

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

- W.P.Nos.6510, 6570, 7331, 8631, 8923, 9437, 8289, 8361, 13482 AND 1351
2015

- W.P.No.6510 of 2015

Between:

Smt.Vasnthu Sumalatha

.... Petitioner

Vs.

1. State of Andhra Pradesh rep. by its Chief Secretary, Hyderabad & Ors.

.... Respondent

DATE OF JUDGMENT PRONOUNCED: 29.09.2015.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE S.RAVI KUMAR

-
1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
 2. Whether the copies of judgment may be marked to Law Reports/Journals
 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

JUSTICE RAMESH RANGANATHAN

* **THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**
AND
* **THE HON'BLE SRI JUSTICE S.RAVI KUMAR**

+ W.P.Nos.6510, 6570, 7331, 8631, 8923, 9437, 8289, 8361, 13482 AND 1351

of 2015

% Dated 29-09-2015

W.P.No.6510 of 2015

Between:

Smt.Vasnthu Sumalatha

.... Petitioner

Vs.

\$ 1. State of Andhra Pradesh rep. by its Chief Secretary, Hyderabad & Ors.

.... Respondent

! Counsel for the petitioners: Sri C.V. Mohan Reddy, Sri T. Niranjan Reddy, Learned Senior Counsel, Smt.B. Mohana Reddy, Sri D. Purnachandra Reddy, and Sri S. Dushyanth Reddy.

^ Counsel for respondents: Learned Advocate-General for the State of Andhra Pradesh

<GIST:

> HEAD NOTE:

? Citations:

1. (2013) 8 SCC 664
2. (1974) 1 SCC 645
3. 1996(4) ALT 485 = (1997)1 ALT(Cri) 184
4. AIR 1953 SC 318 = 1953 SCR 708
5. (2011) 5 SCC 244
6. (1998) 1 WLR 503 (CA)
7. (2004) 7 SCC 467
8. (2004) 3 SCC 75
9. 2013 (4) ALT 243 (D.B)
10. AIR 1981 SC 746
11. (1996) 3 SCC 194
12. (1990) 3 SCC 148
13. (1974) 1 SCC 103
14. (1975) 3 SCC 198
15. (2008) 3 SCC 613
16. (1975) 2 SCC 81
17. AIR 1952 SC 196
18. 1917 AC 260
19. (1990) 2 SCC 1
20. (1980) 4 SCC 470
21. (1995) 4 SCC 51
22. (1979) 4 SCC 370
23. (1975) 4 SCC 47
24. (1980) 4 SCC 531
25. (1972) 2 SCC 542
26. (1974) 1 SCC 637
27. (1975) 1 SCC 837
28. (1975) 3 SCC 395

29. (1974) 4 SCC 463
30. AIR 1966 SC 740
31. (2011) 10 SCC 781
32. (1951) 342 US 98
33. (1969) 1 SCC 10
34. AIR 1951 SC 157 = 1951 SCR 167
35. (1986) 4 SCC 378
36. AIR 1967 SC 295
37. AIR 1964 SC 72
38. AIR 1950 FC 129
39. (1988) 1 SCC 287
40. 2013 Cri.L.J. 585
41. 2013 (4) ALT 243 (D.B)
42. (2012) 2 SCC 72
43. AIR 1984 SC 1334
44. Judgment in W.P. No.10018 of 2012, dated 29.06.2012) (APHC) (DB)
45. (2006) 3 SCC 321
46. (1986) 4 SCC 771
47. (1987) 2 SCC 241
48. 2013 (3) ALT (Cri.) 303 (D.B.) (A.P)
- 49.** (Judgment in WP No.22820 of 2014 and batch dated 13.10.2014)
50. (Judgment in W.P. No.3917 of 2013 dated 26.03.2013)
51. (Common order in W.P. No.32710 of 2014 & Batch dated 02.03.2015)
52. AIR 1952 SC 16
53. AIR 1978 SC 851
54. (1974) 4 SCC 503
55. (1981) 3 SCC 317
56. (2012) 2 SCC 389
57. AIR 1989 SC 2027
58. AIR 1976 SC 2547
59. AIR 1976 SC 2433
60. 1993 (6) SLR 1 = 1993 (3) ALT 471 (FB)
61. 1993 (1) ALT 221 (D.B)
62. (1970) 3 SCC 746
63. (1972) 3 SCC 831
64. (1972) 3 SCC 845
65. (1970) 1 SCC 98
66. (1972) 1 SCC 498
67. (1974) 1 SCC 185
68. (1992) 2 SCC 177
69. (2000) 6 SCC 168
70. (1980) 3 SCC 57
71. Judgment in WP No.8022 of 2015 dated 22.09.2015)
72. AIR 1964 SC 1128
73. 2005 (1) ALT 792 (D.B
74. (2000) 7 SCC 463
75. (1996) 2 SCC 315
76. (2006) 12 SCC 211
77. (1994) 2 SCC 355
78. (1981) 2 SCC 427 = AIR 1981 SC 728
79. (1981) 1 SCC 419
80. (1980) 4 SCC 544
81. (1982) 3 SCC 216
82. (1980) 2 SCC 270
83. (1980) 4 SCC 525
84. (1980) 4 SCC 499
85. (1981) 2 SCC 436
86. (1981) Supp SCC 53(1)
87. AIR 1991 SC 336 = 1991 Supp (2) SCC 274
88. (1981) 2 SCC 709
89. (1970) 1 SCC 219
90. (1979) 4 SCC 401
91. Judgment in WP No.845 of 1979 dated 15.10.1979)
92. Judgment in W.P. No.246 of 1969 dated 10.09.1969)
93. (1991) 1 SCC 476
94. (2011) 10 SCC 215
95. (2010) 9 SCC 618
96. (1982) 2 SCC 43
97. (1991) 4 SCC 39

98. (1989) 3 SCC 173
99. (1989) 3 SCC 277
100. (2013) 4 SCC 435
101. (1999) 1 SCC 417
102. (1969) 1 SCC 433
103. (1970) 3 SCC 696
104. (1983) 4 SCC 537
105. (1987) 4 SCC 58
106. (1990) 3 SCC 459
107. (1992) 4 SCC 495
108. 1992 Cr.L.J. 109 (SC)
109. (2012) 11 SCC 745
110. (1991) 1 SCC 128
111. AIR 1994 SC 165
112. (2008) 5 SCC 490
113. AIR 1981 SC 1752
114. (1982) 3 SCC 10
115. (1982) 3 SCC 328
116. (1999) 8 SCC 177
117. 1990 (Supp) SCC 59
118. AIR 1962 SC 911 = 1962 Supp (2) SCR 918
119. (1999) 2 SCC 413
120. AIR 1969 SC 43
121. (2004) 2 SCC 621
122. (1975) 3 SCC 722
123. 1954 SCR 418
124. (1974) 4 SCC 573
125. (1975) 3 SCC 710
126. 1943 FCR 49
127. AIR 1951 SC 174
128. (1974) 3 SCC 600
129. ILR 1972 AP 1025

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

-
W.P.Nos.6510, 6570, 7331, 8631, 8923, 9437, 8289, 8361, 13482 AND 1351
2015

-
COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Personal liberty is of the widest amplitude covering a variety of rights. Its deprivation shall only in accordance with the procedure prescribed by law conformable to the mandate of the Supreme Law, the Constitution, more particularly to Article 21 thereof. (**N. Sengodan v. State of Tamil Nadu**^[1]; **Bhut Nath Mete vs. State of W.B.**,^[2]). Of all fundamental rights, conceded to the citizens under the Constitution, the right of personal liberty is the most cherished. A person is not to be deprived of this right except in accordance with the procedure laid down by law even if he be a man of the most desperate character. (**Pilli Yeteswari v. Govt. of A.P.**^[3]).

Preventive detention is a serious invasion of personal liberty and

such meagre safeguards as the Constitution has provided, against the improper exercise of the power, must be jealously watched and enforced by the Court. (**Ram Krishan Bhardwaj v. State of Delhi**^[4]). Article 22(3)(b) of the Constitution of India, which permits preventive detention, is an exception to Article 21 of the Constitution. An exception cannot, ordinarily, nullify the full force of the main rule, which is the right to liberty guaranteed under Article 21 of the Constitution. An exception can apply only in rare cases. The imposition of what is, in effect, a substantial term of imprisonment by the exercise of executive discretion, without trial, lies uneasily with the ordinary concepts of the rule of law. (**Rekha v. State of T.N.**^[5]; **R. v. Secy. of State for the Home Deptt., ex p Stafford**^[6]). The law of preventive detention can only be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other. (**Commr. of Police v. C. Anita**^[7]; **Union of India v. Amrit Lal Manchanda**^[8]).

The power of preventive detention is a frightful and awesome power with drastic consequences affecting personal liberty which is the most cherished and prized possession of man in a civilised society. The said power has to be exercised with the greatest care and caution, and it is the duty of the Courts to ensure that this power is not abused or misused. (**Durgam Subramanyam v. Government of A.P.**^[9]; **Francis Coralie Mullin v. UT of Delhi**^[10]). The power of preventive detention must be confined to very narrow limits, otherwise the right to liberty would be rendered nugatory. To prevent misuse of this potentially dangerous power, the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however technical, is mandatory and vital. (**Rekha**⁵). When it comes to fundamental rights under the Constitution, the Court, irrespective of the enormity and gravity of allegations made against the detenu, must intervene. The gravity of the evil to the community, resulting from anti-social activities, cannot furnish sufficient reason for invading the personal liberty of a citizen, except in accordance with the procedure established by law, particularly as normal penal laws would still be available for being invoked instead of keeping a person in detention without trial.

(**Kundanbhai Dulabhai Shaikh v. Distt. Magistrate, Ahmedabad**^[11];
Mahesh Kumar Chauhan v. Union of India^[12]; **Prabhu Dayal Deorah v. Distt. Magistrate**^[13]). The law relating to preventive detention has always been strictly interpreted so as to uphold the concept of individual freedom. Courts have always acted to safeguard the purity of such right which is available to be interfered with only under the most stringent and rigorous conditions. (**Pilli Yeteswari**³).

The compulsions of the primordial need to maintain order in the society without which the enjoyment of all rights, including the right to personal liberty of citizens, would lose their meaning, provide the justification for the laws of preventive detention. These Laws posit that an individual's conduct, prejudicial to the maintenance of public order, provides grounds for satisfaction for a reasonable prognostication of possible future manifestations of similar propensities on the part of the offender. This jurisdiction has, at times, been called a jurisdiction of suspicion. (**C. Anita**⁷). The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be, or may have been, launched. An order of preventive detention may be made before or during prosecution. It may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution. (**Haradhan Saha v. State of West Bengal**^[14]).

The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done, but to prevent him from doing it. Its basis is the satisfaction of the Executive of a reasonable probability of the detenu acting in a manner similar to his past acts, and preventing him by detention from so doing. A criminal conviction on the other hand is for an act already done, by a trial and legal evidence. There is no parallel as one is punitive and the other preventive. In a criminal case a person is punished on proof of his guilt and the standard is proof beyond reasonable doubt. In preventive detention, a man is prevented from doing

something which it is necessary to prevent. (**Haradhan Saha**¹⁴). Preventive detention, an anticipatory measure, is resorted to when the executive is convinced that such detention is necessary to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the law. (**C. Anita**⁷). In preventive detention no offence is proved, and the justification of such detention is suspicion or reasonable probability.

(**Rekha**⁵; **State of Maharashtra v. Bhaurao Punjabrao Gawande**^[15]).

The order of detention is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances. (**Haradhan Saha**¹⁴).

Preventive detention is “largely precautionary and is based on suspicion”. The Court is ill-equipped to investigate into circumstances of suspicion on which such anticipatory action must be largely based. The nature of the proceeding is incapable of objective assessment. The matters to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of surrounding circumstances and other relevant material, is likely to act in a prejudicial manner as contemplated by the provisions of the law and, if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not matters susceptible of objective determination, and they could not have been intended to be judged by objective standards. They are essentially matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of the detaining authority which, by reason of its special position, experience and expertise, would be best suited to decide them. (**Khudiram Das v. State of W.B.**^[16]; **State of Madras v. V.G. Row**^[17]; **Rex v. Halliday**^[18]).

The Constitutional imperatives of Article 22(5), and the dual obligation imposed on the authority making the order of preventive detention, are twofold: (1) The detaining authority must, as soon as may be, i.e. as soon as practicable, after the detention order is passed, communicate to the detenu the grounds on which the order of detention has been made,

and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention, (**M. Ahamedkutty v. Union of India**^[19]; **Mangalbhai Motiram Patel v. State of Maharashtra**^[20]; **Kamleshkumar Ishwardas Patel v. Union of India**^[21]), i.e., to be furnished with sufficient particulars to enable him to make a representation which, on being considered, may obtain relief to him. The inclusion of an irrelevant or non-existent ground, among other relevant grounds, is an infringement of the first of the rights and the inclusion of an obscure or vague ground, among other clear and definite grounds, is an infringement of the second of the rights. In either case there is an invasion of the constitutional rights of the detenu entitling him to approach the Court for relief. The reason why the inclusion of even a simple irrelevant or obscure ground, among several relevant and clear grounds, is an invasion of the detenu's constitutional right is that the Court is precluded from adjudicating upon the sufficiency of the grounds, and it cannot substitute its objective decision for the subjective satisfaction of the detaining authority. (**Mohd. Yousuf Rather v. State of J&K**^[22]).

I. FACTS IN BRIEF:

Several orders of detention, passed by the District Collectors and District Magistrates, Chittoor and Kadapa, are under challenge in these Writ Petitions. It is necessary, at the outset, to note the relevant facts, in each of these Writ Petitions, *albeit* in brief.

(a) W.P. No.6510 of 2015:

This writ petition is filed seeking release of the detenu Sri Vasanthu Ashok Kumar Reddy. The order of detention, passed by the District Collector and Magistrate, Chittoor on 20.12.2014, was confirmed by the Government vide G.O.Rt. No.544, dated 23.02.2015. The grounds of detention, enclosed to the order of detention, refer to six criminal cases registered against the detenu. They are:-

- (i) Crime No.281 of 2014 registered with Tiruchanoor Police Station on 19.09.2014 wherein unconditional bail was granted to the detenu, in CrI.M.P.No.2813 of 2014 dated 16.12.2014;
- (ii) Crime No.84 of 2014 registered with Tirumala II Town Police Station on 21.09.2014 wherein conditional bail was granted in CrI.M.P.No.4587 of 2014

dated 26.11.2014 directing the detenu to appear before the Station House Officer, II Town Police Station, Tirumala, each Tuesday and Thursday between 10:00 A.M. and 12:00 noon for a period of two months or till the charge sheet is filed;

- (iii) Crime No.271 of 2014 registered with Alipiri Police Station, Chittoor district on 23.09.2014 wherein conditional bail was granted to the detenu in CrI.M.P.No.5297 of 2014 dated 03.12.2014 directing him to appear before the Station House Officer, Alipiri Police Station, every Monday between 10:00 A.M. and 01:00 P.M, till a charge was filed or for two months, whichever was earlier;
- (iv) Crime No.164 of 2014 registered with Renigunta Urban Police Station, Chittoor District on 23.09.2014 wherein no order of bail was passed;
- (v) Crime No.80 of 2014 registered with R.C.Puram Police Station, Chittoor District on 25.09.2014 wherein no order of bail was passed; and
- (vi) Crime No.149 of 2014 registered with Srikalahasthi Rural Police Station, Chittoor District on 25.09.2014 wherein a conditional order of bail was passed, in CrI.M.P.No.2603 of 2014 dated 02.12.2014, directing the detenu to appear before the Station House Officer, Srikalahasthi Rural Police Station, every Monday and Thursday at 8:00 A.M, for three months or till filing of charge sheet, whichever was earlier.

It is contended, on behalf of the detenu, that all these six cases were registered within a span of six days between 19.09.2014 and 25.09.2014; and the involvement and participation of the detenu was shown in all six cases based on the confessions of the other accused; and, by the date of the order of detention i.e., 20.12.2014, all the six cases were under investigation; and no charge sheet had been filed in any of them.

(b). W.P. No.6570 of 2015:

The order, detaining Sri Mukkali Narayana in preventive custody, was passed by the District Collector and District Magistrate, Chittoor by order dated 20.12.2014, and was confirmed by the Government vide G.O.Rt.No.539 dated 23.02.2015. The grounds of detention, enclosed to the order of detention, are based on six criminal cases in which the detenu was, allegedly, involved in. They are: -

- (i) Crime No.80 of 2010 registered with Lakki Reddy Palli Police Station, Kadapa District on 01.10.2010 wherein an unconditional order of bail was passed in CrI.M.P.No.545 of 2010 dated 04.10.2010;
- (ii) O.R.No.67 of 2014 registered with S.V. National Park, Chamla Range, Chittoor District on 24.08.2014 wherein an order of conditional bail was passed in CrI.M.P.No.6347 of 2014 dated 05.09.2014 directing the detenu to appear before the Forest Range Officer, every Sunday between 07:00 A.M. and 02.00 P.M, for a period of two months or till filing of charge sheet;
- (iii) Crime No.84 of 2014 registered with Penumuru Police Station, Chittoor district on 02.10.2014 wherein an order of conditional bail was passed in CrI.M.P.No.2373 of 2014 dated 05.11.2014 and the detenu was directed to appear before the S.H.O., Penumuru Police Station twice a week every Monday and Friday between 10:00 A.M. and 12:00 Noon;

- (iv) Crime No.82 of 2914 registered with Tavanam Palli Police Station, Chittoor District on 03.10.2014 wherein an order of conditional bail was passed in CrI.M.P.No.2585 of 2014 dated 10.12.2014, directing the detenu to appear before the S.H.O., Tavanam Palli Police Station, twice a week every Sunday and Friday between 10:00 A.M. and 01:00 P.M.;
- (v) Crime No.235 of 2014 registered with Bangarupalyam Police Station on 07.10.2014 wherein an order of conditional bail was passed in CrI.M.P.No.2648 of 2014 dated 10.12.2014 directing the detenu to appear before the S.H.O., Bangarupalyam Police Station, twice a week every Sunday and Friday between 10:30 A.M. and 01:00 P.M.; and
- (vi) Crime No.236 of 2014 registered with Palamaneru Police Station, Chittoor District wherein no order of bail was passed.

