

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.14706 OF 2015

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PC:

The petitioner claims to be the wife of Bukke Nagendra Naik.

The petitioner prays for writ of Habeas Corpus for release of Bukke Nagendra Naik (hereinafter referred as 'the detainee') by declaring detention order Rc.No.C2/1425/2015 dated 28.03.2015, as illegal and void *ab initio*

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The facts and the contentions relevant for the disposal of writ petition are as follows:

The 2nd respondent through order in Rc.No.C2/1425/2015 dated 28.03.2015 directed detention of the detainee under Section 3(2) of the [Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act](#), 1986 (for short, 'the Act'). The grounds of detention referred to a series of crimes registered against the detainee in different police stations under the A.P. Forest Act, A.P. Sandalwood and Red Sandalwood Transit Rules, 1969, Wild Life (Protection) Act, 1972, Biological Diversity Act, 2002 and under the provisions of the Indian Penal Code. The 2nd respondent refers to the following instances in recording his satisfaction to pass order of detention under Section 3(2) of the Act. The details read thus:

1. Bhakarapet PS, Cr.No.71/2003 U/sec.20(1))(C) (ii)(iii)(iv) & (x) of A.P.Forest Act, 1967, II) Rule 3 & 4 of A.P.Sander Wood & Red Sander Wood Transit Rules, 1969, III) Sec.29 of Wild life Protection Act, 1972, IV) Sec.55(2) of Biological Diversity Act, 2002 and 379 IPC

of Bhakarapet PS:- Occurred on 13-9-13 at 8 PM, Devarakonda cross,

H/o Devarakonda, Chinnagottigallu Mandal and reported in the P.S on 13-9-13 at 9 PM, in which the accused A1 B.Nagendra Naik, 27 years, s/o B.Ramji Naik, Door

No.9-602/1, Rajiv Nagar Colony, Piler Town and 4 others while they were preparing for the illegally transportation of red sander which was committed theft from the forest area and seized 03 RS logs wt.91 KGs, worth Rs.45,500/- and one Hero Honda motor cycle bearing No.AP 03 AF 4251 under a cover of police proceedings. The accused **Bukke Nagendra Naik, age 27 years s/o Ramja Naik, D.No.**

9-602/1, Rajeev Nagar Colony, Piler, A2 and A4 were sent to judicial remand by SI, Bhakarapet PS. Later the accused A5 was arrested on 14-9-13 and sent for remand. The case is UI for arrest of the accused A-3.

2. Rompicherla PS, Cr.No.54/2014 U/s 29, 32 of A.P.Forest Act, 1967, Rule 3 of A.P.Sander Wood & Red Sander Wood Transit Rules, 1969, 29 of Wild life Protection Act, 1972, Sec.55(2) of Biological Diversity Act, 2002, Sec.307, 353, 379 IPC: Occurred prior to 11.6.2014 at 11.00 pm, near Gas Godown, on Rompicherla-Nadimpalli road, Rompicherla Village and Mandal and reported in the PS on 12.6.2014 at 1 AM, wherein the accused A1 to A7 viz.,

1) Maddela Sai Sampath Kumar @ Sai, aged 20 years, s/o M.Reddappa, door No.2-1255, Library street, Piler town and Mandal,

2) Shaik Ashif, aged 19 years, s/o Shaik Noor Mahammad, Palavari Street, Piler town and mandal,

3) Attar Mahaboob Basha, age 35 years, s/o A.Chand Basha, door No.3/16, Sarojinidevi Street, Piler town

and Mandal, 4) Poti Muniraja Naidu @ Muniraja, aged

21 years, s/o late Siddaiah Naidu, Maddipatlavaripalli,

H/o Ganugachinta, Rompicherla Mandal, 5) M.Ravindra Naik, s/o

Jayaram, Indiramma Colony, Piler town and Mandal, 6) D.Prasanth

Kumar, s/o D.Bhaskar, Kalikir,

7) Y.Charan Kumar Reddy, s/o Sriram Reddy, Vagalla Village, K.V.Palli Mandal were illegally entered into the Seshachalam forest,

