
(1989) 12 AHC CK 0037

In the Allahabad High Court

Case No : Habeas Corpus W. P. No. 13644 of 1989

Vashist Narain Karwaria

APPELLANT

Vs

State of U.P.& Anr.

RESPONDENT

Date of Decision : 12-12-1989

Acts Referred:

Constitution of India, 1950 — Article 22

National Security Act, 1980 — Section 10, 3(3), 7(1)(b)

Citation : (1989) 12 AHC CK 0037

Hon'ble Judges : K.P.Singh, J and M.P.Singh, J

Final Decision : Dismissed

Judgement

M. P. Singh, J.—In pursuance of the order dated 3131988, passed by the District Magistrate, Allahabad under Section 3(3) of the National Security Act, the petitioner has been detained on 2071989 at Ghaziabad. By means of the present writ petition the said detention has been challenged by him.

2. The short factual background is as follows :

On 3031988 an auction of country and Indian made foreign liquor shops was held in an enclosed place protected by the police in the Collectorate at Allahabad. The petitioner alongwith three other persons, against whom also the detention order was passed, was present on the occasion for participating in the said auction. A large number of other bidders were also present. The District Magistrate Sri P. C. Chaturvedi was conducting the auction. It started at 10.30. a.m. The petitioner's bid was for a sum of Rs. 51 lacs for the Chail sector of the country liquor shop. It was not accepted.

3. At about 3.30 p.m. Muratganj Indian made foreign liquor shop was to be auctioned. Some controversy arose about this auction. After Ajai Kumar and Chhedi Lal had made their bids for Muratganj liquor shop, the petitioner alongwith three other associates stood up and threatened Ajai Kumar, Chhedi Lal and all prospective bidders present in the Pandal saying that the shop belonged to his area and if anybody dared to bid at the shop, he would shoot him. He

would also destroy the entire family. This created a terror and panic in the public present there. Immediately thereafter the petitioner alongwith three other associates stood and advanced towards Chhedi Lal and Ajai Kumar threatening them with dire consequences. As the situation was going to become worse, Sri Rana Pratap Singh, Station Officer, alongwith other police officials advanced towards the petitioner and his associates to arrest them. Seeing the police party coming towards then, the petitioner fired at the police party with his countrymade pistol. As soon as the police party tried to take out their weapon, the petitioner escaped from the Pandal but was chased by the police party. Another shot was fired by the petitioner on the police party. Undeterred from the firing by the petitioner, the police persisted the chase. The petitioner thereupon again fired and bombs were also hurled by him on the policy party.

4. The firing and the notice of the bombs explosion created panic in the Pandal too. The people sitting in the Pandal started running away on the Kutchery road and shop keepers also started running away saving their lives. Public order was completely disturbed. At 4.30 p.m. first information report was lodged by Sri Rana Pratap Singh, Station Officer, in police station Colonelganj against the petitioner under Sections 307 and 506, I.P.C,

5. Sri P. C. Chaturvedi, the District Magistrate, on being satisfied, that it was necessary to do so, passed an order on 3131988 under Section 3(3) of the National Security Act (hereinafter referred to as the Act).

6. The said order of detention had been challenged by the petitioner by means of writ petition No. 8985 of 1988. By means of another writ petition No. 7030 of 1988 the petitioner had prayed for quashing of the first information report lodged against him under Sections 397 and 506, I.P.C. These two writ petitions were dismissed by a Division Bench of this Court on 3151988 against which the petitioner has filed a Special Leave Petition which is still pending in the Supreme Court. The points urged in the aforesaid two writ petitions were :

(i) that at the highest the act attributed to the four petitioners amounted to disturbance of law and order but did not effect public order.

(ii) That the detaining authority was not qualified to pass the detention order as he was an eyewitness to the incident said to form the basis of the said detention order.

7. The Court while dismissing both the writ petitions has held that the petitioner held out threats to the bidder at the public auction and accompanied with the threats there were acts which led to the disruption of the auction. It created panic in the Collectorate compound and public road. The petitioner committed act which disturbed public order and the acts were not merely of disturbing of law and order.

