Prabhu Dayal Deorah

Vs

The District Magistrate, Kamrup and Others

Raj Kumar Deorah

Vs

The District Magistrate, Kamrup and Others

Writ Petitions Nos. 1496 and 1497 of 1973

(K.K.Mathew, A. K. Mukherjea, M.H. Beg JJ)

11.10.1973

JUDGMENT

MATHEW, J.

1. (for himself and Mukherjea, J.) - The petitioners question the legality of the orders of detention dated July 25, 1973 passed by the District Magistrate, Kamrup, under Section 3 (2) (a) of the Maintenance of Internal Security Act, 1971, hereinafter referred to as the "Act" and pray for issue of writs in the nature of habeas corpus.

2. The orders of detention state that the detaining authority is satisfied that with a view to prevent the petitioners from acting in a manner prejudicial to the maintenance of supplies and services essential to the community in Kamrup District, it is necessary that they should be detained in Gauhati Jail with immediate effect until further orders.

3. On July 30, 1973, the petitioners surrendered themselves before the Additional District Magistrate. On the same day, each of the petitioners was served with the order of detention and also the grounds of detention together with a letter informing him of his right to make a representation against the order of detention to the State Government.

4. The grounds of detention served upon the petitioner Prabhu Dayal Deorah read as follows :

> "That you, being one of the partners and in the active management of M/s. Deora Flour and Rice Mills, Zoo Road, Gauhati and M/s. Srinivas Basudeo, Fancy Bazar, Gauhati are responsible for unauthorised milling of paddy in M/s. Deora Flour and Rice Mills at Zoo Road, Gauhati and smuggling of the resultant rice to Meghalaya for earning undue profit. You are also responsible for unauthorised hoarding of rice and sugar in the premises of M/s. Deora Flour and Rice Mills at Zoo Road and M/s. Srinivas Basudeo at Fancy Bazar for the sole purpose of selling these commodities at higher prices in and outside Gauhati for profiteering.
>
> On July 25, 1973 the following quantities of paddy and rice were unearthed and seized from your unauthorised possession at Zoo Road (Deora Flour and Rice Mills)

premises

1. Sali paddy .. .. 147 bags 2. Ahu paddy .. .. 207 bags 3. Sali Mota rice (Arua) .. .. 239 bags 4. Ahu rice .. .. 8 bags 5. Joha rice .. .. 15 bags##

That on January 4, 1972, 191 bags of sugar were seized by the Supply Officials of Gauhati from your unauthorised possession at Messrs, Basudeo, Fancy Bazar, Gauhati.

That on May 16, 1972 the supply officials seized 105.03 quintals of rice from your unauthorised possession at Messrs. Srinivas Basudeo, Fancy Bazar, Gauhati.

That you indulged in such trade activities which created acute scarcity and high prices of rice and sugar in Gauhati market.

You are, thus acting in a manner prejudicial to the maintenance of supplies and services essential to the community as a whole in this district and your being at large has jeopardised the maintenance of such supplies and services to the community."

5. The grounds of detention served on the petitioner Raj Kumar Deorah read as follows :

"That you being a close associate of Shri Prabhu Dayal Deora son of Late Basudeo Deora of Zoo Road, Gauhati and in the active management of Basudeo, Fancy Bazar, Gauhati, are responsible for unauthorised milling of paddy in Messrs. Deora Flour and Rice Mills at Zoo Road, Gauhati and smuggling of the resultant rice to Meghalaya for earning undue profit. You are also responsible for unauthorised hoarding of rice and sugar in the premises of Messrs, Deora Flour and Rice Mills at Zoo Road and Messrs, Srinivas Basudeo at Fancy Bazar for the sole purpose of selling these commodities at higher prices in and outside Gauhati for profiteering.

That on July 25, 1973 the following quantities of paddy and rice were unearthed and seized from your unauthorised possession at Zoo Road (Deora Flour and Rice Mills premises) :

1. Sali paddy .. .. 147 bags 2. Ahu paddy .. .. 207 bags 3. Sali Mota rice (Arua) .. .. 239 bags 4. Ahu rice .. .. 8 bags 5. Joha rice .. .. 15 bags##

That on January 4, 1972, 191 bags of sugar were seized by the supply officials of Gauhati from your unauthorised possession at Messrs Srinivas Basudeo Fancy Bazar, Gauhati.

That on May 16, 1972 the supply officials seized 105.03 quintals of rice from your unauthorised possession at Messrs. Srinivas Basudeo, Fancy Bazar, Gauhati.

That you indulged in such trade activities which created acute scarcity and high prices of rice and sugar in Gauhati market.

You are, thus acting in a manner prejudicial to the maintenance of supplies and services essential to the community as a whole in this district and your being at large has jeopardised the maintenance of such supplies and services to the community."

6. On August 5, 1973, each of the petitioners sent his representation to the State Government through the jail authorities of Gauhati raising various grounds against the validity of the order of detention. Both representations were rejected by the State Government on August 28, 1973 and their cases, together with their representations were sent by the State Government to the Advisory Board constituted under Section 9 of the Act.

7. Three contentions have been advanced on behalf of the petitioners in this Court : (1) that the grounds of detention were vague and so the petitioners were denied of their constitutional right to make effective representations against the orders of detention; (2) that there was inordinate delay in disposing of the representations by the Government and that was sufficient to vitiate the detention of the petitioners; and (3) that the detaining authority did not apply its mind to the facts of the case to find out whether it was necessary to detain the petitioners for preventing them from acting in a manner prejudicial to the maintenance of supplies and services essential to the community.

8. The first ground for detention states that the petitioners are responsible for unauthorised milling of paddy in Deora Flour and Rice Mills and smuggling the resultant rice to Meghalaya for selling it for earning undue profit. The period during which the unauthorised milling of paddy has been carried on was not state in the grounds of detention nor is there anything to indicate when and how the resultant rice was smuggled to Meghalaya for earning undue profit. The fact that the grounds communicated to each of the petitioners mention the seizure of paddy and rice from the unauthorised possession of the petitioners from the mill in question on July 25, 1973, gives no particulars as regards unauthorised milling of paddy or the smuggling of the resultant rice to Meghalaya for earning undue profit. The first ground of detention was, therefore, vague and that is sufficient to vitiate the detention orders.