committed theft of 6 Red sander logs, concealed the same in the forest area with a view to transport the same in a vehicle with an abetment and active connivance of the accused A8, Nagaraja Naik, Rajiv Nagar Colony, Piler town and Mandal, A9 **Nagendra Naik, Rajiv Nagar Colony, Piler**. When the accused A1 to A4 were attempting to illegally transporing of the 6 red sanders logs, weighing 115 KGs in an auto No.AP03X 4875, when police intercepted, the accused having knives tried to kill the police party, police escaped with unhurt. The accused A1 to A4 were arrested, sized 6 RS logs and auto No.AP 03X

4875 and sent them for remand.

3. **Y.V.Palem PS, Cr.No.68/2014**, U/s 307, 353, 379 R/W 34 IPC Sec.20(1)(C) (II) (IV) & (X) of AP Forest Act, 1967 Sec.29 of Wild life Protection Act, 1972 and Sec.55(2) of Biological Diversity Act, 2002 and Rule 3 of AP Red Sander and Sander Wood Transit Rules: On 23.06.214, SI of Police, Y.V.Palem received credible information that some culprits has criminally trespassed into Seshachalam Forest area, fell down and committed theft of red sanders from live trees and planning to transport the same to Chennai or Bangalore. On that SI, Y.V.Palem along with his staff ambushed at 5.00 PM near Yeti Cheruvu, Toppireddygaripalli Village, H/o Udayamanikyam, Y.V.Palem Mandal intercepted the crime vehicle, ASTRA Car bearing No.KA 03 P 1928 arrested the accused

A1) T.Hari Kumar @ Hari, age 29 years, s/o Ramanjulu, R/o Vagalla, K.V.Palli Mandal, A2) D.Venkataramana Reddy @ Ramana Reddy, age 43 years, s/o late A.Devagangi Reddy, r/o Maramreddygaripalli, H/o Ganugachinta, Rompicherla Mandal, A3) T.Lokanadha Reddy, age 33 years, s/o late Narayana Reddy, R/o Maram Reddygaripalli, H/o Ganugachinta, Rompicherla Mandal and A4) K.Srinivasulu @ Seena, age 29 years, s/o K.Gangadharam, D.No.4-4-1122, Bommagunta, Tirupati and seized 06 logs of red sandals wg. 183 Kgs worth about Rs.4,57,500/- from their possession under a coveryof panchanama. During the interrogation they confessed that they were transporting the above contraband on the instance of A5) Bhupathi Reddy, near IS Mahal, Tirupati, A6) Nagaraju Naik, Piler, A7) Lakshman Naik, Piler,

A8) Bukke Nagendra Naik, age 27 years, s/o Ramja Naik, Door No.9-602/1, Rajeev Nagar Colony, Piler,

9) Saripiaralla Reddeppa Reddy, s/o S.Subba Reddy, Pothukukrupalli, Bandapalli Village, Ramapuram Mandal, Rayachoti Taluk, Kadapa District, A10) Patan Riyaz Khan, Age 30 years, s/o Basha Khan, Kattakanihalli village, Hoskote Taluk, Bangalore District, A11) Srisailam Babu @ Sarai Babu, Piler, A12) Sidda Reddy, Rompicherla, A13) Kamal Kishore, Chittoor, A14) Ghouse, Tummindapalem, Chittoor, A15) Sidda Reddy, O.S.Gollapalli, Y.V.Palem, A16) Ravi @ Guddi Ravi, K.V.Palli, A17) Niranjan Reddy, K.V.Palli, A18) Chakridhar @ Chekari, K.V.Palli, A19) Pushpa Niranjan, Jandla, Piler, A20) Arjun, Piler, A21) Mohan, Vankireddygaripalli, H/o Marela, K.V.Palli, 22) Manoj, Bangalore and A23) Modin, Mumbai. The arrested accused were sent for remand, the case is UI for arrest of A5 to A9, A10) Patan Riyaz Khan and A11 to A23.

