Kamarunnissa

Vs

Union of India and another

Writ Petn. (Cri.) Nos. 757, 759 and 760 of 1990 with Special Leave Petn. (Cri.) Nos. 731, to 733 of 1990

(A. M. Ahmadi, S. C. Agarwal JJ)

14.09.1990

JUDGMENT

AHMADI J

1.Three persons, namely (1) M. M. Shahul Hameed alias Gani Aslam, (2) Haja Mohideen alias Shahul Hameed Asarudeen and (3) Naina Mohammed alias Raja Mohd. Zafar were intercepted by the officers of Department of Revenue Intelligence on 5th October, 1989 at the Sahar International Airport, Bombay, as they were suspected to be involved in smuggling activities. They were escorted to the office of Directorate of Revenue Intelligence, Waldorf, Colaba, Bombay, where they were interrogated. On interrogation it was found that M. M. Shahul Hameed was to board flight No. CX-750 to Hongkong while the other two were to proceed to Dubai by Emirate Flight No. E-5 10 on that day. The said three persons were searched. Two balloon covered rolls secreted in the rectum of M. M. Shahul Hameed were removed and were found to contain diamonds and precious stones weighing about 905.70 carats and 77.37 carats, respectively. The said diamonds and precious stones valued at about Rs. 70 lacs were attached under a Panchnama. In addition to the same foreign currency of the value of Rs. 10,706 was also recovered and attached. His passport was also seized.

2. The other two persons were found to have swallowed 100 capsules each containing foreign currency of the total value of Rs. 6,99,930/-. The capsules were extracted from their person and the currency was recovered and attached under a Panchnama. In addition thereto foreign currency of the value of Rs. 1,466.50 was also found on their person during their search and the same too was attached and seized. Their passports were also seized.

3. All the aforesaid three persons belonged to Village Namboothalai of District Ramnath, Tamilnadu. Their statements were recorded on the same day i.e. 5th October, 1989. M. M. Shahul Hameed disclosed that his cousin Kasim, owner of a film company at Madras, had offered him a sum of Rs. 4,000/- for smuggling diamonds, etc., to Hongkong. On his agreeing, he was trained and was sent to Bombay with one Mohammad who was to introduce him to Mohideen and Rahim who were supposed to entrust him with the diamonds, etc., to be carried to Hongkong. Accordingly he came to Bombay with the said Mohammad and was duly introduced to the aforesaid two persons at a flat in Chembur where he stayed. The said Mohideen and Rahim arranged for his passport and ticket and gave him two rolls wrapped in balloons containing diamonds, etc., on the night of 4th October, 1989 for being carried to Hongkong. As per the training he had received, he concealed these balloons in his rectum before leaving for the Airport to catch the flight to Hongkong. In

addition to the same he was given a paper on which something was scribbled in Arabic. In the course of his interrogation he admitted the recovery and seizure of diamonds and precious stones and also gave the description of Kasim and Rahim. On 12th October, 1989 he wrote a letter retracting his statement made on 5th October, 1989. However, in his further statement recorded on 19th October, 1989 he admitted that his signature was obtained on the letter of 12th October, 1989 without disclosing the contents thereof to him and that his earlier statement of 5th October, 1989 was both voluntary and correct. Incidentally the statement of retraction was rejected by the Deputy Director of Revenue Intelligence on 20th October, 1989.

4. The other two persons whose statements were also recorded on 5th October, 1989 disclosed that they were both working at a Tea shop in Madras and knew Mohideen and Rahim who too were working with them. Rahim had suggested that they would be paid Rs. 2,000/- each if they were willing to smuggle foreign currency to Dubai by swallowing capsules containing the same. On their agreeing they too were trained and were then taken to Bombay where they were lodged in Vimi Lodge at Bhendi Bazar. On 4th October, 1989 they were given air tickets for travel to Dubai and 100 capsules each containing foreign currency. They swallowed the capsules and left by taxi for the Airport in the early hours of 5th October, 1989. They too were given a paper containing some scribbling in Arabic by Mohideen and Rahim. While they were waiting to catch their flight, they were intercepted as stated earlier. Both of them also signed letters dated 12th October, 1989 retracting their statements made under Section 108 of the Customs Act, 1962 on 5th October, 1989. However, in their subsequent statement of 19th October, 1989 they admitted that they were not aware of the contents of the letter of 12th October, 1989. They further admitted that what they had disclosed on 5th October, 1989 was both voluntary and correct. Their statements of retraction were also rejected by the Deputy Director of Revenue Intelligence on 20th October, 1989.