It is contended on behalf of the detenu that, from out of the aforesaid six criminal cases, the direct involvement of the detenu was alleged only in Crime No.80 of 2010; and, by the date of the order of detention i.e. 20.12.2014, all the six criminal cases were under investigation, and no charge sheet was filed in any of them.

(c). W.P. No.7331 of 2015:

The order, detaining Sri Shaik Abdul Mazid in preventive custody, was passed by the District Collector and District Magistrate, Chittoor on 20.12.2014, and was confirmed by the Government vide G.O.Rt.No.490 dated 18.02.2015. The order of detention dated 20.12.2014 refers to eight criminal cases. They are-

- (i) Crime No.101 of 2012 registered with Yadamari Police Station on 01.11.2012 wherein unconditional bail was granted in the year 2012 itself;
- (ii) Crime No.86 of 2014 registered with Pakala Police Station, Chittoor District on 08.02.2014 in which no bail was granted;
- (iii) Crime No.86 of 2014 registered with Gudipala Police Station, Chittoor District on 07.06.2014 wherein conditional bail was granted on 24.10.2014 directing the detenu to appear before the S.H.O., Gudipala Police Station every Saturday between 11:00 A.M. and 01:00 P.M. for two months or till a charge sheet is filed;
- (iv) Crime No.101 of 2014 registered with Chittoor I Town Police Station on 07.06.2014 wherein conditional bail was granted, in CrI.M.P.No.3348 of 2014 dated 10.12.2014, directing the detenu to appear before the S.H.O., Chittoor I Town Police Station every Saturday between 11:00 A.M. and 01:00 P.M. for two months or till filing of the charge sheet;
- (v) Crime No.72 of 2014 registered with Y.V.Palem Police Station, Chittoor District on 07.07.2014 (the order of detention records that the detenu was absconding);
- (vi) Crime No.168 of 2014 registered with Madana Palli Taluk Police Station, Chittoor District on 07.07.2014 (wherein also the detenu was shown as absconding);
- (vii) Crime No.186 of 2014 registered with Punganur Police Station on 08.07.2014 wherein no bail was granted; and
- (viii) Crime No.196 of 2014 registered with Palamaner Police Station on 20.08.2014

wherein unconditional bail was granted in CrI.M.P.No.2442 of 2014 dated 28.10.2014.

It is the case of the detenu that, by the date of the order of detention dated 20.12.2014, all the eight cases were under investigation, and no charge sheet was filed in any of them.

(d). W.P. No.8631 of 2015:

The order dated 09.02.2015, whereby Sri Kala Ramakrishna was detained, was confirmed by the Government vide G.O.Rt. No.949 dated 24.03.2015. Both the order and the grounds of detention refer to six criminal cases. They are-

- (i) Crime No.154 of 2010 registered with Kazipet Police Station, Kadapa on 18.10.2010 wherein an unconditional order of bail was passed on 31.12.2010;
- (ii) Crime No.114 of 2014 registered with Chowdepalle Police Station, Chittoor District on 03.11.2014 wherein no order of bail was passed;
- (iii) Crime No.184 of 2014 registered with Puthalapattu Police Station, Chittoor District on 05.11.2014 wherein a conditional order of bail was passed on 27.01.2015 directing the detenu to appear before the S.H.O., Puthala Pattu Police Station twice a week every Sunday and Friday between 10:30 A.M. and 01:00 P.M.;
- (iv) Crime No.144 of 2014 registered with Kuppam Police Station, Chittoor District on 08.11.2014 wherein the application filed by the S.I. of Police, Kuppam Police Station, for issuance of P.T. Warrants, was dismissed on 09.02.2015;
- (v) Crime No.290 of 2014 registered with Punganur Police Station, Chittoor District on 09.11.2014 wherein no order of bail was passed;
- (vi) Crime No.137 of 2014 registered with V.Kota Police Station on 16.07.2014 wherein conditional bail was granted, in CrI.M.P.No.187 of 2015 dated 05.02.2015, directing the detenu to appear before the S.H.O., V.Kota Police Station every Monday and Thursday of the week, between 10:00 A.M. to 05:00 P.M or till filing of the charge sheet, whichever was earlier.

It is the case of the detenu that, by the time the detention order was passed on 20.12.2014, all the six criminal cases were pending investigation, and no charge sheet was filed in any of them.

(e). W.P. No.8923 of 2015:

The order of detention, whereby Sri R. Narasimhulu @ Narasimha Yadav was detained in preventive custody, was passed by the District Collector and District Magistrate, Chittoor on 20.12.2014. The order of detention was confirmed by the Government in G.O.Rt. No.767 dated 12.03.2015. The grounds of detention refer to nine criminal cases. They are-

- (i) Crime No.19 of 2014 registered with Pakala Police Station, Chittoor District on 08.02.2014 wherein a conditional order of bail was passed, in

Crl.M.P.No.2968 of 2014 dated 17.11.2014, directing the detenu to report before the S.H.O., Pakala Police Station on the 1st of every month between 10:00 A.M. to 02:00 P.M.

- (ii) Crime No.35 of 2014 registered with Bangarupalyam Police Station, Chittoor District on 19.02.2014 wherein an unconditional order of bail was passed in Crl.M.P.No.2793 of 2014 dated 18.12.2014.
- (iii) Crime No.33 of 2014 registered with G.D.Nellore Police Station, Chittoor District on 10.03.2014 wherein a conditional order of bail was passed, in Crl.M.P.No.1899 of 2014 dated 02.12.2014, directing the detenu to appear before the Investigating Officer every Monday between 10:00 A.M. to 05.00 P.M. till the investigation is completed; the detenu was directed not leave his place of residence without obtaining the consent of the Investigating Officer; and was directed to be available for investigation at all reasonable times;
- (iv) Crime No.74 of 2014 registered with Bangarupalyam Police Station, Chittoor District on 23.03.2014 wherein an unconditional order of bail was granted in Crl.M.P.No.2930 of 2014 dated 18.12.2014;
- (v) Crime No.86 of 2014 registered with Gudipala Police Station, Chittoor District on 07.06.2014 wherein a conditional order of bail was passed, in Crl.M.P.No.3640 of 2014 dated 13.11.2014, directing the detenu to appear before the S.H.O., Gudipala Police Station every Saturday between 11:00 A.M. and 01:00 P.M. for a period of two months or till a charge sheet is filed;
- (vi) Crime No.101 of 2014 registered with Chittoor I Town Police Station, Chittoor District on 07.06.2014 wherein a conditional order of bail was passed, in Crl.M.P.No.3855 of 2014 dated 02.12.2014, directing the detenu to appear before the S.H.O. every Saturday between 11:00 A.M. and 01:00 P.M. for a period of two months or till filing of the charge sheet;
- (vii) Crime No.78 of 2014 registered with S.R.Puram Police Station, Chittoor District on 07.06.2014 wherein a conditional order of bail was passed, in Crl.M.P.No.4132 of 2014 dated 11.12.2014, directing the detenu to appear before the S.H.O., every Sunday at 10:00 A.M. for a period of two months or till filing of the charge sheet, whichever was earlier;
- (viii) Crime No.58 of 2014 registered with Penumuru Police Station, Chittoor District on 09.06.2014 wherein a conditional order of bail was passed, in Crl.M.P.No.1841 of 2014 dated 11.11.2014, directing the detenu to appear before the S.H.O. every Monday and Friday between 10:00 A.M. and 05:00 P.M. till the investigation was completed; and
- (ix) Crime No.113 of 2014 registered with Chittoor Taluq Police Station, Chittoor District on 15.09.2014 wherein a conditional order of bail was passed, in Crl.M.P.No.1861 of 2014 dated 19.11.2014, directing the detenu to appear before the S.H.O. on the 1st and 3rd Monday of every month.

It is the case of the detenu that, by the time the detention order was passed on 20.12.2014, all the nine criminal cases were pending investigation, and no charge sheet was filed in any of them.

(f). W.P. No.9437 of 2015:

The detenu Sri Kade Tirupalu was detained in preventive custody on 09.02.2015. The order of detention was confirmed by the Government vide G.O. Rt.No.947 dated 24.03.2015. The grounds of detention refer to seven criminal cases, and that bail was granted to the detenu in six of them. The

grounds of detention also records that, even in the seventh case, the detenu was refused bail. The grounds of detention refer to the bail orders, and copies of all the bail orders were also furnished to the detenu.

(g). W.P. No.8289 of 2015:

The detenu Sri Chirala Rajesh was detained by the District Collector and District Magistrate, Chittoor by his order dated 20.12.2014. The order of detention was approved by the State Government by G.O. Rt.No.4151 dated 26.12.2014. The order of detention was confirmed by the Government by G.O.Rt. No.541 dated 23.02.2015 after receipt of the opinion from the Advisory Board on 29.01.2015. The grounds of detention refer to five criminal cases. They are-

- (i) Crime No.281 of 2014 registered with Tiruchanur Police Station on 19.09.2014;
- (ii) Crime No.84 of 2014 registered with II Town Police Station on 21.09.2014;
- (iii) Crime No.271 of 2014 registered with Alipiri Police Station on 23.09.2014;
- (iv) Crime No.164 of 2014 registered with Renigunta (Urban) Police Station on 23.09.2014; and
- (v) Crime No.149 of 2014 registered with Srikalahasthi (Rural) Police Station on 25.09.2014.

(h). W.P. No.8361 of 2015:

The detenu Sri K.Purushotham Reddy was detained pursuant to the order of detention, passed by the District Collector and District Magistrate, Chittoor, on 09.02.2015. The order of detention was approved by the Government by G.O.Rt. No.487 dated 18.02.2015 and, thereafter, confirmed by G.O.Rt. No.941 dated 24.03.2015. The grounds of detention refer to the detenu's involvement in seven criminal cases. They are-

- (i) Crime No.107 of 2008 registered with Piler Police Station registered on 04.08.2008;
- (ii) Crime No.142 of 2009 registered with Piler Police Station registered on 23.07.2009;
- (iii) O.R.No.99 of 2009-10 registered with Bhakarapet Range registered on 02.10.2009;
- (iv) Crime No.119 of 2014 registered with Piler Police Station registered on 16.06.2014;
- (v) Crime No.55 of 2014 registered with Rompicherla Police Station registered on 16.06.2014 ;
- (vi) Crime No.100 of 2014 registered with Chowdepalli Police Station registered on 10.09.2014; and

- (vii) Crime No.88 of 2014 registered with Rompicherla Police Station registered on 18.10.2014.

(i). W.P. No.13482 of 2015:

The detenu Sri Nazeer Ahammad Roshan was detained by the District Collector and District Magistrate, Kadapa by order dated 23.03.2015. The order of detention was served on the detenu while he was in judicial custody in connection with Crime No.3 of 2015 of Badvel Urban Police Station. The order of detention was approved by the Government vide G.O.Rt. No.982 dated 26.03.2015. The order of detention was confirmed by the Government by G.O.Rt. No.1270 dated 27.04.2015. The grounds of detention refer to seven criminal cases in which the detenu was alleged to be involved. They are-

- (i) Crime No.122 of 2014 registered with Badvel Rural Police Station on 08.10.2014 wherein conditional bail was granted in CrI.M.P.No.707 of 2015 dated 17.03.2015;
- (ii) Crime No.170 of 2014 registered with Badvel Urban Police Station on 09.10.2014 wherein conditional bail was granted in CrI.M.P.No.709 of 2015 dated 17.03.2015;
- (iii) Crime No.173 of 2014 registered with Badvel Urban Police Station on 11.10.2014 wherein conditional bail was granted in CrI.M.P.No.708 of 2015 dated 17.03.2015;
- (iv) Crime No.188 of 2014 registered with Badvel Urban Police Station on 22.10.2014 wherein a conditional bail was granted in CrI.M.P.No.241 of 2015 dated 16.02.2015;
- (v) Crime No.196 of 2014 registered with Badvel Urban Police Station on 31.10.2014 wherein conditional bail was granted in CrI.M.P.No.240 of 2015 dated 16.02.2015;
- (vi) Crime No.131 of 2014 registered with Badvel Rural Police Station on 03.11.2014 wherein conditional bail was granted in CrI.M.P.No.242 of 2015 dated 16.02.2015; and
- (vii) Crime No.3 of 2015 registered with Badvel Urban Police Station on 05.01.2015 wherein also conditional bail was granted in CrI.M.P.No.265 of 2015 dated 19.03.2015.

(j). W.P. No.13517 of 2015:

The detenu Sri Chavva Ramana Reddy was detained by the District Collector and District Magistrate, Kadapa by order dated 12.03.2015. The detention order was served on the detenu while he was in judicial custody in connection with Crime No.11 of 2015 of Porumamilla Police Station. The order of detention was approved by the Government vide G.O.Rt.No.871 dated 17.03.2015, and the detention order was confirmed by the Government by G.O.Rt.No.1269 dated 27.04.2015. The grounds of

detention refer to the involvement of the detenu in 14 criminal cases. They are-

- (i) O.R.No.94 of 2009-10 registered with Badvel Forest Range Office on 24.02.2010 wherein bail was granted before the order of detention;
- (ii) O.R.No.61 of 2010-11 registered with Badvel Forest Range Office on 25.07.2010 wherein bail was granted before the order of detention;
- (iii) O.R.No.53 of 2011-12 registered with Badvel Forest Range Office on 13.09.2011 wherein the detenu was not arrested;
- (iv) Crime No.45 of 2012 registered with Gopavaram Police Station on 07.06.2012 wherein bail was granted after the detention order was passed;
- (v) Crime No.85 of 2013 registered with Porumamilla Police Station on 13.04.2013 wherein bail was granted after the detention order was passed;
- (vi) O.R.No.16 of 2013-14 registered with Badvel Forest Range Office on 05.05.2013 wherein bail was granted after the detention order was passed;
- (vii) O.R.No.66 of 2013-14 registered with Porumamilla Forest Range Office on 16.09.2013 wherein the detenu was not arrested;
- (viii) Crime No.235 of 2013 registered with Porumamilla Police Station on 07.11.2013 wherein the detenu was not arrested;
- (ix) Crime No.17 of 2014 registered with Porumamilla Police Station on 20.02.2014 wherein bail was granted after the detention order was passed;
- (x) Crime No.58 of 2014 registered with Porumamilla Police Station on 22.03.2014 wherein a conditional bail was granted in CrI.M.P.No.471 of 2015 dated 04.03.2015;
- (xi) Crime No.74 of 2014 registered with Porumamilla Police Station on 26.03.2014 wherein conditional bail was granted in CrI.M.P.No.470 of 2015 dated 04.03.2015;
- (xii) Crime No.3 of 2015 registered with Badvel Urban Police Station on 05.01.2015 wherein no bail was granted;
- (xiii) Crime No.2 of 2015 registered with Porumamilla Police Station on 14.01.2015 wherein a conditional bail was granted in CrI.M.P.No.468 of 2015 dated 04.03.2015;
- (xiv) Crime No.11 of 2015 registered with Porumamilla Police Station wherein conditional bail was granted in CrI.M.P. No.469 of 2015 dated 04.03.2015.

Heard Sri C.V. Mohan Reddy, Sri T. Niranjan Reddy, Learned Senior Counsel, Smt.B. Mohana Reddy, Sri D. Purnachandra Reddy, and Sri S. Dushyanth Reddy, Learned Counsel appearing on behalf of the petitioners. On behalf of the State, arguments were advanced by the Learned Advocate-General. As the grounds of challenge to the detention orders vary, from one order to another, it is necessary to refer to the contentions urged in challenge thereto under different heads. Before doing so, it is necessary to examine the scope of enquiry by Courts in Habeas corpus proceedings as, in all

these Writ Petitions, a writ of Habeas corpus is sought seeking release of the detenus from preventive custody.

II. WRIT OF HABEAS CORPUS: ITS SCOPE:

In a habeas corpus petition, filed seeking release of the detenu, the petitioner should show a violation of either Article 21 or Article 22 of the Constitution as the personal liberty of the citizen, which the law so sedulously and carefully protects, can be taken away only by the procedure established by law when public good is jeopardised, and not merely private interests. What has to be considered by the Court, in a habeas corpus petition, is whether the detention is legal or not, and not whether the detaining authorities have wrongly or rightly reached their satisfaction. (**Ram Bali Rajbhar v. State of W.B.**^[23]). It would, however, be unreasonable to insist that, in preventive detention matters, the petitioner should set out clearly and specifically the grounds on which he challenges the order of detention, and make out a case in support of those grounds before a rule is issued, or to hold that the detaining authority is not liable to do any thing more than just meet the specific grounds of challenge put forward in the petition. (**lcchu Devi Choraria v. Union of India**^[24]).