8. After the detention order dated 3131988 has been upheld by a Division Bench of this Court on 3151988, the petitioner was arrested at Ghaziabad on 2071989.

The remarkable feature of the case is that the petitioner could evade the detention for more than one year and four months.

9. Admittedly in the earlier writ petitions only the validity of detention order was challenged. The petitioner was arrested after the decision of the two cases. In the present petition the detention has been challenged on entirely new grounds which did not exist when the High Court decided the matter on 31/5/1988. Sri S. N. Singh, learned Government Advocate, appearing on behalf of the State, has conceded to the legal position that the pendency of the appeal in the Supreme Court will not debar this Court from examining the detention of the petitioner under the provisions of the Act on new grounds.

10. In the case of *Lallo Bhai Jogi Bhai Patel v. Union of India and others*, reported in AIR 1981 SC 728, it has been held :

"The position that emerges from a survey of the above decisions is that the application of the doctrine of constructive *res judicata* is confined to civil actions and civil proceedings. This principle of public policy is entirely inapplicable to illegal detention and does not bar a subsequent petition for a writ of habeas corpus under Article 32 of Constitution on fresh grounds, which were not taken in the earlier petition for the same relief."

11. At the cost of repetition it can be said that in the earlier writ petitions the points raised were that the act of the petitioners amounted to disturbance of law and order but did not affect public order ; and the second point raised was that the detaining authority was not qualified to pass the detention order as he was an eyewitness to the incident said to form the basis of the said detention order.

12. So now we proceed to decide the fresh controversy.

13. This court is aware of the fact that the Act is not to be resorted to for punishing a crime cognizable under any law of the land. The provisions of the Act can be invoked only to prevent the commission of the act prejudicial to the law and public order.

14. Heard Sri Umesh Narain Sharma, learned Counsel for the petitioner and Sri S. N. Singh learned Government Advocate at great length and perused the record.

15. The first point raised by the learned Counsel for the petitioner was that though the order of detention was passed on 31/5/1988 but the petitioner was allowed to move freely for one year and four months and was detained only on 20/7/1989. According to him this fact alone shows that the purpose of detention, if there was any, on the date when the order was passed, did not exist any more. The detention is unwarranted.

16. It has been further asserted by the petitioner that in June, 1988 byelection took place in Allahabad. During the course of such an election the petitioner took active part in the election campaign and canvassed for vote in favour of the

Congress candidate. During the course of canvassing the petitioner was welcomed by various Committees. He was welcomed alongwith the then Chief Minister late Sri Vir Bahadur Singh.

17. The petitioner filed a number of photographs in which he is shown to be present alongwith the then Chief Minister at various meetings. It is said that these photographs related to the period of first fortnight of June, 1988. It was suggested that since the petitioner was moving alongwith the then Chief Minister freely during his election tour, the District Magistrate and the Superintendent of Police could arrest him. His presence was so prominent that it could not escape the attention of the police authorities. In spite of these apparent facts the petitioner was not arrested. According to the petitioner, the impugned order dated 31/3/1989 has outlived its utility and, therefore, continuance of the detention is bad in law and unconstitutional.

18. On behalf of the State it has been stated in the counteraffidavit that during the election campaigning of the candidates of the political parties and their gatherings and meetings, the District Magistrate and the Senior Superintendent of Police have got nothing to do. The authorities responsible for effecting the arrest in pursuance of the detention order had no knowledge that the petitioner was also surreptitiously moving either in the company or in the crowd which had flocked in the meeting or the then Chief Minister late Sri Vir Bahadur Singh. Neither the District Magistrate nor the Senior Superintendent of Police were present in the meeting addressed by the then Chief Minister. The officers of the State Government do not participate in the election meetings of the political parties. It has also been stated that the photographs filed by the petitioner did not relate to a period subsequent to the order of detention passed against the petitioner. None of these photographs prove the presence of the District Magistrate or the Senior Superintendent of Police who was directed to effect the detention of the petitioner.