4. **K.V.Palli PS, Cr.No.96/2014** U/s 29, 32 of AP Forest Act, 1967,

Rule 3 of AP Sander Wood and Red Sanders Transit Rules, 1969, Sec. 29 of Wild Life Protection Act, 1972, Sec.55(2) of Biological Diversity Act, 2002, Sec.379, 353, 307 IPC: Occurred on 29.08.2014 at about 6-00 AM, at Gollapalli water tank culvert, near Madhigani irrigation well, near Sreenadhapuram colony, H/o M.V.Palli of K.V.Palli Mandal in which the accused **A-2: Bukke Ravi Naik, age 27 years, s/o Veera Naik, Vayaladdu Bidiki, H/o Machireddigaripalli, T.Sundupalli Mandal, YSR Kadapa dist and A-3 Mudey Devendra Naik, age 19 years, s/o M.Chakri Naik, Vayaladdu Bidki, H/o Machireddygaripalli, T.Sundupalli Mandal, YSR Kadapa dist** were arrested and seized 6 red sandal logs weighing about 137 KGs, worth Rs.2,74,000/- and one Bolero Vehicle AP 21 R 8180 worth Rs.4,00,000/- total Rs.6,74,000/-, while they both were transporting the red sandal logs on the direction of A-1 Mudey Balaji Naik, s/o M.Reddy Naik, Pedda Bediki Raja Colony, H/o Machireddigaripalli of T.Sundupalli Mandal, YSR Kadapa Dist with the pilot of A-4: B.Nagendra Naik, age 27 years, s/o Ramaja Naik, Rajeev Nagar Colony, Piler town and Mandal, to sell the same to the red sandal smuggler A-5: Dhaba Seenu @ Seenu, Cherukupalli, near K.G.Satharam Bangrupalem Mandal, under a cover of mahazar duly attested by the panchayatdars and while trying to caught the accused A-2 and A-3 hurled the stones on the public servant and attempt to commit murder while discharging their legitimate duties. Case of UI.

5. Rompicherla PS, Cr.No.102/2014 U/s 20(1))(C) (ii)(iii)(iv) & (x) of A.P.Forest Act, 1967, Rules 3 & 4 of A.P.Sander Wood & Red Sander Wood Transit Rules, 1969, Sec.29 of Wild life Protection Act, 1972, Sec.55(2) and 58 of Biological Diversity Act, 2002, Sec.120 (b) IPC r/w 149, Sec.30 of Indian Arms Act, 1959, Sec.307, 353, 379 IPC r/w 34 IPC: Occurred on 29.11.2014 at about 5 AM at Nallagutta forest area cross, on Gunugachinta-Yellamanda Saibuilapuram road, near Maremreddigaripalli, Rompicherla Mandal and reported in the PS on the same day at 8 PM, where in the accused **A1 Sri Bukke Nagendra Naik, age 30 years, s/o Ramja Naik, Rajiv Nagar Colony, Piler town** and 20 others entered to Seshachalam reserve forest located near Nallagutta forest area with instigation of A1 with deadly weapons like axes, stones, cut the red sander live trees and committed theft of 10 red sander logs, concealed in thorny bushes, while the same was trying to illegally transporting in Maruti Omni car TN 24 H 3269, when police intercepted the accused A2 to A21 were attacked on the police party with an intent to kill the police party, at great difficulty, the police has escaped with unhurt, the accused A3 to A13 were nabbed, arrested and seized 10 red sander logs, weighing 105 KGs, 2 axes, stones, one maruthi omni van under a cover of mahazar. The accused

A2, A14 to A21 were absconded from the spot and they are at search.