When a rule is issued, it is incumbent on the detaining authority to satisfy the Court that the detention of the petitioner is legal, and in conformity with the mandatory provisions of the law authorising such a detention. In answer to the rule, the detaining authority must place all the relevant facts before the Court to show that the detention is in accordance with the provisions of the Act. It would be no argument, on the part of the detaining authority, to say that a particular ground is not taken in the petition. Once the rule is issued it is the bounden duty of the Court to satisfy itself that all the safeguards, provided by the law, have been scrupulously observed, and the citizen is not deprived of his personal liberty otherwise than in accordance with law. (**lcchu Devi Choraria**²⁴; **Niranjan Singh v. State of Madhya Pradesh**^[25]; **Shaikh Hanif, Gudma Majhi & Kamal Saha v. State of West Bengal**^[26]; **Dulal Roy v. District Magistrate, Burdwan**^[27]; **Nizamuddin v. State of West Bengal**^[28]; **Mohd. Alam v. State of West Bengal**^[29];

Khudiram Das¹⁶).

The burden, of showing that the detention is in accordance with the procedure established by law, is placed on the detaining authority as Article 21 of the Constitution provides, in clear and explicit terms, that no one shall be deprived of his life or personal liberty except in accordance with the procedure established by law. This constitutional right of life and personal liberty is placed on such a high pedestal that, whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the Court that it has acted in accordance with the law. Even where a requirement of the law is breached in the slightest measure, Courts would not hesitate to strike down the order of detention or to direct release of the detenu. Courts have always regarded personal liberty as the most precious possession of mankind, and have refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade. (**Ichu Devi Choraria**²⁴).

Where the liberty of the subject is involved, it is the bounden duty of the Court to satisfy itself that all the safeguards, provided by the law, have been scrupulously observed, and the subject is not deprived of his personal liberty otherwise than in accordance with law. (**M. Ahamedkutty**¹⁹; **Khudiram Das**¹⁶). If a man can be deprived of his liberty under a law, by the simple process of the making of a certain order, he can only be so deprived if the order is in terms of the law. Strict compliance with the letter of the law is the essence of the matter, in dealing with a statute which drastically interferes with the personal liberty of citizens. It would be legitimate to require, in such cases, strict observance of the law. If there is any doubt whether the law has been strictly observed, that doubt must be resolved in favour of the detenu. (**Ram Manohar Lohia v. The State of Bihar**^[30]).

The procedural safeguards, prescribed for protection of personal liberty, must be strictly followed. The history of personal liberty is a history of insistence on procedural safeguards. (**Ummu Sabeena v. State of Kerala**^[31]). There is nothing like unfettered discretion immune from judicial review. In a Government under law, there can be no such thing as

unreviewable discretion. Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler, some official, some bureaucrat. Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions. This is much more so in a case where personal liberty is involved. Judicial control is necessary to ensure that the power, in the hands of an individual officer or authority, is not misused or abused or exercised arbitrarily or without any justifiable grounds. (**Khudiram Das**¹⁶; **United States v. Wunderlick**^[32]).

III. FAILURE TO REFER TO THE ORDERS OF BAIL IN THE ORDER AND GROUNDS OF DETENTION – ITS EFFECT:

In W.P. No.6510 of 2015, wherein release of the detenu Sri Vasanthu Ashok Kumar Reddy is sought, the detenu was granted conditional bail in three cases, and an unconditional bail in one of the six cases mentioned in the grounds of detention, even prior to the passing of the detention order. The fact that conditional bail orders were passed in favour of the detenu was not referred to in the order and grounds of detention. In the counter-affidavit, filed in W.P.No.6510 of 2015, it is stated that the detenu was granted bail in four of the six cases; and though he was enlarged on bail in four crimes, he still did not mend his ways, and continued with his illegal activities; and it could not be said that there was deliberate suppression of vital information i.e granting of bail in a few crimes.

In W.P. No.8631 of 2015, wherein release of the detenu Sri Kala Rama Krishna is sought, it is stated that the detenu was granted conditional bail in two, and unconditional bail in one, of the six cases referred to in the grounds of detention; and the fact that the detenu was granted conditional bail was suppressed by the sponsoring authority, and was not brought to the notice of the detaining authority. In the counter-affidavit, filed in W.P.No.8631 of 2015 by the detaining authority, it is stated that the detention order was passed while the detenu was in judicial custody; he had placed reliance on the six crimes registered against him; though he was enlarged on bail in three crimes, he still did not mend his ways, and continued with his illegal activities; on the material placed before him, he found it necessary to pass an order of detention against the detenu, in order to curb his illegal activities; and as bail was granted to the detenu in three crimes, and in

another case he was likely to come out on bail, it necessitated passing of the order of detention.

In W.P. No.6570 of 2015, filed seeking release of the detenu Sri Mukkali Narayana, it is contended that the fact that the detenu was granted conditional bail in four, and unconditional bail in one, of the six cases referred to in the grounds of detention, were suppressed by the sponsoring authority; and, if these facts had been brought to the notice of the detaining authority, the detention order would not have been passed. In the counter-affidavit, filed by the detaining authority, in W.P. No.6570 of 2015, it is stated that the detenu was involved in six cases out of which he was granted bail in five cases; in the other case, the bail application was pending; as he was likely to come out on bail in this case also, and with a view to prevent him from further indulging in such activities, the detention order was passed; it could not be said that there was deliberate suppression, of vital information, regarding grant of bail to the detenu; he had placed reliance on the six crimes, registered against the detenu, in arriving at his subjective satisfaction; and though the detenu was enlarged on bail in five crimes, he still did not mend his ways, and continued his illegal activities.

In W.P. No.8923 of 2015, wherein release of the detenu Sri R. Narsimhulu @ Narasimha Yadav is sought, it is contended that the factum of conditional bail having been granted to the detenu in seven, and unconditional orders of bail being passed in two, of the nine cases referred to in the grounds of detention, was suppressed by the sponsoring authority; and, if they had been brought to his notice, the detaining authority may not have passed the order of detention. In the counter-affidavit, filed in W.P. No.8923 of 2015, it is stated that the detaining authority was aware of the fact that the detenu was granted bail in eight of the nine crimes registered against him; the bail application was dismissed in Crime No.78 of 2014; and, though bail was granted in Crime No.35 of 2014, he did not produce sureties. Along with the reply affidavit, is enclosed a copy of the order in Crime No.78 of 2014, vide CrI.M.P. No.4132-A of 2014 dated 11.12.2014 passed by the Judicial Magistrate of First Class, Puttur, whereby the detenu was granted bail on condition that he should appear before the Station House Officer every Sunday at 10.00 A.M. for a period of three months or till filing of the charge-sheet whichever is earlier. The detaining authority had,

therefore, erred in stating in his counter-affidavit that the bail application in Crime No.78 of 2014 was dismissed.

In W.P. No.7331 of 2015, wherein release of the detenu S. Abdul Mazeed @ Habeeb is sought, it is stated that the fact of conditional bail having been granted in favour of the detenu in two, and unconditional bail having been granted in two, of the eight cases referred to in the grounds of detention was deliberately suppressed by the sponsoring authority; and, if the said information had been furnished, the detaining authority may not have passed the order of detention. In the counter-affidavit, filed in W.P. No.7331 of 2015, it is stated that the detenu was involved in eight crimes, out of which he was granted bail in four crimes; in other cases, bail applications were dismissed; as he was likely to come out in these cases also, and with a view to prevent him for further indulging in such unlawful activities, the detention order was passed by the detaining authority after satisfying himself that grounds exist for passing the order of detention; and, as such, it could not be said that there was deliberate suppression of vital information regarding grant of bail to the detenu; he had placed reliance on eight crimes registered against the detenu in arriving at the subjective satisfaction; though he was enlarged on bail in four crimes, the detenu did not mend his ways, and continued with the illegal activities; and this necessitated an order of detention being passed in order to curb his illegal activities.

In W.P. No.13517 of 2015, wherein release of the detenu Sri Chavva Ramana Reddy is sought, it is stated that the detenu was granted unconditional bail in two, and conditional bail in four, of the 14 cases referred to in the grounds of detention, before the order of detention was passed; however, in the order and grounds of detention, it is erroneously stated that the detenu was granted bail only in the first two incidents; the sponsoring authority did not place the bail orders before the detaining authority; and, as the detaining authority was not aware of the bail orders, he had erroneously arrived at the subjective satisfaction of the need to detain the detenu. In the counter-affidavit, filed in W.P. No.13517 of 2015, it is stated that, as on the date of passing the order of detention, the detenu was granted bail only in two incidents i.e. O.R.No.94 of 2009-2010 and

O.R.No.61 of 2010-2011; and both the bail orders with the bail applications were placed before the detaining authority. In the reply affidavit, it is stated that the detenu was granted conditional bail on 04.03.2015 in Crime Nos.58 of 2014, 74 of 2014, 2 of 2015 and 11 of 2015; and though conditional bail was granted to the detenu on 04.03.2015, in four of the nine incidents, before the detention order was passed on 12.03.2015, the detaining authority had not considered the orders granting conditional bail.

In W.P. No.13482 of 2015, wherein release of the detenu Sri Nazir Ahmed is sought, it is contended that the detenu was granted conditional bail in all the seven incidents referred to in the grounds of detention; and the sponsoring authority did not place the conditional orders of bail before the detaining authority, particularly the orders of conditional bails passed in Crime Nos.122, 170, 173,188, 196 and 131 of 2014. In the counter-affidavit, filed in W.P. No.13482 of 2015, it is stated that, though the detenu was enlarged on bail in all the crimes, he did not produce sureties under the apprehension that, if he is enlarged on bail, a preventive order of detention would be passed against him; though seven crimes were registered against the detenu, he did not mend his ways; and, therefore, an order of preventive detention was required to be passed against him. In the reply affidavit, it is stated that neither the order of detention nor the grounds of detention refer to the fact that the detenu was granted bail in all the seven cases referred to in the grounds of detention; the contention of the detaining authority that he was aware of the detenu having been granted bail is stated only in the counter-affidavit, and is not reflected either in the order or in the grounds of detention.

It is contended, on behalf of the petitioners, that the fact, of the detenus having been granted bail, was suppressed by the sponsoring authorities, and were not brought to the notice of the detaining authorities; if they had been made aware of the fact that the detenus were granted conditional bail, and their movement was restricted thereby, the detaining authorities would not have passed the order of detention; and non-consideration of the bail order would vitiate the order of detention. On the other hand, the Learned Advocate General, for the State of Andhra Pradesh, would submit that the counter-affidavit filed by the detaining authority discloses that he had considered the orders granting bail to the detenus; the

mere fact that the order and grounds of detention do not refer to the order granting bail is of no consequence; it is always open to the detaining authority to explain these facts by way of an affidavit filed before this Court; the satisfaction of the detaining authority, under the A.P. Act 1 of 1986, is subjective and is required to be arrived at on the basis of the material placed before him by the sponsoring authority; and adequacy or sufficiency of the material, placed before the detaining authority by the sponsoring authority, cannot be examined in proceedings under Article 226 of the Constitution of India.

While Courts have zealously guarded the personal liberty of citizens, and have strictly construed the provisions of preventive detention laws to ensure that the case of a detenu is justly and impartially considered and dealt with by the detaining authorities, it does not mean that they have to, or can rightly and properly, assume either the duties cast upon the detaining authorities by the law of preventive detention or function as courts of appeal on questions of fact. The law of preventive detention is authorised by the Constitution as it was foreseen by the Constitution-makers that there may arise occasions in the life of the nation when the need to prevent citizens from acting in ways which unlawfully subvert or disrupt the basis of an established order may outweigh the claims of personal liberty. (**Ram Bali Rajbhar**²³).

Exercise of the power of detention is made dependent on the subjective satisfaction of the detaining authority that, with a view to prevent a person from acting in a prejudicial manner as set out in the provision, it is necessary to detain such person. The words “**if satisfied**” in Section 3(1) of Act 1 of 1986 imports subjective satisfaction on the part of the detaining authority before an order of detention is made. The power of detention is clearly a preventive measure. It does not partake the nature of punishment. It is taken by way of precaution to prevent harm to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof. (**Khudiram Das**¹⁶). It is not practicable to lay down objective rules of

conduct in an exhaustive manner, the failure to conform to which should lead to the detention being set aside. The detaining authority may act on any material, and on any information, that he may have before him. Such material and information may merely afford the basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for an offence will be tenable. (**C. Anita**⁷).

The subjective satisfaction of the detaining authority, as regards these matters, constitutes the foundation for the exercise of the power of detention and the Court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. The Court cannot, on a review of the grounds, substitute its own opinion for that of the authority, for what is made a condition precedent to the exercise of the power of detention is not an objective determination of the necessity of detention for a specified purpose but the subjective opinion of the detaining authority, and if a subjective opinion is formed by the detaining authority as regards the necessity of detention for a specified purpose, the condition of exercise of the power of detention would be fulfilled. The power of detention is not a quasi-judicial power. (**Khudiram Das**¹⁶). It would not be open, for instance, to the detenu to contend that the grounds supplied to him do not reasonably lead to the conclusion that, if he is not detained, he would indulge in prejudicial activities. Neither can the reasonableness of the satisfaction of the detaining authority be questioned, nor can the adequacy of the material, on which the satisfaction rests, be examined, in a Court of law. (**Pushkar Mukherjee v. State of W.B.**^[33]; **State of Bombay v. Atma Ram Sridhar Vaidya**^[34]).

If the facts alleged are presumed to be true, and there is a causal connection between the facts alleged and the purpose of detention, and the formation of the opinion is not mala fide, then the sufficiency of the grounds and the truth of the grounds is not germane. (**Suraj Pal Sahu v. State of Maharashtra**^[35]; **Barium Chemicals Ltd. v. Company Law Board**^[36]). The Court cannot substitute its own opinion for that of the detaining authority when the grounds of detention are precise, pertinent, proximate and

relevant. (**C. Anita**⁷). The Court cannot enquire whether grounds exist, which created the satisfaction on which the order could have been made in the mind of a reasonable person. (**Ram Manohar Lohia**³⁰).

The subjective satisfaction of the detaining authority is, however, not wholly immune from judicial review. There is an area, limited though it be, within which the validity of the subjective satisfaction can be subjected to judicial scrutiny. As subjective satisfaction, is a condition precedent for exercise of the power conferred on the Executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority. If it is not, the condition precedent would not be fulfilled, and the exercise of power would be illegal. (**Khudiram Das**¹⁶). Subjective satisfaction notwithstanding, the detaining authority must exercise due care and caution and act fairly and justly in exercising the power of detention. (**Khudiram Das**¹⁶; **Bhut Nath Mete**²). If there be found in the Statute, expressly or by implication, matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider. (**Khudiram Das**¹⁶). The satisfaction of the authority must be grounded “on materials which are of rationally probative value”. The grounds on which the satisfaction is based must be such as a rational human being can consider as being connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the Statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. (**Khudiram Das**¹⁶; **Pratap Singh v. State of Punjab**^[37]; **Machindar v. King**^[38]).

It is incumbent that all vital material are placed before the detaining authority to enable him to arrive at the subjective satisfaction as to the necessity for passing an order of detention. (**M. Ahamedkutty**¹⁹; **State of**

U.P. v. Kamal Kishore Saini^[39]). The bail order is a vital material for consideration. If it is not considered, the satisfaction of the detaining authority would be impaired. If it is considered, it would then be a document relied on by the detaining authority, though not specifically mentioned in the annexure to the order of detention, and ought to form part of the documents to be supplied to the detenu with the grounds of detention; and, without them, the grounds themselves cannot be said to have been complete. It amounts to denial of the detenu's right to make an effective representation, and would be in violation of Article 22(5) of the Constitution of India. It would render the continued detention of the detenu illegal and entitle him to be set at liberty. (**M. Ahamedkutty**¹⁹).

If the bail order, which is a vital material, is not considered, the satisfaction of the detaining authority itself would be impaired. (**V. Muragesh v. Collector and District Magistrate, Chittoor**^[40]; **Durgam Subramanyam v. Government of A.P.**^[41]; **Kamal Kishore Saini**³⁹; **M. Ahmedkutty**¹⁹). Non-placing and non-consideration of material, as vital as the bail order, vitiates the subjective decision of the detaining authority, and the Court cannot attempt to assess in what manner, and to what extent, consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority. (**Rushikesh Tanaji Bhoite v. State of Maharashtra**^[42]). Failure of the sponsoring authority to place the conditional orders, granting anticipatory bail/bail, before the detaining authority is fatal as it is a vital material which would have weighed with the detaining authority at the time of passing the detention order. (**Durgam Subramanyam**⁴¹).

When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinizing the validity of an order of preventive detention, which is based on the very same charge which is to be tried by the criminal court. (**Vijay Narain Singh v. State of Bihar**^[43]; **Jotha Viswanadh v. Chief Secretary, Govt. of A.P.**^[44]). Where the detenu is released on bail, and is enjoying his freedom under the order of the court, the order of bail must be placed before the detaining authority, when the

order of detention is passed, to enable him to reach a proper satisfaction. (**Rushikesh Tanaji Bhoite v. State of Maharashtra, (2012) 2 SCC 72**). If the detaining authority was unaware of the order of bail, the detention order is rendered invalid as the Court cannot attempt to assess in what manner, and to what extent, consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority in passing the order of preventive detention. (**Rushikesh Tanaji Bhoite**⁴²; **Rekha**⁵; **Jotha Viswanadh**⁴⁴).

