(1978) 09 BOM CK 0018

Bombay High Court

Case No: Criminal Application No. 419 of 1978

Smt. Mannabi Shamsi		APPELLANT
	Vs	
B.B. Gujral		RESPONDENT

Date of Decision: Sept. 20, 1978

Acts Referred:

- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - Section 3, 5A
- Constitution of India, 1950 - Article 22

Citation: (1979) 81 BOMLR 476

Hon'ble Judges: Naik, J; Mehta, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Naik, J.

By this petition the petitioner who is the wife of one Qutubuddin, challenges the order of detention of her husband u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, as amended, hereinafter referred to as the Act, and prays for a writ of habeas corpus.

2. On March 31, 1978 the said detenue was served with an order of detention dated March 29, 1978, purporting to have been made by the respondent No. 1 u/s 3(1) of the Act, wherein it was stated that respondent No. 1 having been specially empowered for the purpose of Section 3 of the Act, was satisfied that with a view to preventing him from smuggling goods, the detenue be detained and kept in custody in the Central Prison Bombay. The grounds on which the order of detention was based were supplied to the detenue on March 31, 1978. They are to this effect:

1. You were detained on 6-2-1976 under COFEPOSA Act, 1974 in pursuance of Order No. DESK.XIX.SB.PSA. 017B dated 4-2-1976 issued by Secretary to the Government of Maharashtra, Home Department with a view to preventing you from smuggling

goods, abetting the smuggling of goods and dealing in smuggled goods and were released from detention on 22-3-1977.

Within three months of your release from the detention the Customs Department started receiving intelligence reports that you had revived your smuggling activities. As the intelligence report received indicated that you organised smuggling of contraband goods in the Bassein Creek, a watch was kept by the Customs Authorities at Bassein on the night of 24/25-6-1977. The Customs Party intercepted one mechanised craft BSN 7321 in the Bassein Creek on the same night which was laden with contraband goods viz. wrist watches, textiles etc. of the aggregate value of Rs. 22.23 lakhs. Further intelligence received by the D.R.I. indicated that the aforesaid seized goods were despatched from Dubai and that you in association with others had organised landing of the same near Bassein.

Intelligence received on or about 23-7-1977 indicated that you had planned to smuggle near Bassein wrist watches and textiles sometimes during the end of July, 1977. Further intelligence received in August, 1977 indicated that you and your associates had again planned smuggling of more consignments comprising gold, wrist watches, textiles etc. on or about 24th to 26th August 1977. You were not successful in this mission because of strict vigil maintained by the Customs Department.

2. Information was received on 14-11-1977 by Customs Officer stationed in Thane to the effect that contraband textiles were secreted at certain places in Ulhasnagar near Kalyan, Bombay. In pursuance of this information, the Customs Officers rushed to the places indicated in the information and recovered 9 packages from an open place Barrack No. 4/424 Camp No. 1 and 29 packages were found concealed in a ditch covered with dry grass and thorny branches. These 38 packages were found to contain smuggled textiles of foreign origin valued at Rs. 6,38,057.50 and the same were seized under the provisions of Customs Act, 1962. No person came forward to claim the aforesaid textiles seized by the Customs. The Customs Party found 2 Ambassador cars bearing No. MMD 4897 and MMB 7540 abandoned near the places of seizure of the aforesaid goods at Camp No. 3. The said cars were also seized. In the boot and seat of these cars remnants of dry grass were found. This indicated that the cars were used in the transport of the above smuggled goods. Subsequently inquiries revealed that the cars were registered in the following names:

1. MMD 4897 :

Shri Hussein Hassam Mukadam,
Shalimar Apartment, Kurla-Agra Road, Bombay-70.

2. MMB 7540 :

Shri Abdul Rashid Abdulla,
Cement Chawl, 2nd Air Port Road,
Chakala, Andheri.

Both these cars were found to have been transferred in above names on or about 20-5-1977. On enquiry both the names and addresses have been found to be fictitious.

In pursuance of further information, the Customs Party keeping watch at Mulund Check Naka intercepted one car MRX 5016 on 20-11-1977. There were three occupants in the said car by name Lachman Sobhrajmal Sajnani alias Lachhu, Purshottam G. Belani alias Pishu and Ashok Lachimal Vajirani. In the rummaging of the said car one Slip paper was found. Figures and other writing on the said slip of paper indicated that some account of smuggled textiles was written. Some of the figures and descriptions were identical with some of the packages and goods under seizure. The said car and the said slip of paper were seized for further enquiry.

Lachman Sobhrajmal Sajnani was questioned by the Superintendent of Customs, Thana in the presence of Assistant Collector of Customs, Bassein on 20-11-1977. Replies given by him were recorded by the Superintendent of Customs, Thana. In his statement dated 20-11-1977 Lachman S. Sajnani, inter alia, stated that prior to his detention under Maintenance of Internal Security Act in July 1975, he was engaged in dealing in smuggled goods. That during his detention under Maintenance of Internal Security Act in Nasik Jail, he came in contact with Hans of Ulhasnagar Camp No. 3 and about 20 days back you contacted him on telephone and asked him to contact you near Rupam Talkies on 3rd November 1977. He stated that accordingly he met you and you told him ''they would start their work''. He further stated that on his agreeing to associate with your work you asked him to contact you after 4-5 days on your telephone No. 370546. This telephone is installed in your residence at Flat Nos. 3 and 4, 6th floor, Gulmarg Apartment, Morland Road, 1st Club back Road, Bombay-8. Lachman referred to you in his statement as Shamshir. Lachman S. Sajnani further stated that you told him about necessary arrangements made for the work and that you asked Lachman to meet at Shil Phata near Kalyan in the morning of 12-11-1977. Lachman further stated that he went to the appointed place viz, Shil Phata in his car with Purshottam G. Belani, where Hans also arrived there in an Ambassador car. You arrived there in chocolate colour Ambassador car anl your car was followed by one truck bearing No. 6667. He also stated that the driver of the said truck left and another driver brought by Hans took the wheel of the said truck and all of them along with the truck left for Ulhasnagar and that you were not seen thereafter. He stated that there were about 80/85 packages (Bojas) in the said truck; the said Purshottam was entrusted with distribution of the said smuggled goods, collection of money and making payment to you and that he was to be paid Rs. 25/- per package (boja). He explained that the slip of paper found in his car by the Customs Party contains details of goods of 21 packages and the same were written

by Purshottam. He, however, refused to sign the statement,

Purshottam G. Belani was similarly questioned on 20-11-1977 by the Superintendent of Customs in the Presence of Assistant Collector of Customs, Bassein, He admitted his association with the above said Lachman S. Sajnani, in acquiring the abovesaid seized goods. He also admitted having written the details of packages on the slip of paper seized by the Customs. He also refused to sign the statement.

In the following up action of seizure of aforesaid smuggled goods at Ulhasnagar, your premises and premises of one Aziz Daga were searched simultaneously on 24-11-1977. In the premises situated at flat Nos. 3 and 4 in Gulmarg Apartment where telephone No. 370546 is installed, the Customs Party found among other papers one telephone bill in respect of telephone No. 370546 for the period from 6-10-1975 to 24-1-1976. The telephone bill indicated that during the period as many as 11 urgent trunk calls were booked for telephone No. 823 of Ulhasnagar and one lightning trunk call to telephone No. 237 of Bassein. Telephone No. 237 of Bassein was installed at the Baflekar Fishing Product in Bassein. Baflekar Fishing Product is admittedly the business concern of Hari Bhiva Baflekar of Naigaon, Bassein. You have denied having made trunk calls to the above said telephone numbers at Ulhasnagar and Bassein and also denied any connection with those persons who had these telephone numbers. Hari Bhiva Baflekar also denied acquaintance or any business connections with you.

In your another residence at flat No. 801-802 in Fabina Premises Co-operative Society at Bandra, the Customs Officers on search on 24-11-1977 found two petrol bills, viz.,

(1) No. 9779 dated 4-6-1977 of Parmar Auto Service, Dhulia.

And

(2) No. 28844 dated 5-6-1977 of M/s. Shivchand Amolakchand, Shivpuri (U.P.). Both these bills had No. MMD. 4897 written on them. When questioned about those petrol bills in your statement dated 13-12-1977 you stated that you had hired a private taxi MMD. 4897 at Rs. 0.70p. per Km. to go to Aonla in Uttar Pradesh to attend a wedding of your relative and on the way you purchased petrol at Dhulia and Shivpuri as in the said petrol bills. You further stated that this taxi was hired by you at Pritam

Hotel near Dadar, Bombay, and that you did not know the name of the driver and the owner of the said taxi. This car bearing registration No. MMD 4897 was found near the place where 29 packages containing smuggled textiles were seized at Camp No. 3, Ulhasnagar and was used for the transport of smuggled goods. Enquiries made by the Customs Officers revealed that car MMD 4897 was a private car and not a taxi.

