

PETITIONER:
PRAKASH CHANDRA MEHTA

Vs.

RESPONDENT:
COMMISSIONER AND SECRETARY GOVERNMENT OF KERALA & ORS.

DATE OF JUDGMENT 12/04/1985

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
FAZALALI, SYED MURTAZA
VARADARAJAN, A. (J)

CITATION:
1986 AIR 687 1985 SCR (3) 697
1985 SCC Supl. 144 1985 SCALE (1)813
CITATOR INFO :
RF 1986 SC2177 (47)
D 1987 SC1192 (12)
RF 1988 SC 723 (9)
F 1990 SC 176 (28)
RF 1990 SC 605 (11,12)
RF 1990 SC1272 (11)
D 1991 SC1375 (4)

ACT:

Constitution of India 1950 Act. 22 Cls. (4) & (5)-
Preventive detention-Permissibility of-Safeguards to be
followed by the detaining authority-Rights of detenu-What
are-Grounds for detention-What are

Conservation of foreign Exchange and Prevention of
smuggling Activities Act 1974 SS 3 and 5A-Detention-Grounds
of detention-Communication in a language understood by the
detenu at the earliest-Afford the detenu an opportunity to
make a representation-Confession statements under s 108 of
the Customs Act 1962-Retracton by detenu-Non-consideration
by detaining authority but considered by Advisory Board-
Whether vitiates detention

Words & Phrases-Meaning of

" Grounds" -Content of in detention order-Not mere
factual inferences plus factual material-Constitution of
India 1950 Article 2 (5).

HEADNOTE:

The petitioner in his three writ petitions under Art.
32 challenged the detention orders made against his father,
sister and brother under the Conservation of Foreign
exchange and Prevention of Smuggling Activities Act 1974.

On the basis of intelligence reports, the customs
officials searched the room of the Hotel where father and
daughter-Venilal D. Mehta and Pragna Mehta were staying. The
search led to the recovery of 60 gold biscuits of foreign
origin from the suit case belonging to the daughter. Since
both of them had no valid document to prove the nature Or
import of the gold biscuits to..

698

India and for their legal possession, there was
contravention of the Customs Act, 1962 and the Gold Control

Act, 1960, and, therefore, liable for confiscation. Both were arrested and statements recorded.

In the meanwhile Bharat Mehta, another son of the father, -detenu who had come from Calcutta to arrange for bail was arrested on 4th May 1984 by the Central Excise and Customs Officials after his room in the Hotel, was searched and Indian currency notes amounting to Rs. 24,865 were seized, which he allegedly had brought for meeting the legal expenses for securing release of his father and sister on bail. All the three were remanded to jail custody. They retracted their statements made before the Central Excise and Customs Officers alleging that they were made at the dictates of the customs officers.

Pragna Mehta was served with a detention order under the Conservation of foreign Exchange and Prevention of Smuggling Activities Act 1974 under s. 3(1) (iii) on 20th June 1984 and was served with the grounds of detention in English language. Hindi translation of the grounds of detention was served on 30th June, 1984. Venilal Mehta and his son Bharat Mehta were served with detention orders under s. 3(1) (iii) and (iv) of the Act on 20th June, 1984 and on 1) 25th June, 1984 the grounds of detention were also served on them. The grounds of detention were in English language while some of the accompanying documents were in Malayalam. The detenus made representations for the revocation of their detention. They appeared before the Advisory Board on 6th August, 1984. The advisory Board reported that there was sufficient cause for detention of the detenus and accordingly the Govt. confirmed their detention Orders on 13th August, 1984.

All the three detention orders have been challenged contending: (1) that the grounds were not communicated to the detenus in a language understood by them, (2) that the retraction of the confessions or statements made under s. 108 of the Customs Act, 1962 had not been taken into consideration, (3) that there was delay in serving the grounds upon the detenus, (4) that the detenus were not allowed to be represented properly before the Advisory Board, (5) that the fact of retraction of the confessions having not been taken into consideration the proceedings were vitiated, and (6) that the detaining authority did not independently consider the representations of the detenus but mechanically followed the advice of the Advisory Board.

Dismissing the Petitions,

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HELD: 1. The procedural safeguards have been complied with as far as practicable. There are no merits in the fancied grievances of the detenus .[732]

2. Article 22 of the Constitution ensures protection against arrest and detention except in certain prescribed circumstances and conditions. Art. 22(4)

699

stipulates that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless (a) Advisory Board has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention and (b) such person is detained in accordance with the provision of any law made by the Parliament under sub-cl. (a) and (b) of cl. (7). [618D-G]

Clause (5) of Art. 22 provides that the grounds of detention must be communicated to the detenu as soon as may be and that he should be afforded the earliest opportunity of making a representation against the order. There. fore, it must follow as an imperative that the grounds must be

communicated in a language understood by the person so that he can make an effective representation. [719; 72013-C]

Harikisan v. The State of Maharashtra & Others, [1962] 2 Supp. SCR 918. C

In the instant case, the facts revealed that the detenu Vanilal Mehta was constantly accompanied and was in the company of his daughter as well as his son-both of whom knew English very well. The father signed his mercy petition in Gujarati which was written in English, accepting the guilt of his involvement in smuggling. There is no rule of law that common sense should be put in cold storage while considering constitutional provisions for safeguards against misuse of powers by authorities though these constitutional provisions should be strictly construed. He was in any event given by 30th June 1984 the Hindi translation of the grounds of which he claimed ignorance. The gist of annexures which were given in Malayalam language had been stated in the grounds. That he does not know anything except Gujarati merely ipse dixit of father -detenu and is not the last word and the Court is not denuded to its powers to examine the truth. The Court is not the place where one can sell all tales. The detaining authority came to the conclusion that he knew both Hindi and English. It has been stated so in the counter-affidavit. The circumstances indicate that father -detenu was merely feigning ignorance of English

[720C-H; 720 A-B]

In the instant case, the grounds were given on 20th June, 1984 following the search and seizure of gold biscuits from room of detenu Venilal Mehta in the Hotel in his presence and in the background of the mercy petition, he was in constant touch with his daughter and sons and there is no evidence that these people did not know Hindi or English. Indeed they knew English as well as Hindi. It is difficult to accept the position that in the peculiar facts of this case, the grounds were not communicated in this sense the grounds of detention were not conveyed to the detenu Venilal. Whether grounds were communicated or not detenu upon the fact and circumstances of each case. [712 D-F]

Hadibandhu Das v. District Magistrate, Cuttack & Anr. [1969] 1 SCR 227, Nainmal Partap Mal Shah v. Union of India and Ors [1980] 4 SCC 427 and Ibrahim Ahmad Batti v. State of Gujrat & ors. [1983] 1 SCR 540 distinguished.

700

4 Article 22(5) of the Constitution has two elements (i) communication of the grounds on which the order of detention has been made and (ii) opportunity of making representation against the order of detention. Communication of the grounds pre-supposes the formulation of the grounds and formulation of the ground requires and ensures the application of the mind of the detaining authority to the facts and materials before it that is to say to pertinent and proximate matters in regard to each individual case and excludes the element of arbitrariness and automatism. [725E-G]

5. The "ground." under Art 22(S) of the Constitution do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The concept of 'grounds', therefore, has to receive an interpretation which will keep it meaningfully in tune with the contemporary notions of the realities of the society and the purpose of the Act in question in the light of concepts of liberty and fundamental freedom guaranteed by Art. 19(1) 21 and 22 of the Constitution [725-H; 726 A-B]

Smt. Shalini Soni Etc. v. Union of India & Ors. [1981] 1 SCR 962 relied upon.