9. The learned Attorney-General, appearing for the respondents did not contend that the first ground of detention, taken by itself, was not vague, if smuggling of rice to Meghalaya referred to the past activities of the petitioners. But he said that the reasonable way to understand that ground is to read it in such a way as to imply that the smuggling of the resultant rice to Meghalaya was for earning undue profit and that smuggling was only the purpose for which unauthorized milling of paddy was done. IN the return filed on behalf of the respondents, this is how the ground is read :

> "Detailed particulars have been given in the grounds as to the detention of unauthorised paddy and milled rice in the locked godowns of Messrs. Deorah Rice and Flour Mills, Gauhati and in view of the circumstances state in the previous paragraphs, the purpose of hoarding rice and milling paddy in unauthorised manner was to smuggle the goods for undue profits. The ground clearly and unambiguously states that the petitioner is responsible for unauthorised milling of paddy in Messrs. Deorah Rice and Flour Mills at Zoo Road, Gauhati for the purpose of smuggling the rice to Meghalaya for earning undue profits. The materials on which the latter part of the grounds i.e. smuggling of resultant rice to Meghalaya for earning undue profits is based are the materials which have been mentioned in the preceding paragraphs and, as held earlier by this Hon'ble Court, are not necessary to be mentioned in the grounds.'

10. There can be no doubt that the first ground postulated that the petitioners were indulging in unauthorised milling of paddy and also in smuggling the resultant rice to Meghalaya for earning undue profit. As already stated, no particular instance of smuggling was given, nor the period during which the smuggling operation was carried on mentioned in the ground. We could have understood

the contention of the learned Attorney-General if the ground had stated that the petitioners were responsible for unauthorised milling of paddy and that was for the purpose of smuggling the resultant rice to Meghalaya for earning undue profit. Then it could have been said that no particulars about the smuggling would be available as it was only a natural inference of the purpose of the of humpty dumpty if we are to read the ground in the way in which it has been read in the return filed on behalf of the respondents. We have no hesitation in holding that the first ground is an independent ground and refers to the past activities of the petitioners namely unauthorised milling of paddy and the smuggling of the resultant rice to Meghalaya for earning undue profit.

11. It was said that grounds are nothing but "conclusion of facts and not complete recital of facts" and when Article 22 (5) of the Constitution says that the grounds on which the detention order has been made must be communicated to the detenue, it can only mean that the detaining authority must supply him with his conclusions of facts and the dictum of Kania C.J., writing for the majority, in the State of Bombay v. Atma Ram Sridhar Vaidya was cited in support of it. But we think that the learned Judge was careful enough to point out that if the representation has to be intelligible to meet the charges contained in the grounds, the information conveyed must be sufficient to attain that end. In other words, the majority decision in that case assumed that the requirement of Article 22 (5) will not be satisfied unless the detenue is given the earliest opportunity to make a representation against the detention and that no opportunity to make the representation can be effective unless the detenue is furnished with adequate particulars of the grounds of detention.

12. In Dr. Ram Krishan Bhardwaj v. The State of Delhi and Others, Patanjali Sastri, J., speaking for the Court assumed that in Atma Ram Sridhar Vaidya's case (supra) the majority decision was that the detenue has the right to be furnished with full particulars to make an effective representation. The Court also said that the constitutional requirement must be satisfied in respect of each of the grounds communicated.

13. As one of the grounds communicated to the petitioners is found to be vague, the detention orders must be pronounced to be bad on the basis of a series of decisions of this Court [see The State of Bombay v. Atma Ram Sridhar Vaidya (supra); Dr. Ram Krishan Bhardwaj v. The State of Delhi and Others (supra); Motilal Jain v. The State of Bihar and Mishrilal Jain v. The District Magistrate, Kamrup and Others]. These decisions followed the decision of the Federal Court in Keshav Talpade v. Emperor where it was said :

> "If a detaining authority gave four reasons for detaining a man, without distinguishing between them, and any two or three of the reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one or two good reasons had been before them."

We cannot predicate that if the first ground was excluded, the detaining authority would have passed the order.

14. The fact that one of the grounds mentions that paddy and rice had been unearthed and seized from the unauthorized possession of the petitioners from the rice mill in question on the date of the detention order would not necessarily lead to the inference that the petitioners have been indulging in unauthorized milling of paddy, much less that they were smuggling the resultant rice to Meghalaya for earning undue profit. It cannot, therefore, be said that the first ground, namely, that the petitioners are responsible for unauthorized milling of paddy and smuggling of the resultant rice

to Meghalaya for earning undue profit, is a conclusion reached from the fact of seizure of paddy and rice on July 25, 1973 or the seizure of rice on May 16, 1972 "from their unauthorized possession at Messrs. Srinivas Basudeo, Fancy Bazar, Gauhati".

15. These are not only cases where one of the grounds of detention was vague, but also cases where the detaining authority did not apply its mind at all to one of the grounds of detention. If the detaining authority had no particulars before it as regards the smuggling operation, how was it possible for it to have been satisfied that the petitioners were smuggling rice to Meghalaya for earning undue profit ? If there was any particular instance of smuggling of the kind in the mind of the detaining authority, it would have been possible for it to specify the particular instance at least in the grounds.

16. We think that the fact that the Advisory Board would have to consider the representation of the petitioners where they have also raised the connection that the grounds are vague would not in any way prevent this Court from exercising its jurisdiction under Article 22 (5) of the Constitution to be afforded the earliest opportunity of making a representation against the order of detention. That constitutional right includes within its compass the right to be furnished with adequate particulars of the grounds of the detention order. And, if their constitutional right is violated, they have every right to come to this Court under Article 32 complaining that their detention is bad as violating their fundamental right. As to what the Advisory Board might do in the exercise of its jurisdiction is not the concern of this Court. This Court is only concerned with the question whether any of the grounds communicated to the petitioners was vague which would' preclude them from making an effective representation. We do not think that because the representations of the petitioners are pending consideration before the Advisory Board and the Advisory Board would also go into the question of the vagueness of the grounds communicated to them, this Court should to exercise its jurisdiction under Article 32. In other words, we cannot agree with the proposition that because the Advisory Board was seized of the matter when the writ petitions were filed and would also consider the contention of the petitioners in their representations that the grounds were vague, we should not interfere with the orders of detention on the score that one of the grounds communicated to the petitioners was vague.