19. After examining the matter in detail we are convinced that the copies of the newspaper or photographs filed by the petitioner do not establish his case that he was moving freely in the knowledge of the detaining authority or the officers responsible to effect the detention. Moreover, this Court cannot decide disputed questions of facts whether the photographs relate to the postdetention period or is prior to that. Such photographs appear to be purposely got prepared to make out a case that he was moving freely in public. Actually the petitioner had gone underground and despite the best efforts of the police he could not be arrested.

20. Alongwith the counteraffidavit a chart giving the details as to when and how the police party organized the raids for effecting the petitioner's detention has been filed as AnnexureCA 1. We are satisfied that the police had been trying its best to arrest the petitioner.

21. On 16/4/1988 the State Government had sent a radiogram to the District Magistrate, Allahabad directing him that if the petitioner has not been Arrested,

coercive measures as contained in Section 7 of the Act may be taken. The State Government has also sent communication in this respect on 3041988, 2991988, 7101988 and 8121988.

22. The Station Officer of Police Station Colonelganj sent a report to the District Magistrate on 1841988 requesting that the Chief Judicial Magistrate, Allahabad be directed for issue of warrant of attachment under Section 82/83, Cr. P. C. as provided in Section 7 of the Act. Proceedings under the said provisions of the Code of Criminal Procedure were taken against the petitioner.

23. Section 7 of the Act describes the power in relation to an absconding person which runs as follows :

"7. Powers in relation to absconding persons. (1) If the Central Government or the State Government or an officer mentioned in subsection (3) of Section 3, as the case may be, has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government or officer may :

(a) make a report in writing of the fact to a Metropolitan Magistrate or a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides ;

(b) by order notified in the official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order.

(2) Upon the making of a report against any person under clause (a) of subsection (1), the provisions of Sections 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973, shall apply in respect of such person and his property as if the detention order made against him were a warrant issued by the Magistrate.

(3) If any person fails to comply with an order issued under clause (b), of subsection (1), he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence under subsection (3) shall be cognizable."

On 2341988 an order has been passed under Section 7(I)(b) of the Act that the petitioner has been absconding and concealing himself. The District Magistrate also got the said notification published in the Official Gazette on 2341988 that the detention order has to be effected within a period of 15 days of the publication of the said notification.

24. In support of the above contention the learned Counsel for the petitioner has

placed reliance on the case reported in AIR 1975 SC 1517 *Sk. Serajul v. State of West Bengal and others*. In that case an order of detention was passed on 2481972 relying upon the incidents dated 21111971, 24111971 and 1511972. The petitioner of that case was arrested on 2721973.

There was delay at both the stages, i. e., in passing the order of detention and also in effecting the arrest and this delay, which was not satisfactorily explained, could throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate. In that case while considering the matter the Supreme Court observed :

"It would be reasonable to assume that if the District Magistrate of Burdwan was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude both in making the order of detention as also in securing the arrest of the petitioner, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities. Of course, when we say this, we must not be understood to mean that whenever there is delay in making an order of detention or in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. The detaining authority may have a reasonable explanation for the delay and that might be sufficient to dispel the interference that its satisfaction was not genuine."

25. In the case of *Bhawarlal Ganeshmalji v. State of Tamilnadu and another*, reported in AIR 1979 SC 541, the order of detention was passed on 19121974. The detenu was found absconding. Despite all the necessary efforts he could not be arrested until he surrendered on 121978. The Court held as under :

"It is true that there must be a "live and proximate link" between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the preventing of smuggling activities. The Court in appropriate cases may assume that the link is "snapped" if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case the Court may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the "link" not snapped but strengthened."

26. In the case reported in 1986 ALJ 528 *Simmi v. State of U. P. and others*, a Division Bench of this Court found that there was irrefutable evidence that the petitioner was spending most part of December, 1982 to December, 1984 in jail in Crime No. 463 of 1982 under Section 302/201, I. P. C. and had been attending

the Court in sessions trial regularly. The Court was impressed with the fact that there was no explanation on behalf of the State as to why the detention order was not served on him and he could not be arrested. On this ground the order of detention was set aside.