6. A democratic Constitution is not to be interpreted merely from a lexicographer's angle but with a realisation that it is an embodiment of the living thoughts and aspiration of a free people. The concept of "grounds" used in the context of detention in Art. 22(5) of the Constitution and in sub s. (3) of s.3 of COFEPOSA therefore has to receive an interpretation which will keep it meaningfully in tune with a contemporary notion. While the expression "grounds" for that matter includes not only conclusion of facts but also all the "basic facts" on which those conclusions were founded, they are different from subsidiary facts or further particulars or the basic facts. [726C-E]

Hasmukh S/o Bhagwanji M. Patel v. The State Of Gujarat
JUDGMENT:

In the instant case the grounds of detention is the satisfaction of the detaining authority that with a view to preventing the detenu from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing the detenu from inter alia, dealing in smuggled goods otherwise then by engaging in transporting or concealing or keeping the smuggled goods or engaging in transporting or concealing or keeping smuggled goods the detention of the detenu is necessary. This satisfaction was arrived at an inferences from several factors. One of them is that the retraction from the statements made in the confession or statements under s. 108 of the Customs Act had not been taken into consideration by the detaining authority while passing detention order. The question is whether even if the facts stated in the confession are completely ignored then the inferences can still be drawn from other independent and objective facts mentioned in this

701

case, namely, the fact of seizure of 60 gold biscuits from the suitcase of the daughter in the presence of the father which indubitably belonged to the father and admitted by him to belong to him for which no explanation has been given and secondly the seizure of the papers connected with other groups and organisations to whom gold has been sold by the father are relevant grounds from which an inference can reasonably be drawn for the satisfaction of the detaining authority for detaining the detenus for the purpose of Sec. 3(1) (iii) and 3(1)(iv). The impugned order cannot be challenged merely by the rejection of the inference drawn from confession. [726E-H; 727A-C]

7.(i) The Court is not concerned with the sufficiency of the grounds. It is concerned whether there are relevant materials on which a reasonable belief or conviction could have been entertained by the detaining authority on the grounds mentioned in s. 3(1) of the Act. Whether other grounds should have been taken into consideration or not is not relevant at the stage of the passing of the detention order. If that in the position then in view of s. 5A of the Act there was sufficient material to sustain this ground of detention. [727D-E]

(ii) When detention under s. 3 of the Act is only for the purpose of prevention of smuggling and all the grounds, whether there are one or more, would be relatable only to various activities of smuggling and no other separate ground which could deal with matters other than smuggling could be conceived of because the act of smuggling covered several activities each forming a separate ground of detention and the Act dealt with no other act except smuggling, Whenever allegations of smuggling were made against a person who was

sought to be detained for preventing further smuggling there is bound to be one act or several acts with the common object of smuggling goods which was sought to be prevented by the Act.' It would, therefore, not be correct to say that the object of the Act constituted the ground for detention. In the instant case, however, the authorities concerned came to the conclusion that the detenus were engaged in smuggling, in support of the same they relied on several factors namely: (1) the search and seizure and recovery of 60 gold biscuits, (2) the fact that the importation of the 60 gold biscuits could not be explained by the detenu Venilal, (3) the secretive manner in which the said gold biscuits were kept and (4) the connection with the various dealers and the statements of the employees of the dealers that the father and the sons used to come with gold bars. These materials were in addition to the statements and concessions made under s. 108 of the Customs Act by the father, the sons and the daughter. So even if the statements made by the detenus are ignored and obliterated, the other facts remain and these are good enough materials to come to prima facie belief that detention of the detenus was necessary.

State Or Gujrat v. Chamanlal Manjibhai Soni [1981] 2 SCR 500 followed.

In the instant case, there was no request for consultation with the Advocate. There is no case of non-production of the detenu in spite of intimation by the Advocate to the Customs Officers before a Magistrate. The confessional statement was not the only fact upon which the detaining authority had passed an order. In the premises even if the confessional statements which were ret-

acted as such could not be taken into consideration, there are other facts independent of the confessional statement which can reasonably lead to the satisfaction that the authorities had come to. [729E-G]

Ashadevi, wife of Gopal Chermal Mehta (Detenu) v. K. Shiveraj Addl. Chief Secretary to the Government of Gujrat & Anr. [1979] 2 SCR 215, distinguished.

In the instant case, there was no delay in serving the grounds upon the detenus. The father-detenu was detained on 20th June, 1984. As required under s.8 (3) of the Act, the case of the detenu was referred to the Advisory Board on 18th July, 1984. The representations submitted by the detenu were also forwarded to the Advisory Board for consideration. The services of two persons were utilised by the Board in understanding the statement of the detenu and deciphering the representation in Gujrati submitted by detenu Venilal Mehta to the State Government which was also forwarded to the Board. Therefore, it cannot be said that detenus have not been given proper facility to be represented before the Advisory Board. The allegation that the detaining authority did not independently consider the representation of the detenu but mechanically followed the opinion of the Advisory Board cannot be sustained in view of the fact and circumstances of this case. [759H; J30 A-D]

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CRIMINAL ORIGINAL JURISDICTION : Writ petition (Criminal) NOS.1721, 1722 and 1724 of 1984.

Under Article 32 Of the Constitution of India.

P. Govindan Nair, G.L. Sanghi, Farook M. Razaak and H.K. Puri for the Petitioners.

T.S. Krishnamurthy Iyer and E.M.S. Anam for Respondent Nos. 1 and 2.

N.C. Talukdar and , R.N. Poddar for the Respondent NO.3.

The Judgment of the Court was delivered by
SABYASACHI MUKHARJI , J. One allegedly Venilal D. Mehta is the father. Miss Pragna Mehta is the daughter and Bharat Mehta is the son. They all have been detained under the Pro visions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act , 1974 (hereinafter referred to as the 'Act') , by virtue of an order dated 19th June , 1984.

703

Their detentions are challenged in three writ petitions under Article 32 of the Constitution , filed by Prakash Chandra Mehta , another son of Venilal D. Mehta and brother of Miss Pragna Mehta and Bharat Mehta.

The facts of these cases basically more or less are the same with certain minor variations which would be noticed.

On the 2nd May , 1984 , the father and daughter Venilal D. Mehta and Pragna Mehta were arrested by the officers of the Central Excise and Customs , Cochin on all accusation of having in their possession 60 gold biscuits alleged to be of foreign origin. After their arrest , the father and his daughter were taken to the office of the Central Excise and Customs , Cochin where statements were made on their behalf. It is , however , the allegation of the petitioner that such statements were obtained by use of third degree method , molestation of the daughter , threat and intimidation. We are not concerned with the truth or otherwise of such allegation for the purpose of this application. The statements of the daughter as well as the father were written by the daughter. It is further alleged in the petition that the statement was written by the daughter as dictated by the officers concerned. The father , Venilal D. Mehta put his signature in English as 'Balvant Shah'. It must be noted that statement in English was written by the daughter. It is alleged that the father and the daughter told the officers concerned that the correct name of the father was Venilal Mehta. It is the case of the father in the petition on his behalf that he does not understand , read or speak or write English but he can only sign his name in English. After the said statement. the father and the daughter were taken to the Hotel Dwarka where they were kept in separate rooms under the guard of the officers. [t is alleged on behalf of the father and the daughter that no legal assistance was allowed in spite of repeated requests.