The truck No. 6667 mentioned by Lachmandas Shobhrajmal Sajnani was found to be MHT 6667. Further inquiries revealed that it is registered in the name of Abdul Rashid Abdulla, Cement Chawl, Old Air Port Road, Chakala, Bombay-93. This is the same name and address as of the owner of the aforesaid car No. MMB 7540. This truck was also found to have been transferred in this name on or about 20-5-1977 when the car MMB 7540 was transferred in the same name. The truck in question MHT 6667 was located on 6-3-1978 and seized by the Central Excise Officers. The driver of the truck Appa Shankar Gaikwad stated in his statement dated 6-3-1978 that he was engaged on this truck in December, 1977 by the regular driver Mamoo. This Mamoo had been identified as Mumtazali Amirali. Mumtazali Amirali is your associate in smuggling and was detained under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on 2-8-1976 under Order No. DESK.SB/PSA-0176 (iee)(B) dated 29-5-1976 issued by the Secretary to Government of Maharashtra, Home Department (Special), Bombay. The aforesaid truck, according to the said driver Appa Shankar Gaikwad was undergoing repairs in the workshop of one Mohan Mistry at Dana Bunder, Bombay, in in December 1977 and at that time you had come there. Appa Shankar Gaikwad presumed that you were Abdul Rashid Abdulla, the owner of the truck. Appa Shankar Gaikwad identified you from your photograph as the owner of this truck. He also identified Mumtazali Amirali as Mamoo from his photograph.
The cleaner of the said truck Prakash Mahadeo Shinde in his statement dated 4-3-1978 identified Mumtazali Amirali as Mamoo from his photograph.

One Manekji Lalji Soni who is a goods broker arranging for the loads for trucks in Dana Bunder confirmed in his statement dated 6-3-1978 that the truck MHT 6667 was being driven by Mamoo and he had introduced said Appa Shankar Gaikwad to Mamoo who employed him. He identified you from photograph as the owner of the said truck and Mumtazali Amirali as Mamoo, the regular driver of that truck.

One Sayed Ibrahim alias Mohamed, the partner of aforesaid Mohan Mistry in the said workshop at Dana Bunder also identified you from the photographs as the owner of the truck MHT 6667 and Mumtazali Amirali as Mamoo, the driver of the said truck and stated in his statement dated 7-3-1978 that you had paid him Rs. 600/- as service/repair charges and you claimed to be the real owner of the truck MHT 6667.

You were arrested in the above case on 15-2-1978 and were released on a bail of Rs. one lakh.

The above grounds are communicated to you in pursuance of clause 5 of Article 22 of the Constitution of India.

I consider it to be against the public interest to disclose the source of the intelligence referred to in the grounds of detention above and further consider it against the public interest to disclose further facts contained in the intelligence

referred to in the grounds of detention.

3. After the above grounds were served on the detenue, on April 24, 1978, the petitioner presented the present petition and we are told that a copy of this very petition was forwarded by the detenue on April 26, 1978 in support of his representation against the said detention order. The detenue was given a personal hearing by the Advisory Board on May 8, 1978. On May 17, 1978 the Advisory Board opined that there was sufficient cause for the detention of the detenue. That is why the Central Government confirmed the order of detention by its order dated May 25, 1978 and the sarnie being forwarded on May 30, 1978, was received by the detenue in the jail on June 3, 1978.

4. The petitioner having challenged the detention on several grounds, the respondent No. 1 has filed an affidavit in reply traversing the said averments.

5. Although several grounds have been set out in the petition challenging the detention, Mr. Jethmalani the learned counsel who has appeared in support of the petition initially challenged the order of detention only on the following five grounds viz.

(1) Non-disclosure of all the material on which the detention order is based;

(2) There was a failure to apply the mind to the most important circumstances of the case viz. that Purshottam has not implicated the detenue in the transaction which took place at Sheel Phata on November 12, 1977;

(3) Two judgments of this Court have in terms held that a conclusion of fact based only on the word of an accomplice who himself is caught red-handed will be struck down as unreasonable and perverse and yet in this case substantially everything depends upon the word of Lachman, not corroborated but contradicted by Purshottam;

(4) There is no material at all to show that the two cars which were said to have been abandoned at Ulhasnagar had anything to do with the smuggling or transport of smuggled goods; and

(5) The authority has allowed itself to be influenced by totally innocuous facts and, therefore, in law irrelevant facts viz. the telephone bills.

6. After the arguments for the petitioner were concluded and when Mr. Govilkar, learned counsel for respondent No. 1 started arguing the matter and he produced two forwarding letters dated January 25, 1978 and March 15, 1978, Mr. Jethmalani challenged the detention on the following additional grounds also viz.

(6) New evidence furnished by the letter dated January 25, 1978 discloses the existence of a damning prejudicial report about the prejudicial activities of the detenue. There is no evidence before this Court that everything in that report has been communicated to the detenue. The order must be struck down on that simple

ground.

(7) That the detaining authority has filed an affidavit in sur-rejoinder. The contention of the detaining authority in para. 8 of his sur-rejoinder shows non-application of mind to the fact that in his statement dated December 13, 1977 the detenue had given explanation about the trunk call bills, and

(8) The additional material shows that the affidavit in sur-rejoinder of detaining authority is totally false when it states that it had not been influenced by the detenue''s activities prior to the first detention order.

7. It is not disputed before us that in the grounds of detention which are supplied to the detenue (exh. B) there are two grounds; the first ground concerns the incident of June 24/25, 1977 in which contraband worth Rs. 22.23 lakhs were found near Bassein Creek and the second ground which is mentioned in para. 2 of the grounds supplied to the detenue is in respect of the contraband textiles found at Ulhasnagar on November 14, 1977.

8. We shall first deal with the grounds of attack concerning Ulhasnagar incident in the order mentioned above. Ground No. 1:

9. Learned counsel for the petitioner has assailed the order of detention on the ground of non-disclosure of material on which the detention order is based.

10. Clause (5) of Article 22 of the Constitution of India provides that

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

11. Clause (6) of Article 22 provides that

Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

12. It would therefore appear that the detaining authority is under an obligation, to communicate to the detenue the grounds on which the order has been made and to afford to the detenue earliest opportunity of making a representation against the order. It would further appear that that mandate in Clause (5) of Article 22 is subject to Clause (6) which provides that the requirements of Clause (5) which have no application when the detaining authority considers that the disclosure of the facts would be against the public interest. It would therefore appear that Clause (5) of Article 22 provides various safeguards calculated to protect personal liberty against arbitrary restraint without trial. It would further appear that these safeguards cannot be regarded as substantial and they are essentially procedural in character

and their efficacy depends on the care and caution and the sense of responsibility, with which they are regarded by the detaining authority.

13. The next question is, what is meant by the expression "grounds" in Clause (5) of Article 22 of the Constitution. This expression has been considered by the Supreme Court on several occasions. After a review of the earlier cases on the question of interpretation of the word "grounds" occurring in Clause (5) of Article 22, in Khudiram Das Vs. The State of West Bengal and Others, the Supreme Court has held that since the object underlying the communication of grounds to the detenue is that not only the detenue may know what are the facts and materials before the detaining authority on the basis of which he is being deprived of his personal liberty, but he can also invoke the power of judicial review, howsoever limited and peripheral it may be, the communication of the grounds of detention must also serve the purpose of enabling the detenue to make an effective representation. If the grounds of detention are not communicated to him the propriety of making representation would be illusory. The Supreme Court therefore observed in para. 6 as under (p. 554):

...If this be the true reason for providing that the grounds on which the order of detention is made should be communicated to the detenu, it is obvious that the ''grounds'' mean all the basic facts and materials which have been taken into account by the detaining authority in making the order of detention and on which, therefore, the order of detention is based.

The Supreme Court further observed,

It is, therefore, clear that nothing less than all the basic facts and materials which influenced the detaining authority in making the order of detention must be communicated to the detenu. That is the plain requirement of the first safeguard in Article 22(5)(P. 555).

14. With this legal background let us proceed to examine the grievance of the counsel for the petitioner about the non-disclosure of the basic facts and materials which influenced the detaining authority in making the order of detention. The alleged non-disclosures or incomplete disclosures have been referred to in para. 4 of the affidavit in rejoinder filed by the petitioner. The first non-disclosure which is alleged in para. 4 is that, all the facts mentioned in para. 5(a) of the affidavit-in-reply of the first respondents are not disclosed.

15. That takes us to it he allegation in para. 5 (a) of the affidavit-in-reply of the first respondent. Paragraph 5 of the affidavit-in-reply of the first respondent is to this effect:

5. With reference to para. 3 of the said petition, it is not admitted that the petitioner is a law abiding citizen. The past record of the petitioner shows that he has been engaged in smuggling activities operating from behind the scene. On account of

this past record of the petitioner, he was detained previously under COFEPOSA during the period from 6-2-1976 till 22-3-1977. It is submitted that the question whether the petitioner was not arrested nor prosecuted is not relevant at all for the purposes of detention proceedings, It is enough if it is established that the petitioner has been involved in smuggling activity, and was, therefore, liable to be detained. This fact itself was enough for detention of the petitioner.

(a) On two occasions the petitioner was summoned by the Customs Office and statements were recorded. In the first instance, where Indian currency and foreign loudspeakers were seized on 25-8-1965 from a room situated at Dugal Nivas, Sorabji Santok Lane, Bombay. The above-mentioned seized articles were confiscated. In the second instance, 1000 Tolas of foreign marked smuggled gold were seized on 11-11-1965 from the possession of one carrier by name Rikhabchand Sarimal Shah and Shah, in his statement stated that the said gold was delivered to him by the Petitioner. Even though this much involvement was found out, yet for want of adequate material, the petitioner was not prosecuted. It is a well known fact that the smugglers usually remain behind the scene and operate through others and also take abundant precaution to ensure that they are not directly involved in any smuggling offences. The petitioner has also the same type of modus operandi, for his smuggling activities. I am not aware and therefore, do not admit that the petitioner was not involved or prosecuted for offences under other laws.