27. Another case referred to by the learned counsel for the petitioner reported in AIR 1974 SC 2353 *Sk. Nizam Uddin v. State of U. P. and others*. In that case the order of detention was passed on 10/9/1973 and the subjective satisfaction of the District Magistrate was based on solitary incident of a theft which occurred on 14/4/1973. The petitioner was thereafter detained on 23/11/1973 pursuant to the detention order. The criminal case in which the petitioner was arrested, was ultimately dropped as the witnesses were not willing to depose against the petitioner and the detenu was discharged. No explanation of delay in arresting the petitioner was given in the affidavit filed by the District Magistrate. Thus, the Hon'ble Supreme Court took a view that the detention of the petitioner was unconstitutional.

28. The ratio of all the cases mentioned above is that if there is no satisfactory explanation for the delay, then the Court would be justified in presuming that the detention is not fair. In the instant case, it has been established that the petitioner had successfully evaded the detention for one year and four months. The police could not succeed in arresting him before 20/7/1989. The proceedings under Section 82/83, Code of Criminal Procedure were also initiated against him. The petitioner had gone underground and in spite of the best efforts he could not be arrested before 20/7/1989. The counteraffidavit filed on behalf of the State has given satisfactory explanation. The details of the police action for effecting the arrest has also been brought on record. Thus the cases referred to above are clearly distinguishable inasmuch as in all of them there was no explanation as to why the detenu could not be arrested for such a long period. Each case depends upon its own facts.

29. If the contention of the petitioner's counsel is accepted, it will lead to a very dangerous situation. Whenever such an order is passed, the detenu can successfully evade the detention for sometime and then it can be argued that the detention was bad for that reason. This will frustrate the purpose of the Act. The detenu cannot be permitted to take advantage of his own misdeed of absconding. We find that the State has successfully explained the delay thus caused. The purpose of the detention has not come to an end. The point thus raised by the learned Counsel for the petitioner has got no force and is rejected.

30. The second contention of the learned Counsel for the petitioner was that the detention has become bad for noncompliance of Section 10 of the Act which is quoted below :

"Section 10. Reference to Advisory Board. Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of

detention of a person under the order, place before the Advisory Board constituted by it under Section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order and in case where the order has been made by an officer mentioned in subsection (3) of Section 3, also the report by such office under subsection (4) of that Section".

After hearing the learned Counsel for the petitioner on this point we directed the Government Advocate to produce the jail records and the record of, the officer of the District Magistrate in connection with the case. After perusal of the record the following facts emerged :

(1) On 31/3/1988 the order of detention was passed by the District Magistrate, Allahabad.

(2) On 20/7/1989 the petitioner was detained at Ghaziabad and thereafter detention order and the grounds of detention was served on the petitioner, copies of which have been filed by the petitioner as Annexure 7 to the writ petition.

(3) On 7/8/1989 the petitioner handed over written representation dated 5/8/1989, addressed to the State Government, to the jail authorities. The same day the said representation was sent to the State Government under registered cover.

(4) On 11/8/1989 the copy of the representation had been sent to the District Magistrate.

31. The representation of the detenu was received on 11/8/1989 by the District Magistrate. 12/8/1989 was the second Saturday and 13/8/1989 was Sunday. On 14/8/1989 it was sent to the Senior Superintendent of Police for comments. 15/8/1989 was a public holiday (Independence Day). The comments were received from the office of the Senior Superintendent of Police by the District Magistrate on 17/8/1989. The representation of the detenu was forwarded by the District Magistrate alongwith the comments to the State Government on 17/8/1989 which was received by the State Government on 18/8/1989.

32. The State Government placed the aforesaid representation alongwith the comments of the District Magistrate, Allahabad before the Advisory Board on 18/8/1989. The Joint Secretary, the Special Secretary and the Home Secretary examined the aforesaid representation on 18/8/1989, 19/8/1989 and 21/8/1989 respectively. Nothing was done on 20/8/1989 as it was a Sunday. Finally, the representation of the petitioner was rejected by the State Government on 23/8/1989.