17. The Attorney-General Strongly relied on the decision of this Court in Lawrence Joachim Joseph D'Souza v. The State of Bombay. There it was held that if the nature of the activity for which detention was ordered was such that no better particulars could be given, the detention order cannot be struck down as bad. In that case the ground of detention was that with the financial help of the Portuguese Government the petitioner there was carrying on espionage activities with the help of underground workers and that he was also collecting intelligence about security arrangements on the border area and was making the intelligence available to the Portuguese authorities. In answer to the contention that the ground was vague as no particulars were furnished, the Court first referred to the majority decision in Atma Ram Sridhar Vaidya's case (supra) as laying down that the constitutional right of a detenue under Article 22 (5) consists of two components, namely, the right to be furnished with the grounds of detention and the right to be afforded the earliest opportunity for making representation against the detention which implies the right to be furnished with adequate particulars of the grounds of detention to enable proper representation being made, and then said (at p. 391) :

> "These rights involve corresponding obligations on the part of the detaining authority. It follows that the authority under a constitutional obligation to furnish reasonably definite grounds, as well as adequate particulars then and there, or shortly thereafter. But the right of the detenue to be furnished particulars, is subject to the

> limitation under Article 22 (6) whereby disclosure of facts considered to be against public interest cannot be required. It is however to be observed that under Article 22 (6) the facts which cannot be required to be disclosed are those 'which such authority considers to be against public interest to disclose."

No, question of public interest is involved in the case in hand. At any rate, no such plea has been put forward in the return. Whether we would have harkened to any such plea in this case, if put forward, is another matter. Any general observations in that judgment will have to be read in the light of the paramount consideration of public interest involved therein.

18. Nor are we satisfied that the fact that the petitioners could have asked for further particulars but that they did not do so, would be enough to salvage the orders of detention. The right to call for particulars has been recognized in Atma Ram Sridhar Vaidya's case (supra) as flowing from the constitutional right to be afforded a reasonable opportunity make representation. This Court said in Lawrence Joachim Joseph D'Souza's case (supra) that if the grounds are not sufficient to enable the detenue to make a representation, the detenue, if he likes, may ask for particulars which would enable him to make the representation and the fact that he had made no such application for particulars is, a circumstance which may well be taken into consideration, in deciding whether the grounds can be considered to be vague.

19. If a ground communicated to the detenue is vague, the fact that the detenue could have, but did not, ask for further particulars is immaterial. That would be relevant only for considering the question whether the ground is vague or not.

20. In this view of the matter, we do not think it necessary to consider the question whether disposal of the representations by the Government was inordinately delayed and for that reason the detention orders are vitiated. Nor is it necessary for us to consider the other question whether the detaining authority did apply its mind to the other grounds mentioned in the grounds communicated to the petitioners.

21. The facts of the cases might induce mournful reflection how an honest attempt by an authority charged with the duty of taking prophylactic measures to secure the maintenance of supplies and services essential to the community has been frustrated by what is popularly called a technical error. We say and we think it is necessary to repeat, that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of procedure. And observance of procedure has been the bastion against wanton assaults on personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law. The need today for maintenance of supplies and services essential to the community cannot be over-emphasized. There will be no social security without maintenance of adequate supplies and services essential to the community. But social security is not the only goal of a good society. There are other values in a society. Our country is taking singular pride in the democratic ideals enshrined in its constitution and the most cherished of these ideals is personal liberty. It would indeed be ironic if, in the name of social security, we would sanction the subversion of this liberty. We do not pause to consider whether social security is more precious than personal liberty in the scale of values, for, any judgment as regards that would be but a value judgment on which opinions might differ. But whatever be of impact on the maintenance of supplies and services essential to the community, when a certain procedure is prescribed by the Constitution or the laws for depriving a

citizen of his personal liberty, we think it our duty to see that procedure is rigorously observed, however strange this might sound to some ears.

22. The petitioners are entitled to be released from custody. We make the rule nisi absolute and order the immediate release of the petitioners from custody.

BEG, J. (dissenting) -

The petitioners Prabhu Dayal Deorah and Raj Kumar Deorah, have filed separate petitions for writs of habeas corpus and orders of release after investigating questions raised by them against their detention orders dated July 25, 1973 made following a Police raid on July 25, 1973 at the stores of the Deorah Flour and Rice Mills at Zoo Road Gauhati. The identically worded orders of the District Magistrate, Kamrup, against them state that the detaining authority is satisfied that with a view to preventing them from acting in a manner prejudicial to the maintenance of supplies essential to the community in the Kamrup District, it is necessary that they be detained at Gauhati Jail with immediate effect until further orders. The order mentioned that with immediate effect until further orders. The order mentioned that they are being passed under Section 3 (2) (a) of the Maintenance of Internal intimate that grounds of detention will be served on the detenues within five days.

24. On July 30, 1973, soon after each petitioner had surrendered in the Court of a Magistrate on that very date, the District Magistrate, Kamrup, sent the grounds of detention to each petitioner with a letter informing the detenue of his right to make a representation against the order by which he had been detained and also that he has a right, if he so desires, to appear before the Advisory Board, to which his case would be submitted within thirty days of his detention.

25. The grounds of detention served upon Prabhu Dayal Deorah on the afternoon of July 30, 1973 read as follows :

> That you, being one of the partners and in the active management of Messrs, Deora Flour and Rice Mills, Zoo Road, Gauhati and Messrs, Srinivas Basudeo, Fancy Bazar, Gauhati are responsible for unauthorised milling of paddy in Messrs. Deora Flour and Rice Mills at Zoo Road, Gauhati and smuggling of the resultant rice to Meghalaya for earning undue profit. You are responsible for unauthorised hoarding of rice and sugar in the premises of Messrs. Deorah Flour and Rice Mills at Zoo Road and Messrs. Srinivas Basudeo at Fancy Bazar for the sole Mills at Zoo Road and Messrs. Srinivas Basudeo at Fancy Bazar for the sole purpose of selling these commodities at higher prices in and outside the Gauhati for profiteering.
>
> That on July 25, 1973 the following quantities of paddy and rice were unearthed and seized from your unauthorised possession at Zoo Road (Deora Flour and Rice Mills) premises.
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>
> 1. Sali Paddy .. .. 147 bags.
>
> 2. Ahu Paddy .. .. 207 bags.
>
> 3. Sali Mota rice (Arua) .. .. 239 bags.