16. It is submitted that since what is stated in para. 5 (a) has not been communicated to the detenue the order of detention has violated the constitutional right of the detenue under Clause (5) of Article 22 of the Constitution. There is no dispute that what is stated in para. 5(a) of the affidavit-in-reply has not been communicated to the detenue. The respondent No. 1, however, has justified this non-disclosure by observing as under in para. 5 of his sur-rejoinder:

With reference to paragraph 4 of the petition, it is denied that I have relied upon the material which was not disclosed to the detenu or that any rights of the detenu under Article 22 of the Constitution have been violated as alleged or otherwise.

(a) As regards clause 4 (a) of the rejoinder, it is not agreed that the facts mentioned in paragraph 5 or 5A of the affidavit in reply are the facts which were to be disclosed to the detenu. They were not relied for the purposes to passing the detention order. The facts mentioned in paragraph 5 were the facts relevant to the limited purposes mentioned in the paragraph. When the detenu stated that he was a law-abiding citizen it was necessary to show that he was not a law-abiding citizen and in that context only, the past record was mentioned. As pointed out, such material only showed that he was not a law abiding citizen. That material was not vised or relied upon for passing the impugned order. These facts had to be stated in reply to the statements made in the petition.

17. It would thus appear that while not disputing the fact that the allegations in para. 5 (a) of the affidavit-in-reply were not disclosed, the first respondent is justifying the same on the ground that those facts were not at all relied upon for the purpose of passing the detention order and in particular he says, that whatever has been stated by him in that behalf, is to refute the allegations made by the petitioner, that the detenue is a law abiding citizen.

18. To appreciate this argument we may have a look at para, 3 of the petition. The petitioner has contended in para. 3 of the petition as under:

The detenu is a law-abiding citizen and has never been convicted of any offence by any Court under the Customs Act or the Foreign Exchange Regulation Act or any other allied law. The petitioner submits that the detenu was never even arrested or prosecuted for any offence under any law, save and except that the detenu was arrested on 15th February 1978 in C.C. No. 113/RA-1978....

19. Now, the question which the Court has to consider is as to whether the explanation given by the detaining authority for non-disclosure of the allegations in para. 5 (a) of the affidavit-in-reply should be accepted as correct or not. It has been held by the Supreme Court that the Court is not bound to accept the interested statement of the detaining authority when such authority states that a certain material was not taken into consideration in passing a detention order. The scrutiny by the Court cannot be foreclosed merely on the strength of ipse dixit of the detaining authority. In Daktar Mudi Vs. State of West Bengal, it was observed (p. 2088):

...There is a possibility that certain materials on record would disclose that the activities of the detenu are of a serious nature having a nexus with the object of the Act, namely the prevention of prejudicial acts affecting the maintenance of supplies and services essential to the community, and having proximity with the time when the subjective satisfaction forming the basis of the detention order had been arrived at. If these

20. So also in Khudiram Das''s case, in para. 15, it was observed, the proposition can hardly be disputed that if there is before the District Magistrate material against the detenue which is of a highly damaging character and having nexus and relevancy with the object of detention, and proximity with the time when the subjective satisfaction forming the basis of the detention order was arrived at, it would be legitimate for the Court to infer that such material must have influenced the District Magistrate in arriving at his subjective satisfaction and in such a case the Court would refuse to accept the bald statement of the District Magistrate that he did not take such material into account and excluded it from consideration. In other words the Court should not act on the ipse dixit on interested statement of the detaining authority when it says that such particular material which was not disclosed had not weighed with it in passing any impugned detention order. It is, therefore, the duty

of the Court to consider as to what was the nature of the undisclosed matter and if that undisclosed matter is of a highly damaging character and in addition has a nexus and relevancy with the object of detention, and proximity with the time when the subjective satisfaction forming the basis of the detention order was arrived at, the Court should not accept the statement of the detaining authority that it was not influenced by that undisclosed material. It may be, however, mentioned that both in the case of Daktar Mudi and Khudiram Das, the Court accepted the version of the detaining authority that the undisclosed material had not weighed with it while passing the impugned order of detention in question after examining the material which was not disclosed.

21. It would be therefore necessary to examine in the light of the decisions in Daktar Mudi''s case and Khudiram Das''s case, the nature of the material which was not disclosed. That material as we have pointed out by reference to para. 5 (a) of the affidavit-in-reply filed by the respondent No. 1, consists of two instances. The first instance is about the Indian currency and foreign loudspeakers being seized in 1965 from a room situated at Dugal Nivas, Bombay and the second instance is of 1,000 tolas of foreign marked smuggled gold which were seized on November 11, 1965 from the possession of one carrier by name Rikhabchand Sarimal Shah who in his statement had stated that the said gold was delivered to him by the detenue. In para. 5, at the beginning it is also stated that the past record of the detenue shows that he has been engaged in smuggling activities.

22. So far as the two instances of 1965 mentioned in para. 5 (a) of the affidavit-in-replys are concerned, it would appear that they were too remote in point of time and, therefore, when the detaining authority swears that that undisclosed material did not weigh with him in passing the impugned order, we see no reason to suspect the truth of his version. It is also significant to note that the detaining authority has justified the averments in para. 5 of his affidavit-in-reply as being made in reply to the contention of the petitioner in para. 3 of the petition contending inter alia that the detenue is a law abiding citizen and he has never been convicted for any offence under the Customs Act or the Foreign Exchange Regulation Act or any other allied law and that the detenue was never even arrested or prosecuted for any offence under any law. It is worthwhile to note that the affidavit-in-reply has been drafted for refuting the para-wise allegations which have been made by the petitioner in the petition. Paragraph 5 of the affidavit-in-reply, states at the outset that the contentions therein are with reference to para. 3 of the said petition wherein it is alleged that the petitioner is a law abiding citizen. It is to refute that contention that a reference has been made to the fact that the past record shows that he has been engaged in smuggling activities operating from behind the scene. It is next stated that on account of that past record that the petitioner was detained previously under COFEPOSA during the period from February 6, 1976 till March 22, 1977. In reply to the contention in para. 3 that the petitioner was not arrested or prosecuted, it is stated that the petitioner was not

prosecuted is not relevant at all for the purpose of detention proceedings. It is next stated that it is enough if it is established that the petitioner has been involved in smuggling activities and he was therefore liable to be detained. This fact itself was enough for detention of the petitioner. It may be mentioned that the further paragraphs in the affidavit-in-reply are replies to the allegations in the petition and these replies are para-wise replies. A perusal of the contention in para. 5 of the affidavit-in-reply read with allegations in para. 3 of the petition, would show that the allegations in para. 5 do appear to have been made to refute the allegations of the petitioner in para, 3 of the petition. We have already shown that the two instances of 1965 are too remote to have any bearing for the impugned detention order.

23. In this connection we might refer to the observations of the Supreme Court in the case of Binod Bihari Mahato Vs. State of Bihar and Others, In para. 7, the Supreme Court has observed as under (p. 2130):

...It is true that various statements in regard to the activities of the petitioner were made in paragraphs 5 and 7 of the counter-affidavit of Miss Sunila Dayal but these were obviously intended to repel the allegations of the petitioner that he was a dedicated social and public worker devoted to the uplift of the backward and down trodden classes. They were not set out as facts taken into account by the District Magistrate for the purpose of arriving at his subjective satisfaction in regard to the necessity of the detention of the petitioner. Miss Sunila Dayal did not state anywhere in her counter-affidavit that these facts weighed with the District Magistrate in reaching the requisite satisfaction. In fact, the District Magistrate himself had made an affidavit in reply to the petition filed by the petitioner in the High Court of Patna and in that affidavit, he did not refer to any of these facts as having been taken into account by him in passing the order of detention. This ground must also, therefore, fail.

24. In our case in fact the respondent No. 1 has sworn that the allegations in para. 5 of the affidavit-in-reply were in fact made to repudiate the allegations made in para. 3 of the petition and that they therefore did not at all weigh with him in passing the order of detention. Since the scrutiny of para. 3 of the petition and the averments in para. 5 of the affidavit-in-reply and the fact that the incidents therein referred to are of 1965 would go to show that the explanation offered by respondent No. 1 is correct and it must be accepted. There is, therefore, no force in the submission of the petitioner based on non-disclosure of the facts alleged in para. 5(a) of the affidavit-in-reply.

25. It is next contended in para. 4(b) of the affidavit in rejoinder of the petitioner that all incriminating circumstances showing the involvement of Lachman Sobhrajmal Sajnani in smuggling being the circumstances referred to in para. 11 of the affidavit-in-reply have not been disclosed in the grounds. Paragraph 11 of the affidavit-in-reply has reference to ground (B) in the petition. Ground (B) in the petition reads as under:

Without prejudice to what is stated hereinabove, the petitioner submits that the order of detention is based on material which is devoid of any probative value. No reasonable person would on the basis of the said material come to the conclusion that the detenu was either indulging in smuggling activities or that it was necessary to detain him with a view to preventing him from indulging in the said activities. The said Laxman Sobhrajmal Sajnani was apprehended by the Customs authorities in incriminating circumstances from the car in which he was travelling. Figures and other writing indicating that the same are accounts of smuggled textiles were found in the car. The figures and descriptions in the said writing were identical with those on the packages and goods which had been seized earlier in Ulhasnagar. Under the circumstances, no reasonable man could place reliance upon the uncorroborated word of the said Lachman Sobhrajmal Sajnani.

26. Paragraph 11 of the affidavit-in-reply which has reference to that contention after setting out some facts goes on to state,

...It is submitted that there were enough incriminating circumstances showing involvement of Lachman Sobhrajmal Sajnani in smuggling and the seizure of smuggled goods in Ulhasnagar, reveal the facts to that effect. His statement is corroborated by other facts and circumstances. The association of Sajnani with the car, names and accounts, about the textiles found in the car, the figures and description in the said writing and also the identity with the packages and goods seized, showing the same writing figures or numbers and other circumstances were enough to come to the conclusion for any reasonable man that the statement of the said Sajnani was true and was also adequately corroborated.