6. OFFENCE No.6, Piler PS Cr.No.116/2014 U/s 20(1)(C) (ii)(iii)(iv) & (x) of A.P.Forest Act, 1967, Sec.29 of Wild life Protection Act, 1972, Sec.55(2) of Biological Diversity Act, 2002, Sec.353, 307, 379 IPC r/w 34 IPC: Occurred on 11.6.2014 5 PM at Reserve forest located northern side of Cheinnappagaripalli village, at a distance of 3 furlongs, H/o Mallalacheruvu, YV Palem and reported in the PS on the same day at 8 PM, in which the accused A1 Mude Ravindra Naik, aged 27 years, s/o M.Jayaram Naik, caste by sugali, Plot No.1885, Indiramma Colony, Piler town and mandal, A2 to A8, A9 Sri Bukke Nagendra Naik, age 30 years, s/o Ramja Naik, Rajiv Colony, Piler town and Mandal were formed into common intention, in furtherance of their common intention in entering into Seshachalam forest area, committed theft and illegal transportation of red sander logs, when police intercepted, they tried to kill the police party having axes, knives, the accused A1 Mude Ravindra Naik, A2 D.Prasanth Kumar, A3 Charan Kumar Reddy were arrested, seized 5 red sander logs weighing 169 KGs, 6 pieces of sandal wood weighing 14 KGs, total 183 KGs under a cover of mahazar.

7. K.V.Palli PS, Cr.No.25/2015, U/s 109, 147, 148, 353, 341, 307, 379, 129 (b) r/w 149 IPC, Sec. 20(1)(C) (ii)(iii)(iv) (x) of A.P.Forest Act, 1967, Rule 3 of AP Sander Wood and Red Sanders Transit Rules, 1969, Sec. Sec.29 of Wild Life Protection Act, 1972, Sec.55, 55(2), 58 of Biological Diversity Act, 2002, Sec.30 of Indian Arms Act: Occurred on 11.02.2015 at about 7-00 AM in the bushes, near Sakineni Cheruvu to Venkavarivadipalli Village, H/o Minimireddygaripalli of KV Palli Mandal, wherein the accused A1 B.Nagendra Naik, age 27 years, s/o Ramja Naik, Rajiv Colony, Piler town and Mandal, A2 D.Rajanna @ Vaddela Rajanna, age 40 years, s/o Lakshmaiah, Devandlapalli, KV Palli Mandal, A3 B.Chengalaryulu @ Chinna, aged 28 years, s/o Subbaiah, Srinadhapuram Colony, Piler Mandal and 5 others were entered into Seshachalam forest area, cut the red sander logs, illegally transporting the same, when police intercepted, the accused A1 to A3 attacked on the police party with a view to kill them, the accused A1 to A3 arrested, seized 5 red sander logs, 78 KGs, one Maruti 800 car No.TJI41C 8078, two knives and stones were seized under a cover of mahazar.

He is a very intelligent and cunning man and many times he used manage the things over phone only and change the cell numbers frequently to avoid surveillance over his phone by police. Number of times he escaped from police arrest by acting wisely. Police and forest officials conducted number of special raids to apprehend him, but he could escape tactfully. But, on 11.02.2015 at 7.00 AM he was arrested in Cr.No.25/2015 of K.V.Palli PS while he was transporting red sander illegally and 5 red sander logs, 78 KGs, one Maruti 800 Car No.TJ 14 1C 8078, two knives and stones and on at present he is lodged in Sub-Jail, Madanapalle. If he is released on bail, again he will go for underground and continue his illegal activities. He doesn't have any respect towards law and his activities could not be controlled just by invoking the normal legal procedure."

The 2nd respondent, after referring to the unabated commission of alleged crimes viz., forest offences, theft of red sanders and repetition of the same offences after the detenue is enlarged on bail in pending criminal cases by the Magistrates and with a view to preventing the detenue from committing same offences, recorded the subjective satisfaction warranting preventive detention as follows:-

"Upon perusal of all material papers, it is clear that Sri Bukke Nagendra Naik, aged 30 years, s/o B.Ramja Naik, Caste by Sugali (ST), residing at Door No.9-602/1, Rajeev Nagar Colony, Near Railway Track, Piler Town and Mandal, Chittoor District, Andhra Pradesh State has committed a series of forest offences by entering Government Reserve Forests without proper authorization, severing standing red sanders trees from the Earth, and trying to smuggle the highly valuable red sanders heart wood to secret destinations in Bangalore/Chennai and other unknown places. He has repeatedly been committing forest offences involving the smuggling of Red Sanders, he has not stopped and committing the same type of offences even after cases and charge sheets were filed against him. It is also evident from the case records he is engaging a huge number of persons for the clandestine business and they were arrested along with red sander stock at the time of cutting of trees and during transportation. Organizing such large number of persons for illegal severing and transportation of Red Sanders has created fear and terror among the public in the district and villages surrounding the reserve forest in a particular leading to disturbance of peace, law and order. On careful consideration of material placed by the SP, Chittoor, it is constructed that cases booked against him under Forest Laws and other laws have failed to curb his illegal activities and accused continues to perpetrate the series act of smuggling red sanders unabatedly.