The question whether, on the date of passing the order of detention, the detenu was in custody or not is a relevant fact. It would also be a relevant fact whether he is free on that date and, if he is, whether he is subjected to certain conditions pursuant to, and in furtherance of, the order of bail. If pursuant to, or in furtherance of, such conditions he may not be able to flee from justice, that may be a relevant consideration in passing an order of detention. Other grounds, raised in the application for bail and forming the basis for passing an order of bail, may also be relevant. It would, however, not be correct to contend that, irrespective of the nature of the application for bail or irrespective of the nature of the restrictions, if any, placed by the Court of competent jurisdiction, in releasing the detenu on bail, the same must invariably and mandatorily be placed before the detaining authority, and copies thereof supplied to the detenu. (**Sunila Jain v. Union of India**^[45]).

If, the detaining authority is not made aware, at the time the detention order was made, that the detenu had moved applications for bail, and he was enlarged on bail, it would indicate total absence of application of mind on the part of the detaining authority while passing the order of detention, as one does not know how the detaining authority would have acted if he was made aware of these details. (**Anant Sakharam Raut v. State of Maharashtra**^[46]). Non-consideration of the bail order would amount to non-application of mind as non-consideration of relevant and important material is fatal to the detention order. If the detaining authority had considered the order, it may have persuaded him to desist from passing the order of detention. (**M. Ahamedkutty**¹⁹; **Union of India v. Manoharlal Narang**^[47]).

In **S. Sathu v. Government of A.P., rep. by its Chief Secretary**^[48], a Division bench of this Court held that the order of detention was vitiated on account of non-application of mind as the detaining authority had not considered the fact that the detenu had applied for bail in four cases, and was granted bail in the said four cases; the sponsoring authority did not place these order before the detaining authority; and this, being vital material, ought not to have been suppressed by the sponsoring authority.

In **V. Muragesh**⁴⁰ this Court held that it was evident that, from out of the eight forest offences registered against the detenu, he was arrested and released on bail in five cases, while in three cases, he was not even arrested; curiously, in the order of detention, the detaining authority had recorded that the detenu was released on bail in all the cases; this showed that the detaining authority, had not applied his mind to the facts of the case; the detaining authority did not even bother to refer to the details of the bail applications moved by the detenu nor to the details of the bail orders nor to the conditions on which bail was granted to the detenu; and he could not have recorded details of the bail applications moved by the detenu and the bail orders granted and the conditions on which the bail was granted, as they were not placed before him.

The Learned Single judge, in **B. Venkata Ramana v. The Government of Andhra Pradesh**^[49], following **Sunila Jain**⁴⁵, held that if the order of bail contains relevant information which, if considered by the detaining authority, he would have been satisfied that the ordinary course of law was adequate enough to deal with the detenu, and the power of preventive detention need not be invoked against him; in such cases the subjective satisfaction can be said to have been impaired; in the instant case, no such demonstration had been carried out to show that the bail order contained vital material, and as to how the order of bail would have made a difference in the matter of subjective satisfaction of the detaining authority; and the detention order was not vitiated for want of knowledge of granting bail by the criminal court to the detenu.

On the other hand, in **Gajjala Subba Reddy v. The Collector and District Magistrate, Kadapa**^[50], the Learned Single Judge considered the

judgment of the Supreme Court in **Sunila Jain**⁴⁵, and held that, in the present case, the bail applications filed by the detenu in the five cases specifically stated that he was implicated therein on the basis of confessions allegedly made by co-accused which were inadmissible in law, no red sander logs were found in his possession, and cases were foisted on him at the instance of his enemies; these facts would be relevant and material to decide whether the detaining authority should pass an order of preventive detention against the detenu, and cannot be said to be irrelevant; the order of detention or the grounds of detention made no reference to the fact that the detenu had applied for bail in five cases, and was granted bail therein; although a plea was taken, in the counter affidavit filed by the detaining authority, that the bail applications and the bail orders were placed before him, he had perused the same, and had then passed the order of detention, this was not reflected in the grounds of detention supplied to the detenu or in the order of detention; it was clear that the detaining authority had not considered the fact that the detenu had applied for bail in the five cases, and had secured bail, before passing the order of detention; the order of detention was vitiated on account of non-application of mind as the detaining authority did not consider the vital fact that the detenu had applied for bail in five cases and was also granted bail in all the said five cases; and a similar view was also taken in **Durgam Subrahmanyam**⁴¹ and in **V. Muragesh**⁴⁰.

In **Saroj Mehandi v. The Government of A.p. rep. by its Chief Secretary, Hyderabad**^[51], a learned single judge of this Court held that, in **Sunila Jain**⁴⁵, the detaining authority was aware of the orders under which the detenu was released on bail, and failure to place the bail applications before the detaining authority was held not to vitiate the subjective satisfaction; placing of a bail application, and the bail order before the detaining authority, are two different and distinct aspects; and, as the orders granting bail was within the knowledge of the detaining authority, the Supreme Court, in **Sunila Jain**⁴⁵, had held that absence of the bail applications, being placed before the detaining authority, would not vitiate the detention order; it was imperative for the detaining authority to be

apprised of the fact that the detenu was released on bail in more than one crime listed in the grounds as that would, inter alia, lead to an inference that a competent criminal court has chosen to enlarge on bail rather than holding the detenu in custody.

In view of the conflicting opinions expressed by the Learned Single judges in the aforesaid judgments, placing reliance on the judgment of the Supreme Court in **Sunila Jain**⁴⁵, it is necessary to consider the law declared by the Supreme Court in **Sunila Jain**⁴⁵. In **Sunila Jain**⁴⁵, the Supreme Court held that **M. Ahamedkutty**¹⁹ was a case where an order of bail was passed on the condition that the detenu would report before the Customs Authority every Wednesday, and would not change his residence without prior permission of the Court; in the aforementioned fact situation, the Supreme Court had opined that non-consideration of the order, passed on the said petition for bail, amounted to non-application of mind on the part of the detaining authority; the said decision had no application to the present case; on the petitioner's own showing, only that part of the application for grant of bail, that the offence in question was bailable, was relevant; whether a provision of law is bailable or not is a question of law; the same is presumed to be known to the courts and/or the detaining authority; it may not be necessary even to be stated in the application for bail; if a person had been released on bail on the ground that the offence is bailable, it would not be necessary to bring the said fact before the detaining authority; in the instant case the order of detention had taken note of the fact that the detenu had already been released on bail; it was also not in dispute that a copy of the order granting bail, and the order of remand, had been furnished to the detenu; in this view of the matter, non-furnishing of a copy of the application for bail could not be said to be a relevant fact which was required to be taken into consideration by the detaining authority; all the documents placed before the detaining authority are not required to be supplied; and only relevant and vital documents are required to be supplied.

Unlike in **Sunila Jain**⁴⁵ where a copy of bail application, for an offence which was bailable, was not furnished and a copy of the order granting bail and the order of the remand were furnished to the detenu, in the present case the orders granting conditional/conditional bail were neither

considered by the detaining authority nor were copies thereof furnished to the detenu. The conditional orders of bail restricted the movement of the detenus and required them to appear before the officer concerned periodically. If these conditional orders of bail had been brought to his notice, it may well have resulted in the detaining authority arriving at the subjective satisfaction that the detention of the detenus were unnecessary. Reliance placed by the Learned Advocate-General on **Sunila Jain**⁴⁵ is, therefore, misplaced.

Neither the order nor the grounds of detention refer either to the conditional or the unconditional orders of bail granted in favour of the detenus. As noted hereinabove failure of the detaining authority to consider the orders granting conditional bail would vitiate the orders of detention. It is, however, contended by the Learned Advocate General that the detaining authority has, in the counter-affidavit filed before this Court, asserted that he had considered the bail orders, and failure to refer to the bail orders, in the order or the grounds of detention, is of no consequence.

The submission of the Learned Advocate General does not merit acceptance as it is well settled that, if the order of the detaining authority exceeded his powers, the order cannot later be read differently even if there is an affidavit the other way. The statements in the affidavit filed by the State are of no avail for establishing that the order of detention is in terms of the law, as the detention is not under the affidavit but under the Order. (**Ram Manohar Lohia**³⁰). Orders of detention cannot be sustained on the basis of a plea in the counter of the State, if such fact is not mentioned in the grounds of detention. (**Pilli Yeteswari**³; **Gajjala Subba Reddy**⁵⁰).

Public orders, publicly made in the exercise of statutory authority, cannot be construed in the light of explanations subsequently given by the officer making the order of what he intended to do. Public orders, made by public authorities, are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. (**Commissioner of Police v. Gordhan Das Bhanji**^[52]). When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh

reasons in the shape of an affidavit. Otherwise, an order bad in the beginning may, by the time it comes to the Court on account of a challenge, get validated by additional grounds later brought out. (**Mohinder Singh Gill v. Chief Election Commissioner**^[53]).

It is no doubt true that, in **Jayanta Jadav v. State of W.B.**^[54], the Supreme Court held that the affidavit of the Deputy Secretary showed that the vernacular translation of the detention order was supplied to the petitioner on the very day that the order of detention was served on him; besides the petitioner had made his representation to the Government, and had also appeared in person before the Advisory Board; and it could not, therefore, be said that the petitioner was not aware of the nature of allegations made against him. Again in **L.M.S. Ummu Saleema v. B.B. Gujaral**^[55], the Supreme Court held that a reading of the entire counter-affidavit made it clear that, in the opinion of the detaining authority, prosecution or no prosecution, the only effective way of preventing the detenu from engaging himself in objectionable activities was to detain him. Thereafter in **G. Reddeiah v. Govt. of A. P.**^[56], the Supreme Court held that, in a matter of detention, the law was clear that, as far as subjective satisfaction is concerned, it should either be reflected in the detention order or in the affidavit justifying the detention order.

In **Jayanta Jadav**⁵⁴ and **L.M.S. Ummu Saleema**⁵⁵ the question, whether an order of detention can be sustained by way of an explanation in the affidavit filed before the Court later, did not arise for consideration. While the two judge bench of the Supreme Court, in **G. Reddiah**⁵⁶, no doubt held that the subjective satisfaction of the detaining authority can be reflected in the affidavit justifying the detention order, the earlier Constitution bench judgments of the Supreme Court in **Ram Manohar Lohia**³⁰ and **Mohinder Singh Gill**⁵³, and the three judge bench judgment of the Supreme Court in **Gordhan Das Bhanji**⁵², were not noticed therein. It is settled law that all subsequent decisions by benches comprised of lesser number of Judges should be read in the light of the earlier Constitution Bench decisions. (**N. Meera Rani v. Govt. of T.N.**^[57]). In cases where a High Court finds any

conflict between the views expressed by larger and smaller benches of the Supreme Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court, in such a case, is to try to find out and follow the opinion expressed by larger benches of the Supreme Court in preference to those expressed by smaller benches of the Supreme Court which practice, hardened as it has into a rule of law, is followed by the Supreme Court itself. (**State of U.P. v. Ram Chandra Trivedi**^[58]; **Union of India v. K.S. Subramanian**^[59]). The legal position is that, in the hierarchical set up of Courts, the High Court is bound by the decisions of the Supreme Court. However, when a smaller bench of the Supreme Court lays down a proposition contrary to and without noticing the ratio decidendi of the earlier larger Benches, such a decision will not become the law declared by the Supreme Court so as to have a binding effect under Article 141 of the Constitution on all the Courts within the country. (**Sakinala Harinath v. State of A.P.**^[60]). Judicial discipline requires that the opinion expressed by larger benches of the Supreme Court, in preference to those expressed by smaller benches of the Supreme Court, should be followed. (**K.S. Subramanian**⁵⁹; **O.Ramachandra Reddi v. The Director, DRDL, Hyderabad**^[61]). The order and the grounds of detention should reflect the material, on the basis of which the detaining authority arrived at the subjective satisfaction of the need to detain the detenu in preventive custody. As there is no reference therein to the orders passed by Courts granting conditional bail to the detenus, the detention orders are vitiated by non-consideration of vital and relevant material. The assertion to the contrary, in the counter-affidavits filed before this Court, would not justify upholding the, otherwise, invalid detention orders.

IV. SATISFACTION ARRIVED AT BOTH ON GROUNDS OF “PUBLIC ORDER” AND “PUBLIC PEACE AND LAW AND ORDER”: ITS CONSEQUENCE:

In W.P. No.8361 of 2015, it is contended that the detaining authority had recorded his satisfaction, basing on four crimes registered against the detenu, that his activities were adversely affecting public peace and law and order; the detaining authority was entitled to invoke the provisions of Act 1 of

1986 only if the activities of the detenu were prejudicial to the maintenance of public order; and violation of “**law and order**” is not a ground for detention under A.P. Act 1 of 1986. While the order of detention passed by the District Collector and District Magistrate, Chittoor dated 09.02.2015, records his satisfaction that the acts of the detenu were prejudicial to the maintenance of public order and the grounds of detention, at several places, refer to the fact that the activities of the delinquent were prejudicial to the maintenance of public order, the satisfaction of the detaining authority, as recorded in the concluding part of the grounds of detention, is that the detenu should be detained under Section 3(1) read with Section 3(2) of A.P. Act 1 of 1986, as his activities were injurious to the maintenance of “**public peace and law and order**”.

In W.P. No.8289 of 2015, it is stated that the detaining authority had recorded his satisfaction, basing on four crimes registered against the detenu, that his activities were adversely affecting “**public peace and law and order**”; the detaining authority can invoke the provisions of Act 1 of 1986 only if the activities of the detenu are prejudicial to the maintenance of “**public order**”; and violation of “**law and order**” is not a ground for detention under A.P. Act 1 of 1986.

While the order of detention passed by the District Collector and District Magistrate, Chittoor dated 09.02.2015, records his satisfaction that the acts of the detenu were prejudicial to the maintenance of public order, and the grounds of detention at several places refer to the fact that the activities of the delinquent were prejudicial to the maintenance of “**public order**”, the satisfaction recorded in the concluding part of the grounds of detention is that the detenu should be detained, under Section 3(1) read with Section 3(2) of A.P. Act 1 of 1986, as his activities were injurious to the maintenance of “**public peace**” and “**law and order**”.

It is contended, on behalf of the petitioners, that A.P. Act 1 of 1986 can only be invoked if the activities of the detenu are prejudicial to “**public order**”; detention, on the ground that activities of the detenu are prejudicial to “**law and order**”, is impermissible under the 1986 Act; the detaining authority has used both the expressions – “**law and order**” and “**public order**” – in recording his satisfaction; the satisfaction of the detaining

authority, on the ground that the activities of the detenu are prejudicial to “**public peace**” and “**law and order**”, are irrelevant factors, the use of which reveal non-application of mind and vitiate the orders of detention; the order of detention is akin to a decree, and the grounds of detention are akin to a judgment; on the basis of the material furnished by the sponsoring authority, and after perusing the file and analysing the material placed before him, the detaining authority decides whether or not the concerned person should be detained; such a reference forms the basis of the satisfaction arrived at by the detaining authority to detain the detenu in preventive custody; the very fact that the detaining authority referred to “**public order**” in the Order of detention, and “**public peace**” and “**law and order**” in the grounds of detention reflects his confused state of mind; he was not sure of the reason for detaining the detenu; he was swayed by irrelevant considerations which vitiated the order of detention; and reference to “**public peace**” and “**law and order**” in the grounds of detention vitiates the order of detention also.

Learned Advocate-General for the State of Andhra Pradesh, would submit that the order of detention states that the activities of the detenu are prejudicial to “**public order**”; even, in several parts of the grounds of detention, reference is made only to “**public order**”; an isolated reference to “**public peace**” and “**law and order**”, in the concluding part of the grounds of detention, would not vitiate the order of detention; and both the order and the grounds of detention should be read together.

The meaning of the words “**maintenance of public order**”, in the context of special laws entailing detention of persons without a trial on the pure subjective determination of the Executive, is confined to graver episodes not involving cases of “**law and order**”, which are not disturbances of public tranquillity but of ordre publique. (**Madhu Limaye v. Sub-Divisional Magistrate**^[62]). “**Public order**” is synonymous with public safety and tranquillity. Public order, if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. Disorder is no doubt prevented by the maintenance of law and order also, but disorder is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. (**Ram Manohar Lohia**³⁰; **C. Anita**⁷). “Public order” is something more than

ordinary maintenance of law and order. The test to be adopted, in determining whether an act affects law and order or public order, is: does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? (**C. Anita**⁷; **Kanu Biswas v. State of W.B.** [\[63\]](#)).

The expression “**law and order**” is wider in scope, as contravention of the law always affects order. “**Public order**” has a narrower ambit, and public order would be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of “**law and order**” and “**public order**” is one of degree, and the extent of the reach of the act in question on society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only and, therefore, touch the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is in its impact on society, it may be very different. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention, in its effect, is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problems of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting “public order” from that concerning “law and order”. (**C. Anita**⁷).