4. Ahu rice .. .. 8 bags.

5. Joha rice .. .. 15 bags.

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That on January 4, 1972, 191 bags of sugar were seized by the Supply Officials of Gauhati from your unauthorised possession at Messrs. Srinivas Basudeo, Fancy Bazar, Gauhati.

That on May 16, 1972 the Supply Officials seized 105. 03 quintals of rice from your unauthorised possession at Messrs. Srinivas Basudeo, Fancy Bazar, Gauhati.

That you indulged in such trade activities which created acute scarcity and high prices of rice and sugar in Gauhati market.

You are, thus acting in a manner prejudicial to the maintenance of supplies and services essential to the community as a whole in the district and your being at large has jeopardised the maintenance of such supplies and services to the community.

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(Sd.)

Illegible,

July 30, 1972.

District Magistrate, Kamrup."##

26. The grounds of detention served on the afternoon of July 30, 1973 upon Raj Kumar Deorah read as follows :

"That you being a close associate of Shri Prabhu Dayal Deora, son of Late Basudev Deora of Zoo Road, Gauhati and in the active management Basudeo, Fancy Bazar, Gauhati, are responsible for unauthorised milling of paddy in Messrs. Deora Flour and Rice Mills at Zoo Road, Gauhati, and Smuggling of the resultant rice to Meghalaya for earning undue profit. You are also responsible for unauthorised hoarding or rice and sugar in the premises of Messrs. Deora Flour and Rice Mills at Zoo Road, and Messrs. Srinivas Basudeo at Fancy Bazar for the sole purpose of selling these commodities at higher prices in and outside Gauhati for profiteering.

That on July 25, 1973 the following quantities of paddy and rice were unearthed and seized from your unauthorised possession at Zoo Road (Deora Flour and Rice Mills premises) -

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1. Sali paddy .. .. 147 bags.

2. Ahu paddy .. .. 297 bags.

3. Sali Mota rice (Arua) .. .. 239 bags.

4. Ahu rice .. .. 8 bags.

5. Joha Rice .. .. 15 bags.

##

That on January 4, 1972, 191 bags of sugar were seized by the supply officials of Gauhati from your unauthorised possession at Messrs. Srinivas Basudeo, Fancy Bazar, Gauhati.

That on May 16, 1972 the supply officials seized 105.03 quintals of rice from your unauthorised possession at Messrs, Srinivas Basudeo, Fancy Bazar, Gauhati.

That you indulged in such trade activities which created acute scarcity and high prices of rice and sugar in Gauhati market.

You are, thus acting in a manner prejudicial to the maintenance of supplies and services essential to the community as a whole in this district and your being at large has jeopardised the maintenance of such supplies and services to the community.

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(Sd.)

District Magistrate, Kamrup."

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27. On August 5, 1973, Prabhu Dayal Deorah sent his representation to the State Government through the Jail authorities of Gauhati. He alleged in his Habeas Corpus Petition dated August 13, 1973 to this Court that his representation had not been disposed of by the State Government till then. Apart from complaining that the grounds served upon him were so vague and devoid of particulars as to nullify his constitutional right of making a representation against the order of detention, he also alleged that, as a criminal prosecution had commenced against him on July 28, 1973, for the alleged unauthorised possession of hoarded rice on July 25, 1973, a detention order against him, on the basis of this allegation, was illegal as the charge against him could be dealt with in the course of the criminal prosecution. The petitioner denied the correctness of the allegation that he had hoarded rice in an unauthorised fashion. He claimed to have the authority to keep the rice in question at Zoo Road, Gauhati, on the ground :

"That the aforesaid Deorah Rice and Flour Mill used to get paddy from Food Corporation of India for the purpose of milling and the said mill did rice milling job only as a licensee under the Rice Milling (Regulation) Act of paddy allotted by the Food Corporation of India and given for the purpose of milling by other authorised persons."

28. As regards 191 bags of sugar seized on January 4, 1972 from Messrs. Srinivas Basudeo, Fancy Bazar, Gauhati, of which also Prabhu Dayal Deorah was a partner, the petitioner claimed that it was covered by a licence (Annexure 'E' to the petition), the annexed copy of which showed that it was a provisional licence renewed on March 27, 1973 retrospectively for the year 1971 and 1972. According to the detaining authorities this did not prevent the possession of sugar seized from being unauthorised at the time of its seizure. As regards 105.03 quintals of rice seized on May 16, 1972, the petitioner denied "any seizure of rice from the unauthorised possession of Messrs. Srinivas Basudeo on May 16, 1972". He went on to explain that as the firm had a licence for dealing in rice, the possession of it could not be unauthorised. In this way, at least the seizure of rice was admitted, but, what was disputed was that its possession was unauthorised on May 16, 1972. The reply of the detaining authorities, set out in the affidavit of the Joint Secretary to the Government of Assam, was that there was no licence for this rice and that this was released only after a warning and directions were given to the petitioner as to how it should be dealt with.

29. Raj Kumar Deorah had denied connection with both the partnerships mentioned above. It is, however, clear from the affidavit filed in reply that he was found at the premises at the time of the seizure on July 25, 1973. He also repeated the explanations given by Prabhu Dayal Deorah such as that the rice was held on behalf of the Food Corporation of India or of Messrs. P. K. Gogoi & Co., or "other authorised persons". The detaining authorities had found the allegations to be false after contacting the Food Corporation and Messrs. Gogoi & Co. It was also revealed by the returns made in this Court that the petitioners, who were present when the stores were raided, had run away from the premises on one pretext or another and that nobody there could explain how the storage of all the rice found hoarded was authorised. The replies filed also showed that the sources of the total quantities seized had remained unexplained and that the quantities recovered were not shown to be covered by required authority or licences under the law.