27. What is contended for the petitioner is that the allegations in para. 11 of the affidavit-in-reply to the effect that the textiles found in the car showing the same writing figures have not been communicated to the detenue. We are not impressed with this submission. A perusal of the grounds which were supplied to the detenue would show that all these facts have been stated in such a way as to be understood by the detenue as would appear from the way the ground ''B'', in para. 7 of the petition itself is worded. Therefore, there is no force in the contention in para. 4(b) of the affidavit-in-rejoinder.

28. The next alleged non-disclosure referred to in para. 4(c) of the affidavit-in-rejoinder is that the contents of the writing said to have been found in the car and said to contain accounts and particulars of identity of the figures and description in the said writing with the packages and goods seized in Ulhasnagar, have not been communicated. The affidavit in sur-rejoinder filed by the detaining authority stated that the contents of the slip indicated the description of the goods seized and that at any rate, Belani had admitted as mentioned in the order that he had written the details of the packages seized on the slip. There is therefore no new material which is referred to in the affidavit in reply. At any rate it is submitted that the matter is not one of non-disclosure as is alleged. In our opinion this ground also

has no force. The grounds are clear on this point as well. What is intended by this contention is that the details are not furnished. But we do not find that any such details were necessarily required to be furnished inasmuch as what is required to be furnished is the pith and substance of the evidential material and not the details of the evidence.

29. In Vakil Singh Vs. The State of J. and K. and Another, the Supreme Court has observed,

...Apart from conclusions of facts ''grounds'' have a factual constituent, also. They must contain the pith and substance of primary facts but not subsidiary facts or evidential details.(p. 2341).

30. On the facts of the case it was held that the facts which were not disclosed were not basic facts, and their non-disclosure did not affect the petitioner''s right of making a representation.

31. We will have occasion to refer to this very authority in connection with some more grounds alleged in para. 4 of the affidavit-in-rejoinder of the petitioner.

32. In para. 4(d) of the affidavit-in-rejoinder of the petitioner it is stated that the non-disclosed material is that the detenue had given to the said Sajnani the particulars of another telephone No. 537938 said to be installed at the Bandra flat of the detenue being the facts [mentioned in para. 12 of the affidavit-in-reply. It is important to bear in mind that para. 12 of the affidavit-in-reply is in reply to ground (C) in the petition. Ground (C) in the petition is to the effect that the detaining authority has shown no awareness of the glaring fact that on the several points mentioned therein, except the word of the said Lachman Sobhrajmal Sajnani there is no material at all. Again at the conclusion of ground (B) of the petition, it is stated that no reasonable man could place reliance upon the uncorroborated word of the said Lachman Sobhrajmal Sajnani. It is while giving reply to the said contention in ground (C) of the petition that allegations in para. 12 of the affidavit-in-reply are made. It is enough to state that therein the respondent No. 1 is at pains to state how Sajanani''s word stands corroborated and in particular he denied the allegation in Ground (C) of the petition that there was no material except the word of Sajnani on points mentioned therein. For instance he states that he acted on the statement of Sajnani as the statement was made spontaneously and voluntarily. It is further stated that the statement of Sajnani was corroborated by the telephone No. 370546 being installed in the petitioner''s residence which was the number given by Sajnani. It is stated that there was no reason for the said Sajnani to mention the petitioner''s aforesaid telephone number except for the reason that he had had definite connection with the petitioner and that the said Sajnani need no have given the petitioner''s telephone number unless he had something to do with it. Then follows an important disclosure which was not disclosed in the grounds and that disclosure is to this effect:

...The said Sajnani also further stated that the petitioner had given his another telephone number, starting with the figure ''53''. He however stated that he could not remember the other figures. The said statement of the said Sajnani was corroborated when it was found that the petitioner in fact has another telephone number, beginning with the figure ''53''. That number 537938 which is installed in the petitioner''s third residence situated at Flat No. 801, 8th floor, Fabina Housing Society, St. Martin Road, Bombay-50. The said Sajnani further mentioned about truck bearing No. 6667 arriving at Shil Phata on November 12, 1977 in the morning. He stated that this truck followed the detenue''s car and was then handed over to the said Shri Hans. The truck was loaded with 80-85 packages of contraband goods. On further enquiries it was found that the said truck had number MHT 6667 and at the material time it was under the control of the petitioner as stated by the other persons. The statement of the said Sajnani thus stands corroborated by these facts.

33. It is not disputed that nowhere in the grounds it is stated that the said Sajnani also further stated that the detenue had given his another telephone number starting with figure "53" and that he having stated that he could not remember the other figures, the said statement of the said Sajnani was corroborated when it was found that the detenue had in fact a telephone beginning with the figure ''53'' and that in fact telephone No. 537938 was installed in the detenue''s third residence.

34. In the affidavit in sur-rejoinder filed by the respondent No. 1 with reference to para. 4(d) of the rejoinder, the respondent No. 1 states,

I deny that I had relied upon Mr. Sajnani''s statement so far as it related to figure 53 alleged to be the portion of another telephone number. Such vague and uncertain information was not worth consideration and reliance for passing the detention order. At any rate, the contents of this paragraph were mentioned only to show how Sajnani had volunteered the information and spontaneously gave out the information. It is not correct to say that the contents of the paragraph were material which was relied upon by me for passing the impugned order. The contents are given only to show the voluntary nature of Sajnani''s disclosure.

35. We find considerable difficulty in accepting this explanation which is offered by the detaining authority. As we have pointed in para. 12 of his affidavit-in-replys in a bid to meet the contentions in ground (C) of the petition, that on several points mentioned therein except the bare interested word of Sajnani, there was no other material, the respondent No. 1 is at pains to point out how the statement of Sajnani stands corroborated. It is in that bid as we have pointed out he stated, that the said Sajnani also further stated that the petitioner had given his another telephone number starting with the figure ''53'' and he however stated that he could not remember the other figures and the said statement of the said Sajnani was corroborated when it was found that the petitioner in fact had another telephone beginning with number 53 viz, 537938 which is installed in the petitioner''s third residence situate at Flat No. 801, 8th Floor, Fabina Housing Society, St. Martin Road,

Bombay-50 and there is a further observation as we have pointed out in the same paragraph that the statement of the said Sajnani thus stands corroborated by these facts. It would thus appear that when in his affidavit in surrejoinder the detaining authority would have us believe that he had not at all relied on the statement of Sajnani relating to the figure ''53'' being the portion of another telephone number and that such vague and uncertain information was not worth consideration and reliance for passing the detention order, and the contents of that paragraph were mentioned only to show how Sajnani had volunteered the information spontaneously, we cannot accept this explanation. The fact remains as appears from his allegation in para. 12 of the affidavit-in-reply that the information given by Sajnani with regard to telephone number beginning with the figure ''53'' must have weighed with him in believing the interested word of Sajnani who was an accomplice as per his own statement. In terms the detaining authority in para. 12 of the affidavit-in-reply has stated that the said statement of the said Sajnani was corroborated when it was found that the detenue had in fact at his residence a telephone beginning with the figure ''53''. We are aware as we have just pointed out, that what is required to be disclosed is the pith and substance of the evidence and not the details of the evidence, but at the same time, as we have pointed out, those observations of the Supreme Court in Vakil Singh''s case that the grounds must contain the pith and substance of primary facts but not subsidiary facts or evidential details, must be reconciled with the observations of the Supreme Court in Khudiram Das''s case wherein the Supreme Court has held that what is meant by the grounds to be disclosed is all the basic facts and materials which have been taken into account by the detaining authority in making the order of detention and that nothing less than all the basic facts and materials which influenced the detaining authority in making the order of detention must be communicated to the detenue, since all the allegations in para. 12 of the affidavit-in-reply do show that the information concerning the telephone number beginning with the figure ''53'' given by Sajnani had very much weighed with the detaining authority in accepting the word of Sajnani as a very important piece of material corroborating the version of Sajnani, it would appear that on the facts and circumstances of this case that information does not fall under the class of details of the evidence as referred to in Vakil Singh''s case but would be a basic fact or material which has evidently influenced the detaining authority in passing the detention order by relying upon Sajnani and, therefore, the contention of the petitioner about the non-disclosure referred to in para. 4(d) concerning telephone appears to be well-founded.

36. It is next contended in para. 4(e) of the affidavit-in-rejoinder filed by the petitioner that the nature of the inquiries which revealed that the truck which was described by Sajnani as bearing No. 6667 was in fact MHT 6667, has not been disclosed. We find no force in this submission. The detaining authority is not expected to disclose the source of information. In Beni Madhob Shaw Vs. The State of West Bengal, para. 6, the Supreme Court has observed that

...It has not been shown on behalf of the petitioner that it was necessary under the law to disclose the sources of the information or the exact words of the information so long as the activities which formed the foundation of the impugned order were actually disclosed to the petitioner.

37. We, therefore, find no force in this contention.

38. In para. 4(f) of the affidavit-in-rejoinder, it is contended that the particulars showing that the two cars MRD 4897 and MMB 7540 were abandoned at the place where the contraband was discovered, has not been disclosed and the mere fact that the cars were found lying there could not show that the same were abandoned. We find no substance in this submission either. However, we will have occasion to deal with these cars while dealing with another contention for the petitioner.