The State is at the centre and society surrounds it. The acts become graver as we journey from the periphery of the largest circle towards the centre. (**Madhu Limaye**⁶²). For expounding the phrase “**maintenance of public order**”, one has to imagine three concentric circles : Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents the Security of the State. All cases of disturbances of public tranquillity fall in the largest circle but some

of them are outside “**public order**” for the purpose of the phrase “**maintenance of public order**”, similarly every breach of public order is not necessarily a case of an act likely to endanger the security of the State. (Ram Manohar Lohia³⁰; Madhu Limaye⁶²).

Every infraction of the law must necessarily affect order, but an act affecting “**law and order**” may not necessarily also affect the “**public order**”. Likewise an act may affect “**public order**”, but not necessarily the “**Security of the State**”. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the Security of the State. (C. Anita⁷; Kishori Mohan Bera v. State of W.B.^[64]; Pushkar Mukherjee³³; Arun Ghosh v. State of W.B.^[65] and Nagendra Nath Mondal v. State of W.B.^[66]). Stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound, in some measure, to lead to disorder but every infraction of the law does not necessarily result in public disorder. “**Law and order**” comprehends disorders of less gravity than those affecting “**public order**” just as “**public order**” comprehends disorders of less gravity than those affecting “**Security of State**”. (C. Anita⁷; Kuso Sah v. State of Bihar^[67]; Harpreet Kaur v. State of Maharashtra^[68]; T.K. Gopal v. State of Karnataka^[69] and State of Maharashtra v. Mohd. Yakub^[70]).

In Ram Manohar Lohia³⁰ the Supreme Court held that the action of the District Magistrate was entirely his own; he was, no doubt, facing a law and order problem, but he could deal with such a problem through the ordinary law of the land, and not by means of preventive detention; his powers were limited to taking action to maintain public order; he could not run the law and order problems in his District by taking recourse to the provisions for detention under the preventive detention laws; if he thought in

terms of "public order", he should have said so in the order or explained how the error arose; he did neither; and if the needs of public order demanded action a proper order should have been passed.

In **V. Muthuvelu v. State of A.P.**^[71], a Division Bench of this Court held that the meaning and interpretation of "maintenance of public order" and "law and order" had fallen for scrutiny before the Supreme Court in **Ram Manohar Lohia**³⁰; in the said judgment, the Supreme Court had held that "public order" and "law and order" are not the same; 'law and order' comprehends disorders of lesser gravity than those affecting 'public order'; Courts cannot inquire into grounds of satisfaction and, similarly, the State also cannot prove the legality of the order, except on the terms as contained in such order; the aforesaid ratio laid down by the Supreme Court supported the contention that, if the order of detention is passed by the detaining authority on the ground that the activities of detenu are prejudicial to the interest of not only public order but also law and order, it would amount to widening the scope of the very provision; in **Smt. Godavari Shamrao Parulekar v. The State of Maharashtra**^[72], the Supreme Court held that when an order is passed, using different expressions at different places, the satisfaction arrived at, by reading the order as a whole, is to be given effect to; but, in view of the subsequent judgment of the Supreme Court in **Ram Manohar Lohia**³⁰, this contention could not be accepted; it was also clear from the concluding portion of the order that the subjective satisfaction of the detaining authority was arrived at only on the premise that the activities of the detenu were not only prejudicial to the interest of public order, but was also prejudicial to the interest of law and order; the other portions of the order, where the sponsoring authority's proposals were referred to, used the expression 'public order'; and that would not outweigh the concluding portion where the detaining authority arrived at the subjective satisfaction that an order of detention should be passed on the ground that the activities of the detenu were also prejudicial to law and order.

The detaining authority cannot wish away the fact that, in the grounds of detention, he has recorded his satisfaction of the need to detain the detenus as he apprehended their activities to be injurious to "**public peace**" and "**law and order**" neither of which are grounds for detaining a citizen, in

preventive custody, under A.P. Act 1 of 1986. Even if the order and the grounds of detention are read together, the fact that the detaining authority has recorded his satisfaction in the Orders of detention on grounds of “**public order**”, and in the grounds of detention, as affecting “**public peace**” and “**law and order**”, reflect his confused state of mind, and lack of clarity of thought in satisfying himself whether the detention should be on grounds of “**public order**” or “**public peace and law and order**”. As noted hereinabove, “**public order**” has acquired a meaning distinct from “**law and order**” and, as the detaining authority is not empowered to detain citizens on grounds that their activities are injurious to “**public peace and law and order**”, his subjective satisfaction is based on extraneous and irrelevant considerations invalidating the orders of detention.

V. SATISFACTION ARRIVED AT ON NON-EXISTENT GROUNDS VITIATES THE ORDER OF DETENTION:

In W.P. No.6510 of 2015, the grounds of detention dated 20.12.2014 records that the detenu was repeatedly committing forest offences involving smuggling of red sanders; he had not stopped, and was continuously conducting the same type of offences even after cases were registered and charge-sheets were filed against him; and no charge-sheet was filed in any of the cases referred to in the grounds of detention. In the counter-affidavit, filed in W.P. No.6510 of 2015, it is stated that the detention order, being a preventive measure to prevent the detenu from further indulging in committing unlawful activities, the question of non-filing of charge-sheet, and trial being pending, does not debar the detaining authority from passing the order of detention against the detenu.

In W.P. No.8631 of 2015, it is contended that the sponsoring authority had supplied false information to the detaining authority that, in some of the cases registered against the detenu, investigation was completed and charge-sheets were also filed; inspite of filing of charge-sheets in some of the cases, the detenu did not stop his activities; the detaining authority was not aware that all the cases were at the preliminary stage; only in one case, i.e. Crime No.154 of 2010, a defective charge-sheet was filed on 21.01.2015, but was not taken on file; the detenu was taken in judicial custody on 16.11.2014, and he continues to remain in custody ever since;

and the conclusion of the detaining authority that the detenu had involved himself in such cases, even after charge-sheets were filed against him, is incorrect. In the counter-affidavit filed in W.P.No.8631 of 2015, this allegation is denied as false, and it is stated that filing of a charge sheet is not the criteria for preventive detention, and it did not prejudice the mind of the detaining authority while passing the order of detention.

In W.P. No.6570 of 2015, it is stated that the sponsoring authority had supplied false information to the detaining authority that, in some cases registered against the detenu, the investigation was completed and charge-sheets were also filed and, inspite of filing of charge-sheets in some of the cases, the detenu did not stop his activities; and this was merely a concocted invention to prejudice the detaining authority. In the counter-affidavit, filed in W.P.No.6570 of 2015, it is stated that it is not the criteria whether charge-sheets are filed or not in the above crimes; and it did not prejudice the mind of the detaining authority while passing the order of detention.

In W.P. No.8923 of 2015, it is stated that the sponsoring authority had furnished false information to the detaining authority that, in some of the cases registered against the detenu, investigation was completed and charge-sheets were also filed and, inspite of filing charge-sheets in some of the cases, the detenu did not stop his activities; and this was merely a concocted invention to prejudice the mind of the detaining authority. In the counter-affidavit, filed in W.P. No.8923 of 2015, it is stated that filing or non-filing of the charge-sheets, and the stage of investigation of the crimes registered against the detenu, are not the criteria for passing the order of detention.

In W.P.No.7331 of 2015, it is stated that the sponsoring authority had furnished false information to the detaining authority that, in some of the cases registered against the detenu, investigation was completed and charge-sheets were also filed; and, inspite of filing of charge-sheets in some of the cases, the detenu did not stop of his activities; and this false information had prejudiced the mind of the detaining authority in passing the order of detention. In the counter-affidavit, filed in W.P.No.7331 of 2015, it is stated that it is not the criteria whether charge sheets are filed or not in the

above crimes; it does not prejudice the mind of the detaining authority while passing the order of detention; and, as such, there is no need to suspect the genuineness of the information provided by the sponsoring authority.

It is submitted, on behalf of the petitioners, that the grounds of detention contain factual errors; they record that, inspite of criminal cases and charge-sheets having been filed, the detenu continued to involve himself in other criminal cases; this statement, in the grounds of detention, is factually incorrect; no charge-sheet was filed prior to the order of detention in any of these cases; it is evident, therefore, that the detaining authority was swayed by irrelevant considerations; and there was no independent application of mind on his part.

Whether the investigation is in a preliminary stage, or whether a charge sheet is filed, is also relevant information required to be apprised to the detaining authority and/or else the detaining authority could be misled into believing that, inspite of filing of the charge sheets, the detenu did not mend his ways inspite of having been involved in several cases. As, in none of the cases, charge sheets were filed, the assumption of the detaining authority, in that respect to the contrary, clearly vitiates the detention order. (**Saroj Mehandi**⁵¹). An administrative order, based on non-existent reasons, must be held to be infected with abuse of power. (**N. Sengodan**¹; **Bhut Nath Mete**²). Notwithstanding the assertions in the counter-affidavit to the contrary, the fact remains that the grounds of detention, in the aforesaid Writ Petitions, records that the detenu was repeatedly committing forest offences involving smuggling of red sanders; and he did not stop his activities of committing the same type of offences even after the cases and charge-sheets were filed against him. As no charge sheets were filed by the date of the orders of detention, the satisfaction of the detaining authority, to the contrary, is based on non-existent factors, and the order of detention is vitiated thereby.

VI. FAILURE TO INFORM THE DETENU OF HIS RIGHT TO SUBMIT A REPRESENTATION TO THE DETAINING AUTHORITY: ITS EFFECT:

In W.P. No.9437 of 2015, the detenu Sri Kade Tirupalu was informed that he had a right to make a representation against his detention to the Government and the Advisory Board. He was not informed that he had a

right to make a representation to the detaining authority also. In W.P. No.13517 of 2015, the order of detention does not disclose the detenu being informed of his right to make a representation to the detaining authority. It is evident from the order of detention that the detenu was informed only of his right to make a representation to the Government and the Advisory Board; and not regarding his right to make a representation to the detaining authority. In W.P. No.13482 of 2015, it is contended that the detenu was not informed that he had a right to make a representation, against his detention, to the detaining authority. The order of detention records that the detenu was informed that he had a right to make a representation to the Government and the Advisory Board against his detention. The said order makes no reference to the detenu's right to make a representation to the detaining authority.

It is contended, on behalf of the petitioners, that the detenu has a three fold right of submission of representation to (1) the detaining authority, (2) the Government and (3) the Advisory Board; the detaining authority is obligated to inform the detenu, in the order and grounds of detention, of his three fold right to submit representations; and the impugned orders do not inform the detenu of his right to make a representation to the detaining authority. On the other hand, the Learned Advocate General would submit that the detenu has no right to be informed that he has a right to make a representation to the detaining authority.

Article 22(5) of the Constitution does not indicate the authority to whom the representation is to be made. Since the object and purpose of the representation, that is to be made by the person detained, is to enable him to obtain relief at the earliest opportunity, the said representation should be made to the authority which can grant such relief, i.e., the authority which can revoke the order of detention and set him at liberty. The authority that has made the order of detention can also revoke it. This right is inherent in the power to make the order. It is recognised by Section 21 of the General Clauses Act, 1897 though it does not flow from it. A representation can be made by the detenu to any authority which is empowered by law to revoke the order of detention. (**Kamleshkumar Ishwardas Patel**²¹). When an order of detention is made by an officer, authorized under Section 3(2) of

A.P. Act 1 of 1986, it is only he who is seized of, and is privy to, the matter. After the detention order is passed by the officer, the matter goes to the Government which has no power to intervene unless the matter is considered by the Advisory Board and, from the date of passing of the order of detention till the Government acts on the opinion of the Advisory Board, the formal authority, to consider the representation, is the detaining authority. (**Pabba Yadagiri v. Collector and District Magistrate, Nalgonda**^[73]).

Notwithstanding the fact that he is required to forthwith report the factum of detention, together with the grounds and material, to the State Government, and notwithstanding that the Act provides for making a representation to the State Government, the officer under Section 3(2) continues to be the detaining authority until the order of detention issued by him is approved by the State Government. He can, until then, entertain a representation from a detenu and, in exercise of his powers under the General Clauses Act, can amend, vary or rescind the order. Non-communication of the fact to the detenu, that he can make a representation to the detaining authority as long as the order of detention has not been approved by the State Government, would constitute an infraction of a valuable right of the detenu under Article 22(5) of the Constitution. (**State of Maharashtra v. Santosh Shankar Acharya**^[74]).

The right to make a representation carries within it a corresponding obligation on the authority, making the order of detention, to inform the person detained of his right to make a representation against the order of detention to the authorities who are required to consider such a representation. This right, necessarily, implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation, and failure to do so results in denial of the right of the person detained to make a representation (**Kamleshkumar Ishwardas Patel**²¹; **Nutan J. Patel v. S.V. Prasad**^[75]). The representations made by the detenu are required to be considered both by the detaining authority as also the State Government.

They are required to be considered on their own merit upon application of independent mind on the part of the authorities concerned. (**Harshala Santosh Patil v. State of Maharashtra**^[76]).

Reliance is placed by the Learned Advocate-General on **Amin Mohammed Qureshi v. Commissioner of Police, Greater Bombay**^[77], wherein a two Judge Bench of the Supreme Court held that the detaining authority is not under an obligation to tell the detenu that he can make a representation to the detaining authority also. In the light of the subsequent Constitution Bench judgment of the Supreme Court, in **Kamleshkumar Ishwardas Patel**²¹, holding to the contrary, reliance placed on the earlier two Judge Bench judgment, in **Amin Mohammed Qureshi**⁷⁷, is of no avail. Failure on the part of the detaining authority to inform the detenu, of his right to submit a representation to the detaining authority, would vitiate the orders of detention.

VII. COPIES OF BAIL ORDERS NOT SUPPLIED TO DETENU: ITS EFFECT:

In W.P. No.6510 of 2015, the petitioner contended that, even after the detaining authority passed the detention order, the complete material relating to the cases, referred to in the grounds of detention, were not furnished to him; copies of bail orders were not furnished to the detenu; and, as he was detained at a far away place i.e. Central Prison, Rajahmundry, he was not in a position to collect all those documents. In the counter-affidavit filed in W.P. No.6510 of 2015, it is stated that the detenu, being a party to the bail proceedings, it could not be said that, due to non-furnishing of said information, his right to make a representation is affected.

In W.P.No.8631 of 2015, it is contended that non-furnishing of the bail order had resulted in the detenu failing to submit an effective representation. The counter-affidavit filed in reply thereto does not deal with the said contention, nor is it the case of the respondents that copies of the bail orders were furnished to the detenu.

In W.P. No.6570 of 2015, it is contended that, though the detenu was granted bail in the five crimes mentioned in the grounds of detention, prior to the passing of the detention order, copies of the bail orders were not

furnished to the detenu along with the order of detention dated 20.12.2014.

In the counter-affidavit, filed in W.P.No.6570 of 2015, it is stated that as the detenu was a party to the bail proceedings, it could not be contended that, due to non-furnishing of the said information, his right to make a representation was affected.

In W.P. No.8923 of 2015, it is contended that the detenu had submitted a representation on 28.01.2015, complaining of non-furnishing of copies of the bail orders which resulted in his being unable to submit an effective representation; and in view of non-furnishing of vital information, relating to the grant of bail to the detenu and due to non-supply of copies of the bail orders passed in his favour, he was not in a position to make an effective representation.

In the counter-affidavit, filed in W.P.No.8923 of 2015, it is stated that as the detenu was a party to the bail proceedings, and having stated in his affidavit that he was granted bail in nine crimes, it could not be contended that, failure to refer to these facts in the order of detention, and non-furnishing of such material to the detenu affected his right to make an effective representation.

In W.P. No.7331 of 2015, it is contended that non-supply of copies of the bail orders granted in favour of the detenu resulted in his being denied his right to make an effective representation. In the counter-affidavit, filed in W.P.No.7331 of 2015, it is stated that as the detenu was a party to the bail proceedings, it could not be said that, due to non-furnishing of the said information, his right to make a representation is affected.

In W.P. No.13517 of 2015, it is contended that the detenu was not supplied with copies of the bail orders passed in his favour, and he was thereby deprived of his right to make an effective representation. In the counter-affidavit, filed in W.P. No.13517 of 2015, it is stated that copies of the bail applications along with bail orders were supplied to the detenu under due acknowledgement. As the detaining authority was aware of the detenu being granted bail only in two cases, it is evident that copies of bail orders passed only in these two cases were supplied to the detenu and the bail orders, passed in the other cases, were not.

In W.P. No.13482 of 2015, it is contended that the detenu was not supplied with the bail orders passed in his favour, and he was thereby deprived of his right to make an effective representation. In the counter-

affidavit, filed in W.P. No.13482 of 2015, it is stated that the detenu was well aware of bail having been granted to him; and, as such, it could not be contended that, due to non-furnishing of copies of the bail orders, he was deprived of making an effective representation.

It is contended, on behalf of the petitioners, that the orders granting bail are relevant material which should have been furnished to the detenus; though the detenus had requested, in their respective representations submitted to the Government, for copies of the bail order to be furnished, no such copies furnished to them; non-furnishing of copies of the bail orders rendered the continued detention of the detenu illegal; and failure to furnish copies of the bail orders violated the right of the detenus to make an effective representation. On the other hand, the Learned Advocate-General, for the State of Andhra Pradesh, would submit that non-furnishing of copies of the bail order to the detenu would not vitiate the order of detention.