30. The petitioners had tried to controvert the allegations made against them by the detaining authority but had not succeeded in satisfying the Government of Assam about the correctness of their stands either on questions of fact or of law raised by them. Their lengthy representations submitted to the Government on August 6, 1973, had been rejected on August 28, 1973, by the Government of Assam after due inquiries into allegations made by he petitioners. Their cases, with their representations, had been sent by the Government of Assam to the Advisory Board constituted under Section 9 of the Act. The Advisory Board, before which the petitioners' cases are pending, had the jurisdiction to consider all he contentions of the detenues on questions of fact and law arising in their cases. The Board had to report to the Government within ten weeks from the date of detention "as to whether there is or not sufficient cause for the detention of the person concerned". The recommendation of the Advisory Board to release a detenue was binding on the Government.

31. The relevant provisions of the Act regulating the procedure and powers of the Board may be set out here :

> "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 thirty days from the date of detention 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, also the report by such officer under sub-section (3) of Section 3.

11. Procedure of Advisory Boards. - (1) The Advisory Board shall after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard after hearing him in person, submit its report to the appropriate Government within ten weeks from the date of detention.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

12. Action upon the report of Advisory Board. - (1) In any case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith".

32. Three contentions have been advanced on behalf of the petitioners in an attempt to assail the legality of their detentions. They are : firstly, that the grounds are too vague and indefinite so that the detention orders are vitiated particularly because the Constitutional right of making an effectual representation against the detention orders is defeated; secondly, that there was inordinate delay in disposing of the representations of the petitioners which, by itself, was enough to vitiate the continued detention of the petitioners; and, thirdly, that the detaining authorities had not applied their minds to the facts of the case with a view to determining the need for detaining the petitioners for preventing them from acting in any manner prejudicial to the "maintenance of supplies and services essential to the community". I will take up each of these three grounds seriatim.

33. On the first question, there is considerable dispute between the two sides as to whether any ground is really vague. The learned Attorney General conceded that the first two paragraphs of the grounds would be vague if they were to constitute separate grounds and were to be considered in isolation from the succeeding paragraphs giving particulars. This, however, is not, according to the Attorney-General, the correct way of reading the document constituting the grounds with their particulars. It is submitted that it is obvious that the first two sentences are conclusions based upon the particulars of recoveries made from the premises of Messrs. Deorah Flour and Rice Mills at Zoo

Road, Gauhati, and of Messrs. Srinivas Basudeo at Fancy Bazar, Gauhati. The alleged responsibility of the petitioners for smuggling to Meghalaya, where it was being sold at higher rates, was said to be nothing more than a reasonable inference from patent fact. Similarly, the last two paragraphs, alleging indulgence in "trade activities which created scarcity and high prices of rice and sugar in Gauhati Market" and the prejudice caused to the "maintenance of supplies and services essential to the community as a whole in this district" and the effect of leaving the petitioners "at large" are said to be inferences and forecasts resulting from particulars of recoveries of rice and sugar said to have been found hoarded in an unauthorised manner at the times and places shown there. The three dates on which recoveries of hoarded sugar and rice were made, that is to say, January 4, 1972, May 16, 1972, and July 25, 1973, were stated. The places from which the recoveries were made are also clearly specified. The quantities of rice and sugar recovered on each occasion are given. So far as the recovery of rice on July 25, 1973 is concerned, the five qualities of rice recovered are also mentioned. It was this particular, about qualities of rice, which made it possible to say that no part of the rice, recovered could be a part of "Winter Lahi Paddy" allotted to the Deorah Flour and Rice Mills by the Food Corporation of India at Gauhati.

34. It has been very fairly and properly conceded by the learned Counsel for petitioners that seriously disputed questions of fact cannot be properly decided by this Court upon a writ petition under Article 32 of the Constitution. Moreover, it lies within the power and province of the detaining authorities to investigate and consider the correctness of the explanations given by the detenues of the recoveries made. It is apparent that they have not accepted the versions of the petitioners either about the sources of supplies of the quantities of sugar and rice shown to have been recovered or about the alleged authority or licence possessed by the petitioners at the times when the recoveries were made. They had also not accepted the correctness of the assertion of Raj Kumar Deorah that he had nothing to do with the two partnership firm involved. We are unable, upon the materials on record and in the proceedings before us now, to declare that the allegations constituting the grounds of detention are baseless. Nor does that really fall within our province to determine. We can, however, go into the question whether the grounds are so vague as to disable the petitioners from making effective representations against the detention orders or otherwise vitiate the detention orders.

35. If we accept the interpretation put by the Attorney-General upon the grounds of detention, they could not be said to be vague although they could be said to be badly drafted. The sentences at the beginning and end of the document stating the grounds in each case apparently constitute the conclusions or inferences reached from the particulars given in the body of the document. I do not see why the basic principle that a document, in order to correctly understand its meaning, should be read lengthy explanations submitted by the petitioners to the Government, where, after asserting that they were unable to understand or make representations against the grounds of detention, because of vagueness, they proceed to refute the allegations of fact contained in the particulars of the recoveries made, it is difficult to see how the petitioners were really prejudiced by the alleged vagueness or infirmity in drafting the grounds.

36. Assuming, however, that there was some infirmity or vagueness in some parts of the documents containing the grounds, can it be said that it was of such a kind as to vitiate the detention order ? This Court, following the principles laid down in Keshav Talpade v. Emperor (supra) has held in some cases that even if some of the grounds are vague the detention is vitiated. I am, respectfully, unable to concur with this view.

37. The principle laid down in Talpade's case (supra) was with reference to grounds, some of which

were good and the others extraneous to the purposes for which detention could be ordered. Moreover, there was no question there of a scrutiny of grounds by an Advisory Board which could separate the good from the bad. The Federal Court said (at page 8) :

> "If a detaining authority gives four reasons for detaining a man, without distinguishing between them, and any two or three of the reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one or two good reasons had been before them".