5. All the three aforesaid persons were produced before the learned Additional Chief Metropolitan Magistrate, Esplanade, Bombay on 6th October, 1989. They were taken on remand by the police for investigation. Barring M. M. Shahul Hameed, the other two had preferred applications for bail which were kept for hearing initially on 27th October, 1989 but the date was later extended up to 16th November, 1989. Their co-accused Kasim was arrested on 6th October, 1989 and was produced before the Additional Chief Metropolitan Magistrate, Egmore, Madras. He too was taken on remand. On 19th October, 1989 he too had preferred a bail application which was kept pending as the investigation was in progress. Since the period of remand was extended from time to time in the case of all the aforesaid four persons finally up to 16th November, 1989, the bail applications were also fixed for hearing on that date.

6. In the meantime on 10th November, 1989 the Joint Secretary to the Government of India in the Ministry of Finance, Department of Revenue, passed an order under subsection (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter called 'the Act') directing the detention of all the three persons 'with a view to preventing them from smuggling goods'. They were directed to be detained in the Central Prison, Bombay. This order of detention, though passed on 10th November, 1989 was in fact served on the three detenus on 21st November, 1989, i.e., after a lapse of about 11 days. The grounds of detention dated 10th November, 1989 were also served on the three detenus on the same day. Thereafter the Additional Secretary to the Government of India in the Ministry of Finance, Department of Revenue, made a declaration concerning the three detenus dated 20th December, 1989 under sub-section (1) of Section 9 of the Act after recording a satisfaction that they were likely to smuggle goods out of and through Bombay Airport, an area highly vulnerable to smuggling within the meaning of Explanation 1 to that section. This declaration was served on the detenus within the time

allowed by law. Thereupon, the wives of all the three detenus filed separate habeas corpus writ petitions under Article 226 of the Constitution in the High Court of Bombay on 18th January, 1990. These writ petitions were numbered 66, 67 and 68 of 1990. Four contentions were raised before the High Court, namely, (1) since the detenus were in custody their detention was unwarranted; (2) the detaining authority had betrayed non-application of mind by describing the offence with which the detenus were charged as 'bailable'; (3) the representation of the detenus dated 18th December, 1989 had not been disposed of promptly and there was inordinate delay; and (4) the authorities had failed to supply certain crucial documents called for by the detenus thereby depriving them of the opportunity of making an effective representation. All the three petitions came up for hearing before a Division Bench of the High Court on 21st March, 1990. The High Court rejected all the four contentions and dismissed the writ petitions. The said dismissal has led to the filing of Special Leave Petitions (Criminal) Nos. 731, 732 & 733 of 1990. Besides filing the said special leave petitions under Article 136 of the Constitution, the wives of the detenus have also filed separate Writ Petitions (Criminal) Nos. 751, 759 and 760 of 1990 under Article 32 of the Constitution. We have heard the three special leave petitions as well as the three writ petitions together and we proceed to dispose them of by this common judgment.