33. The petitioner was actually detained on 20/7/1989 and his case was referred to the Advisory Board by the State Government on 5/8/1989 within 21 day from the date of actual detention of the petitioner as contemplated by Section 10 of the Act. The Advisory Board heard the petitioner personally on 19/8/1989 and found that there was sufficient cause to detain the petitioner. The State Government once again examined the entire matter of the petitioner and was of the view that

the detention deserves to be confirmed. This order was issued on 29/8/1989.

34. The detention order dated 31/3/1988 and all the material documents having bearing on the said order reached the State Government on 24/1/1988. The said order was approved by the State Government on 9/4/1988 which was communicated to the district authorities on 11/4/1988.

35. The State Government reported to the Central Government about the approval of the detention order on 11/4/1988. On the same detention order, the grounds of detention and all other papers were also sent which were received by the Secretary, Ministry of Home Affairs, New Delhi on 13/4/1988 within 7 days from the date of approval. This proves that the State Government had complied with the provisions of Sections 3 (4) and 3 (5) of the Act.

36. From the Jail record, which we have perused personally, it is clear that the petitioner did not hand over any representation in the name of the Central Government. He had only made a representation to the State Government. In some other cases we found from the Jail register that the representations made to the State Government as well as the Central Government were sent to them respectively.

37. In support of his contention the learned Counsel for the petitioner has relied upon a decision reported in AIR 1984 SC 46 *Raisuddin v. State of V. P.* In that case, the petitioner had addressed his representation not to the State Government as contemplated in Section 8 of the Act, but to the District Magistrate, Moradabad. He received it on 24/11/1982 and promptly, on the same day, he forwarded the same to the Senior Superintendent of Police for later's comments. The comments were received by the District Magistrate on 27/11/1982. The District Magistrate forwarded the report to the State Government on 3/12/1982 enclosing the petitioner's representation and the comments of the Senior Superintendent of Police. The case of the petitioner in that case that there had been undue and inordinate delay on the part of the detaining authority in forwarding the representation of the petitioner to the State Government inasmuch as nearly six days had elapsed by the office of the Senior Superintendent of Police and the submission of the same to the State Government by the District Magistrate. The District Magistrate has given good explanation. On account of the fact he had to tackle some explosive situation of the district, he could not get any time to consider the matter of the petitioner. The Hon'ble Supreme Court summoned the record of the case and after being satisfied found that the petitioner's representation has been dealt with by the District Magistrate with all promptness that was reasonably possible under the circumstances. The charge of inordinate delay of six days was disbelieved.

38. Applying the ratio of this decision to the facts of the present case, can be safely held that the State has given sufficient explanation for the delay of few days. The case relied upon by the learned Counsel for the petitioner is of no help to him.

39. In the case reported in 1985 ALJ 1314 State of U. P. v. Mohant Singh, the Hon"ble Supreme Court has relied upon earlier decision reported in AIR 1975 SC 115 Khudi Ram Das v. State of West Bengal, wherein it has been held as under :

"The constitutional imperatives enacted in this Article (22) of twofold : (1) the detaining authority must, as soon as may be, that is, as soon as practicable after the detention, communicate to the detenu the grounds on which the order of detention has been made ; (2) the detaining authority must afford the detenu the earliest opportunity of order of detention. These are the barest minimum safeguards which must be observed before an executive authority can be permitted to preventively detain a person and thereby drawn his right of personal liberty in the name of public good and social security."

40. No doubt the framework of Section 10 of the Act are mandatory and the representation has to be placed within three weeks of the detention In that case the representation was placed before the Advisory Board 22 days after the date of detention of the petitioner. The High Court took the view that there was a clear breach of Section 10. It held that the detention was bad in law. The order of detention was thus quashed. On Appeal by the State of U. P. the Hon"ble Supreme Court in that case relying upon the ratio in Shamser Singh's case (reported in AIR 1985 SC 1082) held that the High Court should not have quashed the order of detention but in view of the lapse of almost three and half years after the detention was quashed, the Supreme Court did not interfere with the decision of the High Court and the appeal was dismissed on this ground only. As a matter of fact, the decision relied upon by the learned counsel for the petitioner does not support him.