38. The cases cited before us to contend that vagueness of grounds given for detention would vitiate detention orders were : Dr. Ram Krishan Bhardwaj v. The State of Delhi and Others (supra); Motilal Jain v. State of Bihar and Others (supra); Rameshwar Lal Patwari v. State of Bihar and The State of Bombay v. Atma Ram Sridhar Vaidya (supra).

39. In Vaidya's case (supra) the Bombay High Court had allowed a habeas corpus petition because the grounds did not give the time, place, and nature of the activities indulged in by the petitioner so that his right to make a representation was defeated, although, the Bombay High Court had also held that the particulars, which were subsequently supplied to the detenue by the Commissioner of Police, were enough to enable him to make an effective representation. A Bench of five Judges of this Court held that there had been no contravention of the Constitutional right to make a representation. It was explained there that grounds which have to be communicated to the detenue were conclusions from facts, constituting particulars, all of which need not be conveyed to the detenue simultaneously. The particulars supplied subsequently were enough to remove the uncertainty from the grounds. If what may appear vague can be made definite by supplying particulars afterwards, it follows that, a fortiori, vagueness in the earlier or any other part of a document may be removed by the particulars contained in the remaining parts of the very document containing grounds.

40. It was also held by this Court in Lawrenece Joachim Joseph D'Souza v. The State of Bombay (supra) that the detenue has a right to call for particulars. This implied that mere alleged vagueness of grounds or insufficiency of particulars, without calling upon the detaining authority to remedy this defect, may not be enough to vitiate a detention order.

41. In Rameshwar Lal Patwari's case (supra) reliance was placed on Shibban Lal Saksena v. State of U.P., and Keshav Talpade v. King Emperor's case (supra), but all the grounds were found to be vitiated. It was held after examining one ground after another (at page 514) :

> "In this case at least two grounds are vague, one ground is found to be false and of the remaining in one there is no explanation and in the other there is a lame excuse that the driver of the truck did not furnish the full information. The case is thus covered by our rulings that where some grounds are found to be non-existing or are cancelled or given up, the detention cannot be justified. It is further covered by our decisions that if the grounds are not sufficiently precise and do not furnish details for the purpose of making effective representation the detention can be questioned".

Similarly, in Mishrilal Jain's case (supra), although each of the two grounds was found to be vague, it was held, relying upon the cases of Rameshwar Lal Patwari (supra), Pushkar Mukherjee and Others v. State of West Bengal, and Motilal Jain's case (supra), and Keshav Talpade's case (supra),

that, even if one of the two grounds was vague, it would vitiate the detention. It was noticed, in this case, that the petitioners contention was that he had no effective opportunity of making a representation because the grounds were vague. His complaint to the Government, which included the grievance that the grounds were vague, had been rejected.

42. In Motilal Jain's case (supra), after examining the various cases decided by this Court, a Bench of six Judges of this Court held that the grounds under consideration there included one ground which was vague and another which was non-existent with the result that the detenue did not get an effective opportunity to satisfy the Advisory Board about the insufficiency of the grounds of detention.

43. In Dr. Ram Krishan Bhardwaj's case (supra), a detention, under Section 3 of the Preventive Detention Act of 1952, was held to be vitiated on the ground that one of the grounds was vague so that his constitutional safeguard, by getting an opportunity of making a representation against his detention had been impaired. This was a decision under the provisions of an enactment of 1952.

44. In none of the cases cited before us was the question raised or decided whether, in a case where representations including those against vagueness of grounds, were made and were pending before an Advisory Board, which had full power to consider all objections on questions of fact and law and to reject any particular ground or grounds for vagueness or irrelevance and to recommend appropriate action after considering whether the residue was sufficient for detention, the detenues could be held to have been really deprived of the right to make a representation. It is true that the detenue has a right under Article 22 (5) of the Constitution to be afforded the earliest opportunity of making a representation against the order. That opportunity had been afforded to the detenues before us and they had made representations which included the grievance that some of the grounds were so vague and indefinite so as not to be intelligible.

45. With great respect for the views of my learned brethren, with which I regretfully differ, it seems to me that the question whether a detenue was or was not given due opportunity of making an effective representation, in particular case, is largely a question of fact which must be decided after taking into account the totality of facts. It cannot be satisfactorily decided by merely looking at the grounds of detention in every case. There can be no really binding authority unless some principle is laid down on a question which has to be determined primarily on the particular facts of each case.

46. The Advisory Board is given ten weeks' time from the date of detention, by provisions of Section 11 (1), to make its report. The validity of Section 11 (1) has not been challenged before us on the ground of conflict with Article 22 (5). The right of being afforded the earliest possible opportunity of making a representation is one thing and the right of having it considered and decided within a particular time is another. But, the right of making the representation cannot be construed so unreasonably as to practically demolish the unchallenged power, under a constitutionally valid statutory provision, to consider and decide the objections contained in a representation. There may be, occasionally, case where the grounds of detention may, prima facie, show that the detention is invalid or ordered for some collateral purpose in excess of power to detain, or, the facts indicating denial of the right of making an effective representation may be so patent and clear that it would be an unnecessary prolongation of an illegal detention to wait for the opinion of the Advisory Board. Such cases would, however, be exceptional.

47. When the Advisory Board has full power to consider every kin of representation against grounds of detention, including a grievance that any grounds are too vague or indefinite to be understood or

to enable a detenue to make an effective representation, the detenue should ordinarily wait at least until the report has been made by the Advisory Board before he complains that he has been really deprived of any right under the Act. If the provisions of Section 11 (1) of the Act are valid he could not complain that he has been denied a constitutional right of making a representation merely because his case could remain pending for decision before an Advisory Board for ten weeks. Moreover, that is not a ground for assailing either of the two detentions before us.

48. As the matter is pending before the Advisory Board, it is not really necessary for us to give a definite or final opinion on the question whether any of the grounds supplied to the petitioners is vague. I also think that it is not necessary to give a decision, at this stage, on the correct interpretation to be placed upon the grounds of detention. I will content myself indicating the lines on which cases like the ones before us should be decided.