One of the Constitutional imperatives, embodied in Article 22(5) of the Constitution, is that the authority making the order of detention must, as soon as may be, communicate to the detenu the grounds on which the order of detention has been made; and all the documents and materials relied upon by the detaining authority, in passing the order of detention, must be supplied to the detenu as soon as practicable. (**Lallubhai Jogibhai Patel v. Union of India**^[78]; **Ichu Devi Choraria**²⁴). All the basic facts and particulars, which influenced the detaining authority in arriving at the requisite satisfaction leading to the making of the detention order, must be communicated to the detenu so that the detenu may have an opportunity of making an effective representation against the order of detention. (**M. Ahamedkutty**¹⁹; **Khudiram Das**¹⁶).

Documents, statements or other material relied upon in the grounds of detention, must be communicated to the detenu, because they form part of the grounds, and the grounds furnished to the detenu cannot be said to be complete without them. It would not, therefore, be sufficient to communicate to the detenu a bare recital of the grounds of detention. (**Lallubhai Jogibhai Patel**⁷⁸; **Ichu Devi Choraria**²⁴). If the documents, which formed the basis of the order of detention, are not served on the detenu along with the grounds of detention, there would be no service of the grounds of detention

in the eye of law; and that circumstance would vitiate the detention, and would make it void ab initio. (**M. Ahamedkutty**¹⁹; **S. Gurdip Singh v. Union of India**^[79]; **Ichhu Devi Choraria**²⁴ v. **Union of India** and **Shalini Soni v. Union of India**^[80]). The documents relied on, and referred to in the order of detention, should be furnished at the earliest so that the detenu can make an effective representation immediately, instead of waiting for the documents to be supplied later. The question of demanding the documents is wholly irrelevant. (**M. Ahamedkutty**¹⁹; **Mohd. Zakir v. Delhi Administration**^[81]).

The right is to make an effective representation and when some documents are referred to or relied on in the grounds of detention, without copies of such documents, the grounds of detention would not be complete. If there is failure or even delay in furnishing those documents it would amount to denial of the right to make an effective representation. (**M. Ahamedkutty**¹⁹; **Ramachandra A. Kamat v. Union of India**^[82]; **Francies Coralie Mullin**¹⁰; **Ichhu Devi Choraria**²⁴; **Pritam Nath Hoon v. Union of India**^[83]; **Tushar Thakker v. Union of India**^[84]; **Lallubhai Jogibhai Patel**⁷⁸; **Kirit Kumar Chaman Lal Kundaliya v. Union of India**^[85]; and **Ana Carolina D'Souza v. Union of India**^[86]). The material and documents, which influence the mind of the detaining authority in passing the order of detention, are part of the basic facts and material, and should be supplied to the detenu. (**Lallubhai Jogibhai Patel**⁷⁸; **Ichhu Devi Choraria**²⁴).

If the documents, relating to the grant of bail, had been given to the detenu, he could have made an effective representation explaining the circumstances relevant to the grant of bail. The denial of an effective opportunity, by not giving the detenu the relevant documents while he was in custody, would result in failure of justice. (**P.U. Abdul Rahiman v. Union of India**^[87]; **M. Ahamedkutty**¹⁹). It is immaterial whether the detenu already knew about the contents of the documents or not. Non-furnishing of the copy of the document is fatal as the detenu, who is in jail, would have no access

to his own documents. (**M. Ahamedkutti**¹⁰; **Mehrunisa v. State of Maharashtra**^[88]). It is hardly an answer to the submission made on behalf of the detenu that copies of material documents referred to in the grounds of detention, were not supplied to him, and he was thus prevented from making an effective representation, to contend that copies of the documents were not supplied as the detenu was already aware of the contents of the documents. The detenu is entitled to be supplied with copies of all the material documents, instead of having to rely upon his memory in regard to the contents of the documents. Failure of the detaining authority to supply copies of such documents vitiates the detention, and the detenu is entitled to be released. (**Mehrunisa**⁸⁸; **Ichchu Devi Choraria**²⁴; **Shalini Soni**⁸⁰).

To enable the detenu to exercise his right to make an effective representation against his detention, it is imperative that all relevant material, including copies of the bail orders, are furnished to him. The contention that the detenu was aware of the bail order, even if accepted as true, would not justify failure of the detaining authority to furnish these copies to the detenu when he has no access to these documents when he is in preventive custody. Failure to furnish copies of the orders granting bail to the detenu vitiates the order of detention.

VIII. DELAY IN CONSIDERING REPRESENTATION, PRIOR TO THE ORDER OF CONFIRMATION, IS OF NO CONSEQUENCE:

In W.P. No.6510 of 2015, the representation submitted by the detenu on 10.01.2015 was rejected more than a month thereafter on 16.02.2015, but prior to the order passed by the Government, vide G.O.Rt.No.544 dated 23.02.2015, confirming his detention. In W.P.No.6570 of 2015, the representation submitted by the detenu to the Government on 17.01.2015 was rejected on 16.02.2015 before the order of detention was confirmed by the Government vide G.O.Rt.No.539 dated 23.02.2015. In W.P. No.8923 of 2015, the detenu submitted a representation on 28.01.2015 which was rejected vide G.O.Rt.No.684 dated 05.03.2015 prior to the order of detention being confirmed by the Government vide G.O.Rt.No.767 dated 12.03.2015.

Learned Advocate-General, for the State of Andhra Pradesh, would submit that if a representation is submitted by the detenu, before the order of confirmation is passed by the Government, the period from the date of

receipt of the representation till the confirmation order is passed cannot be reckoned in computing the period of delay in considering the representation; the delay in considering the representation, before confirmation of the order of detention, must be ignored; and there is no constitutional or a statutory violation if the representation is not considered prior to the order of detention.

In **Jayanarayan Sukul v. State of W.B.**^[89], the Supreme Court held that the appropriate authority/ Government is bound to consider the representation of the detenu as early as possible; the reason, for immediate consideration of the representation, is that the personal liberty of a person is at stake; any delay would not only be an irresponsible act on the part of the appropriate authority, but also unconstitutional, as the Constitution enshrines the fundamental right of a detenu to have his representation considered; it is imperative that, when the liberty of a person is in peril, immediate action should be taken by the relevant authorities; the appropriate authority should, immediately, consider the representation of the detenu before sending the matter to the Advisory Board; and such action will then have the real flavour of independent judgment.

After considering the judgment in **Jayanarayan Sukul**⁸⁹, and overruling the judgments in **V.J. Jain v. Shri Pradhan**^[90]; **Om Prakash Bahl v. Union of India**^[91] and **Khairul Haque v. State of W.G**^[92], holding that they were not good law, the Constitution Bench of the Supreme Court, in **K.M. Abdulla Kunhi v. Union of India**^[93], held that the representation of the detenu may be received by the Government before the case is referred to the Advisory Board, but there may not be time to dispose of the representation before referring the case to the Advisory Board; in that situation the representation must also be forwarded to the Advisory Board along with the case of the detenu; the representation may be received after the case of the detenu is referred to the Board; even in this situation the representation should be forwarded to the Advisory Board provided the Board has not concluded the proceedings; in both the situations there is no question of considering the representation before receipt of the report of the Advisory Board; nor can it be said that the government has delayed

consideration of the representation, unnecessarily, awaiting the report of the Board; it is proper for the government, in such situations, to await the report of the Board; if the Board finds no merit in the detention, and reports accordingly, the government is bound to revoke the order of detention; even if the Board expresses the view that there is sufficient cause for detention, the government, after considering the representation, can revoke the detention. It is, therefore, proper that the government considers the representation, in the aforesaid two situations, only after receipt of the report of the Board; a representation received by the government, after the Advisory Board has made its report, should be dealt with and disposed of as early as possible; confirmation of detention does not preclude the government from revoking the order of detention upon considering the representation; the words, '**shall afford him the earliest opportunity of making a representation against the order**' in Article 22(5), suggest that the obligation of the government is to offer the detenu an opportunity of making a representation against the order; if the detenu makes the representation after the order of detention is confirmed, the government still has to consider such representation; confirmation of the order of detention is not conclusive as against the detenu; it can be revoked suo motu or upon a representation of the detenu; the fact that the representation is considered, after confirmation of detention, makes little difference on the validity of the detention or confirmation of the detention; and the confirmation cannot be invalidated solely on the ground that the representation is considered subsequent to confirmation of detention. (**K.M. Abdulla Kunhi**⁹³).

In **D.M. Nagaraja v. Govt. of Karnataka** ^[94], the detention order was passed on 22-9-2010 by the Commissioner of Police; the said order was approved by the Government on 30-9-2010; the case was sent to the Advisory Board on 8-10-2010; the Board sat on 4-11-2010; the Government received the report of the Advisory Board on 10-11-2010; the order confirming the detention was issued on 16-11-2010; and the representation of the detenu, through the Central Prison, was sent on 6-10-2010 i.e. before passing of the confirmation order by the Government. The Supreme Court observed:

“.....This Court in **K.M. Abdulla Kunhi & B.L. Abdul Khader v. Union of India**

and State of Karnataka (1991) 1 SCC 476, has clearly held that the authority has no constitutional duty to consider the representation made by the detenu before the order of confirmation of the detention order. **There is no constitutional mandate under Clause (5) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention. In other words, the competent authority can consider the representation only after the order of confirmation and, as such, the contentions raised by the appellant as if there was delay in consideration is baseless and liable to be rejected...."** (emphasis supplied)

The delay in consideration of the aforesaid representation is of the consequence, as the representations were rejected before the Government confirmed the orders of detention.

IX. INORDINATE AND UNEXPLAINED DELAY IN CONSIDERATION OF THE REPRESENTATION:

It is contended, on behalf of the petitioners, that there is an inordinate and unexplained delay in disposal of the representations submitted by the detenu; there is no explanation, much less one which is satisfactory, for the inordinate delay in considering the representations of the detenu; and such unexplained delay renders the continued detention of the detenu illegal. On the other hand, the Learned Advocate-General for the State of Andhra Pradesh would submit that the delay in disposal of the representations, even in cases where the detenu submitted his representation after the detention order was confirmed, is not fatal.

Article 22(5) of the Constitution of India mandates that the detenu should be afforded the earliest possible opportunity to make a representation against the order of detention. (**Pebam Ningol Mikoi Devi v. State of Manipur**^[95]). The Constitution has, 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 clauses (4) and (5) of Article 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. (**Rushikesh Tanaji Bhoite**⁴²). The obligations imposed on the authority, making the order of detention, are to ensure that the right of the person detained to make a representation is a real right, and he is able to take steps for redressal of a wrong which he thinks has been committed.

The detenu has the right, under Article 22(5), to be furnished with particulars of the grounds of his detention “sufficient to enable him to make a representation which, on being considered, may give relief to him. This constitutional requirement must be satisfied with respect to each of the grounds communicated to the person detained. If that is not done, the detention cannot be held to be in accordance with the procedure established by law within the meaning of Article 21. (**Ram Krishan Bhardwaj**⁴).

The authority exercising the power, to detain without trial, must afford an opportunity to the detenu to convince the Government/detaining authority that the power was not justifiably exercised or no occasion arose for exercise of the power. In a punitive detention, which is the end product of a trial, the convict participates and has full opportunity to present his side of the case. Preventive detention does not afford any opportunity to the detenu to explain his side of the matter before he is deprived of his liberty and therefore, soon after the detenu is deprived of his personal liberty, the Statute makes it obligatory on the authorities concerned to afford him the earliest opportunity to represent his side of the case. (**Vijay Kumar v. State of J&K**^[96]). *The right to make a representation against the detention order flows from the constitutional guarantee enshrined in Article 22(5) which casts an obligation on the authority to ensure that the detenu is afforded an earliest opportunity to exercise that right, if he so desires. (Amir Shad Khan v . L. Hmingliana*^[97]*; Kundanbhai Dulabhai Shaikh*¹¹). The word “earliest”, which qualifies the opportunity, must equally qualify the corresponding obligation of the State to deal with the representation, if and when made, as expeditiously as possible, (**Vijay Kumar**⁹⁶), or else the constitutional and the statutory obligation to provide the earliest opportunity of making a representation would lose both its purpose and meaning. (**Kundanbhai Dulabhai Shaikh**¹¹). The question is not whether the detenu will be prejudicially affected in securing his release by his representation, but whether his constitutional safeguard has been infringed. (**Ram Krishan Bhardwaj**⁴).

The representation relates to the liberty of the individual, the highly cherished right enshrined in Article 21 of the Constitution. It is a

constitutional mandate commanding the concerned authority, to whom the detenu submits his representation, to consider the representation and dispose it of as expeditiously as possible. The words “**as soon as may be**”, occurring in Article 22(5), reflects the concern of the framers of the Constitution that the representation should be expeditiously considered, and disposed of with a sense of urgency without avoidable delay. There is no period prescribed either under the Constitution, or under the concerned detention law, within which the representation should be dealt with. However, as a citizen’s right raises a corresponding duty on the State, there should not be supine indifference, slackness or callousness in considering the representation. Unexplained delay, in the disposal of the representation, is in breach of the constitutional imperative, and would render the continued detention impermissible and illegal. (**K.M. Abdulla Kunhi**⁹³; **Jayanarayan Sukul**⁸⁹; **Khairul Haque**⁹²; **Francies Coralie Mullin**¹⁰; **Rama Dhondu Borade v. V.K. Saraf, Commissioner of Police**^[98] and **Aslam Ahmed Zahire Ahmed Shaik v. Union of India**^[99]).

It is the constitutional obligation of the Government to consider the representation forwarded by the detenu without delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words “as soon as may be” in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. The time imperative can never be absolute or obsessive. (**Francies Coralie Mullin**¹⁰; **Abdul Nasar Adam Ismail v. State of Maharashtra**^[100]). The fundamental right of the detenu, to have his representation considered by the Government, would be rendered meaningless if the Government does not deal with the matter expeditiously, but at its own will and convenience. It is imperative that, when the liberty of a person is in peril, immediate action should be taken by the relevant authorities. (**Jayanarayan Sukul**⁸⁹).

The requirement of each day’s delay, in dealing with the representation, being adequately explained is meant to emphasise the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release

of the detenu. Law deals with the facts of life. In law, as in life, there are no invariable absolutes. Neither life nor law can be reduced to mere but despotic formulae. (**L.M.S. Ummu Saleema**⁵⁵; **Abdul Nasar Adam Ismail**¹⁰⁰). There can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. It is not necessary that every day's delay, in dealing with the representation of the detenu, should be explained. The explanation offered must be reasonable indicating that there was no slackness or indifference. Though delay itself is not fatal, the delay which remains unexplained becomes unreasonable. The Court can consider whether the delay was occasioned due to permissible reasons or unavoidable causes. It is not enough to say that the delay was very short. Even longer delay can be explained. The test is not the duration or the range of delay, but how it is explained by the authority concerned. The authority, empowered to make an order of detention, should adopt a procedure calculated towards expeditious consideration of the representation. The representation must be taken up as soon as it is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. (**Abdul Nasar Adam Ismail**¹⁰⁰; **Rajammal v. State of T.N.** [\[101\]](#); **Kundanbhai Dulabhai Sheikh**¹¹).

The requirement is the absence of supine indifference, slackness or callousness in considering the representation. Unexplained delay, in disposal of the representation, would breach the constitutional imperative, and would render the continued detention impermissible and illegal. (**Rajammal**¹⁰¹; **K.M. Abdulla Kunhi**⁹³; **L.M.S. Ummu Saleema**⁵⁵; **Kundanbhai Dulabhai Shaikh**¹¹; **Abdul Nasar Adam Ismail**¹⁰⁰). Reasons for the delay must be indicated to the Court. Unexplained delay or unsatisfactory explanation in the disposal of the representation would fatally affect the order of detention. In that situation, the continued detention would be rendered illegal. (**Kundanbhai Dulabhai Shaikh**¹¹; **Sk. Abdul Karim v. State of W.B.** [\[102\]](#); **Durga Show, In re:** [\[103\]](#); **Jayanarayan Sukul**⁸⁹; **Sk.**

Hanif²⁶; **Raisuddin v. State of U.P.**^[104]; **Frances Coralie Mullin**¹⁰; **Mohinuddin v. Distt. Magistrate**^[105]; **Rama Dhondu Borade**⁹⁸; **Aslam Ahmed Zahire Ahmed Shaik**⁹⁹; **Mahesh Kumar Chauhan**¹²; **Gazi Khan v. State of Rajasthan**^[106]; **State of T.N. v. C. Subramani**^[107]; **K.M. Abdulla Kunhi**⁹³ and **Julia Jose Mavely v. Union of India**^[108]).

Unreasonable delay in considering the representation is fatal to the continued detention of the detenu. (**Rashid Kapadia v. Medha Gadgil**^[109]; **Mohinuddin**¹⁰⁵ and **Harshala Santosh Patil**⁷⁶). It is the constitutional right of the detenu to have his representation considered as expeditiously as possible for, otherwise, the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning. (**Jayanarayan Sukul**⁸⁹; **Khairul Haque**⁹²).