41. Another case relied upon by the learned Counsel for the petitioner is reported in AIR 1985 SC 1082 State of Rajasthan v. Shamser Singh. The facts of that case are : Rajasthan High Court had allowed the writ petition of the detenu who was an Advocate and detained under Section 3 of the Act. While doing so, the High Court held that the representation of the detenu had not been placed before the Advisory Board within three weeks as required by Sec. 10 of the Act. Advisory Board has not considered the documentary evidence produced by the detenu. The materials on the record which have been considered by the Advisory Board in formulating its recommendations to the State Government had not been transmitted to the Government and the same was not available before the State Government when it made the order of confirmation. The Court was also of the further view that the contents of the intelligence reports referred to in the grounds of detention had not been supplied to the detenu and he had, therefore, been deprived of the opportunity of making an effective representation against his detention. On appeal by the State of Rajasthan, the judgment of the High Court was set aside and the detention order was upheld by the Hon"ble Supreme Court. The admitted position in that case was that there was a delay of one day in placing the representation of the detenu before the Board. The Supreme Court while allowing the appeal of the State and setting aside the judgment of the High

Court in paragraph 10 of the judgment took the view :

"Keeping the attendant circumstances of this case in view, we find it difficult to hold that the time taken by the State Government can amount to withholding of the representation which resulted in noncompliance of Section 10 of the Act so as to vitiate the detention."

While recording such a finding reliance has also been placed in the cases reported in AIR 1983 SC 849 *Coralie Mullin v. W.C. Khambra*, AIR 1970 SC 675 *Jayanarayan Sukul v. State of West Bengal* and AIR 1984 SC 46 *Raisuddin v. State of U. P.* The last case in its paragraph 11 of the judgment lays down as under :

"In this context, we consider it necessary to emphasize that the question whether the representation submitted by the detenu has been dealt with all 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 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."

42. It has further been held that no prejudice has been caused to the detenu on account of delay of a day beyond the statutory period in placing the representation before the Advisory Board. The finding of the High Court on other points have also been set aside by the Supreme Court. We get strength from this decision of the Supreme Court in holding that the delay, if any, was caused in the present case will not invalidate the detention which has successfully been explained by the State Government.

43. The learned Counsel for the petitioner has also relied upon a decision reported in AIR 1980 SC 849 *Coralie Mullin v. W. S. Khambra*, which need not be discussed again because in the case of *Shamsher Singh* this case has been considered.

44. Applying the ratio of *Shamsher Singh* case, in the instant case the State has given good explanation for the delay of 3 or 4 days and we are satisfied that the delay thus caused was not on account of any negligence on the part of the State machinery. On the other hand, it shows that the authorities have acted with great promptness in sending the representation to the State Government on 7/8/1989, the day it was received from the detenu. The provisions of Section 10 of the Act have been substantially complied with. The contention thus raised has

got no force and is rejected.

45. The third point raised by the learned Counsel for the petitioner was that no effective representation could be made by the petitioner as the copy of the history sheet has not been supplied to him. In support of his contention he has relied upon a decision reported in AIR 1974 SC 888 Alek Mohammad v. State of West Bengal. In that case a particular incident communicated to the petitioner was that he and his associates were engaged in committing theft of Telephone cable wires belonging to the P&T Department. The order was based on the ground that in consequence of the activity which attracted clause (iii) of Section 3(1)(a) of the Maintenance of Internal Security Act, 1971, the Telecommunication System was disturbed. This was the sole ground on which the petitioner could possibly make a representation. However, the District Magistrate in his affidavit in the opposition, has stated that the petitioner was one of the notorious stealers of railway materials and cable wire. The Supreme Court while considering this matter was of the view that this important and injurious information was not communicated to the petitioner and, therefore, could not have been the subjectmatter of any effective representation. But in the instant case, the District Magistrate has only used word "notorious" without any reference to special activity regarding which the material could be supplied to the petitioner. Thus, this case is distinguishable on facts. The learned Counsel for the petitioner has also made a reference to a case reported in AIR 1975 SC 550 Khudi Ram Das v. State of West Bengal. In that case, the scope of Article 22(5) of the Constitution was taken into consideration and while doing so, the Court held :