39. In para. 4(g)(h) and (i) of the affidavit-in-rejoinder, it is contended that the involvement of another person named Gopal in the process of unloading or about the contraband found in the close vicinity of the residence of Hans and Gopal and about Hans and Gopal having disappeared and not being available in Ulhasnagar for a month or so have not been stated. We find no fores in this submission also. While replying to these contentions the first respondent in his sur-rejoinder has stated that the contents mentioned therein are stated as a reply to the contentions raised in the affidavit-in-rejoinder. It is further alleged that Sajnani had stated that the goods were unloaded at Camp Nos. 1 and 3 and that has been disclosed in the grounds and that the other particulars mentioned in the affidavit-in-reply with reference to the goods unloaded by Gopal were meant to show the exact location of the goods unloaded in Camp 1 and 3. Apart from that, it is alleged Gopal was not important at all for the consideration of passing the order of detention against the detenue.

40. We find no force in this contention for the petitioner. As we have stated what is required to be stated is the pith and substance of the basic facts and not the details of the evidence. In fact the names of the associates are not required to be given. In this connection we may refer to S.K. Ibrahim Vs. The State of West Bengal and Others, , Milan Banik Vs. The State of West Bengal and Others, , and Daroga Rai Vs. The State of West Bengal, . In all these cases it was held that the fact that the names of associates of the detenue were not given in the grounds of detention would not make the grounds vague.

41. The next contention in para. 4(j) of the affidavit-in-rejoinder is non-disclosure of the fact that Purshottam Balani was to get some contraband goods out of the aforesaid consignment and that the writing found in the car related to that portion of the contraband which Pishu Balani was to get as his share. In his reply the detaining authority has met this contention of the petitioner by saying that it is nowhere stated in the affidavit in reply that Balani was to get a portion of the contraband as his share. It is further stated that Balani has admitted as stated in the

grounds that he had association with Sajnani in acquiring the goods under seizure. Here also having perused the grounds and the affidavit-in-reply, we are of the opinion that what is required to be stated is the pith and substance of the basic facts and not the details of the evidence.

42. The last contention based on non disclosure mentioned in para. 4 (k) of the affidavit-in-reply is that the enquiries which revealed that car No. MRD 4897 was never plied as a taxi, have not been disclosed. There is no substance in this submission either as the source of the information is not required to be disclosed.

43. In the result the challenge based on ground No. 1 viz. non-disclosure of all the materials, it would appear that the fact that Sajnani had given particulars of another telephone number beginning with the figure ''53'' and that that was found to be the telephone number 537938 which was installed at the residence of the petitioner is proved to be basic material which was not disclosed, although it is clear that it has weighed with the detaining authority in relying upon the word of Sajnani and, therefore in passing the detention order. The other alleged nondisclosures as we have pointed out are of no consequence.

Ground No. II:

44. The second ground of attack is that there was a failure to apply the mind to the most important circumstances of the case viz. that Purshottam has not implicated the detenue in the transaction which took place at Sheel Phata on November 12, 1977. It is undoubtedly true that Purshottam Balani does not involve the detenue in the Sheel Phata incident whereas it is the version of Sajnani that both he and Purshottam had together been to the Sheel Phata and it was there that the detenue came in his car followed by a truck and that Hans was present and that contraband goods were entrusted by the detenue to these people and the detenue went away. This contention was met by counsel for the detaining authority by contending that since there were two statements before the detaining authority viz. one by Sajnani and the other by Purshottam Balani, it was perfectly open for the detaining authority to rely on the word of Sajnani in preference to the word of Purshottam Balani and this Court cannot sit in judgment over that appreciation of the evidence by the detaining authority. Mr. Jethamalani immediately took exception to that statement and submitted that from his experience he knows that the statements are never sent by the authorities to the detaining authority, and by taking us through the substance of the evidence of Purshottam Balani as summarised in the grounds of detention Ehx.B, served on the detenue, maintained that the statements could not have been sent and he further added that if it is shown to the Court that the detaining authority had before it both the statements of Sajnani and Purshottam, he would give up his contention, as after all in that event, it would be open to the detaining authority to accept the word of Sajnani in preference to the word of Purshottam. In that bid Mr. Jethmalani drew our attention to the following material in the grounds of detention. It is to this effect :

Purshottam G. Belani was similarly questioned on 20-11-1977 by the Superintendent of Customs in the presence of Assistant Collector of Customs, Bassein. He admitted his association with the above said Lachman S. Sajnani, in acquiring the abovesaid seized goods. He also admitted having written the details of packages on the slip of paper seized by the Customs. He also refused to sign the statement.

45. Counsel for the detaining authority while refuting the contention of Mr. Jethmalani that the statement of Purshottam Balani was not at all sent to the detaining authority and that what was done was only to summarise the statement as is done in grounds, produced the forwarding letter dated January 25, 1978 addressed by the Collector of Customs (Preventive) Bombay to the Deputy Secretary, Ministry of Finance, Department of Revenue, New Delhi. Along with it the proposal for taking action to detain the petitioner was sent. From this letter it is clear that amongst the eight annextures therein, we have at serial No. 7, a statement of Lachman S. Sajnani dated November 20, 1977 and at serial No. 8, the statement dated November 20, 1977 of Purshottam G. Balani. It is thus clear that the detaining authority had before it both the statements viz. of Sajnani and of Purshottam Balani. It was after perusing these statements before it, that the detaining authority decided to rely on the word of Sajnani to that of Purshottam and, therefore, it could not be said that it is a case of non-application of mind to the important circumstances about Purshottam not implicating the detenue in the transaction which took place at Sheel Phata on November 12, 1977. This contention must therefore be rejected. Ground No. III :

46. It is contended that two judgments of this Court have in terms held that a conclusion of fact based only on the word of an accomplice who himself is caught red-handed would be struck down as unreasonable and perverse and yet in this case substantially everything depends upon the word of Lachman Sajnani not corroborated but contradicted by Purshottam Balani.

47. In support of this contention reliance is placed on two unreported decisions of Vimadalal and Shah JJ. The first is a decision in Smt. Mohinidevi v. The State of Maharashtra (1975) Criminal Application No. 320 of 1975, decided by Vimadalal and Shah JJ., on July 1, 1975 (Unrep.) and the second is Gangadevi Shrikishan Solanki v. Shri K.G. Paranjpe (1975) Criminal Application No. 96 of 1975, decided by Vimadalal and Shah JJ. on September 22, 1975 (Unrep.). It is true that in Smt Mohinidevi v. The State of Maharashtra, the learned Judges have observed,

...In the view which I have taken, viz. that the uncorroborated statement of Mehtabchand that the said foreign bank account was the account of the detenu could not be accepted by any reasonable man.

Earlier in the course of the judgment it is observed that it is true that Mehtabchand has orally stated that the account was the detenue''s account, but an uncorroborated statement made by a person like Mehtabchand at a time when he

himself was in trouble with the enforcement authorities cannot be accepted by any reasonable man for, by such a statement, the said Mehtabchand might well be attempting to exculpate himself, wholly or partly.

48. It appears from that judgment that the said Mehtabchand Jain had in his statement stated that he understood from reliable source that the detenue and his family were engaged in unauthorised dealing in foreign exchange in India and the Court held that that statement cannot be countenanced for the simple reason that it is in the nature of pure hearsay, and that too, without disclosing the source referred to therein. It is as against this background that the said observations have been made and they cannot be taken down to lay down any law as such. These observations were relied upon by the same Bench in the subsequent decision in Gangadevi Shrikishan Solanki v. Shri K. G. Paranjpe (supra). It may be however noted that those decisions do not appear to lay down any law as such but they are decisions on the peculiar facts of those cases.

49. In the instant case, however, apart from the fact that this Court is not an appellate Court and it was for the detaining authority to decide whether to believe or not to believe the word of Sajnani, it is worthwhile to note that the statement of Sajnani is corroborated and as appears from the affidavit-in-reply in para. 12, the detaining authority has taken care to see that the statement of Sajnani was corroborated for several reasons and that is why it thought that he is a witness who could be relied upon for passing the impugned order of detention.

50. The first corroboration which is referred to is that Sajnani''s statement shows that he had a talk with the detenue on his telephone No. 370546. Since in one of the residences of the detenue this telephone number is installed this circumstance was a piece of corroborative evidence to the statement of Sajnani.

51. The next circumstance on which he has relied is that Sajnani gave another telephone number beginning with the figure ''53'' and that was found to be phone No, 537938. It was installed in another residence of the detenue. We had occasion to refer to this telephone number in connection with the ground of nondisclosure. But so far as the detaining authority is concerned, this material was before it and as stated by it, this went to corroborate the version of Sajnani.

52. The next circumstance which corroborates the version of Sajnani is that Sajnani gave the number of the truck in which the contraband was handed over by the detenue at Sheel Phata on November 12, 1977 as bearing No. 6667 and the inquiries revealed that that truck number was of MHT 6667. That truck was in fact traced to the detenue who was passing of under the fictitious name Abdul Rashid Abdullah as appears from the statements of three witness viz. Appa Gaikwad the truck driver, Soni the transport agent in Dana Bazar and Sayeed Ibrahim, the truck repairer.

53. The next circumstance which corroborates Sajnani is that both the truck and one of the two cars which were found abandoned at Ulhasnagar on November 12, 1977

bearing No. MMB 7540 were registered in the office of the R.T.O. in the selfsame fictitious name viz. Abdul Rashid Abdullah Cement Chawl, Chakala, Andheri.

