials such as polyester filament yarn, dyes which is allowed duty free is directly proportional to the quantity of exported fabric was inflated and this allegation was sought to be illustrated with reference to the first, second and third copies of the same shipping bill for export of duty free goods and the

manipulation is alleged particularly in the export promotion copy, i.e., triplicate. Mr. Mehta submitted that all these manipulations are on the obverse side of the bill and therefore, the grievance with regard to non-supply of the reverse side of the documents, i.e., shipping bills as alleged by the petitioners in ground No. XXIV of para 15 is not disputed.

60. In view of the admitted position with regard to the non-supply of the reverse side of the various shipping bills it has to be considered as to what is the effect of such non-supply of the reverse side of the documents on the question of violation of effective right of representation under Article 22(5) of the Constitution of India and the same shall be considered in the later part of the judgment.

Tenth Point:

61. Coming to the tenth point that the documents contained in the Addendum at item Nos. 54 to 73 were not placed before the detaining authority and were not referred to and relied upon by the detaining authority in the grounds of detention, I may refer to the pleadings contained in ground Nos. XVII and XIX of para 15 and the reply thereto as contained in paragraph Nos. 26 and 28 of the parawise reply. It has been stated as under:

I say that all the documents listed at serial Nos. 1 to 73 were placed before the detaining authority. I say that I have formulated the grounds of detention after careful consideration of the documents placed before me and therefore, it is not correct on the part of the petitioner to submit that the documents were not placed before me and if they would have been placed I would have made a reference to the said documents in the grounds of detention. Merely because there is no reference given by me to the documents, it does not mean that the documents were not placed before me when I formulated the grounds of detention and pass the order of detention.

It is, therefore, clear that the fact that there is no reference to these documents in the detention order has been admitted. The argument of the respondents that merely because there is no reference by the detaining authority to these documents in the body of the detention order it does not mean that the documents were not placed before him when the grounds of detention were formulated. In this regard the factual controversy was also raised that the statements of detenu's brother Rajesh Mittal which are purported to have been relied upon were recorded on 10th January, 1996 and the statement of detenu was recorded on 9th January, 1996; the impugned order of detention was issued on 15th January, 1996 and it is submitted that 13th and 14th January, 1996 were holidays and there were only two days for the detaining authority to screen such large number of documents covering 808 pages and it was also submitted by Mr. Naik that after the receipt of the documents which were included in the Addendum, i.e., documents at items No. 54 to 73 there was no time left with the detaining authority to apply its mind on all these documents and in fact these

documents do not find any reference in the detention order because the same were not considered though the same are sought to be relevant to the consideration for passing the detention order and the very fact that these documents have been supplied on 20th January 1996 along with other documents goes to support his contention. Apart from the factual position, in this regard, the fact remains that there is no reference to any of these documents at item Nos. 54 to 73 in the body of the detention order and subsequently in the affidavit filed by the detaining authority through reply it is sought to be explained that these documents were considered. It is settled that the detention order is an order passed under the statute and the law is settled right from the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, that the statutory orders cannot be supported or defended on the basis of subsequent explanations. If a particular document or a set of documents have been considered, the order itself is required to show that these documents were considered. If the order does not show the consideration of those documents the consideration of such documents cannot be pleaded on the basis of subsequent explanation through affidavits. Reliance in this regard had also been placed by Mr. Naik on the decision of the Supreme Court in Ramveer Jatav Vs. State of U.P. and Others, . Thus, the law is settled that with regard to statutory orders subsequent explanations cannot be taken to aid to uphold the order otherwise the order which is invalid at the time when it is passed would acquire validity by the time it reaches for judicial scrutiny before the Court.