"The "ground" under Article 22(5) mean all the basic facts and materials which have been taken into account by the detaining authority in making the order of detention and on which, therefore, the order of detention, is based. Nothing less than all the basic facts and materials which influenced the detaining authority in making the order of detention, must be communicated to the detenu. This is the plain requirement of the first safeguard in Article 22(5). The second safeguard in Article 22(5) requires that the detenu shall be afforded the earliest opportunity of making representation against the order of detention. No avoidable delay, no shortfall in the materials communicated shall stand in the way of the detenu in making an earlier, yet comprehensive and effective representation in regard to all basic facts and materials which may have influenced the detaining authority in making the order of detention depriving him of his freedom."

46. This case does not in any way help the petitioner. On the other hand, we find in the instant case that the order of detaining authority is based on the incident which took place on 30/3/1988 in the Collectorate compound and all the relevant material in that connection has been supplied to the petitioner to make effective representation. The learned Counsel for the petitioner has also made a reference to a case reported in AIR 1985 SC 849 Caralie Mullin v. W. C. Khambra and AIR 1984 SC 46 Raisuddin v. State of U. P. The principle laid down in these two cases

have been considered by a later judgment of the Supreme Court reported in 1985 SC 1082 State of Rajasthan v. Shamsheer Singh, which has been discussed elaborately in the preceding paragraphs. This contention is also devoid of force and is accordingly rejected.

47. The fourth point raised by the learned Counsel for the petitioner was that there was a denial of opportunity of making an effective representation to the Union Government and there was violation of Article 22 of the Constitution of India. The said Article is quoted below :

"22. Protection against arrest and detention in certain cases.

(1)

(7) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

48. The submission of the learned Counsel for the petitioner is devoid of merit inasmuch as it has come on record that the petitioner had not made any representation to the Union of India. Had there been any such representation, then the same could also be sent to the Union of India in compliance with the provisions of the Act. The Jail record which has been examined by us does not support the petitioner's contention.

49. The last submission of the learned Counsel for the petitioner was that since the District Magistrate has relied upon the criminal background of the petitioner and the copies of those documents have not been supplied to him, the detention becomes vitiated. The grounds of the detention served on the petitioner alongwith the detention order shows that it has referred to the incident which occurred on 30 31988 which resulted into disturbance of the public order. We do not find that any document which was material in support of the detention order was not supplied to the petitioner. He had full opportunity of making a proper representation. Mere use of the word "criminal history" in the report of the Senior Superintendent of Police and not supplying the copy of the history sheet in no way vitiates the detention order. The point thus raised is also devoid of merit and is accordingly rejected.

50. In the case of Smt. Asha Keshavrao Bhosale v. Union of India and another reported in AIR 1986 SC 283, while considering the nonsuppliance of the report of intelligence, the Supreme Court held as under :

"Where an order of detention was passed under Section 3(1) and the contraband articles were alleged to have been received on the seashore at the back of the Raj Bhavan access to which place was only through the Raj Bhawan, and an employee of the Raj Bhavan had allowed the truck to enter into the Raj Bhavan compound for the purpose of transporting the contraband articles the order of

detention could not be challenged on the ground that the grounds of detention disclose that the detaining authority had relied upon contact between the detenu and the employee and the source of information for ascertaining the existence of relationship was described as intelligence report but the same had not been furnished to the detenu when adequate material had been disclosed and no prejudice had been caused for want of further closure. It may be that the exact information received from the intelligence source had not been made available to the petitioner or placed on record but sufficient material with reference to the intelligence report had been made available."

51. The Supreme Court took the view that relevant material has been supplied to the petitioner for the purpose of making effective representation and no prejudice has been caused to him at any point of time and dismissed the petition. This case also does not support the petitioner's case.

52. No other point survives for consideration.

53. After having given our anxious consideration to the merits of the case and for the reasons given above we do not find any merit in the writ petition. It is accordingly dismissed.