54. The next circumstance which corroborates Sajnani is that in the house of the detenue which was searched two petrol bills dated June 4, 1977 and June 5, 1977 in respect of car No. MMD 4897 registered in the fictitious name of one Hussein Kassam Mukadam were found. One of them is issued by the petrol pump in Dhule and the other is issued by petrol pump in Shivpuri (U.P.) on June 5, 1977. It may be mentioned that this car was one of the two cars along with car No. MMD 4897 which was found abandoned at Ulhasnagar near Camp Nos. 1 and 3 on November 12, 1977.

55. It would thus appear that there was sufficient corroborative material to attest the version of Sajnani which was in fact present to the mind of the detaining authority as appears from the grounds in the affidavit-in-reply filed by the detaining authority. It would thus appear that the two unreported rulings of Vimadalal and Shah JJ. in Smt. Mohinidevi v. The State of Maharashtra (supra) and Gangadevi Shrikishan Solanki v. Shri K.G. Paranjpe (supra) in fact do not lay down any law as such and they have been decided on the peculiar facts of those cases. In fact when the decision in Smt. Mohinidevi v. The State of Maharashtra was cited before another Bench consisting of Chandurkar and Shah JJ. in Ramila Pravin Choksey v. Shri K. B. Srinivasan (1976) Criminal Application No. 841 of 1975, decided by Chandurkar and Shah JJ., on March 5/8, 1976 (Unrep.), and also in another case being Smt. Godavari Ben v. The Union Territory of Goa, Daman and Dieu (1976) Criminal Application No. 795 of 1975, decided by Chandurkar and Shah JJ., on February 13, 1976 (Unrep.), the unreported rulings of Vimadalal and Shah JJ. relied upon by Mr. Jethmalani were distinguished. Again as we have endeavoured to point out there is sufficient material to corroborate the version of Sajnani. Therefore, there is no substance in the third ground of attack based on the two unreported decisions of Vimadalal and Shah JJ.

56. The fourth ground of attack is that there is no material at all to show that the two cars which are said to have been abandoned at Ulhasnagar had anything to do with smuggling or transport of smuggled goods. We are not impressed with this submission. The grounds show that at Ulhasnagar Camp Nos. 1 and 3, when on information received on November 14, 1977, Customs Officers Mr. Desai and Mr Talkakar rushed to the spot at Ulhasnagar, they found and recovered nine packages of textiles from an open place near barrack No. 4/424, Camp No. 1 and twentynine packages were found concealed in a ditch covered with dry grass and thorny branches. These thirty-eight packages were found to contain smuggled textiles of foreign origin valued at Rs. 6,38,057.50. The Customs party also found two Ambassador cars bearing No. MRD 4897 and MMB 5740 abandoned near the places of seizure of the aforesaid goods at Camp No. 3, and the said cars were also seized inasmuch as in the boot and seat of these cars remnants of dry grass were found

and that according to the detaining authority mentioned in the order of detention, indicated that the cars were used in the transport of the above smuggled goods. In our opinion, the very circumstance of the finding of the dry grass in the boot and under the seat of the cars identical with the dry grass with which twenty-nine packages were found concealed in the ditch nearby, would go to show the connection between these cars and the smuggled goods which were found there. We have already dealt with the fact that those two cars together with the truck were transferred in the fictitious names and it may be mentioned that the date of transfer is May 20, 1977. We have further shown connection of the detenue with these cars and the truck. It would thus appear that there is no substance in this contention.

Ground No. V :

57. The fifth ground of challenge is that the authority has allowed itself to be influenced by totally innocuous facts and, therefore, in law in relevant facts viz. the telephone bills. In para. 7(F) of the petition, the petitioner has alleged that the detaining authority has allowed itself to be influenced by a totally irrelevant fact which is devoid of probative value, viz. a telephone bill for the period from October 6, 1975 to January 24, 1976. To regard the said bill as having any relevance to the contraband found in Ulhasnagar on November 14, 1977, is to act perversely. No reasonable person would attach the slightest importance to such circumstance. In the affidavit-in-reply to this contention filed by respondent No. 1 in para. 15 it is contended as under :

With reference to ground (F) of the petition, it is denied that the detaining authority has allowed itself to be influenced by any or totally irrelevant fact alleged to be devoid of probative value, namely, the telephone bill for the period from 6th October 1975 to 24th January 1976. The petitioner wrongly assumes that the respondents made an attempt to show that this fact has relevance to Ulhasnagar case in particular, when proper explanation is not forthcoming from the detenu who alone could have given proper and satisfactory explanation.

From all these facts and circumstances, it was quite proper for me to hold that there was a close connection between the detenu, the said Hari and his persons operating at Ulhasnagar and that they were all connected with the smuggling activities.

(emphasis supplied), (here indicated in italics-ed.)

58. To appreciate this contention some more facts need to be stated. In the grounds of detention supplied to the detenue (ex. B), it is stated

At the time of search on 24th November 1977, in the premises situate at Flat Nos. 3 and 4 in Gulmarg Apartment where telephone No. 370546 is installed, the Customs Party found among other papers one telephone bill in respect of telephone No, 370546 for the period from 6-10-1975 to 24-1-1976. The telephone bill indicated that during the period as many as 11 urgent trunk calls were booked for telephone No.

823 of Ulhasnagar and one lightning trunk call to telephone No. 237 of Bassein. Telephone No. 237 of Bassein was installed at the Baflekar Fishing Product in Bassein. Baflekar Fishing Product is admittedly the business concern of Hari Bhiva Baflekar of Naigaon, Bassein. You have denied having made trunk calls to the above said telephone numbers at Ulhasnagar and Bassein and also denied any connection with those persons who had these telephone numbers. Hari Bhiva Baflekar also denied acquaintance or any business connections with you.

59. Another fact which needs to be mentioned in this connection is that whereas the telephone bill in question is for the period from October 6, 1975 to January 24, 1976, admittedly by an order dated February 4, 1976 issued by the Secretary to the Government of Maharashtra, Home Department, the detenue was detained from February 6, 1976 under the COFEPOSA Act, 1974 and he was released thirteen months later on March 22, 1977. In other words the trunk call bills were undoubtedly for a period prior to the earlier detention of the detenue from February 6, 1976. We really fail to see how there could be a rational nexus between these telephone bills and the find of contraband articles in Ulhasnagar in November 1977. It is not at all the case of detaining authority that any call was booked by the detenue from his telephone to the concerned places viz. Ulhasnagar and Bassein at any time after his release from detention on March 22, 1977. In fact there is not instance of any call being booked to these place after January 24, 1976 and yet as we have pointed out by reference to para. 15 in the affidavit-in-reply filed by the detaining authority, that from that circumstance and the circumstance that the detenue did not give proper explanation inasmuch as he denied having made any call, the authority considered that it was quite proper for it to hold that there was a close connection between the detenue and the said Hari Bhiva and the person operating at Ulhasnagar and that they were all connected with the smuggling activities. It would appear from these facts that it is a clear case where the detaining authority has been influenced by totally irrelevant facts of the find of a telephone bill which is devoid of all probative value so far as the find of contraband at Ulhasnagar is concerned. This challenge therefore must be upheld.

60. As we stated earlier when the learned counsel for the detaining authority produced the office copy of the letter dated January 25, 1978, forwarding the proposal to take action under COFEPOSA Act. 1974 for repudiating the challenge of Mr. Jethmalani that the statement of Purshottam Balani was not before the detaining authority, on examining the said letter and the subsequent forwarding letter dated March 15, 1978 Mr. Jethmalani urged additional grounds to challenge the order of detention. We shall now consider those additional contentions.

Ground No. VI:

61. It was contended that the new evidence furnished by the letter dated January 25, 1978 discloses the existence of a damning prejudicial report about the prejudicial activities of the detenue, there is no evidence before the Court that everything in

that report has been communicated to the detenue. The order must be therefore struck down on that single ground as was done by the Supreme Court in Sasthi Keot Vs. The State of West Bengal, . It may be mentioned that in that case in the affidavit-in-reply which was filed on behalf of the respondent, there was a statement as under :

''I further state that it appears from the records that the detenu petitioner is a man of desperate habits and dangerous character and also prone to committing theft of underground tele-communication cable''.

It further appears from the judgment that the above observations had been relied upon by the State as additional ground in support of the detention, apart from the theft of cables, recited in the detention order and repeated in the counter-affidavit. Counsel candidly admitted that this additional circumstance had been placed before the State Government and the Advisory Board, and certainly was before the District Magistrate when he passed the detention order.

62. It was, therefore, a clear case where authorities had been influenced by the report of the police that the petitioner was a man of desperate habits and dangerous character and also prone to committing theft of underground cables. The Supreme Court on these facts observed,

Moreover, this vital yet injurious dossier about the petitioner has not been communicated to him and opportunity afforded for making a proper representation contra. Therefore there is violation both of Article 22(5) of the Constitution and of Section 3(1) of the Act. In this view, we are constrained to quash the detention order on the petitioner and direct his release.(p. 526).

63. We have already stated that this additional ground of attack is inspired after going through the letter of the Collector of Customs dated January 25, 1978 sending in a proposal for taking an action against the detenue under the COFEPOSA Act along with which certain documents were sent. It is in this covering letter that the Collector of Customs has observed that Kutubuddin (the detenue) has come to the adverse notice of his Collectorate for his smuggling over a period of years. There is a reference to the fact that he was detained under the COFEPOSA under the orders issued by the Government of Maharashtra on February 6, 1976 and about his being released on March 22, 1977 on revocation of emergency.

64. What is relied upon are the further observations in this letter which are as under :

Reports available with us indicate that since his release he has revived his smuggling activity. He is operating a big racket from behind the send as can be seen from the enclosed report on his prejudicial activities. The reports and accompaniments may be placed before the Additional Secretary for considering detention of this smuggler under Cofeposa Act, 1974. Draft grounds are also enclosed.