On the next day , the father and the daughter were brought to the office of the Central Excise and Customs , Cochin , where once again , the daughter wrote a statement on her behalf and on behalf of her father. It is alleged that neither the said statement was explained to the father nor a copy was supplied. After the said recording of the statement , both the father and the daughter

704

were kept detained at the Customs Department.

In the meanwhile one Bharat Mehta , another son of the father Venilal Mehta who had come from Calcutta to arrange for bail was brought under arrest by the officers of the Central Excise in the presence of the father and was asked to identify the father and his sister whereupon Shri Bharat Mehta identified Shri Venilal D. Mehta as his father and Miss Pragna Mehta as his sister. Upon such identification , Miss Pragna Mehta wrote down a third statement-one on behalf

of her father and one on her own behalf. It is alleged that such statements were dictated by the officers of the Central Excise.

Bharat Mehta also wrote down a statement on his behalf which is similarly alleged to have been written as dictated by the officers. Then all the three aforesaid persons Venilal D. Mehta, Miss Pragna Mehta and Bharat Mehta were produced before the Acting Chief Judicial Magistrate on 5th May, 1984 at 8. 30 P.M. at his residence at Vanala and were reminded to jail custody.

So far as Bharat Mehta is concerned, on 2nd May, 1984, he was in Calcutta and he was informed by his brother from Bombay that his father Venilal Mehta and his sister Pragna Mehta had been arrested and upon hearing that he left for Bombay and arrived in Bombay by the evening flight. On the following day i. e. On 3rd May, 1984, Bharat Mehta left on the morning flight for Cochin for arranging bail for his father and sister. At the Cochin Airport, he was apprehended by the officers of the Central Excise who desired to interrogate him and was thereupon brought to the office of the Central Excise and was interrogated about his complexity in the smuggling of gold. According to Bharat Mehta, as he had nothing to do with the smuggling of gold, he denied having any connection with the same. Thereafter he was allowed to go. On 4th May, 1984 the room in the Indian Airlines Hotel, Ernakulam where he was staying was searched by the officers of the Central Excise and Customs. Though Bharat Mehta states that nothing incriminating was found, the Custom Authorities had seized Indian currency notes amounting to Rs. 24,865 which sum, he alleged to have brought for meeting the legal expenses. Thereafter, he was arrested and taken to identify his

705

father and sister as mentioned hereinbefore.

When all the three were remanded to jail custody, the father, the daughter and the son retracted their statements. They made complaints to the Collector of Central Excise and Customs about the manner in which their statements were obtained. Application for bail was moved on 7th May, 1984 before the learned Acting Chief Judicial Magistrate Miss Pragna Mehta was allowed interim bail till 7th May, 1984. On 8th May, 1984 the bail application was rejected. After the cancellation of her bail application, Pragna Mehta moved an application under section 439 of the Code of Criminal Procedure, 1973 before the Kerala High Court and the High Court was pleased to grant bail on certain conditions. She was served with the detention order on 20th June, 1984, and the detenu was served with the grounds of detention in English language. Hindi translation of the grounds of detention was served on, the detenu on 30th June, 1984.

The father's bail application was, however, rejected by the Kerala High Court. The father was transferred on 24th May, 1984 from sub-jail, Ernakulam, to the General Hospital, Ernakulam because he had become ill. He was thereafter admitted in the General Hospital.

The son's bail application was also rejected by the High Court of Kerala and he was also transferred to the General Hospital, Ernakulam because he became ill. Thereafter on 6th June, 1984, application for grant of bail was moved on behalf of the father and the son before the Sessions Judge and the said application was rejected on 12th June, 1984 in respect of both of them.

Both Bharat Mehta and Venilal Mehta were transferred to

the Medical College Hospital , Kottayam for treatment. On 20th June 1984 , the father and the son while in custody and undergoing treatment in Medical College Hospital were served with the detention orders under the said Act. Thereafter they were transferred to the Central Prison , Trivandrum.

On 25th June , 1984 , the grounds were served on all three of them. It is alleged that the said grounds were served nearly at midnight and said grounds served were written in English while

706

some of the accompanying documents about six in number were In Malayalam.

On 25th July , 1984 Miss Pragna Mehta made an application praying , inter alia that the order of detention by revoked and she may be set at liberty. On 4th August , 1984 , she wrote a letter to the Chairman , Advisory Board seeking the assistance of a legal practitioner or a friend during the Advisory Board proceedings. It is alleged that on or about 6th August , 1984 , she was informed at 9.00 A.M. for the first time that she had to appear before the Advisory Board at 10.00 A.M.

It is her case that she appeared without being given an opportunity of being assisted by any friend. She further alleges that she being the only lady detenu in solitary confinement , after coming back from the Advisory Board meeting made a representation to the detaining authority for certain jail facilities namely , facility of home cooked food, reading and writing materials , frequent interviews with relations and friends , facility of writing letters to mother in Gujrati language , sewing and embroidery materials and hygienic toilet facility.

She made a representation to the Central Government on 9th August. 1981 for revocation of her detention order.

On 11th August , 1984 , a letter was received by her from the Commissioner and Secretary to Government , Government of Kerala respondent No. 1 that there was no provision for home cooked food and there was no solitary confinement , that interviews , and all outgoing and incoming letters are required to be censored and no special restrictions have been imposed upon her. She alleges that on 13th August , 1984 , she came to know from the jail authorities that the Advisory Board had confirmed the detention of her and of brother and father for one year and that the opinion of the Advisory Board was published in the local newspaper Mothrubhumi on 13th August , 1984.

On 23rd August , 1984 she received a letter that her representation dated 25th July , 1984 had been rejected On 24th August , 1984 she received a letter from the Under Secretary to the Government of India in terms whereof she was informed that her repre-

707

sentation dated 9th August , 1984 addressed to the Central Government had been rejected.

On 23th August , 1984 , she was served with an order issued by respondent No. 1 whereby she was informed that the Advisory Board in its report had expressed that there was sufficient cause for detention of the detenu and accordingly , the Government confirmed the order of detention for a period of one year.

So far as father , Venilal Mehta is concerned , it is his case that Hindi translation of grounds of detention was served on him on 30th June , 1984. While supplying the Hindi translation Of the grounds , the annexures being

annexure Nos. 1, 6, 8, 27, 38 and 47 of the list of documents were supplied in Malayalam. It is the case of the father that he does not know how to read, write or speak English or Hindi or Malayalam. He can only sign his name in English. But thereafter on 27th May, 1984 he made a representation in Gujarati to the detaining authority praying that he was unable to read, write either English or Hindi or Malayalam and the grounds of detention may be given to him duly translated in Gujarati.

On 5th August, 1984, he was informed by a letter dated 4th August, 1984 that his representation could only be examined after the same was translated into English. On 5th August, 1984 he made a representation to the detaining authority praying that his detention order may be revoked. He was informed on 6th August, 1984 at 9.15 A.M. that he would have to appear before the Advisory Board at 10.00 A.M. He appeared before the Advisory Board and the Advisory Board had confirmed his order of detention on 13th August, 1984. He received a letter on 25th August, 1984 that his request for supply of grounds of detention and connected documents was not considered necessary by the Government. The representation dated 9th August, 1984 was rejected and the same was communicated to him by a letter dated 28th August, 1984, and he was informed on 31st August, 1984 that the Advisory Board was of the opinion that there was sufficient ground for detention. He was also informed by a letter dated 10th August, 1984 that his representation dated 5th August, 1984 had been rejected.