Where there is considerable delay between receipt of the representation of the detenu, and its consideration and rejection by the Government, and no attempt has been made in the counter-affidavit to explain the delay, such unexplained delay in considering the detenu's representation is fatal. A delay of 16 days is also a long delay where a person is being detained without trial under a special law relating to preventive detention. (**Durga Show, In re**,¹⁰³). Merely stating that the Minister was on tour, and he could pass orders only thereafter, is not a justifiable explanation when the liberty of a citizen, guaranteed under Article 21 of the Constitution, is involved. (**Rajammal**¹⁰¹). On the other hand the time taken to obtain parawise comments from, and seeking the views of, the sponsoring authority cannot be said to be a futile exercise. (**Kamarunnissa v. Union of India**^[110]; **Abdul Nasar Adam Ismail**¹⁰⁰). Likewise where the stages through which the file, containing the representation, was processed show that it was dealt with promptly, there was no indifference, lethargy or negligence in dealing with the same, the file was not unnecessarily held up at any level, but moved from one level to another promptly, it does not betray lack of urgency in dealing with the representation. (**Rajammal**¹⁰¹; **U. Vijayalakshmi v. State of T.N**^[111]).

There can be no hard and fast rule as to the measure of reasonable time. It is the duty of the Court to ensure that the efficacy of the limited, yet crucial, safeguards provided in the law of preventive detention is not defeated by the delay caused by the mechanical routine in consideration of the representation, and the indifference of the authorities entrusted with their application. When the delay is caused because of *indifference or avoidable reasons, the detention becomes vulnerable*. (**Pebam Ningol Mikoi Devi**⁹⁵; **Union of India v. Laishram Lincola Singh**^[112]). A consistent attitude of lethargy would result in the order of detention being quashed to restore the “liberty and freedom” of the person whose detention is allowed to become bad by the Government itself for its failure to dispose of the representation at the earliest. (**Kundanbhai Dulabhai Shaikh**¹¹).

In **Mehdi Mohamed Joudi v. State of Maharashtra**^[113], the order of detention was passed on 4-10-1980 and served on the detenu on 1-11-1980 when the detenu was taken into custody; on 6-11-1980 and 18-11-1980 some documents were served on the detenu; the final instalment of the documents and materials was served on the detenu on 21-11-1980; a representation was made by the detenu on 27-11-1980 which was rejected by the State Govt on 30-12-1980. The Supreme Court held that the order of detention suffered from two infirmities, first, that the document and material were not supplied along with the grounds of detention and, secondly, there was a delay of more than a month in disposing of the representation which itself was fatal to the order of detention.

In **Raj Kishore Prasad v. State of Bihar**^[114], the representation was received in the office of government on October 20, 1981; on the same day, a copy thereof was sent to the detaining authority who returned the representation, with his comments, on October 31, 1981; it was received in the Department of Home (Special) on November 4, 1981; on November 5, 1981, it was examined by the Deputy Secretary, Home (Special) Department; and, on November 6, 1981, it was received by the Special Secretary, Home (Special) Department who endorsed it to the Chief Minister on November 10, 1981. The Supreme Court held that the detaining authority took more than nine days in examining the representation, and in

forwarding his comments for which there was no explanation; barring giving out the dates, there was not the slightest explanation for the delay by the detaining authority as also the State Government; even rotation of the files from the Deputy Secretary to the Special Secretary, and then to the Chief Minister, had taken an unusually long time; and, on the whole, the delay of 28 days, in disposing of the representation, was inordinate and vitiated the order.

In W.P.No.8631 of 2015, the detenu Sri Kala Rama Krishna submitted his representation on 05.03.2015. The order of confirmation of detention was passed by the Government vide G.O. Rt.No.948 dated 24.03.2015. The detenu's representation was rejected on 20.06.2015, long after the counter-affidavit was filed on 19.04.2015, and around 53 days after the order of confirmation was passed on 24.03.2015. In the counter-affidavit filed in W.P. No.8631 of 2015, it is stated that, subsequent to the passing of the confirmation order, the detenu made a representation to the Government on 26.03.2015 through the Superintendent of Central Prison, Rajahmundry; the representation was forwarded to the detaining authority on 31.03.2015 for his remarks; the detaining authority sent his remarks, and the matter was pending consideration before the Government. In the absence of any explanation for the inordinate delay in considering the detenu's representation dated 05.03.2015, even after the order of detention was confirmed on 24.03.2015, till it was rejected 53 days thereafter on 20.06.2015 would render the continued detention of the detenu illegal.

In W.P. No.9437 of 2015, the detenu Sri Kade Tirupalu submitted his representation on 02.03.2015, and the same was rejected only on 20.06.2015 nearly three months after the detention was confirmed by the Government vide G.O. Rt.No.947 dated 24.03.2015. In the affidavit, filed in support of the Writ Petition, it is stated that the representation was neither considered nor rejected by the Government; and non-consideration of the representation invalidated the order of detention. It is contended, on behalf of the petitioner, that the delay, of more than three months in disposal of the representation, has not been explained either in the order rejecting the representation or in the counter affidavit filed before this Court; the representation was not even disposed of by the time the counter affidavit was filed; and, as the representation was rejected only thereafter, these facts

have been placed on record by way of a reply affidavit. In the counter-affidavit, filed in W.P. No.9437 of 2015, it is stated that the representation of the detenu dated 02.03.2015 was received by the Government through the Superintendent of Central Prison, Rajahmundry only on 26.03.2015; the Government, in turn, had forwarded the same to the District Collector on 31.03.2015; after receiving the same, the detaining authority had forwarded his remarks to the Government, and the matter is pending consideration before the Government.

Delay on the part of the Superintendent of Jails, in forwarding the representations of the detenu to the Government is fatal. Failure to explain the time-lag between the date of receipt of the representation by the Superintendent of Jails, and the date on which the detaining authority received it from the Superintendent of Jail, is also fatal. (**Abdul Nasar Adam Ismail**¹⁰⁰; **Aslam Ahmed Zahire Ahmed Shaik**⁹⁹; **Vijay Kumar**⁹⁶). The detenu, who is served with the detention order and is thereby deprived of his liberty, would, ordinarily, be in a position to send his representation only through the jail authorities who are merely communicating channels, as the representation must reach the Government which has the power to invoke the detention order. These intermediary authorities should also move with promptitude so that the statutory guarantee, of affording the earliest opportunity of making the representation, is translated into action on its reaching the Government. The corresponding obligation of the State, to consider the representation, cannot be whittled down by merely saying that much time was lost in transit. The State Government must gear up its machinery to ensure that the representation reaches it as quickly as possible, and it is considered by the authorities with equal promptitude. Any slackness, not properly explained, would result in denial of the protection conferred by the Statute and would invalidate the order. (**Vijay Kumar**⁹⁶). The delay of 24 days from the date on which the detenu submitted his representation on 02.03.2015 till the Government received a copy thereof on 26.03.2015 has not been explained. Likewise the delay, after the representation was forwarded to the District Collector on 31.03.2015 till it was rejected two and half months thereafter on 20.06.2015, is also not explained. This unexplained delay of 24 days before the representation was

received by the Government on 26.03.2015, and for 81 days after the representation was forwarded to the District Collector on 31.03.2015 till it was rejected on 20.06.2015, would render the continued detention of the detenu illegal.

In W.P. No.13517 of 2015, it is stated that though a representation was submitted on 24.03.2015, the said representation was not considered even till filing of the Writ Petition on 28.04.2015. In the counter-affidavit, filed in W.P. No.13517 of 2015, it is stated that the representation of the detenu dated 24.03.2015 was forwarded to the District Collector on 31.03.2015; it was received in the office of the District Collector on 04.04.2015; the District Collector forwarded it to the Superintendent of Central Prison on 12.04.2015; after receiving para-wise remarks from the Superintendent of Police, the detaining authority had submitted his remarks to the Government; the Government had rejected the representation of the detenu by passing orders in G.O.Rt. No.1556 dated 23.05.2015; and the representation was submitted by the detenu on 24.03.2015 even before the order of confirmation was passed on 27.04.2015. The fact, however, remains that it was more than three weeks, after the order of confirmation was passed on 27.04.2015, that the representation was rejected on 23.05.2015. No explanation is forthcoming for the delay of 23 days (i.e., from the date of confirmation of the order of detention till the date on which representation was rejected), in considering the representation. Consequently the continued detention of the detenu is rendered illegal.

In the affidavit filed in support of W.P. No.8361 of 2015, it is stated that, despite submitting a representation to the Government through proper channel from Central Prison, Rajahmundry, the representation is still pending and the Government has not considered the same. A copy of the Government of Andhra Pradesh fax memo dated 31.03.2015 is filed which shows that the representation of the detenu was received by the Government along with the letter of the Superintendent, Central Prison, Rajahmundry dated 19.03.2015. While the representation of the detenu dated 18.03.2015 was forwarded to the Government on 19.03.2015, the petitioner would contend that the said representation was not disposed of even by the time a counter-affidavit was filed on 15.04.2015, and the delay in considering the representation has not been explained therein. In the

counter affidavit, filed by the Government on 20.04.2015, it is stated that the Government had called for remarks on the representation. This representation is also said to be pending with the Government till date. Non-consideration of the representation dated 19.03.2015 till a counter-affidavit was filed on 20.04.2015, and even thereafter, would render the continued detention of the detenu illegal.

In W.P. No.8289 of 2015, whereby release of the detenu Sri Cheerala Rajesh is sought, it is contended that the detenu's representation has not been considered, and it is still pending. The detenu's representation dated 18.03.2015, was forwarded to the Government by the Superintendent, Central Prison, Rajahmundry by his letter dated 19.03.2015, as is evident from the Government of A.P. Fax memo dated 31.03.2015. It is the petitioner's case that the representation has not been disposed of till date. In the counter affidavit dated 15.04.2015, no reference is made to the representation of the detenu having been disposed of, and it is merely stated therein that remarks have been called from the detaining authority. It is evident that, even by the time a counter-affidavit was filed on 15.04.2015, the said representation had not been disposed of. There is no explanation, much less a reasonable explanation, for the delay in disposal of the representation. Consequently, the continued detention of the detenu is rendered illegal.

In all the aforesaid cases, no explanation is forthcoming, in the counter-affidavits filed before this Court, for the delay in considering the representation. The delay in disposal of the representation of the detenu would vitiate only the continued detention of the detenu, and not the detention order. By reason of the delay, only further detention of the detenu is rendered illegal and unconstitutional. (**Abdul Nasar Adam Ismail**¹⁰⁰;

Kundanbhai Dulabhai Shaikh¹¹; **Mohinuddin**¹⁰⁵; **Rama Dhondur Borade**⁹⁸; **Devi Lal Mahto v. State of Bihar**^[115]; **Meena Jayendra Thakur v. Union of India**^[116]).

X. ILLEGIBLE DOCUMENTS SUPPLIED TO THE DETENU:

In W.P. No.6510 of 2015, which relates to the detenu Sri Vasanthu Ashok Kumar Reddy, some of the documents supplied to him, on which the

detaining authority had placed reliance upon, were illegible. In the counter-affidavit, filed in W.P.No.6510 of 2015, the detaining authority stated that the material supplied to the detenu was very much visible; and, having acknowledged receipt of the same, the detenu could not allege that the documents supplied to him were illegible. In W.P. No.8631 of 2015 it is contended that the documents, relied upon by the detaining authority, were not properly supplied to the detenu; and some of the documents supplied to the detenu were illegible. In the counter-affidavit, filed in W.P.No.8631 of 2015, it is stated that the material supplied to the detenu was very much visible; and, having acknowledged receipt of the same, the detenu could not allege that the documents supplied to him were illegible.

In W.P. No.9437 of 2015 it is contended that some of the documents supplied to the detenu were illegible. In the counter-affidavit it is stated that the material supplied to the detenu was very much visible; and, having acknowledged receipt of the same, the detenu could not allege that the documents supplied to him were illegible. In W.P. No.6570 of 2015 it is stated that illegible copies of some of the documents, relied upon by the detaining authority, were furnished to the detenu. In the counter-affidavit, filed in W.P. No.6570 of 2015, it is stated that the material supplied to the detenu was very much visible; and, having acknowledged the receipt of the same, the detenu could not allege that the documents supplied to him were illegible.

In W.P. No.8923 of 2015, it is stated that some of the documents, relied upon by the detaining authority, supplied to the detenu were illegible; and thereby the detenu was prevented from submitting an effective representation. In the counter-affidavit, filed in W.P. No.8923 of 2015, it is stated that the material supplied to the detenu was very much visible; and, having acknowledged receipt of the same, the detenu could not allege that the documents supplied to him were illegible. In W.P. No.7331 of 2015, it is contended that some of the documents, relied upon by the detaining authority, supplied to the detenu were illegible; and thereby the detenu was denied his right to make an effective representation. In the counter-affidavit, filed in W.P.No.7331 of 2015, it is stated that the material supplied to the detenu are very much visible; and, having acknowledged receipt of the

same, the detenu cannot allege that the documents supplied to him are not legible.

In W.P. No.8361 of 2015, filed seeking release of the detenu Sri Kakularam Purushotham Reddy, it is contended that the translated copies in Cr. No.119 of 2014 and Cr. No.55 of 2014, which were supplied to the detenu were not legible, and his right under Article 22(5) was affected. In the counter-affidavit, filed in W.P. No.8361 of 2015, it is stated that the documents and material furnished to the detenu are legible; and, as such, the allegation that his right to make an effective representation, for non-supply of legible copies, is affected is invented only for the purpose of filing the present Writ Petition. In W.P. No.8289 of 2015, it is stated that the translated copy of Cr. No.281 of 2014 and Cr. No.271 of 2014, supplied to the detenu, were not legible to the naked eye. In the counter-affidavit filed in reply thereto, it is stated that the documents supplied to the detenu are legible; and the contention to the contrary is incorrect.

It is contended, on behalf of the petitioners, that the documents relied upon by the detaining authority, for detaining the detenu, were not properly supplied to him; some of the documents were illegible and some documents were not supplied with pagination; and many documents were mixed up with each other; and furnishing such illegible documents has resulted in denial of a reasonable opportunity to the detenu to submit an effective representation. On the other hand, the Learned Advocate-General for the State of Andhra Pradesh would submit that the copies furnished to the detenu are legible.

Our attention was drawn to the documents filed by the detaining authorities, along with their counter affidavits, to show that a few of the pages are illegible. On being satisfied that the pages pointed out to us were, indeed, illegible, we asked the learned Advocate General if he could read at least a few lines in these pages. While fairly expressing his inability to read them, Learned Advocate General would, however, contend that all that the law requires is for a gist of these allegations to be made known to the detenu, and the mere fact that a few of the pages are illegible is of no consequence. If copies of the documents, supplied at the request of the detenu, are illegible, the safeguards provided by the Constitution must be held to have not been followed. **(Manjit Singh Grewal v. Union of**

India^[117]). Failure to supply legible copies has affected the right of detenu to submit an effective representation, and has thereby rendered his continued detention illegal.

XI. DOCUMENTS SUPPLIED IN A LANGUAGE UNKNOWN TO THE DETENU:

In W.P. No.13482 of 2015, it is stated that the material, relied upon by the detaining authority, was not supplied to the detenu in the language known to him; the detenu knows Kannada, Urdu and a little bit of English; however, the confessional statement of the co-accused, on the basis of which the detenu was added as the accused, were supplied to the detenu in Telugu; and, thereby, the detenu was deprived of his right to make an effective representation to the concerned authorities. In the counter-affidavit, filed by the respondents, it is stated that the grounds of detention, and the material relied upon, were served on the detenu in two languages i.e., English and Telugu; the same were acknowledged by him; on enquiry with the detenu, whether he knew English and Telugu languages, the detenu had stated that he knew English very well and he was able to speak, read and write in English; he had also stated that he could speak Telugu, Kannada and Hindi, but he did not know to read and write in these languages; he had stated that he had studied upto Intermediate in English medium; he had asserted that he had no need for the detention order to be supplied in some other language; and his statement was reduced in writing in the presence of the Jailor and two Deputy Jailers.

It is contended, on behalf of the petitioners, that the detenu in W.P. No.13482 of 2015 has not been supplied documents in a language known to him; he had specifically informed the respondent-authorities that he knew how to speak, read and write in English, but could only speak in Telugu and Kannada; yet the authorities furnished the material, referred to in the grounds of detention, only in Telugu, a language which the detenu could neither read nor write; and furnishing of material in Telugu denied the detenu his right to make an effective representation. On the other hand, the Learned Advocate-General, for the State of Andhra Pradesh, would submit that the claim of the detenu that he should have been furnished material in

English is not tenable as he had, on his own accord, waived his right to be furnished copies thereof in English.

The written statement of the detenu records that he knows how to speak, read and write in English very well; he could speak Telugu, Kannada and Hindi, but he did not know how to read and write; and he had no need for the detention order in some other language i.e., Kannada, Urdu or Hindi. On a perusal of this written statement, it is evident that the detenu had informed the authorities that he knew how to read and write in English, but he did not know how to read and write in Telugu. As the detention order was supplied in English, the detenu had stated that he had no need for the detention order to be supplied to him in some other language. However several documents, including the confession statements of the co-accused, were furnished to the detenu in Telugu, a language which he neither knew how to read nor to write.

In **Lallubhai Jogibhai Patel**⁷⁸, the grounds of detention were drawn up in English, though the detenu did not know English; and the Police Inspector, who served the grounds of detention on the detenu, filed an affidavit stating that he had fully explained the grounds of detention in Gujarati to the detenu. The Supreme Court held that this was not sufficient compliance with the mandate of Article 22(5) of the Constitution, which required that the grounds of detention must be “communicated” to the detenu; “Communicate” meant that sufficient knowledge, of the basic facts constituting the “grounds”, should be imparted effectively, and fully to the detenu in writing, in a language which he understood; the whole purpose of communicating the “grounds” to the detenu was to enable him to make a purposeful and effective representation; and if the “grounds” were only verbally explained to the detenu, and nothing in writing was left with him in a language which he understood, then that purpose was not served, and the constitutional mandate in Article 22(5) was infringed.