65. The annextures to this letter which are eight in number consist of:

1) Proposal for COFEPOSA action ;

2) Grounds of detention ;

3) Statement of Mohamed Bachu Boljm dated September 6, 1975 ;

4) Statements of Kutubuddin A. Shamshi dated December 9, 1977 and December 13, 1977.

5) Statement of Kutubuddin A. Shamshi dated February 6, 1976.

6) Copy of adjudication order relating to the incidents of smuggling dated February 6, 1976.

7) Statement of Lachman S. Sajnani dated November 20, 1977 ; and

8) Statement dated November 20, 1977 of Purshottam G. Balani.

66. On behalf of the respondents it is submitted that the report referred to in that covering letter about the prejudicial activities of the detenue being a secret communication as the letter itself shows at the top, consists of intelligence report which is received by the Collector and, therefore, that material need not and could not have been furnished to the detenue. It is further submitted that the decision in Sasthi Keot v. State of West Bengal (supra) could not be applicable to this letter and the facts of our case, inasmuch as in that case, there was no plea based on privilege claimed by the detaining authority. Since in the instant case both in the grounds supplied to the detenue and affidavit-in-rejoinder privilege is claimed, the decision in Sasthi Keot''s case has no application to the facts of our case. Actually we find that in the grounds itself to start with, the fact of his earlier detention and release has been stated and it has been further stated that within three months from his release from detention the Customs department started receiving intelligence report that the detenue has revived his smuggling activities. Having regard to these facts we do not find any force in this additional challenge which is made by Mr. Jethmalani. Ground No. VII :

67. The next contention was that there was non-application of mind of the detaining authority to the statement of the detenue dated December 13, 1977 which was forwarded by the Collector of Customs to the Deputy Secretary along with his letter dated January 25, 1978 proposing the detention of the detenue. After taking us through the statement of the detenue dated December 13, 1977 wherein the detenue states that since phone No. 370546 installed in his residence is being used by his wife, relations and neighbours, he cannot account for the trunk call bills for the period from October 6, 1975 to January 24, 1976 and he has in fact denied his having booked those calls. What is argued is that inasmuch as in para. 15 of the affidavit-in-reply, the detaining authority has stated that proper explanation is not forthcoming from the detenue who alone could have given satisfactory and proper

explanation in respect of the trunk bill for the period from October 6, 1975 to January 24, 1976 and further in his sur-rejoinder in para. 8 he observed that the detenue ought to have offered explanation within his knowledge concerning the trunk bills, it was submitted that this is a case of non-application of the mind of the detaining authority. What is argued is that as appears from the letter dated January 25, 1978, when the proposal was sent the statement of the detenue dated December 13, 1977 offering an explanation about his inability to explain the trunk call bills was also sent and inspite of that the detaining authority without applying its mind to the same, has taken the view that no clarification or explanation was given by the detenue. No doubt in the affidavit in sur-rejoinder para. 8, there is such a loose explanation but then it is worthwhile to note that in the earlier affidavit-in-reply, which is filed what is stated in para. 15 is that proper explanation was not forthcoming from the detenue. What is more, it is stated therein only that he had denied about his having made the calls. Thus it would appear that it would not be proper to say that that explanation was not present to the mind of the detaining authority. What is argued is that the detaining authority ought to have stated that it rejects that explanation which could have shown that the detaining authority had applied its mind to that statement. This submission is devoid of force. The moment it is stated that the explanation given is not proper it goes without saying that the explanation was considered and was present to the mind of the detaining authority. Therefore this contention must be rejected.
Ground No. VIII :

68. The last contention so far as the Ulhasnagar incident is concerned, viz. contention No. 8 is that the additional material shows that the affidavit in sur-rejoinder is totally false when the first respondent states that the detaining authority has not at all been influenced by the detenue''s alleged activities prior to the first detention order. To appreciate this argument some more facts need be stated. In this connection our attention is drawn to the annextures to the covering letter dated January 25, 1978 sent by the Collector of Customs to the Deputy Secretary making a proposal for the detention of the detenue. In particular our attention is drawn to the fact that amongst the annextures there is a copy of the adjudication order relating to the incidents of smuggling dated February 6, 1976 and there is also the statement of one Mohamed Bolim dated September 6, 1975. The third document on which reliance has been placed is that the statement of the detenue dated February 6, 1976 was also forwarded. It is submitted by Mr. Jethmalani that all this material having gone to the detaining authority, he must have been influenced by this material and yet when he says in his sur-rejoinder para. 5 (a), while meeting the contention in para. 4 (a) in the petitioner''s rejoinder, that it is not agreed that the facts mentioned in para, 5 or 5A of the affidavit-in-reply are the facts which were to be disclosed to the detenue, and that they were not relied for the purpose of passing the detention order, that contention must be held to be false.

69. We are not at all impressed with this submission. We have already dealt with this contention while dealing with the very first ground of attack levelled by Mr. Jethmalani on the score of non-disclosure. The additional material in the covering letter has no relevance to the order of instant detention. That would be only past history. In fact the detenue was under detention from February 6. 1976. So the adjudication order if any dated February 6, 1976 could have only reference to the incidents on which the earlier detention from February 6. 1976 was founded. Since none of them could have any proximate connection with the instant order and the detaining authority says that the earlier incidents did not weigh with him in passing the order and when as we have already shown his explanation deserves to be accepted nothing more need be stated even in respect of this so-called additional grounds. We, therefore, see no force in this submission.

70. Had the matter rested there only and the Act were not amended by the Amending Act No. 35 of 1975 which introduced Section 5A in the Act, it would have been unnecessary for us to consider the other ground viz. the first ground of detention based on the find of contraband at Bassein on the night of June 24/25, 1977 inasmuch as under the law as interpreted by the Supreme Court prior to that amendment, if one of the grounds among other grounds was found to be vague or suffering from any infirmity, the order though based on other valid grounds also could not be sustained but was liable to be quashed. But in view of Section 5A of the Act, it is necessary for us to consider the first ground of detention also, although as we pointed out while dealing with the second ground, that that ground cannot be sustained on two counts viz. one of non-disclosure of basic material fact about Sajnani having given telephone number beginning with the figure 53 and in view of the detaining authority being influenced by totally irrelevant material about the telephone bills.

71. At this stage it may be relevant to refer to the provisions of Section 5A of the Act as amended by Act No. 35 of 1975 which is deemed to have come into force on July 1975.

5A. Grounds of detention severable.-Where a person has been detained in pursuance of an order of detention under Sub-section (1) of section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly-

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are-

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever.

and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in Sub-section (7) of section 3 with reference to the remaining ground or grounds and made the order of detention.

(b) The Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section CO after being satisfied as provided in that sub-section with reference to the remaining ground or grounds.

72. It is not disputed before us and in fact it is conceded by Mr. Jethmalani that the order of detention is based on two grounds. The first ground is in respect of the Bassein incident and the second is in respect of Ulhasnagar incident. We have already dealt with the second ground concerning the Ulhasnagar incident and that ground as we have pointed out is liable to be struck down. The first ground may now set out here for ready reference. It is mentioned in para. 1 of the grounds of detention as under :

You were detained on 6-2-1976 under COFEPOSA Act, in pursuance of Order No. DESK.XIX.SB.PSA. 017B dated 4-2-1976 issued by Secretary to the Government of Maharashtra, Home Department with a view to preventing you from smuggling goods, abetting the smuggling of goods and dealing in smuggled goods and were released from detention on 22-3-1977.

Within three months of your release from the detention the Customs Department started receiving intelligence reports that you had revived your smuggling activities. As the intelligence report received indicated that you organised smuggling of contraband goods in the Bassein Creek, a watch was kept by the Customs Authorities at Bassein on the night of 24/25-6-1977. The Customs Party intercepted one -mechanised craft BSN 7321 in the Bassein Creek on the same night which was laden with contraband goods viz, wrist watches, textiles etc. of the aggregate value of Rs. 22.23 lakhs. Further intelligence received by the DRI indicated that the aforesaid seized goods were despatched from Dubai and that you in association with others had organised landing of the same near Bassein.

Intelligence received on or about 23-7-1977 indicated that you had planned to smuggle near Bassein wrist watches and textiles sometimes during the end of July 1977. Further your associates had again planned smuggling of more consignments comprising gold, wrist watches, textiles etc. on or about 24th to 26th August 1977. You were not successful in this mission because of strict vigil maintained by the Customs Department.

73. It is argued for the respondents that this ground alone is sufficient to sustain the order of detention in view of the provisions of Section 5A of the Act as amended. We have proceeded on the basis that the Act as amended is valid so far as this petition

is concerned as we proceeded to hear the petition on the express submission of Mr. Jethmalani : that he is not going to challenge the validity of the Act. With regard to this ground it was submitted by Mr. Govilkar that there is hardly any challenge in the petition. Mr Jethmalani however submitted that while drafting the petition it does not appear that this ground was present to the mind of the draftsman. However, he submitted that there is some sort of challenge in the petition. For instance in ground A in para. 7, it is alleged that the petitioner submits that the impugned order of detention dated March 29, 1978 has been passed without there being any ground whatsoever which could entail the satisfaction of respondent No. 1 u/s 3(7) of the said COFEPOSA Act. In ground 7 (k) it is contended,

The claim of privilege is on the face of it mala fide and there has been no compliance with Article 22 of the Constitution. The detenu has thus been deprived of an effective opportunity of making any representation against the order of detention.