7. The learned counsel for the petitioners raised several contentions including the contentions negatived by the High Court of Bombay. It was firstly contended that the detenus had made representations on 18th December, 1989 which were rejected by the communication dated 30th January, 1990 after an inordinate delay. The representations dated 18th December, 1989 were delivered to the Jail Authorities on 20th December, 1989. The Jail Authorities despatched them by registered post. 23rd, 24th and 25th of December, 1989 were non-working days. The representations were received by the COFEPOSA Unit on 28th December, 1989. On the very next day i.e. 29th December 1989 they were forwarded to the sponsoring authority for comments. 30th and 31st December, 1989 were non-working days. Similarly 6th and 7th January, 1990 were non-working days. The comments of the sponsoring authority were forwarded to the COFEPOSA Unit on 9th January, 1990. Thus it is obvious that the sponsoring authority could not have received the representations before 1st January, 1990. Between 1st January, 1990 and 8th January, 1990 there were two non-working days, namely, 6th and 7th January, 1990 and, therefore, the sponsoring authority can. be said to have offered the comments within the four or five days available to it. It cannot therefore, be said that the sponsoring authority was guilty of inordinate delay. The contention that the views of the sponsoring authority were totally unnecessary and the time taken by that authority could have been saved does not appeal to us because consulting the authority which initiated the proposal can never be said to be an unwarranted exercise. After the COFEPOSA Unit received the comments of the sponsoring authority it dealt with the representations and rejected them on 16th January, 1990. The comments were despatched on 9th January, 1990 and were received by the COFEPOSA Unit on 11 th January, 1990. The file was promptly submitted to the Finance Minister on the 12th, 13th and 14th being non-working days, he took the decision to reject the representations on 16th January, 1990. The file was received back in the COFEPOSA Unit on 17th January, 1990 and the Memo of rejection was despatched by post on 18th January, 1990. It appears that there was postal delay in the receipt of the communication by the detenus but for that the detaining authority cannot be blamed. It is, therefore, obvious from the explanation given in the counter that there was no delay on the part of the detaining authority in dealing with the representations of the detenus. Our attention was drawn to the case law in this behalf but we do not consider it necessary to refer to the same as the question of delay has to be answered in the facts and circumstances of each case. Whether or not the delay, if any, is properly explained would depend on the facts of each case and in the present case we are satisfied that there was no delay at all as is

apparent from the facts narrated above. We, therefore, do not find any merit in this submission.

8. It was next submitted by the learned counsel for the petitioners that there was no compelling reason for the detaining authority to pass the impugned orders of detention as the detenus were already in custody on the date of the passing of the detention orders as well as the service thereof. Besides, he submitted, it is apparent from the averments in paragraph 15 of the grounds of detention that the concerned authority was labouring under a misconception that the detenus were charged with a 'bailable' offence which betrays total non-application of mind. He further submitted that the delay in the service of the detention orders discloses that there was no urgency about ordering detention. Taking the last limb of the argument first, we may refer to the counter filed in the writ petitions in this behalf. Therein it is stated that after the detention orders were signed on 10th November, 1989, it was realised that certain documents which were not in Tamil language would have to be translated. The services of a professional translator were requisitioned. Between 10th and 21st November, 1989 there were five holidays on 11th, 12th, 13th, 18th & 19th. As soon as the translations were ready and received by the Department, the police authorities were directed on 20th November, 1989 to execute the detention orders. This was done on 21st November, 1989. Thus the time taken between 10th and 21st November, 1989, excluding 5 holidays, as only of six days during which all the documents were got translated in Tamil language and were served on the detenus along with grounds of detention. These facts clearly show that the time taken in the service of the detention orders cannot be attributed to lack of sense of urgency on the part of the authorities but it was to get the documents translated in Tamil language before they were supplied to the detenus. Under the circumstances we do not see any delay which would vitiate the detention orders.

9. It is indeed true that in paragraph 15 of the grounds of detention the detaining authority has averred that the detenus are charged with a bailable offence. After setting out the fact that two of the detenus had made an application for bail in the Bombay Court and their co-accused Kasim had made a similar application in the Madras Court, the authority proceeds to state as under:

> "Though you are in judicial custody but can be released on bail any time as the offence with which you have been charged is bailable in which case you may indulge in similar prejudicial activities."

It is necessary to bear in mind the context in which the expression 'bailable' is used. In the counter filed by the Joint Secretary who passed the detention orders and prepared the grounds for detention it is stated that his past experience in such cases was that normally and almost as a matter of rule courts grant bail after the investigation is completed. It was in this background, says the officer, that he used the expression 'bailable'. We may reproduce his exact words from the counter:

> "It is also submitted that the word bailable which has not been used in the legal sense, it was intended to convey that normally in such cases one gets bail and in that context, the word ' bailable' was used".