More or less similar is the Case of the son except that he
708

did not plead ignorance of any language English or Hindi.

As mentioned hereinafter, all the three detention orders have been challenged by Prakash Chandra Mehta, the son of Venilal Mehta and brother of Bharat Mehta and Pragna Mehta by these three separate writ petitions.

The father had on or about 30th June, 1984 made a representation for mercy. It was written in English but signed in Gujarati. It is the case of the father that his son brought this representation prepared by his wife and without understanding he signed the representation for forwarding the same to the proper authorities. The detenu Venilal Mehta, the father and Bharat Mehta, the son, were detained on grounds mentioned in section 3 (1) (iii) and 3 (i) (iv) of the Act and the detenu Miss Pragna Mehta, the daughter was detained on grounds mentioned in section 3 (i) (iii) of the said Act. The said orders were dated 19th June, 1984 were served on 20th June, 1984 alongwith the grounds in English. It was further mentioned in the communications containing the said grounds that the said grounds were being communicated to them for the purpose of Article 22 (5) of the Constitution and they were given opportunities to make representation against the said grounds.

The grounds of detention stated that on the basis of intelligence received a search of room No. 316 of Dwaraka Hotel at M.G. Road, Ernakulam, was conducted and after being identified it was stated that the Customs authorities had reason to believe that gold of foreign origin was kept in the room in the custody of B.V. Shah in contravention of the provisions of the Customs Act, 1962 and Gold Control Act, 1960. The occupants of the room, the father and the daughter had informed that they were not having any such articles. Thereafter the Superintendent and the party made a through search in the presence of the independent witnesses, the occupants and the accountant of the hotel, Mr.

Jayaprakash. In addition to the furniture in the room there were three suitcases and one vanity bag in side the room. On enquiry, the father informed that two of the suitcases belonged to him and the third suitcase and the vanity bag belonged to his daughter. The Superintendent requested the daughter to identify her suitcase and accordingly she identified a brown coloured suitcase marked Aristocrat and vanity bag as hers. The two

709

suitcases claimed to be of the father were examined by the Superintendent. There were no gold or incriminating documents in the suitcases. The Superintendent asked the daughter to open her suitcase and accordingly she opened the suitcase by taking a key from her vanity bag. When she opened, the suitcase was found to contain one inflated air pillow and certain personal clothings- Beneath the air pillow and the personal clothings, there was some thing warped in a Turkish towel. When the Turkish towel was removed three paper packets with abnormal weight were found. The Superintendent enquired Or the daughter about the contents of the three packets and she had remained silent. Immediately the father disclosed that the packets contained gold biscuits of foreign origin. When the Superintendent asked about the quantity, the father informed that the three packets totally contained 60 gold biscuits, with 25 gold biscuits each in two bigger packets and 10 gold biscuits in the small packet. All the three packets were covered with paper bearing printed English letters. The three packets were opened and examined and found to contain 60 gold biscuits, with 25 gold his suits each in two packets and 10 gold biscuits in the third packet. All the 60 gold biscuits were thoroughly examined, weighed and purity tested by a certified goldsmith. Each gold biscuits was found to be of 24 carat purity with a weight of 116.5 grams. The total weight and other particulars of the said gold biscuits and other particulars of certain other materials found were mentioned. It is unnecessary to set these out in detail. The persons of both the father and the daughter were searched. Nothing incriminating was found from the daughter, but certain documents which are noted as incriminating were found from the person of father, the particulars of the said documents have also been set out in that: grounds. It is not relevant for our present purpose to set these out in detail.

The Superintendent asked the daughter and the father whether they were having any valid documents to prove the nature of import and prove the legal possession of the 60 gold biscuits of foreign origin recovered from the suitcase claimed to be of the daughter. She replied that she did not have any such document and that she carried the above said gold biscuits from Bombay to Cochin as directed by her father. The father also said that he had no valid documents to prove the nature of import of the 60 gold biscuits to India and for the possession of

710

the same and that the daughter carried the gold biscuits from Bombay to Cochin as directed by him.

In the premises it was stated that there was reasonable belief that 60 gold biscuits were smuggled into India and acquired and possessed and dealt with in contravention of the Customs Act, 1962 and the Gold Control Act, 1960 and hence were liable for confiscation.

The show cause notice further stated that the entire articles in the suitcase from which the gold biscuits were recovered, the key of the suitcase and the documents

recovered from the vanity bag of Miss Pragna Mehta and from the shirt pocket of Venilal Mehta (B.V. Shah) were also seized for further necessary action. The value of the gold biscuits seized came to round about Rs. 14 lakhs. B.V. Shah alias Venilal Mehta, Miss Pragna Mehta and the independent 1) witnesses have signed on the documents and on the mahazar. Mr. Jayaprakash accountant of Dwaraka Hotal had also appended his signature in the mahazar. A copy of the mahazar was also given to B.V. Shah alias Venilal Mehta and his acknowledgement was obtained on the original.

Ground I (b) stated about the search on intelligence report of Hotel Airlines at M.G. Road, Ernakulam. It is not necessary to set out in detail the documents and the currency notes seized, particulars whereof were stated in the said show cause.

In Ground I (c), the search and seizure of Swastic Society, Bombay have been set out. Certain telephone numbers are noted. The documents seized from this place included telephone bills installed at the residence of Venilal Mehta and two other telephone numbers noted in the paper. Other details of the ground and facts of the search need not be set out in detail.

In Ground I (d), it was stated that the Superintendent of Customs searched premises of R.D. Mehta & Co. and certain particulars of telephone numbers and other documents recovered were stated therein.

In Ground I (e), it was stated that the Superintendent searched the silver refinery controlled by Shri Partap Sait. Certain
711

diaries and documents are seized. The telephone of the refinery is 37144. In the documents and diaries seized from the silver refinery, phone number 625768-the phone number of the residence of Venilal Mehta was found entered.

In Ground I (f), it was mentioned that certain documents were recovered from Sadasiva Sait, the particulars whereof are mentioned therein the grounds. As a result of search 10 foreign made gold biscuits weighing 116.500 grams each, 8 primary gold bars weighing 1714 gms. and one gold piece weighing 95 gms. were recovered from the office room. It is further stated in the show cause notice in ground 11 (iii) that during the sight-seeing trip to Cochin with family in January, 1983 Venilal Mehta had contacted different jewellers in Cochin. Shri Pratap Sait of Shalimar Jewellery, Cochin alone responded to the business of Venilal Mehta.

These were entered into in the statement signed by Miss Pragna Mehta which of course, she had retracted thereafter

From different searches at different places telephone number 37144 of Pratap Sait (at the silver refinery of Pratap Sait) was found in various documents.

In Ground II (c), the statements recorded under section 108 of the Customs Act by Venilal Mehta and others were mentioned. It is not necessary in view of the fact that these statements have been retracted, to refer and set out the said grounds in detail.

In Ground II (f), the interrogation of Bharat Mehta is set out. Here also the same cannot be set out because he has also retracted.

In Ground III, it is mentioned that Venilal Mehta, Miss Pragna Mehta and Bharat Mehta were arrested and produced before the then Chief Judicial Magistrate who granted permission to interrogate Shri Venilal Mehta and Shri Bharat Mehta in the presence of Jail Superintendent. Thereafter Bharat Mehta was interrogated and the result of

such interrogation is mentioned in Ground IV. The same again cannot be relied on because these have been retracted.