In **V. Muthuvelu**⁷¹), a Division bench of this Court held that no material was supplied to the detenu by translating it into Tamil; all the crimes were registered in the State of Andhra Pradesh; while referring to such crimes, under various Sections, reasons were recorded for invoking the

provisions of the Act, but such material was not supplied in tamil; from the material placed on record, it was clear that the detenu had signed in English in token of receiving the grounds etc; but merely because he had signed in English, it could not be said that he was well-versed in English; it is common practice that many of those who sign in English are not conversant with the said language; and the plea, that non-supply of material in tamil did not affect the right of detenu in making an effective representation, was not convincing.

For the detenu to effectively make his representation against the order of detention, he should have knowledge of the grounds of detention, which are in the nature of a charge setting out the kinds of prejudicial acts which the authorities have attribute to him. In cases where the grounds are several, any oral translation or explanation given by the police officer, serving those on the detenu, would not amount to communicating the grounds. Communication, in this context, must mean bringing home to the detenu effective knowledge of the facts and circumstances on which the order of detention is based. (**Harikisan v. State of Maharashtra** ^[118]).

Communication of the grounds of detention in English is not in compliance with the requirements of the Constitution. 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 he can read, if he is literate. (**Rushikesh Tanaji Bhoite**⁴²; **Atma Ram Sridhar Vaidya**³⁴). The amplitude of the safeguard, embodied in Article 22(5), extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detenu, but also to supplying their translation in a script or language which is understandable to the detenu. Failure to do so would amount to denial of the right of being communicated the grounds, and of being afforded the opportunity of making a representation against the order. (**Powanammal v. State of T.N.** ^[119]);

Hadibandhu Das v. District Magistrate, Cuttack^[120]; **A.C. Razia v. Government of Kerala**^[121]).

The distinction between a document which has been relied upon by the detaining authority in the grounds of detention, and a document which finds a mere reference in the grounds of detention, should be maintained. Non-supply of a copy of the document relied upon in the grounds of detention is fatal to the continued detention, and the detenu need not show that prejudice was caused to him as non-supply of such a document would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order. It would not be so where the document merely finds a reference in the order of detention or among the grounds thereof. In such a case, the detenu's complaint of non-supply of the document has to be supported by prejudice caused to him in making an effective representation. What applies to a document would equally apply to furnishing a translated copy of the document in the language known to and understood by the detenu, should the document be in a different language. (**Powanammal**¹¹⁹). As noted hereinabove, the documents furnished to the detenu in Telugu included copies of the confessional statements of the co-accused. These statements were relied upon by the detaining authority in making the order of detention. Failure to supply these documents, in a language known to him, resulted in the detenu being denied the opportunity of making an effective representation, and would render his continued detention illegal.

XII. CONCLUSION:

In W.P. No.6510 of 2015, wherein release of the detenu Sri Vasanthu Ashok Kumar Reddy is sought, the order of detention is vitiated, and the continued detention of the detenu is rendered illegal, as the detaining authority, while passing the order of detention, failed to consider the fact that the detenu was granted conditional bail; the detaining authority recorded his satisfaction on non-existent grounds that charge sheets were filed against the detenu when, in fact, no charge sheets were filed; the detaining authority

failed to furnish copies of the conditional/unconditional bail orders to the detenu; and illegible copies of the documents, relied upon by the detaining authority, were supplied to the detenu.

In W.P. No.6570 of 2015, wherein release of the detenu Sri Mukkali Narayana is sought, the order of detention is vitiated, and the continued detention of the detenu is rendered illegal, as the detaining authority, while passing the order of detention, failed to consider the fact that the detenu was granted conditional bail; the detaining authority recorded his satisfaction on non-existent grounds that charge sheets were filed against the detenu when, in fact, no charge sheets were filed; the detaining authority failed to furnish copies of the conditional/unconditional bail orders to the detenu; and illegible copies of the documents, relied upon by the detaining authority, were supplied to the detenu.

In W.P. No.7331 of 2015, wherein release of the detenu Sri Shaik Abdul Mazid is sought, the order of detention is vitiated, and the continued detention of the detenu is rendered illegal, as the detaining authority, while passing the order of detention, failed to consider the fact that the detenu was granted conditional bail; the detaining authority recorded his satisfaction on non-existent grounds that charge sheets were filed against the detenu when, in fact, no charge sheets were filed; the detaining authority failed to furnish copies of the conditional/unconditional bail orders to the detenu; and illegible copies of the documents, relied upon by the detaining authority, were supplied to the detenu.

In W.P. No.8631 of 2015, wherein release of the detenu Sri Kala Ramakrishna is sought, the order of detention is vitiated, and the continued detention of the detenu is rendered illegal, as the detaining authority, while passing the order of detention, failed to consider the fact that the detenu was granted conditional bail; the detaining authority recorded his satisfaction on non-existent grounds that charge sheets were filed against the detenu when, in fact, no charge sheets were filed; the detaining authority failed to furnish copies of the conditional/unconditional bail orders to the detenu; there is inordinate and unexplained delay in considering the representation of the detenu; and illegible copies of the documents, relied upon by the detaining

authority, were supplied to the detenu.

In W.P. No.8923 of 2015, wherein release of the detenu Sri R. Narasimhulu @ Narsimha Yada is sought, the order of detention is vitiated, and the continued detention of the detenu is rendered illegal, as the detaining authority, while passing the order of detention, failed to consider the fact that the detenu was granted conditional bail; the detaining authority recorded his satisfaction on non-existent grounds that charge sheets were filed against the detenu when, in fact, no charge sheets were filed; the detaining authority failed to furnish copies of the conditional/unconditional bail orders to the detenu; and illegible copies of the documents, relied upon by the detaining authority, were supplied to the detenu.

In W.P. No.9437 of 2015, wherein release of the detenu Sri Kade Tirupalu is sought, the order of detention is vitiated, and the continued detention of the detenu is rendered illegal, as the detaining authority failed to inform the detenu of his right to make a representation, against his detention, to the detaining authority also; there is inordinate and unexplained delay in considering the representation of the detenu; and illegible copies of the documents, relied upon by the detaining authority, were supplied to the detenu.

In W.P. No.8289 of 2015, wherein release of the detenu Sri Chirala Rajesh is sought, the order of detention is vitiated, and the continued detention of the detenu is rendered illegal, as the detaining authority was swayed by extraneous and irrelevant considerations of the need to maintain "public peace and law and order"; there is inordinate and unexplained delay in considering the representation of the detenu; and illegible copies of the documents, relied upon by the detaining authority, were supplied to the detenu.

In W.P. No.8361 of 2015, wherein release of the detenu Sri K. Purushotham Reddy is sought, the order of detention is vitiated, and the continued detention of the detenu is rendered illegal, as the detaining authority was swayed by extraneous and irrelevant considerations of the need to maintain "public peace and law and order"; there is inordinate and

unexplained delay in considering the representation of the detenu; and illegible copies of the documents, relied upon by the detaining authority, were supplied to the detenu.

In W.P. No.13482 of 2015, wherein release of the detenu Sri Nazeer Ahammad Roshan is sought, the order of detention is vitiated, and the continued detention of the detenu is rendered illegal, as the detaining authority, while passing the order of detention, failed to consider the fact that the detenu was granted conditional bail; the detaining authority failed to inform the detenu of his right to make a representation, against his detention, to the detaining authority also; the detaining authority failed to furnish copies of the conditional/unconditional bail orders to the detenu; and the detenu was supplied documents, relied upon by the detaining authority, in a language unknown to him.

In W.P. No.13517 of 2015, wherein release of the detenu Sri Chavva Ramana Reddy is sought, the order of detention is vitiated, and the continued detention of the detenu is rendered illegal, as the detaining authority, while passing the order of detention, failed to consider the fact that the detenu was granted conditional bail; the detaining authority failed to inform the detenu of his right to make a representation, against his detention, to the detaining authority also; the detaining authority failed to furnish copies of the conditional/unconditional bail orders to the detenu; and there is inordinate and unexplained delay in considering the representation of the detenu.

Even if one of the grounds or reasons, which led to the subjective satisfaction of the detaining authority, is non-existent or misconceived or irrelevant, the order of detention would be invalid. (**Dwarika Prasad Sahu v. State of Bihar**^[122]; **Shibban Lal Saxena v. State of U.P.**^[123]; **Ram Manohar Lohia**³⁰ and **Pushkar Mukherjee**³³; **Biram Chand v. State of U.P.**^[124]). Where the order of detention is founded on distinct and separate grounds, if any one of the grounds is vague or irrelevant the entire order must fall. The satisfaction of the detaining authority being subjective, it is impossible to predicate whether the order would have been passed in the

absence of vague or irrelevant data. (**Ram Bahadur Rai v. State of Bihar**^[125]).

A ground is said to be irrelevant when it has no connection with the satisfaction of the authority making the order of detention. Irrelevant grounds, being taken into consideration for making the order of detention, are sufficient to vitiate it. One irrelevant ground is sufficient to vitiate the order as it is not possible to assess, in what manner and to what extent, that irrelevant ground operated on the mind of the appropriate authority, and contributed to his satisfaction that it was necessary to detain the detenu in order to prevent him from acting in any manner prejudicial to the maintenance of the public order. (**Mohd. Yousuf Rather**²²; **Keshav Talpade v. King-Emperor**^[126]; **Tarapada De v. State of W.B.**^[127]; **Shibban Lal Saxena**¹²³; **Pushkar Mukherjee**³³; **Satya Brata Ghose v. Mr Arif Ali, District Magistrate, Sibasagar, Jorhat**^[128]; **K. Yadava Reddy v. Commissioner of Police, Andhra Pradesh**^[129]).

As the orders of detention are vitiated, for the reasons aforementioned, all the Writ Petitions are allowed, the orders of detention are quashed and the detenus shall be set at liberty forthwith, provided they are not required to be kept in custody in connection with any other case/cases registered against them. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

S. RAVI KUMAR, J

Date:29.09.2015.

Note:1) L.R. copy to be marked

B/o

MRKR/CS

2) Issue C.C. of the order by 30.09.2015.

B/O

tsy

-
- [1] (2013) 8 SCC 664
- [2] (1974) 1 SCC 645
- [3] 1996(4) ALT 485 = (1997)1 ALT(Cri) 184
- [4] AIR 1953 SC 318 = 1953 SCR 708
- [5] (2011) 5 SCC 244
- [6] (1998) 1 WLR 503 (CA)
- [7] (2004) 7 SCC 467
- [8] (2004) 3 SCC 75
- [9] 2013 (4) ALT 243 (D.B)
- [10] AIR 1981 SC 746
- [11] (1996) 3 SCC 194
- [12] (1990) 3 SCC 148
- [13] (1974) 1 SCC 103
- [14] (1975) 3 SCC 198
- [15] (2008) 3 SCC 613
- [16] (1975) 2 SCC 81
- [17] AIR 1952 SC 196
- [18] 1917 AC 260
- [19] (1990) 2 SCC 1
- [20] (1980) 4 SCC 470
- [21] (1995) 4 SCC 51
- [22] (1979) 4 SCC 370
- [23] (1975) 4 SCC 47
- [24] (1980) 4 SCC 531
- [25] (1972) 2 SCC 542
- [26] (1974) 1 SCC 637
- [27] (1975) 1 SCC 837
- [28] (1975) 3 SCC 395
- [29] (1974) 4 SCC 463
- [30] AIR 1966 SC 740
- [31] (2011) 10 SCC 781
- [32] (1951) 342 US 98
- [33] (1969) 1 SCC 10
- [34] AIR 1951 SC 157 = 1951 SCR 167
- [35] (1986) 4 SCC 378
- [36] AIR 1967 SC 295
- [37] AIR 1964 SC 72
- [38] AIR 1950 FC 129
- [39] (1988) 1 SCC 287
- [40] 2013 CrI.L.J. 585
- [41] : 2013 (4) ALT 243 (D.B)
- [42] (2012) 2 SCC 72

- [\[43\]](#) AIR 1984 SC 1334
- [\[44\]](#) (Judgment in W.P. No.10018 of 2012, dated 29.06.2012) (APHC) (DB)
- [\[45\]](#) (2006) 3 SCC 321
- [\[46\]](#) (1986) 4 SCC 771
- [\[47\]](#) (1987) 2 SCC 241
- [\[48\]](#) 2013 (3) ALT (Cri.) 303 (D.B.) (A.P)
- [\[49\]](#) (Judgment in WP No.22820 of 2014 and batch dated 13.10.2014)
- [\[50\]](#) (Judgment in W.P. No.3917 of 2013 dated 26.03.2013)
- [\[51\]](#) (Common order in W.P. No.32710 of 2014 & Batch dated 02.03.2015)
- [\[52\]](#) AIR 1952 SC 16
- [\[53\]](#) AIR 1978 SC 851
- [\[54\]](#) (1974) 4 SCC 503
- [\[55\]](#) (1981) 3 SCC 317
- [\[56\]](#) (2012) 2 SCC 389
- [\[57\]](#) AIR 1989 SC 2027
- [\[58\]](#) AIR 1976 SC 2547
- [\[59\]](#) AIR 1976 SC 2433
- [\[60\]](#) 1993 (6) SLR 1 = 1993 (3) ALT 471 (FB)
- [\[61\]](#) 1993 (1) ALT 221 (D.B)
- [\[62\]](#) (1970) 3 SCC 746
- [\[63\]](#) (1972) 3 SCC 831
- [\[64\]](#) (1972) 3 SCC 845
- [\[65\]](#) (1970) 1 SCC 98
- [\[66\]](#) (1972) 1 SCC 498
- [\[67\]](#) (1974) 1 SCC 185
- [\[68\]](#) (1992) 2 SCC 177
- [\[69\]](#) (2000) 6 SCC 168
- [\[70\]](#) (1980) 3 SCC 57
- [\[71\]](#) (judgment in WP No.8022 of 2015 dated 22.09.2015)
- [\[72\]](#) AIR 1964 SC 1128
- [\[73\]](#) 2005 (1) ALT 792 (D.B)
- [\[74\]](#) (2000) 7 SCC 463
- [\[75\]](#) (1996) 2 SCC 315
- [\[76\]](#) (2006) 12 SCC 211
- [\[77\]](#) (1994) 2 SCC 355
- [\[78\]](#) (1981) 2 SCC 427 = AIR 1981 SC 728
- [\[79\]](#) (1981) 1 SCC 419
- [\[80\]](#) (1980) 4 SCC 544
- [\[81\]](#) (1982) 3 SCC 216
- [\[82\]](#) (1980) 2 SCC 270
- [\[83\]](#) (1980) 4 SCC 525
- [\[84\]](#) (1980) 4 SCC 499

[\[85\]](#) (1981) 2 SCC 436
[\[86\]](#) (1981) Supp SCC 53(1)
[\[87\]](#) AIR 1991 SC 336 = 1991 Supp (2) SCC 274
[\[88\]](#) (1981) 2 SCC 709
[\[89\]](#) (1970) 1 SCC 219
[\[90\]](#) (1979) 4 SCC 401
[\[91\]](#) (Judgment in WP No.845 of 1979 dated 15.10.1979)
[\[92\]](#) (Judgment in W.P. No.246 of 1969 dated 10.09.1969)
[\[93\]](#) (1991) 1 SCC 476
[\[94\]](#) (2011) 10 SCC 215
[\[95\]](#) (2010) 9 SCC 618
[\[96\]](#) (1982) 2 SCC 43
[\[97\]](#) (1991) 4 SCC 39
[\[98\]](#) (1989) 3 SCC 173
[\[99\]](#) (1989) 3 SCC 277
[\[100\]](#) (2013) 4 SCC 435
[\[101\]](#) (1999) 1 SCC 417
[\[102\]](#) (1969) 1 SCC 433
[\[103\]](#) (1970) 3 SCC 696
[\[104\]](#) (1983) 4 SCC 537
[\[105\]](#) (1987) 4 SCC 58
[\[106\]](#) (1990) 3 SCC 459
[\[107\]](#) (1992) 4 SCC 495
[\[108\]](#) 1992 Cri.L.J. 109 (SC)
[\[109\]](#) (2012) 11 SCC 745
[\[110\]](#) (1991) 1 SCC 128
[\[111\]](#) AIR 1994 SC 165
[\[112\]](#) (2008) 5 SCC 490
[\[113\]](#) AIR 1981 SC 1752
[\[114\]](#) (1982) 3 SCC 10
[\[115\]](#) (1982) 3 SCC 328
[\[116\]](#) (1999) 8 SCC 177
[\[117\]](#) 1990 (Supp) SCC 59
[\[118\]](#) AIR 1962 SC 911 = 1962 Supp (2) SCR 918
[\[119\]](#) (1999) 2 SCC 413
[\[120\]](#) AIR 1969 SC 43
[\[121\]](#) (2004) 2 SCC 621
[\[122\]](#) (1975) 3 SCC 722
[\[123\]](#) 1954 SCR 418
[\[124\]](#) (1974) 4 SCC 573
[\[125\]](#) (1975) 3 SCC 710
[\[126\]](#) 1943 FCR 49

[\[127\]](#) AIR 1951 SC 174

[\[128\]](#) (1974) 3 SCC 600

[\[129\]](#) ILR 1972 AP 1025