Proceeding further it is averred in the counter that even in non-bailable offences the Sessions Court and the High Court are empowered to grant bail. He was, therefore, of the view that in such cases courts normally grant bail. It was in this background that he used the word bailable in the grounds of detention.

10. Mr. Sibbal the learned Additional Solicitor General, contended that the expression bailable was used in the backdrop of the fact that two of the detenus and Kasim had already applied for bail. The

Court had not rejected their applications but had adjourned them as the investigation was in progress. That gave rise to the belief that bail would be granted. His normal experience also was that in such cases Courts ordinarily granted bail on the conclusion of the investigation. He, therefore, loosely described the offence as bailable and did not use that word in the technical sense of Section 2(a) of the Code of Criminal Procedure. The High Court also pointed out that even in respect of non-bailable offences it is generally open to the Sessions Court and the High Court to release the accused on bail. It further points out that it is equally open to the Magistrate to release the accused on bail after a period of two months. In the circumstances the High Court was of the opinion that the use of the expression 'bailable' cannot lead one to the conclusion that there was no application of mind. We are inclined to think that having regard to the background in which this expression is used in paragraph 15 of the grounds of detention and bearing in mind the explanation and the fact that in such cases courts normally grant bail, it cannot be said that the use of the said expression discloses non-application of mind. It was then submitted that the detenu M. M. Shahul Hameed had not applied for bail and, therefore, there was no question of his being released on bail. We do not think that there is any merit in this submission for the simple reason that if the co-accused are released on bail he too could seek enlargement on bail at any time. Therefore, the possibility of all the detenus being released on bail was a real one and not an imaginary one. This was based on past experience which is reinforced by the observations of the High Court that even in non-bailable cases court of Session and High Court do grant bail. The second limb of the contention is, therefore, clearly devoid of merit.

11. Counsel for the detenus, however, vehemently argued that since the detenus were in custody, there was no compelling necessity to pass the detention orders for the obvious reason that while in custody they were not likely to indulge in any prejudicial activity such as smuggling, In support of this contention reliance was placed on a host of decisions of this Court beginning with the case of Vijay Narain Singh v. State of Bihar, (1984) 3 SCC 14 : (AIR 1984 SC 1334) and ending with the case of Dharmendra Suganchand Chelawat v. Union of India, (1990) 1 SCC 746: (AIR 1990 SC 1196). It is necessary to bear in mind the fact that the grounds of detention clearly reveal that the detaining authority was aware of the fact that the detenus were apprehended while they were about to board the flights to Hongkong and Dubai on 5th October, 1989. He was also aware that the detenu M. M. Shahul Hameed had secreted diamonds and precious stones in his rectum while the other two detenus had swallowed 100 capsules each containing foreign currency notes. He was also aware of the fact that all the three detenus were produced before the Additional Chief Metropolitan Magistrate, Esplanade, Bombay and two of them had applied for bail. He was also conscious of the fact that the hearing of the bail applications was postponed because investigation was in progress. His past experience was also to the effect that in such cases courts ordinarily enlarge the accused on bail. He was also aware of the fact that the detenu M. M. Shahul Hameed had not applied for bail. Conscious of the fact that all the three detenus were in custody, he passed the impugned orders of detention on 10th November, 1989 as he had reason to believe that the detenus would in all probability secure bail and if they are at large, they would indulge in the same prejudicial activity. This inference of the concerned officer cannot be described as bald and not based on existing material since the manner in which the three detenus were in the process of smuggling diamonds and currency notes was itself indicative of they having received training in this behalf. Even the detenus in their statements recorded on 5th October, 1989 admitted that they had embarked on this activity after receiving training. The fact that one of them secreted diamonds and precious stones in two balloon rolls in his rectum speaks for itself. Similarly the fact that the other two detenus had created cavities for secreting as many as 100 capsules each in their bodies was indicative of the fact that this was not to be a solitary instance. All the three detenus had prepared themselves for