74. It may be mentioned at this very stage that in the grounds of detention itself privilege is claimed under Clause (6) of Article 22 in the following terms :

I consider it to be against the public interest to disclose the source of intelligence referred to in the grounds of detention above and further consider it against the public interest to disclose further facts contained in the intelligence referred to in the grounds of detention.

75. Again in para. 19 of the affidavit-in-reply to the contentions in para. 7 (K) of the petition, the respondent has denied that the privilege is on the face of it or otherwise mala fide or that there has been no compliance with Article 22 of the Constitution of India. It is further stated that it is not admitted that the detenue was in any way deprived of an effective opportunity of making representation as alleged or otherwise. It is further observed,

The details of secret information which are necessary to be disclosed have been disclosed in the ground of detention. The respondents have a right to claim privilege regarding the disclosure of sources of information and the intelligence reports in public interest. It is not correct that claiming such privilege amounts to non-compliance of the provisions of Article 22 of the Constitution of India. Under the said Article the respondents have full right to claim such privilege if such disclosure is considered to be against public interest. The facts and circumstances and the material disclosed in the grounds of detention clearly bring out the prejudicial activities in which the detenu engaged himself.

76. Mr. Jethmalani submitted that ground No. 1 consists of five facts viz. (1) previous detention order; (2) Intelligence report received; (3) Organising of smuggling of contraband goods at Bassein; (4) Plan of smuggling in July 1977; and (5) plan again failing between August 24 and 26, 1977, in which the detenue and his associates were concerned. Mr. Jethmalani submits that no particulars on points 3, 4 and 5 have been furnished. He concedes that the source of information need not be

disclosed but argues at least the detaining authority must give the nature of the activities. We are not impressed with this submission. It is important to bear in mind that the constitutional mandate to communicate the grounds of detention provided for in Clause (5) of Article 22 of the Constitution is clearly subject to the privilege which is provided for under Clause (6) of Article 22 which in unmistakable terms provides that nothing in Clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

77. The position therefore boils down to this. Under Clause (5) of Article 22, there is a mandate of the Constitution which requires the detaining authority to communicate the grounds on which the order has been made and he shall also afford an opportunity of making a representation against the order. As we pointed out in order to make an effective representation the detaining authority must furnish all the basic material and facts on which the detention order is founded. But then this obligation on the detaining authority and the corresponding right of the detenue is subject to Clause (6) of Article 22. Undoubtedly the privilege is limited to the disclosure of facts which such authority considers to be against the public interest to disclose. Therefore what is privileged would be the disclosure of the facts which such authority considers to be against the public interest to disclose. Again the authority who could come to that decision is the detaining authority. Unless mala fides is proved on the part of the detaining authority full effect must be given to the provisions of Clause (6), By its very nature it would follow that when privilege is claimed under Clause (6), the grounds viz. the material or basic facts which are to be supplied to the detenue under Clause (5) could not be all the basic facts and materials on which the detention order is founded. In other words to the extent that the detaining authority considers that the disclosure of facts is against the public interest to disclose the facts, those facts or basic material under Clause (5) could not be disclosed. To that extent, the detenue is handicapped and the grounds which are furnished are bound to fall short of and be not as elaborate as they ought to be and could be for the application of Clause (5) of Article 22 of the Constitution. It may be, however, noted that in very clear terms it has been stated that within three months of his release from earlier detention as per the intelligence report received by the Customs department, the detenue is alleged to have revived smuggling activities. It is further stated that the intelligence report indicated that the detenue organised smuggling of contraband goods in the Bassein creek and a watch being kept by the Custom authorities at Bassein on the night of June 24/25, 1977 the Customs party intercepted one mechanised craft BSN 7321 in the Bassein creek on the same night which was laden with contraband goods viz. wrist watches, textiles etc, of the aggregate value of Rs. 22.23 lakhs, and that further intelligence received by the DRI indicated that the aforesaid seized goods were despatched from Dubai and that the detenue in association with others had organised landing of the same near Bassein. In respect of the further unsuccessful attempts of the detenue also on July 23, 1977

and between August 24 and 26, 1977, a reference is made to the intelligence received. Once privilege is claimed under Clause (6) of Article 22, unless it is shown to be mala fide, there is no reason to suspect the bona fides of the claim which is made by the detaining authority.

78. In this connection Mrs. Cooper has drawn our attention to the observations of Chagla C.J., in Balkrishna Kashinath Khopkar v. Dist. Magistrate, Thana I.L.R.[1956] Bom. 797 : 58 Bom. L.R. 614 , and also to the judgment of the Delhi High Court in Daya Shankar Kapoor Vs. Union of India and Others, in which reliance is placed on the observations of Chagla C.J. in Balkrishna Kashinath Khopkar''s case. The observations of Chagla C.J. on which reliance is placed are at pages 800 and 801 and are as under :

Now, in our opinion it is not sufficient for the detaining authority to satisfy the Court that a privilege has been claimed with regard to all facts not disclosed, by some omnibus averment in the order that other facts than those disclosed have not been disclosed because they are against public interest. If in the petition challenging the order the detenu makes a grievance of the fact that certain specific facts have not been disclosed and which has prevented him from making an effective representation it is incumbent upon the detaining authority to make an affidavit and to deal with each of these facts and to say that a privilege is claimed with regard to these facts. The Court must be in a position to judge that privilege has been bona fide claimed with regard to any particulars the failure to disclose which has led to the prejudice of the detenu.

79. It is these observations which have been relied upon by the Delhi High Court.

80. It is enough to state that in the case before us privilege is claimed not only in the grounds of detention served on the detenue but also in the affidavit in reply filed by respondent No. 1. Our attention is also drawn to the further observations of Chagla CJ. (p. 804) :

We should have expected the District Magistrate either to have applied his mind to the grievance of the petitioner and state that each one of the particulars required by the by the petitioner was denied to him in public interest or he should have frankly admitted that some of the particulars could not be denied to him in public interest but for other reasons, those particulars were not supplied. But this general unspecific averment of public interest is not what the Constitution or the law requires. Although the question of public interest is not justiciable and although the Constitution and the Act has left it to the detaining authority to decide what facts should be withheld, the Court must at least be satisfied that the authority has applied its mind and has come to the conclusion with regard to public interest bona fide and not arbitrarily or capriciously. It is because of this that we expect a proper affidavit to be filed by the detaining authority whenever a ground is challenged as being vague.

81. It is enough to state that in Balkrishna Kashinath Khopkar''s case there was no affidavit-in-reply claiming any privilege and such affidavit was sought to be filed at a late stage which was not allowed.

82. In The State of Bombay Vs. Atma Ram Sridhar Vaidya, Kania C.J., speaking on behalf of himself and five other Judges has observed as under in para. 11 (p. 163) :

It was argued that under Article 22(6) the authorities are permitted to withhold facts which they consider not desirable to be disclosed in the public interest. It was argued that, therefore, all other facts must be disclosed. In our opinion that is not the necessary conclusion from the wording of Article 22(6), It gives a right to the detaining authority not to disclose such facts, but from that it does not follow that what is not stated or considered to be withheld on that ground must be disclosed and if not disclosed, there is a breach of a fundamental right. A wide latitude is left to the authorities in the matter of disclosure. They are given a special privilege in respect of facts which are considered not desirable to be disclosed in public interest. As regards the rest, their duty is to disclose facts so as to give the detained person the earliest opportunity to make a representation against the order of detention.

83. The decision in Atma Ram''s case was followed by the Supreme Court in Lawrence Joachim Joseph D''souza Vs. The State of Bombay, In para. 5, the Supreme Court has observed as under (p. 535) :

...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.

Hence it follows that both the obligation to furnish particulars and the duty to consider whether the disclosure of any facts involved therein is against public interest, are vested in the detaining authority, not in any other.

(emphasis ours), (here indicated in italics - ed.)

84. The above authorities were further relied upon by the Supreme Court in Puranlal Lakhanpal Vs. Union of India (UOI), There, in the grounds itself it was stated that the Central Government is satisfied that it is against public interest to disclose to the detenue any facts or particulars as to dates, persons and places and the nature of detenue''s activities and the assistance received or otherwise than those which have been already mentioned in the earlier grounds. The Supreme Court observed relying on the decisions in Atma Ram''s case and Lawrence D''Souza''s case that such a privilege having been exercised in the present case, the appellant cannot be heard to say, apart from the question of mala fides, that the grounds did not disclose the necessary facts or particulars or that in the absence of such facts or particulars he was not in a position to make an effective representation.

85. We might also mention that a similar view was taken by a division Bench of this High Court in Ramesh Ramlal v. M. G. Mugwe [1974] 77 Bom. L.R. 437 . Mr. Jethmalani however submitted that the decision in Prabhu Dayd''s case viz. the case reported in Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others, , was not however cited before the division Bench which decided Ramesh Randal''s case. It may be mentioned that this case was decided by a Bench of three learned Judges and the majority judgment is the judgment of Mathew and Mukherjee JJ., Beg J. as he then was, dissenting. It may be remembered that that was not a case where the question of public interest was involved. It was not cited for the simple reason that in that case no privilege was claimed. There is absolutely no material before us to hold that there is any mala fides on the part of the detaining authority.

86. In the result, the ground No. 1 concerning the Bassein incident is perfectly valid and the challenge to that ground must fail in view of the enabling provisions of Clause (6) of Article 22 of the Constitution. Since that ground is valid notwithstanding the fact that the second ground in respect of Ulhasnagar incident is liable to be struck down, in view of the amended provisions of Section 5A of the Act, the petition fails and has got to be dismissed.

87. Leave to appeal to the Supreme Court is rejected.