49. I may mention here two cases cited by the Attorney-General to submit how the grounds supplied may be interpreted. In Naresh Chandra Ganguli v. The State of West Bengal & Ors., a distinction was made between the objects of detention, which sometimes find a place in grounds, and the particulars which contain facts on which the grounds are based. It was held here that the grounds, read in the context of particulars supplied, were neither vague nor irrelevant. In Lawrence Joachim Joseph D'Souza case (supra), it was held that, having regard to the nature of the activity for which preventive detention was ordered, no better particulars could be given.

50. It has to be borne in mind that preventive detention is not punitive detention. Hence, the mere fact that a past occurrence, used for forecasting probable future conduct of the detenue, could also be the subject matter of a prosecution for an offence, would not affect the validity of preventive detention.

51. Preventive detention orders involve forecasts, in general terms, based on past conduct of which particulars can be given. It is certainly not possible to give particulars of future anticipated conduct. All that can be done is to give a statement of an apprehension in the form of grounds as to what the detenue is likely to do, having regard to the particulars of past activities which may be given, so that preventive detention for one of the purposes for which it can be ordered, is shown to have become necessary in his case. The grounds and particulars must necessarily have a rational nexus with these purposes, or, in other words, must be relevant.

52. One of the questions argued was whether the reference to recovery of sugar so long ago as January 4, 1972, did not vitiate the detention order on the ground of its irrelevance. In reply, reliance was placed upon two decisions of this Court where it was held that mere references to past activities would not vitiate a detention order as that is not irrelevant in forecasting future conduct. These cases were : Bhim Sen v. State of Punjab and Rameshwar Shaw v. District Magistrate, Burdwan & Anr.

53. The recovery of 199 bags of sugar on January 4, 1972, was not so remote as to be considered irrelevant, particularly as hoarded rice was also recovered on May 16, 1972, and then, finally, came the discovery of hoarded rice on July 25, 1973. It is this chain of events which considered together, enabled the detaining authorities to form a reasonable apprehension as to the future conduct of the detenues.

54. A distinction between grounds which are merely vague and those which are extraneous or irrelevant often tends to be overlooked. Particulars of vague grounds can be, as seen already,

supplied even later so as to show that the grounds were justified. If not supplied, the detenue can also ask for them. But, no amount of particulars of it would cure the defect of a ground given which is extraneous to the purposes for which preventive detention may be ordered. Any such ground would vitiate the detention order eat its inception. At any rate, this Court could not separate the extraneous or irrelevant ground from the proper and the relevant ones. It could only order the release of detenue because something extraneous to the legally authorised objects of detention had also affected the decision to detain.

55. In Tarapade De & Ors v. The State of West Bengal, a Bench of five Judges of this Court explained the distinction between the vague grounds and irrelevant grounds and said that they do not stand on the same footing. It said (at page 218-219) :

> "We are unable to accept the contention that 'vague grounds' stand on the same footing as 'irrelevant grounds'. An irrelevant ground has no connection at all with the satisfaction of the Provincial Government which makes the order of detention. For the reasons stated in that judgment we are also unable to accept the contention that if the grounds are vague and no representation is possible three can be no satisfaction of the authority as required under Section 3 of the Preventive Detention Act. This argument mixes up two objects. The sufficiency of the grounds, which gives rise to the satisfaction of the Provincial Government is not a matter for examination by the Court. The sufficiency of the grounds to give the detained person the earliest opportunity to make a representation can be examined by the Court, but only from that point of view. We are therefore unable to accept the contention that the quality and characteristic of the grounds should be the same for both tests. On the question of satisfaction, as has been often stated, one person may be, but another may not be, satisfied on the same grounds. The aspect however is not for the determination of the Court, having regard to the words used in the Act. The second part of the enquiry is clearly open to the Court under Article 22 (5). We are therefore unable to accept the argument that if the grounds are not sufficient or adequate for making the representation the grounds cannot be sufficient for the subjective satisfaction of the authority".

56. It, however, seems to me that whether some of the grounds are merely vague or are irrelevant and extraneous to the purposes of the Act, the detenue can make a representation against them in such a way that it may be considered by the Advisory Board. The Advisory Board has full jurisdiction to declare a detention invalid or to recommend that, after excluding what may be vague or irrelevant, the detention should continue. So far as the Courts considering habeas corpus petitions are concerned, they cannot enter into sufficiency of grounds for detention They can only declare the detention vitiated on the ground that some of the grounds supplied are irrelevant or are so vague that no effective representation is possible against them. In those cases where detention is vitiated because particulars were not supplied at the earliest reasonably possible opportunity, so that the right of a detenue to make a representation is held to be defeated and on other ground, the detention would, strictly speaking, not be vitiated ab initio, but, it would become illegal only from the time when the infringement of the right to sufficient particulars to make a representation takes place. This takes us to the question whether the alleged delay in considering the petitioners' representations was sufficient to vitiate their detentions on the ground of infringement of their constitutional right to make representations against them.

57. In support of the second ground of attack - that the period of nearly three weeks taken by the

Government in rejecting the petitioners representations was so long as to defeat the right of petitioners to make a representation - the decisions cited before us on behalf of the petitioners were : Babul Mitra v. State of West Bengal & Ors., Khaidem Ibocha Singh, etc. V. State of Manipur. On the other hand, the learned Attorney General has relied on Deonarayan Mondal v. State of West Bengal, in which it was held that where the Government has satisfactorily explained the time taken in considering the detenue's representation, there could not be said to be an undue delay which defeated the right of a detenue to make a representation.

58. In the cases before us, there is no complaint that the Government had not forwarded the petitioners' representations to the Advisory Board within a reasonable time or that the Advisory Board had taken an unduly long time over the petitioners' cases. As already indicated above, the Advisory Board is given ten weeks' time, under Section 11 (1) of the Act, within which to make the report on a detenue's case. If this provision is valid (it may be repeated that its validity is not challenged here), it could not be said that there is undue delay in deciding a case if there is no infringement of this provision. And, if there is an infringement of this provision in a case that would provide an independent ground for invalidating the detention.