indulging in smuggling by creating cavities in their bodies after receiving training. These were not ordinary carriers. These were persons who had prepared themselves for a long term smuggling programme and, therefore, the officer passing the detention orders was justified in inferring that they would indulge in similar activity in future because they were otherwise incapable of earning such substantial amounts in ordinary life. Therefore, the criticism that the officer had jumped to the conclusion that the detenus would indulge in similar prejudicial activity without there being any material on record is not justified. It. is in this backdrop of facts that we must consider the contention of the learned counsel for the detenus whether or not there existed compelling circumstances to pass the impugned orders of detention. We are inclined to think, keeping in view the manner in which these detenus received training before they indulged in the smuggling activity, this was not a solitary effort, they had in fact prepared themselves for a long term programme. The decisions of this Court to which our attention was drawn by the learned counsel for the petitioners lay down in no uncertain terms that detention orders can validly be passed against detenus who are in jail, provided the officer passing the order is alive to the fact of the detenus being in custody and there is material on record to justify his conclusion that they would indulge in similar activity if set at liberty. We will now consider the case law in brief

12. In Vijay Narain Singh, (AIR 1984 SC 1334) (supra) this Court stated that the law of preventive detention being a drastic and hard law must be strictly construed and should not ordinarily be used for clipping the wings of an accused if criminal prosecution would suffice. So also in Ramesh Yadav v. District Magistrate ET, (1 985) 4 SCC 232 : (AIR 1986 SC 315) this Court stated that ordinarily a detention order should not be passed merely on the ground that the detenu who was carrying on smuggling activities was likely to be enlarged on bail. In such cases the proper course would be to oppose the bail application and if granted, challenge the order in the higher forum but not circumvent it by passing an order of detention merely to supersede the bail order. In Suraj Pal Sahu v. State of Maharashtra, (1986) 4 SCC 378 : (AIR 1986 SC 2177) the same principle was reiterated. In Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416: (AIR 1986 SC 2090), it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. There must be cogent material before the officer passing the detention order for inferring that the detenu was likely to be released on bail. This inference must be drawn from material on record and must not be the ipse dixit of the officer passing the detention order. Eternal vigilance on the part of the authority charged with the duty of maintaining law and order and public order is the price which the democracy in this country extracts to protect the fundamental freedom of the citizens. This Court, therefore, emphasized that before passing a detention order in respect of the person who is in jail the concerned authority must satisfy himself and that satisfaction must be reached on the basis of cogent material that there is a real possibility of the detenu being released on bail and further if released on bail the material on record reveals that he will indulge in prejudicial activity if not detained. That is why in Abdul Razak Abdul Wahab Sheikh v. S. N. Sinha, (1989) 2 SCC 222: (AIR 1989 SC 2265), this Court held that there must be awareness in the mind of the detaining authority that the detenu is in custody at the time of actual detention and that cogent and relevant material disclosed the necessity for making an order of detention. In that case the detention order was quashed on the ground of non-application of mind as it was found that the detaining authority was unaware that the detenus application for being released on bail was rejected by the designated Court. In Meera Rani v. State of Tamil Nadu, (1989) 4 SCC 418: (AIR 1989 SC 2027) the case law was examined in extenso. This Court pointed out that the mere fact that the detenu was in custody was not sufficient to invalidate a detention order and the decision must depend on the facts of each case. Since the law of preventive detention was intended to prevent a detenu from acting in any manner considered prejudicial under the law,

ordinarily it need not be resorted to if the detenu is in custody unless the detaining authority has reason to believe that the subsisting custody of the detenu may soon terminate by his being released on bail and having regard to his recent antecedents he is likely to indulge in similar prejudicial activity unless he is prevented from doing so by an appropriate order of preventive detention. In Shashi Aggarwal v. State of Uttar Pradesh, (1988) 1 SCC 436: (AIR 1988 SC 596), it was emphasized that the possibility of the Court granting bail is not sufficient nor is a bald statement that the detenu would repeat his criminal activities enough to pass an order of detention unless there is credible information and cogent reason apparent, on the record that the detenu, if enlarged on bail, would act prejudicially. The same view was reiterated in Anand Prakash v. State of Uttar Pradesh, (1990) 1 SCC 291 : (AIR 1990 SC 516) and Dharmendra's case, (AIR 1990 SC 1196) (supra). In Sanjay Kumar Aggarwal v. Union of India, (1990) 3 SCC 309 : (AIR 1990 SC 1202) the detenu who was in jail was served with a detention order as it was apprehended that he would indulge in prejudicial activities on being released on bail. The contention that the bail application could be opposed, if granted, the same could be questioned in a higher forum, etc., was negatived on the ground that it was not the law that no order of detention could validly be passed against a person in custody under any circumstances.