Eleventh Point:

62. The Eleventh point raised is with regard to the documents enumerated in ground No. XXVI of paragraph 15 and it is alleged that the documents at pages 87, 99, 113, 116, 125, 128, 133, 142, 148, 156, 169, 177, 178, 180, 157, 166, 182, 184, 186, 215, 271, 272, 273, 274, 275, 276, 277, 278, 279, 281, 286, 287, 448, 344, 346, 347, 348, 530, 616 and 647 of the compilation of the documents furnished to the detenu were illegible. The learned Counsel for the petitioners took me through all these documents mentioned in ground No. XXVI of paragraph 15. Ground No. XXVI of para 15 has been replied in para 3 and it has been submitted that pages 99, 113, 116, 125, 128, 132, 142, 148, 156, 157, 166, 169, 177, 178, 180, 182, 184, 186, 215, 271, 272, 273, 274, 275, 277, 278, 279, 281 are the copies of shipping bill/bills of exports which had been shown to the detenus and their explanation has, in detail, been discussed in their respective statements, which are indisputedly legible. Page No. 87 was only the introductory aspect of the statement and does not contain any vital information. The contents of pages 286, 287, 344, 346, 347 and 348 are the statements of detenu Shri Naresh Mittal and licence consultants Shri Rohit Seth.

63. In this regard, the contention of the detenu that they are illegible is denied as these pages are quite legible. It was further submitted that there was enough other materials which establish that the detenu has indulged in prejudicial

activities for which materials have been furnished to the detenu. At page 530, i.e., the affidavit filed by the Investigating Officer, a copy of the same has already been given to the detenu. Regarding page No. 616 which is a telegram from the detenu's side is known in its detail to the detenus. As regards Page 647 which is arrest memo of the detenu's employee Shri Arvind is not a vital document as it contains only the information regarding arrest of the said person. In view of these pleadings, even if those documents which have been stated by the respondents to be legible in their reply, are not taken into consideration, the fact remains that the legibility of the documents at pages 99 to 281, i.e., copies of the shipping bills/bills of exports is not denied, although the knowledge has been sought to be imputed with regard to these documents by referring to the fact that these bills had been shown to the detenus and their explanation in detail, has been discussed in their respective statements and these statements are legible.

64. Page 286 is the statement of Shri Naresh Mittal dated 12th December, 1995 which is handwritten and this document is absolutely blurred and not at all legible. Page 287 is also a part of the statement which is handwritten and certain lines are not at all legible and there is no print of certain words and it appears to be difficult to apprehend the import of the contents. The same is the position with regard to the documents at page 346 which is again handwritten, certain lines are absolutely blurred, and certain lines are absolutely faint and blurred and not at all readable. The document at page 348 is not at all readable in its column No. 2 and in column No. 3 also certain parts are not readable. Page No. 344 again contains a handwritten matter a portion of which is not at all legible. Same is the position with regard to pages 530, 616, page 99,113,116,124, 125, 129,133,142,143, only partly legible, invoice No. 156/157 partly legible, (handwritten matter is not legible), 167 illegible, 168 partly legible, 169 not legible, 177/178, 180, 182, 183, 184, 186 and 215 are only partly legible, 271 not legible, 272, 273/274, partly legible, 275, 277, 278 not legible, 280, 281 282 partly legible. Thus, these documents about which the allegation of illegibility of the documents is admitted include obverse sides in certain cases and thus, the obverse sides as well as the reverse sides are either not at all legible or are only partly legible and these documents cannot be said to be readable.

65. In this regard Mr. Naik placed reliance on *Bhupinder Singh v. Union of India* reported in : (1987)2SCC234 . In this case the detention order was confirmed before the supply of the legible copies and it was held that right of making effective representation was denied. In *Smt. Dharmista Bhagal v. State of Karnataka* reported in 1989 Supp. (2) SCC 155, copy of a vital document supplied to the detenu is not legible and request of the detenu for supply of the legible of the said copy was turned down. The order of detention was held to be liable to be quashed. In *Manjit Singh Grewal v. Union of India* reported in 1990 Supp. SCC 59 the Supreme Court found that the supply of illegible copies of documents was sufficient to hold that the procedural safeguards provided by the Constitution were violated and on the facts of the case the Supreme Court did