In Ground V(1) , it was stated that Shri Pratap Sait of 712

'Mahadev Parvathy House' was interrogated under section 108 of the Customs Act. He denied having seen Venilal Mehta or B.V. Shah. He also denied any dealings with B.V. Shah regarding the gold biscuits.

In Ground V (2) , it was stated that Mr. Prakash Krishnan Yadav , an employee of the silver refinery was interrogated under section 108 of the Customs Act. He stated that his normal work in the refinery was purifying silver. He used to purify the gold from Shalimar Jewellery also. He knew Bharat Mehta , Venilal Mehta and Rashmi Mehta. They used to come to the refinery. They used to meet the younger brother of Pratap Sait , Shri Suresh. They were doing some secret business. Suresh used to entrust him with certain bundles of notes to be handed over to Venilal Mehta or his sons. This he used to do. The documents seized from the refinery contained the accounts of agriculture and grapes were written by Pratap Sait. Some times Venilal Mehta , Bharat Mehta and Rashmi Mehta used to stay at Hotel Blue Diamond and he had met them while they were there. The telephone number of the refinery , he stated , was 37144. His statement was read over to him and admitted to be correct. This statement was not retracted.

In Ground V (3) , it was stated that one Shri Suresh Mahadeva Salunkhe S/o Mahadev Dari Salunkhe was examined under section 108 of the Customs Act. He has also given certain facts about the business of Pratap Sait and others. He said that Pratap was looking after Blue Diamond Hotel. He also knew Venilal Mehta , Bharat Mehta and Rashmi Mehta. He further stated that Venilal Mehta came to the refinery some time ago and thereafter as per the telephonic direction of his brother , Shri Pratap Sait , he received some gold biscuits from him and had given these to his brother. His brother gave a bundle of currency notes. This was repeated many times.

In Ground V (4) , it was stated that one Shri Suresh S/o Damodharan , was interrogated under section 108 of the Customs Act. He also stated certain facts giving the connection and the phone number of Venilal Mehta. These have been set out in details in the ground. The particulars of other grounds in V (5) need not be set out in detail. 713

In Ground VI (i) , it was stated that as a follow up action , the house of Pratap Sait at Convent Junction , Cochin was searched. No contraband goods or incriminating documents were recovered. Shalimar Jewellery was also searched in the premises , it was stated , against Venilal Mehta that evidence collected showed that Venilal Mehta had large scale dealings in smuggled gold biscuits. A paper bit recovered from him on 2nd May , 1984 , which showed the details of transaction and the particulars of the writings of the paper have been set out in the show cause notice and it is further stated that one Sadasiva Sait was apprehended with 2974 grams foreign gold biscuits and the numbers shown against the letters 'S' in the paper mentioned here in before related to the gold biscuits delivered to him by Venilal Mehta and his sons on the dates mentioned against each. From this , according to the respondent , it was evident that the other numbers shown were also related to gold biscuits- As set out before , Sadasiva Sait in his statement stated that letters 'P' might be in relation to

Pratap Sait and letter 'B' might be in relation to Bhim Rao.

From the aforesaid, it was stated that it was evident that Venilal Mehta, and in the case of the other two, son and the daughter more or less similar grounds are made, was dealing in smuggled gold biscuit and that 60 gold biscuits weighing 6990 grams and valued at Rs. 14 lakhs were seized and that Venilal Mehta, sons Rashmi Kanth Mehta and Bharat Mehta and Miss Pragna Mehta were actively engaged in the business of smuggled foreign gold biscuits. Venilal Mehta was the master brain behind this business. A list of documents was annexed. The search list and the deposition and necessary documents, the panchnama and his statements were also annexed with the show cause notice.

One of the documents which is annexed to the affidavit in opposition of the respondents is a mercy petition which is annexure R-1 dated 30th June, 1984 addressed to the Secretary and Commissioner, Home & Vigilance, Home Department, Government of Kerala, Trivandrum through the Superintendent, Central Jail, Trivandrum. In that he stated as follows:-

"I, Venilal M Mehta, beg to request you to give kindly and sympathetic attention to the following few

714

lines and render mercy to me.

I am an old man of 60 years. I had my peaceful life as a business man and commanded respect in the business circle and friends. I myself am surprised to understand what prompted me to involve in such activity as dealing in Imported Gold. My financial and social status was unblemished during all these years of my life. I would not say it was a greed it was only the destiny that played this part.

Looking to my old-age and unstinted career up till now, I beg you to show mercy on me and to revoke the order of detention under COFEPOSA. I assure you that never in my life to come, I will indulge in any such activity there are detrimental to the nation as a whole and me in particular.

Thanking you in anticipation of your favours,

Yours faithfully,

Trivandrum,
30th June, 1984.

Sd/-
(Venilal M. Mehta)"

It was written in English but signed in Gujarati. It was stated as mentioned before that it was signed without understanding as this was sent by the wife of the detenu, Venilal Mehta.

The charges against the daughter were under section 3 (1) (iii), and against the father, Venilal Mehta and the son, Bharat Mehta, these were under section 3 (1) (iii) and 3 (1) (iv) of the said Act. The relevant provisions of section 3 of the said Act reads as follows:-

"3. Power to make orders detaining certain persons-

(1) The Central Government or the State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank

715

of a Secretary to that Government, specially empowered for the purposes of this section by that Government may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing him from acting in any manner

prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from-

(i) XXXX

(ii) XXXX

(iii) engaging in transporting or concealing or keeping smuggled goods , or

(iv) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods , or

(v) XXXX

it is necessary so to do , make an order directing that such person be detained"

Before we consider the submissions on behalf of the detenue in this case , certain board facts have to be borne in mind. Search of room No. 316 of Dwarka Hotel M.G. Road , Ernakulam , by the Superintendent of the Central Excise and Customs , Cochin stands demonstrated. It also cannot be disputed that the occupants of the room at the time of search were Venilal Mehta alias B.V. Mehta and daughter Pragna Mehta. 60 gold biscuits were recovered from the suitcase belonging to Miss Pragna Mehta. Details have been mentioned in Ground I(a) , Panchnama regarding the search and seizure was prepared and was signed by the daughter and the father and attested by independent witness-one of being the accountant of the Hotel Secondly , B.V. Shah was interrogated and he made certain statements. On 2nd May , 1984 , there was search of the house of Pratap Sait at Ernakulam. On the same day , Shalimar Jewellery Fixed Deposit Door No. 37/8 , Broadway , Cochin was searched , The statements of B.V. Shah or Venilal Mehta , Pragna Mehta and Bharat Mehta under section 108 even if these are ignored , there

716

were searches and statement by one Shri S. Kumar and there was also search on 14th May , 1984 of the residential quarters of Venilal Mehta at Bombay where telephone having No 625768 was installed. This telephone number tallied with certain papers of Pratap Sait and other houses mentioned here in before.

There was search of the premises of Venilal Mehta in the name of R.D. Mehta & Co. Bombay. There also the telephone numbers 339774 and 338286 were found installed. These tallied with the telephone numbers found in the papers in other houses The documents recovered from R.D. Mehta included telephone bills of phone No. 625768 installed at the house of Venilal Mehta which showed that from the said phone trunk calls were booked to Cochin telephone Nos. 37144 and 33221 Ernakulam , 37144 is the telephone number of Silver Refinery and 33221 is the telephone number of Blue Diamond Hotel controlled by Pratap Sait.

The search of Silver Refinery owned by Pratap Sait was made on 21st May , 1984. Two diaries and certain documents were seized. A Panchnama was prepared. In the diary seized from the Silver Refinery , telephone No. 625768 of the residence of Venilal Mehta was found entered.