13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher Court. What this court stated in the case of Ramesh Yadav, (AIR 1986 SC 315) (supra) was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This stems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore, find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the detenus were in custody.

14. Counsel for the petitioners next submitted that while making the representation dated 18th December, 1989 the detenus had requested for the supply of copies of the declarations made by them before the customs authorities at the Bombay Airport before boarding their respective flights and for copies of the search warrants mentioned in the grounds of detention. It was stated that the detenus needed these documents for the purpose of making a representation. While rejecting their representation by the memorandum of 18th January, 1989 the detenus were informed that the sponsoring authority was requested to supply the copies of search authorisations to the detenus. The petitioners complained that despite this communication the sponsoring authority did not supply copies of the search authorisations whereupon another letter dated 6th February, 1990 was written to the detaining authority asking for the said documents. By the memorandum of 14th February, 1990, the detenus were informed that the Deputy Director of Revenue Intelligence, Bombay, was requested to supply the documents asked by the detenus. In response to the same the detenus were supplied copies of the search warrants but not copies of the declarations made to the customs

officers at the airport. It is further complained that this delay had resulted in depriving the detenus of their valuable right to make an effective representation against the impugned detention orders. The High Court while dealing with this contention came to the conclusion that the declarations made by the detenus at the airport were neither relied on nor referred to in the grounds of detention. As regards the search authorisations, it may be pointed out that although there is a mention of the premises searched in the grounds of detention, the incriminating material found has neither been used nor made the basis for formulating the grounds of detention. Mere reference to these searches by way of completing the narration cannot entitle the detenus to claim copies of the search authorisations. The High Court, therefore, rejected this contention by observing as under:

> "We fail to understand how the Detaining Authority can be compelled to give documents which were not relied upon while arriving at the subjective satisfaction. We are also unable to appreciate how the declaration made by the detenu before proceeding to board the aircraft has any relevance while considering whether the order of detention should be passed to prevent the detenu from indulging in any prejudicial activities in future. In our judgment, the complaint that some documents which according to the detenu were relevant for making representation were not furnished by the Detaining Authority and, therefore, the order of the continuation of the detention is bad is without any substance."

In the counter it is specifically mentioned that these documents were not placed before the detaining authority nor the detaining authority has relied upon 'these documents while issuing the detention order'. The detenus would have been entitled to any document which was taken into consideration while formulating the grounds of detention but mere mention of the fact that certain searches were carried out in the course of investigation, which have no relevance to the detention of the detenus cannot cast an obligation on the detaining authority to supply copies of those documents. Much less can an obligation be cast on the detaining authority to supply copies of those documents in Tamil language. In the peculiar circumstances of the present petitions we are of the opinion that the view taken by the High Court cannot be assailed. Reliance was, however, placed on a decision of the Delhi High Court in Gurdeep Singh v. Union of India, Criminal Writ. No. 257 of 1988 decided on 7th October, 1988 [1989 C LJ NOC 41 (Delhi)] wherein Malik Shariefuddin, J. observed that the settled legal position was that all the documents relied upon for the purpose of ordering detention ought to be supplied pari passu with the grounds of detention to the detenu and documents not relied upon but casually referred to for the purpose of narration of facts were also to be supplied to the detenu if. demanded. Where documents of the latter category are supplied after the meeting of the Advisory Board is over it was held that that would seriously impair the detenu's right to make an effective and purposeful representation which would vitiate the detention. Counsel for the petitioners, therefore, submitted that in the present case also since the search authorisations were supplied after the meeting of the Advisory Board, the detention orders stood vitiated. But in order to succeed it must be shown that the search authorisations had a bearing on the detention orders. If, merely an incidental reference is made to some part of the investigation concerning a co-accused in the grounds of detention which has no relevance to the case set up against the detenus it is difficult to understand how the detenus could contend that they were denied the right to make an effective representation. It is not sufficient to say that the detenus were not supplied the copies of the documents in time on demand but it must further be shown that the non-supply has impaired the detenu's right to make an effective and purposeful representation. Demand of any or every document, however irrelevant it may be for the concerned detenu, merely on the ground that there is a reference thereto in the grounds of detention cannot vitiate an otherwise legal detention order. No hard and fast rule can be laid down in this behalf but what is essential is that the detenu must show