not go into the question whether these documents were relevant or material. In *P.S. Chandel v. Dist. Magistrate* reported in 1991 (2) GLR 753 out of the copies of documents supplied to the detenu, copy of only one document was found to be illegible and the Division Bench held that the detention order was liable to be set aside. The Division Bench of this Court found that page 195 which was the receipt was a vital document on which reliance was placed. Now, this document was found to be illegible and the name of the payer on which rubber stamp was applied and the contents of the rubber stamp were not legible. The detaining authority had failed to supply legible copy of the said relevant document and it was held that the right of effective representation was infringed. Reliance was placed on *Ganesh Prasad Kapoor v. State of U.P.* reported in 1986 Cri. LJ 1607. In this case the supply of blank and illegible copies of the documents relied upon by the detaining authority was held to be sufficient for setting aside the detention order notwithstanding that the detenu had failed to raise the said ground earlier in his representation against the detention order. In *Siraj Khan v. L. Himingliana* reported in 1989 Cri. LJ 392 the Division Bench of Bombay High Court found that some handwritten documents were incomplete and illegible and unreadable and did not make out any sense. The Bombay High Court took the view that supply of illegible and unreadable documents amounted to non-supply of the said documents which violated Article 22(5) of the Constitution of India. The Division Bench of the Bombay High Court found that on the left side of the document there was an order passed by the Magistrate, releasing the detenu on certain conditions and that it was impossible to read the entire order. Some important words were completely missing. Argument was raised on behalf of the detaining authority that the order which was not readable dealt with the condition on which the bail was granted and since the detenu availed of the bail by complying with the conditions, there was no question of any prejudice to the detenu. This argument was repelled by the Bombay High Court by saying that it was no answer to the argument that the document was illegible and unreadable and it was held that it would amount to non-supply of the document. Reliance was placed on the observations made in the case of *Mehrunissa Vs. State of Maharashtra*, *M.S. Ganvani v. Secretary, Govt. of Gujarat* reported in 1991 (1) GLR 421 is a case decided on the basis of *Smt. Dharmishta Bhagat v. State of Karnataka* (supra). It was found that page 1 of compilation supplied to the detenu was a statement of Harpaldas recorded on 4-2-1990 and the same was absolutely illegible. The failure on the part of the detaining authority to supply the legible copy in this case of *M.S. Ganvani* (supra) was held to violate the right of effective representation under Article 22(5) of the Constitution of India.

66. Mr. Mehta on this aspect has submitted that no failure can be said to be total unless any prejudice is caused and that the illegibility cannot obscure the ground. He has placed reliance on *Kamarunnissa and Others Vs. Union of India* and another, wherein it has been held that no hard and fast rule can be laid down in this behalf but what is essential is that the detenu must show that the failure to supply the documents had impaired or prejudiced his right, however, slight or

insignificant it may be. Reliance has also been placed on Haridas Amarchand Shah of Bombay Vs. K.L. Verma and Others, wherein it was held that bank pass-books were not vital and material documents in reaching the subjective satisfaction and as such failure to furnish bank pass-books to the detenu has not infringed any of his rights. In Veeramani Vs. State of T.N., the question of non-supply of the statements u/s 161 of Cr. P.C. was considered which was the only document in support of the contents of F.I.R., and the Court held that it did not cause any prejudice to the detenu nor the detenu had asked for it.

Conclusion:

67. Thus, the question as to whether non-supply of certain documents or the supply of the illegible documents in a given case would effect the right of effective representation is also required to be considered in light of the facts of each case, the grounds which are taken into consideration by the detaining authority and the nature of the documents which are not supplied or which are illegible and it is also to be seen as to whether non-supply or supply of illegible copies of the documents have caused any prejudice or not. Here is a case in which with regard to the point Nos. (iv), (v) and (vi), as a question of fact, it is found that the documents were not supplied. Now, these documents pertaining to the contentions raised at Serial Nos. iv, v, vi, vii, ix, x and xi constitute a large number of documents. When there is a grievance with regard to such large number of documents, out of which the documents with regard to retraction are certainly the documents which could be said to be vital documents for the purpose of consideration by the detaining authority because they could have filled the balance one way or the other and such documents which may tilt the balance with the detaining authority cannot be said to be the documents of no consequence. A large number of documents are not readable and in such cases it is difficult for this Court to say as to whether the prejudice could be caused or not because the prejudice in such cases operates in a subtle manner and once the duty is assigned upon the authority this duty is the duty arising out of the right which is conferred on the detenu and if the saying goes that every right has a corresponding duty and every duty has a corresponding right, the authority cannot be heard to say that the omission on its part has not caused any prejudice. Besides this it is also trite proposition of law that the authority passing the penal order is not concerned as to what defence the other side has to make, it is a question of the requirement of the duty cast upon the authority to be followed by the very nature of the things and if there is failure in discharging such duty, it cannot be said that it leaves no consequence. The requirement to discharge such duty may be burdensome to some minds, but this price - a small price indeed, we have to pay if at all we mean the rule of law to prevail. The consequences in such cases follow, as a matter of course and in the instant case I find that the due and requisite care which was required to be taken at the time of supply of the documents has not been taken. The impure one suspects others.