Then there was statement of Prakash Krishna Yadav v , one of the employees of Silver Refinery where he had stated Venilal Mehta , Bharat Mehta and another son of Venilal M Mehta used to come to Refinery. He had further stated that they (the aforesaid named persons) used to meet the younger brother Or Pratap Sait 1' and they were doing some secret business. Suresh usual to entrust him with bundle of notes to be handed over to Venilal Mehta and his sons. These statements were made under section 108 of the Customs Act by these persons and these statements were not retracted. He

further stated that he had met them at Hotel Blue Diamond when they had stayed there. In the statement of Suresh M Chalunka, younger brother of Pratap Sait, he established the connection of B.V. Shah with the refinery of Pratap Sait at Ernakulam. He also confirmed that they were dealing in gold biscuits. He did not know how many gold biscuits were there. Mr. Bharat and Mr. Rashmi, sons of B.V. Shah used to come, according to his statement, with gold biscuits. He used to receive the gold biscuits and give these to his brother Pratap Sait.

717

Shri Suresh, receptionist of Blue Diamond Hotel in statement on 25th May, 1984 under section 108 of Customs Act had stated that on 3rd May 1984, Bharat Mehta contacted him over the phone and accordingly he and Bharat Mehta met at Oberoi Hotel. Bharat Mehta had told him that his father and sister were caught with gold biscuits and requested for help. On 5th June, 1984, Customs Department Superintendent party arrived at the Silver Refinery, Trichur of Sadashiv Sait and as a result of the search 10 foreign made gold biscuits, 8 primary gold biscuits and 1 gold piece were recovered. Then on 5th June, 1984, Sadashiv Sait was interrogated. Extracts from his examination have been set out here in before, which clearly established the connection of Venilal with these transactions. Some documents were recovered from B.V. Shah (Venilal) while he was caught with 60 gold biscuits and letter 'S' has been explained as indicated before.

On the above facts, detailed show cause notice was issued. It is true that in the said show cause, the statements of Venilal Mehta on 2nd May, 1984, 3rd May, 1984 and 4th May, 1984 were also taken into account but Annexure 'C' to letter to the Collector retracting the statement was not taken into account.

It has therefore to be examined that in view of the fact that the whole statement had been retracted, these statements should have been considered along with the retraction. The fact of not doing so will require examination. It may, however, be mentioned that in the counter-affidavit, it has been stated that the basis of the detention order was not only the statement by the detenus but also other materials which were supplied to the detenus.

In support of these applications, the following main grounds were urged namely:

(1) The grounds were not communicated to the detenus in a language understood by them.

(2) The retraction of the confessions or statements made under section 108 of the Customs Act had not been taken into consideration.

718

(3) There was delay in serving the grounds upon the detenus.

(4) The detenus were not allowed to be represented properly before the Advisory Board.

(5) The fact that there was retraction of the confession having not been taken into consideration the proceedings were vitiated.

(6) The detaining authority did not independently consider the representation of detenus but mechanically followed the advice of the Advisory Board.

Preventive detention under certain prescribed circumstances under the provisions of certain Acts is permissible in India with certain constitutional safeguards and the preventive detention which is recognised and

permitted by our Constitution must be resorted to strictly within those constitutional safeguards ,

Article 22 ensures protection against arrest and detention except in certain prescribed circumstances and conditions. Article 22(4) of the Constitution stipulates that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless.

(a) an Advisory Board consisting of persons who are , or have been , or are qualified to be appointed as , Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention;

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under such clauses (a) and (b) of clause (7).

Clause 15 of Article 22 reads as follows:-

719

"(5) 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'.

Clause (6) provides that nothing 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. Clause (7) of Article 22. ensures that the Parliament may make law in certain manner prescribed in that sub-clause.

Therefore it was contended that the order and grounds should be communicated to the detenus in the languages or language they understood. According to the petitioner , Venilal Mehta understood nothing except Gujarati. He did not understand English or Hindi or Malayalam. The grounds of detention were initially supplied to Venilal Mehta in English on 25th June , 1984 i.e. within five days of his arrest or detention. But certain accompanying documents in Malayalam language were supplied to him namely , item Nos. 1 , 6 , 8 , 27 , 38 and 47.

Sub-section (3) of section 3 of the slid Act provides as follows:-

"For the purposes of clause (5) of Article 22 of the Constitution , the communication to a person detained in 1 pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention , but ordinarily not later than five days , and in exceptional circumstances and for reasons to be recorded in writing not later than fifteen days , from the date of detention."

In the instant case it was submitted that assuming that Venilal Mehta knew Hindi , the translated copy of the English grounds was admittedly made available to him in Hindi language on 30th June , 1984-beyond a period of five days and for which neither any excep-

720

tional circumstances existed nor an reason given. Moreover it was urged that the annexures in Malayalam language

retained their places while supplying the translated copy of the grounds of detention in Hindi language. Therefore it was urged that there was noncompliance with the provisions of the Act.

It will be appropriate to deal with the first ground. Whether the grounds should have been communicated in the language understood by the detenus ? The Constitution requires that the grounds must be communicated. Therefore it must follow as an imperative that the grounds must be communicated in a language understood by the person concerned so that he can make effective representation. Here the definite case of the petitioner's father is that he does not understand English or Hindi or Malayalam and does understand only Gujarati language. The facts revealed that the detenu Venilal was constantly accompanied and was in the company of his daughter as well as son both of them knew English very well. The father signed a document in Gujarati which was written in English which is his mercy petition in which he completely accepted the guilt of the involvement in smuggling. That document dated 30th June, 1984 contained, inter alia, a statement "I myself am surprised to understand what prompted me to involve in such activity as dealing in Imported Gold". He further asked for mercy. There is no rule of law that common sense should be put in cold storage while considering constitutional provisions for safeguards against misuse of powers by authorities though these constitutional provisions should be strictly construed. Bearing this salutary principle in mind and having regard to the conduct of the detenu Venilal Mehta specially in the mercy petition and other communications, the version of the detenu Venilal is feigning lack of any knowledge of English must be judged in the proper perspective. He was, however, in any event given by 30th June, 1984 the Hindi translation of the grounds of which he claimed ignorance. The gist of the annexures which were given in Malayalam language had been stated in the grounds. That he does not know anything except Gujarati is merely the ipse dixit of Venilal Mehta and is not the last word and the Court is not denuded to its powers to examine the truth. He goes to the extent that he signed the mercy petition not knowing the contents, not understanding the same merely because his wife sent it though he was sixty years old and he was in business and he was writing at a time when he was under arrest,

721

his room had been searched, gold biscuits had been recovered from him. Court is not the place where one can sell all tales. The detaining authority came to the conclusion that he knew both Hindi and English. It has been stated so in the affidavit filed on behalf of the respondent. We are of the opinion that the detenu Venilal Mehta was merely feigning ignorance of English.