59. The only grievance of the petitioners in this respect is that the Government had deprived them of their rights of making representations because it took too long to reject their representations on August 28, 1973, during the pendency of their petition in this Court. Copies of their representations to the Government filed by the petitioners show that they have disputed every single fact, alleged illness, absence from Gauhati, given names of persons from whom the rice was alleged to have come, set up possession of licences to cover the quantities recovered in addition to taking the plea of the vagueness of the grounds of detention. The Government of Assam would naturally take sometime to verify the correctness of the allegations of fact made by the petitioners. I find that the affidavits filed on behalf of the Government have sufficiently explained the delay.

60. Coming to the last and third ground of attack, that the detaining authorities had not applied their minds to the facts of the petitioners' cases, the basis of this attack is two-fold : firstly, that the allegations made against he petitioners were not true; secondly, that the Government of Assam had taken nearly three weeks to verify the details, so that it must be presumed that they were not there before the detention was ordered.

61. As regards the first of the two grounds, I have to repeat that it is not for this Court to consider, as a rule, the correctness or otherwise of the assertions made on questions of fact in the returns filed. The matter is still pending before the Advisory Board which can examine them. We cannot, by holding that the detaining authorities had come to some incorrect conclusion, infer that they must have failed to apply their minds to the allegations made and facts ascertained by them. The detailed affidavits filed in reply show that they had fully applied their minds to the conflicting versions on questions of fact. As regards the second ground, it is enough to point out that the Government of Assam could not be presumed to be in possession of all the facts taken into account by the detaining officer. The detaining officer had not consulted the Government of Assam before ordering detention. Therefore, the reasonable time taken by the Government of Assam in making enquiries only shows that it took care to verify the correctness of allegations made by the petitioners, or, in other words, that it really applied its mind to the fact of their cases.

62. As the petitioners' cases are still pending before the Advisory Board, I think we ought to observe that any opinion which we may have expressed, in the course of discussion of matters argued before us, on questions pending before the Advisory Board, would not preclude the Board from going into

either questions of fact or of law raised by the petitioners before the Advisory Board. All that we could and should hold here is that the petitioners have not established an infringement of their constitutional right under Article 22 (5) to be afforded the earliest opportunity of making effective representations against their detention orders on the facts of the cases before us. They have, in fact, made representations, including those against alleged vagueness of some grounds to the Advisory Board. Power has been expressly given to the Board by Section 11 (1) of the Act, to call for further information, even suo moto, from the appropriate Government, if it deems it necessary to do so. The whole opinion of the Board is not confidential under Section 11 (4) of the Act. The effectiveness of the representations made by the detenues could only be gauged after the Advisory Board has given its opinion.

63. The question whether the grounds of detention show that the detention is ab initio illegal must, it seems to me, be kept distinct from the question whether they are so vague and devoid of particulars as to amount to a denial of the right to make an effective representation at the earliest opportunity. The totality of relevant facts and circumstances of each case must be taken into account to determine whether the opportunity of effective representation has been denied. The alleged vagueness or want of particulars, must be viewed in the context of the nature of activities alleged, the substance of the allegations made, the contents of actual representations made, and, last but not the least, the effect they have actually produced. And, in considering the last mentioned question, the fact that the case is still under consideration, within the legally fixed period of ten weeks from the detention, before an Advisory Board, which has full power and jurisdiction to eliminate some grounds as vague or wanting in particulars and to determine the sufficiency or otherwise of the rest of the grounds and particulars supplied, cannot be ignored.

64. If matters in dispute, including disputed questions of fact, relating to the validity of a detention had necessarily to be determined in this Court whenever habeas corpus petition is filed, it is difficult to see why the principle could not be extended so that an under trial prisoner, charged with the commission of an offence, could insist that the question of his innocence or guilt be tried and determined by this Court directly pending his trial by a Court of competent jurisdiction. In a case of preventive detention where fairly triable questions of fact or law, which can be more appropriately gone into and decided by an Advisory Board, are pending before the Board, the petition should be dismissed as premature barring very exceptional circumstances as already indicated above.

65. In Halsbury's "Laws of England" [III Edn. (Vol. III), p. 46], we find :

> "Although the Habeas Corpus Act, 1816, enables the return to be controverted, and a total absence of jurisdiction, or matters in excess of jurisdiction, may be alleged and proved by affidavit, facts alleged on the return which were within the jurisdiction of a court cannot be controverted".

66. I find that the petitioners before us have neither proved an excess of power to detain on grounds alleged against them nor that their detentions have subsequently become illegal due to denials of their constitutional rights to make effective representations.

67. No doubt this Court must zealously protect the personal freedom of citizens against arbitrary or unconstitutional invasions of it by executive authorities. But, it does not appear to me to be necessary, in order to do that, to stultify what is, in some respects, the more effective method of consideration of the whole case by an Advisory Board which could consider sufficiency of grounds of detention. In this respect the Board could do no more than we could ordinarily do in exercise of

our writ issuing jurisdiction. To allow the legally prescribed procedure for protection of personal liberty to operate freely and consistently with the social interests (sic) preventive detention is meant to safeguard appears to be the path of judicial wisdom.

68. A habeas corpus proceeding should test the legality of a detention and not the draftsmanship of the officer who passes a detention order or sends the grounds of his satisfaction. Even if some of the grounds of detention are vague, but others could reasonably satisfy the detaining authority that, to prevent much greater apprehended harm to social good from the anti-social activities of an individual, his preventive detention is imperative, the sufficiency of the remaining grounds of detention should be allowed to be determined by those charged with the duty to consider this question. We cannot indirectly do what we have repeatedly held to be not possible for this Court to do directly, or, in other words, we should not undertake to determine what is really and substantially only a question of sufficiency of grounds of detention.

69. Some vagueness seems often unavoidable and can almost invariably be discovered if we search assiduously for it among grounds of satisfaction relating to future course of conduct of an individual about which the detaining authority has to attempt a reasonable and honest forecast. It is only where a vagueness or indefiniteness is disclosed which either makes the satisfaction quite illusory and unreasonable or which really disables a detenue from making an effective representation that a detention is vitiated on such a ground. I am not at all satisfied that this is the position in the case before us.

70. The consequence of the views held and expressed by me above is that I would dismiss these Writ Petitions.

ORDER

71. In view of the majority judgment, the rule nisi be made absolute. We direct the immediate release of the petitioners from custody.

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