Swayamshudhhah Parananshankate (Original is in Sanskrit) - Chanakya sutra

A single defect overshadows many qualities.

Bahoonapi Gunane Ko Dosho Grasati (Original is in Sanskrit) -Chanakyasutra

Therefore, whenever a task is to be accomplished those officers upon whom the duty is enjoined to accomplish that task, should not leave any scope for the other side to raise grievance for violation of essential procedural safeguards. It is, therefore, only a case of lack of effort which makes the task to fail for the fault of those who execute it. Only a little effort may accomplish the task and due to lack of effort even the fortune may fail. Thus, the effort should be made to see that when those suspected in the cases against national wealth are dealt with, all possible care is taken to see that there is no opportunity to raise a grievance as has been said in one of the cases referred to hereinabove - Veeramani v. State of T.N. (supra) that even a little grievance should not be allowed to be raised.

68. Besides this, it is found to be a case in which certain vital documents have not been supplied, copies of certain documents are not legible and certain documents are not at all readable, and further that the order of detention does not find the consideration of certain documents mentioned in the Addendum at item Nos. 54 to 73 about which a subsequent explanation is being given that they were considered which explanation is not at all acceptable in view of the settled proposition of law. I find that the petitioners' right under Article 22(5) of the Constitution of India has been violated to that extent.

Twelfth Point:

69. Mr. Naik also wanted to raise certain questions with regard to the illegibility and non-supply of the documents about which there is no reference in the pleadings as also grounds that bail applications of the detenus Naresh Mittal (Spl. C.A. No. 5274 of 1996) and Surendra Mittal (Spl. C.A. No. 5320 of 1996) dated 10-12-1995 had not been placed before the detaining authority and the same were not supplied to the detenus. This grievance about the non-supply of the copy of the bail application was made with reference to two Special Civil Applications as above. In absence of clear pleadings in this regard, in the facts of this case and in view of the conclusion to which the Court has arrived as above, I do not find it necessary to go into these questions although it is sound proposition that grounds which are not taken in the pleadings can also be urged at the time of arguments in a given case. 70. It may be pointed out that the detenu in Special Civil Application No. 5274 of 1996 had provisionally been released earlier by an order dated 21st September 1996 which is reproduced as under:

The detenu - Naresh Ramkumar Mittal is directed to be released provisionally on his furnishing security in the sum of Rs. 10,000/- (Rupees ten thousand only) with two sureties in the like amount to the satisfaction of the Chief Metropolitan Magistrate, Ahmedabad. It would be open to the detenu to give personal bond in the sum of Rs. 30,000/- with cash security of Rs. 30,000/- to be deposited in the Court of the learned Chief Metropolitan Magistrate, Ahmedabad in lieu of

furnishing of two sureties. It is made clear that this order of release is passed on the ground of illness of the detenu.

The order of provisional release is under challenge before the Division Bench in L.P.A.

71. On the basis of the discussion as aforesaid, the right under Article 22(5) is found to be violated and I have kept into consideration the fact that the detention order had been passed on 17th January, 1996, detenu in Special Civil Application No. 5274 of 1996 has remained under detention till 21st September, 1996 and the other two detenus are under detention since 17th January, 1996 and by this time a major period of detention is already over which was a consideration kept in view by the Supreme Court.

72. In view of the discussion as aforesaid the three Special Civil Applications are allowed and the impugned orders dated 15th January, 1996 in Special Civil Application No. 5274 of 1996 - Naresh Ramkumar Mittal, dated 15th January, 1996 in Special Civil Application No. 5320 of 1996 - Surendra Ramkumar Mittal, dated 12th January, 1996 in Special Civil Application No. 5509 of 1996 - Rajesh Ramkumar Mittal passed by the Joint Secretary to the Government of India, New Delhi, Ministry of Finance, Department of Revenue are hereby quashed and set aside. The detention of the detenus in each of the three petitions is declared to be illegal. The respondents are directed to release the detenus and set them at liberty forthwith in each of these three petitions if they are not required in any other case. Rule is made absolute in all these three petitions.