We may here notice the first decision upon which reliance was placed a decision in the case of *Harikisan v. The State of Maharashtra & Others*. (1) This Court reiterated that the provisions of Article 22 (5) of the Constitution required that the grounds should be communicated to the detenu as soon as may be and that he should be afforded the earliest opportunity of making a representation against the order. This Court reiterated that communication meant bringing home to the detenu effective knowledge of the facts and the grounds on which the order was based. To a person who was not conversant with the English language, in order to satisfy the requirement of the Constitution, the detenu must be given grounds in a language which he can understand

and in a script which he can read , if he is a literate person , in that case it was held that mere oral translation at the time of the service was not enough. In that case the detenu was served with the order of detention and the grounds in English. He did not know the language and asked for a translation in Hindi. The request was refused on the ground that the grounds had been orally translated to him at the time these were served upon him and that English was still being the official language , communication of the order and grounds in English was in accordance with the law and the Constitution. This Court observed at pages 925-926 of the report as follows:-

"If the detained person is conversant with the English language , he will naturally be in a position to understand the gravamen of the charge against him and the facts and circumstances on which the order of detention is based. But to a person who is not so conversant with the English language , in order to satisfy the requirements of the Constitution , the detenu must be given the grounds in a language which he can understand , and in a script which

(1).[1982] 2 Supp. S.C.R. 918.

722

he can read , if he is a literate person.

The Constitution has guaranteed freedom of movement throughout the territory of India and has laid down detailed rules as to arrest and detention. It has also , by way of limitations upon the freedom of personal liberty , recognised the right of the State to legislate for preventive detention , subject to certain safeguards in favour of the detained person , as laid down in cls.(4) & (5) of Art. 22 One of those safeguards is that the detained person has the right to be communicated the grounds on which the order of detention has been made against him , in order that he may be able to make his representation against the order of detention. In our opinion , in the circumstances of this case , it has not been shown that the appellant had the opportunity , which the law contemplates in his favour , making an effective representation against his detention. On this ground alone , we declare his (I detention illegal , and set aside the Order of the High Court and the Order of Detention passed against him."

The principle is well-settled. But in this case it has to be borne in mind that the grounds were given on 25th June , 1984 following the search and seizure of gold biscuits from his room in the hotel in his presence and in the background of the mercy petition as we have indicated and he was in constant touch with his daughter and sons and there is no evidence that these people did not know Hindi or English. Indeed they knew English as well as Hindi. It is difficult to accept the position that in the peculiar facts of this case the grounds were not communicated in the sense the grounds of detention were not conveyed to the detenu Venilal. Whether grounds were communicated or not depends upon the facts and circumstances of each case.

As early as in 1968 , in the case of Hadibandhu Dase v. District Magistrate , Cuttack & Anr.(1) this Court was concerned with a case where on December 15 , 1967 , the District Magistrate , Cuttack had served an order made in exercise of power under section 3(1) (a) (ii) of the Preventive Detention Act directing that

(2) [1969] 1 S.C.R. 227.

723

appellant be detained on various grounds. On December 19, 1967, the appellant filed a petition in the High Court challenging the order of detention on the grounds, inter alia, that the order and the grounds in support thereof served upon the appellant were written in the English language which the appellant did not understand. On January 18, 1968 the District Magistrate supplied 1 to the appellant an Oriya translation of the order and the grounds. On January 28, 1968, the State of Orissa revoked the order and issued a fresh order of detention. A translation of this order in Oriya was supplied to the appellant. The appellant thereafter submitted a supplementary petition challenging the validity of the order dated January 28, 1968. The High Court of Orissa rejected the petition filed by the appellant. There was an appeal to this Court by certificate. It was held that in the facts of that case, there was no proper communication. The order ran into fourteen typed pages. Mere oral explanation of such an order without supplying him a translation in a script or language which he understood, amounted to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order. The facts in the instant case as mentioned hereinbefore are different.

In the case of Nainmal Partap Mal Shah v. Union of India and Others (1), the detenu not conversant with the English language was not supplied with the translated script. It was stated in opposition that the grounds were explained to the detenu by the prison authorities. This Court found that who explained it was not stated. This explanation was not correct and as such there is no proper communication. This does not help us in the facts of this case.

It is submitted in the instant case before us that the accompanying documents were supplied to the detenu in Hindi on 30th June, 1984 beyond a period of five days. For this there were no exceptional circumstances nor any reason had been recorded. Reliance was placed on certain observations in the case of Ibrahim Ahmad Batti v. State of Gujarat & Others. (2) But again the facts of that case were entirely different because in the instant case all the

(1)[1980] 4 S.C.C. 427.

(2)[1983] 1 S.C.R. 540.

724

factors were pointed out in the grounds in English which Venilal understood. His mercy petition corroborates that view. There is no dispute that the other two detenus namely Pragna Mehta and Bharat Mehta knew English and Hindi. Indeed no point of non communication of the grounds was made out in respect of them.

It was next submitted that the detenus had retracted the alleged statements by letters dated 5th May and 6th May, 1984 addressed to the Collector, Central Excise and Customs. While the statements made in the confession or statements before the Collector under section 108 had been noted in the grounds of detention, the retraction had not been noted. It was submitted that the said retraction was bound to influence the mind of the detaining authority one way or the other whether to make or not to make the detention order and therefore not taking this fact into consideration on or about 19th/20th June, 1984, there was no application of mind. It is true that retraction was not taken into consideration as it is evident from the order of detention, thought the retraction as noted here in before, was considered before confirming the

order of detention subsequently after the opinion of the Advisory Board.

Section 5A of the said Act which was introduced by amendment in 1975 reads as follows:

'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,

725

(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 (1) 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 (I) after being satisfied as provided in ground or that sub-section with reference to the remaining grounds."

Section 5A stipulates that when the detention order 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 that if one irrelevant or one inadmissible ground had been taken into consideration that would not make the detention order bad.

Article 22 (5) of the Constitution has two elements: (i) communication of the grounds on which the order of detention has been made; (ii) opportunity of making a representation against the order of detention. Communication of the grounds pre-supposes the formulation of the grounds and formulation of the grounds requires and ensures the application of the mind of the detaining authority to the facts and materials before it, that is to say, to pertinent and proximate matters in regard to each individual case and excludes the elements of arbitrariness and automatism.

The 'grounds' under Article 22(5) of the Constitution do not mean mere factual inferences but mean mere factual inferences plus factual material which led to such factual inferences. See the

726

observations of this Court in the case of Smt. Shalini Soni Etc v. Union of India- & Ors. Etc.(1)

As has been said by Benjamin Cardozo, "A Constitution states or ought to state not rules for the passing hour, but principles for an expanding future". The concept of "grounds", has to therefore, has to receive an interpretation which will keep it meaningfully in tune with the contemporary notions of the realities of the society and the purpose of the Act in question in the light of concepts of liberty and fundamental freedoms guaranteed by Article 19 (1), 21 and 22 of the Constitution. Reviewing several decisions in the case of Hasmukh S/o

Bhagwanti M. Patel v. The State of Gujarat & Others. , (2) this Court held that a democratic Constitution is not to be interpreted merely from a lexicographer's angle but with a realisation that it is an embodiment of the living thoughts and aspirations of a free people. The concept of 'grounds' used in the context of detention in Article 22(5) of the Constitution and in sub-section (3) of section 3 of COFFPOSA , therefore , has to receive an interpretation which will keep it meaningfully in tune with a contemporary notions. While the expression "grounds" for that matters includes not only conclusions of fact but also all the "basic facts" on which those conclusions were founded , they are different from subsidiary facts or further particulars or the basic facts.

In the instant case , the ground of detention is the satisfaction of the detaining authority that with a view to preventing the detenu from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing the detenu from , inter alia , dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping the smuggled goods , or engaging in transporting or concealing or keeping smuggled goods the detention of the detenu is necessary. This satisfaction was arrived at as inferences from several factors. These have been separately mentioned. One of them is the contention but this ground was taken into consideration without taking note of the retraction made thereafter. But the inference of the satisfaction was drawn from several factors which have been enumerated before. We have to examine whether even if the facts

(1) [1981] S.C.R. 962.