that the failure to supply the documents before the meeting of the Advisory Board had impaired or prejudiced his right, however slight or insignificant it may be. In the present case, except stating that the documents were not supplied before the meeting of the Advisory Board, there is no pleading that it had resulted in the impairment of his right nor could counsel for the petitioners point out any such prejudice. We are, therefore, of the opinion that the view taken by the Bombay High, Court in this behalf is unassailable.

15. The declaration under Section 9(1) dated 20th December, 1989 is challenged on the ground that the second respondent failed to forward the copies of the documents on which he placed reliance for arriving at the subject to satisfaction that the detenus were likely to smuggle goods out of and through Bombay Airport, an area highly vulnerable to smuggling as defined in Explanation 1 to Section 9(1) of the Act. Now if we turn to paragraph 2 of the declaration it becomes evident that the second respondent merely relied on the grounds of detention and the material in support thereto which had already been served on the detenu and nothing more. Counsel for the petitioners relying on a decision of the Bombay High Court in Nand Kishore Purohit v. Home Secretary, Maharashtra, (1986) 2 Bom CR 25, however urged that it was obligatory for the second respondent to supply the grounds of detention and the accompanying documents 'afresh' if the declaration was based thereon. We are afraid we cannot subscribe to this point of view. If the documents relied on for the purpose of framing a declaration under Section 9(1) are the very same which were earlier supplied to the detenus along with the grounds of detention under Section 3(1), we fail to see what purpose would be served by insisting that those very documents should be supplied afresh. Such a view would only result in wasteful expenditure and avoidable duplication. We do not think that we would be justified in quashing the declaration made under Section 9(1) of the Act on such a hypertechnical ground. We, therefore, do not see any merit in this contention.

16. There are a few other minor grounds on which the detention orders are challenged. These may be stated to be rejected. Firstly, it was contended that under Section 3(1) of the Act a detention order can be passed on one or more of the five grounds set out in clauses (i) to (v) thereof. Since the impugned orders make no mention of the clause number on which they are founded they are bad in law. The detention orders clearly state that the power is being exercised with a view to preventing the smuggling of goods referable to clause (i) of the sub-section. Merely because the number of that clause is not mentioned, it can make no difference whatsoever. So also we see no merit in the contention that the value of goods seized varies in the grounds of detention from that mentioned in the panchnama or apprisal report. How that has prejudiced the detenus is difficult to comprehend in the absence of any material on record. The submission that the declaration under Section 9(1) was required to be communicated within five weeks from the date of its making is not specifically raised in the writ petitions nor was it argued before the High Court. We were, however, told that the declaration was communicated in the first week of January 1990, a statement which was not contested on behalf of the petitioners. In fact the submission was not pursued after this fact was disclosed. We also see no merit in it. Lastly, it was said that the authority had failed to take notice of the retraction of the statement recorded under Section 108 of the Customs Act, 1962. In fact there is a specific reference to the retraction letter dated 12th October, 1989 and the subsequent letter of 19th October, 1989, wherein the detenus stated that they had signed the letter of 12th October, 1989 without knowing the contents thereof and had in fact not disowned their earlier statement of 5th October, 1989. It is clear from the above that this challenge is also without substance.

17. These were the only contentions urged at the hearing of the special leave petitions as well as the writ petitions. As we do not see any merit in any of these contentions we dismiss the special leave petitions as well as the writ petitions and discharge the rule in each case.

Order accordingly.

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