(2) [1981] 1 S.C.R. 353.

727

stated in the confession are completely ignored , then the inferences can still be drawn from other independent and objective facts mentioned in this case , namely the fact of seizure after search of 60 gold biscuits from the suitcase of the daughter in the presence of the father which indubitably belonged to the father and admitted by him to belong to him for which no explanation has been given and secondly the seizure of the papers connected with other groups and organisations Pratap Sait and others to whom gold has been sold by the father are relevant grounds from which an inference can reasonably be drawn for the satisfaction of the detaining authority for detaining the detenu for the purpose of section 3(1) (iii) and 3(1) (IV). We are of the opinion that the impugned order cannot be challenged merely by the rejection of the inference drawn from confession. The same argument was presented in a little different shade namely the fact or retraction should have been considered by the detaining authority and the Court does not know that had that been taken into consideration , what conclusion the detaining authority would have arrived at. This contention cannot be accepted. We are not concerned with the sufficiency of the grounds. We are concerned whether there are relevant materials on which a reasonable belief or conviction could have been entertained by the detaining authority on the grounds mentioned in section 3(1) of the said Act. Whether other ground should have been taken into consideration or not is not relevant at the stage of the passing of the detention order. This contention , therefore , cannot be accepted. If that is the position then in view of section 5A of the Act there was sufficient material to sustain this ground of detention.

In the case of State of Gujarat v. Chamanlal

Manjibhai Soni , (1) this Court maintained the order of the High Court quashing the detention. This Court observed that detention under section 3 of the Act was only for the purpose of preventing smuggling and all the grounds , whether there are one or more , would be relatable Only to various activities of smuggling and no other separate ground which could deal with matters other than smuggling could be conceived of because the Act of smuggling covered several activities each forming a separate ground of detention and the Act dealt with no other act except smuggling. Whenever allegations of

(1) [1981] 2 S.C.R. 500.

728

729

the custody of the Customs Officers , his advocate addressed a letter and sent a telegram to them protesting against his detention and illegal custody beyond 24 hours and also expressing an apprehension that he was being detained with a view to obtain confessional statements under duress. It was admitted that the advocate's request for permission to remain present at the time of interrogation of the detenu was turned down by the Customs Officers. The advocate was also told that the detenu would be produced before a Magistrate on the day of request but that was not done. He was produced on the following day and was remanded to judicial custody permitting further interrogation while in judicial custody , the detenu refused to sign the further statements and squarely resiled. While the detenu's application for bail was pending before the Magistrate , the respondent passed the impugned order. In petition under Art. 226 of the Constitution for the issue of a writ of habeas corpus , the appellant contended that the order of the detaining authority was liable to be set aside because full facts of the case were not intimated before the detention order was passed , and therefore , there was complete non-application of mind of the detaining authority to the attendant vital circumstances. It was held that the impugned order was invalid and illegal because there was complete non-application of the mind of the detaining authority to the most material and vital facts. In the instant case before us , there was no request for consultation with the advocate. There is no case of non-production in spite of intimation by the advocate to the Customs officers before a Magistrate. The confessional statements of course , were retracted. But in this case the confessional statements was not the only fact upon which the detaining authority had passed an order. In the premises even if the confessional statements which were retracted as such could not be taken into consideration , there are other facts independent of the confessional statement as mentioned hereinbefore which can reasonably lead to the satisfaction that the authorities have come to.

The contention on behalf of the detenus that there was delay in serving the grounds upon the detenus has been dealt with. There is no substance in the contention in view of what is stated hereinbefore .

So far as the ground that the detenus were not allowed to be represented properly before the Advisory Board? from the facts

730

narrated in affidavit in opposition where it has been stated that services of Dr. S.C. Purohit , Senior Scientist , V.S.S C. Thumba , Trivandrum and Dr. Mrs. Purohit were available to the detenu to translate the statements of the detenu to the Advisory Board. The detenu was detained on

20th June, 1984. As required under section 8(3) of the Act, the case of the detenu was referred to the Advisory Board in Government letter dated 18th July, 1984. The representations submitted by the detenu were also forwarded to the Advisory Board for its consideration. The services of the two persons mentioned here in before were utilised by the Board in understanding the statement of the detenu and deciphering the representation in Gujarati submitted by the detenu, Venilal Mehta to the State Government which was also forwarded to the Board. Therefore, it has cannot be said that detenus have not been given proper facility to be represented before the Advisory Board. The contention that the fact that there was retraction of the confession not having been taken into consideration had vitiated orders has been dealt with. The allegation or the submission that the detaining authority did not independently consider the representation of the detenu but mechanically followed the opinion of the Advisory Board cannot be sustained in view of the facts and circumstances of this case.

In this case there was evidence before the authorities concerned that 60 gold biscuits of foreign origin without any explanation of their importation were found in the possession of the father—that is undisputed. Venilal could not give any explanation of their being in there possession. These were smuggled. Secondly, there was evidence in view of the subsequent other facts independent of the confessions of the father and the sons and the daughter that the father was in contact with persons who were buying smuggled gold from him and buying at high prices. Their telephone number were found and they could be identified from the papers seized during the search at his hotel room. The detenu Venilal made a mercy petition—

As the statement of objects and reasons of 1975 Amending Act state that smuggling of foreign exchange racketeering and related activities have a deturious effect on the national economy and thereby a serious adverse effect on the security of State. The society must be protected from that social menace by immobilizing

731
the persons by detention of the persons engaged in those operations and to disrupt the machinery established for furthering smuggling and foreign exchange manipulations (Statement of objects and reasons of 1975 Act). Preventive detention unlike punitive detention which is to punish for the wrong done, is to protect the society by preventing wrong being done. Though such powers must be very cautiously exercised not to undermine the fundamental freedoms guaranteed to our people, the procedural safeguards are to ensure that yet these must be looked at from a pragmatic and commonsense point of view. The exercise of the power of preventive detention must be strictly within the safeguards provided. We are governed by the Constitution and our Constitution embodies a particular philosophy of Government and a way of life and that necessarily requires understanding between those who exercise powers and the people over whom or in respect of whom such power is exercised. The purpose of exercise of all such powers by the Government must be to promote common well-being and must be to sub-serve the common good. It is necessary to be protect therefore the individual rights in so far as practicable which are not inconsistent with the security and well-being of the society. Grant of power imposes limitation on the Use of the power. There are various procedural safeguards and we must construe those in proper light and from pragmatic commonsense point of view. We must remember that observance

of written law about the procedural safeguards for the protection of the individual is normally the high duty of public official but in all circumstances not the highest. The law of self preservation and protection of the country and national security may claim in certain circumstances higher priority.

As has been said by Thomas Jefferson "To lose our country by a scrupulous adherence to written law, would be to lose itself, with life, liberty, property and all those who are enjoying them with us, thus absurdly sacrificing the end to the means" (Thomas Jefferson, Writings (Washington ed), V. 542-545 and The Constitution Between friends by Louis Fisher 47). By the aforesaid approach both justice and power can be brought together and whatever is just may be powerful and whatever may be powerful may be just

732

In the background of the facts and circumstances of this case the procedural safeguards have been complied with as far as practicable. There are no merits in the fancied grievances of the detenus. In that view of the matter, these petitions fail and are accordingly dismissed.

A.P.J.

Petitions dismissed.

733