Whereas, I am satisfied from the material placed before me that Sri Bukke Nagendra Naik, aged 30 years, s/o B.Ramja Naik, Caste by Sugali (ST), residing at Door No.9-602/1, Rajeev Nagar Colony, Near Railway Track, Piler Town and Mandal, Chittoor District, Andhra Pradesh State is indulging in smuggling of Red Sanders frequently in and around of Chittoor District to Tamilnadu and other unknown destinations by organizing large number of persons and there is a valid and prima facie case against Sri Bukke Nagendra Naik, aged 30 years, s/o B.Ramja Naik, Caste by Sugali (ST), residing at Door No.9-602/1, Rajeev Nagar Colony, Near Railway Track, Piler Town and Mandal, Chittoor District, Andhra Pradesh State for invoking the provisions under Section 3(1) of [Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act](#), 1986 (Act 1 of 1986) that Sri Bukke Nagendra Naik, aged 30 years, s/o B.Ramja Naik, Caste by Sugali (ST), residing at Door No.9-602/1, Rajeev Nagar Colony, Near Railway Track, Piler Town and Mandal, Chittoor District, Andhra Pradesh State shall be detained under Section 3(1), read with 3(2) of the said Act as his activities are injurious to maintenance of public peace, law and order.”

Hence, the writ petition.

The petitioner contends that invocation of power under Section 3(2) of Act 1 of 1986 is not attracted to the activities of detainee, for if the petitioner is guilty of any offence, criminal prosecution in accordance with law can be initiated.

The 2nd respondent did not follow the prescription of rule of law.

The categorical submission of petitioner to challenge detention order is that the 2nd respondent failed to conform to the mandate of Article 22(5) of the Constitution of India, for while passing the order, the 2nd respondent is required to inform the detainee of his right to make representation to the authority in the language known to the detainee. The Detaining Authority ought to have informed the right to represent to the Detaining Authority, Government and Advisory Board to the petitioner in the language known to the detainee. The failure to inform the detainee his right to represent to these authorities is contrary to the principle of law laid down in **KAMLESHKUMAR ISHWARDAS PATEL V. UNION OF INDIA**. The further ground of

challenge is that the Detaining Authority supplied illegible documents (Telugu) and thereby the detainee was prevented from making effective representation to the authorities under the Act. The petitioner prays for setting aside the detention and detention order. The further challenge to the detention order is that the satisfaction recorded by the Detaining Authority is not on proximate incidents and the material does not encourage to form an opinion for passing an order of detention to supposedly prevent a person from acting in any manner contemplated under the Act.

The 2nd respondent filed counter affidavit and on the material allegations and grounds of challenge in the writ petition, the reply of 2nd respondent is that on 11.02.2015, the detainee was arrested in Cr.No.25 of 2015 of K.B.Palli PS, Piler Circle, Chittoor District. The detainee was in judicial custody and the impugned order Rc.No.C2/1425/2015 dated 28.03.2015 was passed. In terms of detention order dated 28.03.2015, the detainee was taken into custody on 01.04.2015. It is categorically asserted that the order of detention, grounds of detention and material relied upon by the Detaining Authority was served on the detainee in both the languages i.e., English and the vernacular language Telugu under an acknowledgement of the detainee. It is averred that the right of detainee to make of representation to the Detaining Authority, the Chief Secretary and the Advisory Board is covered in the grounds of detention. The detention order was confirmed by Government vide G.O.Rt.No.1049, General Administration (Law and Order) Department, dated 06.04.2015. The Advisory Board in the meeting held on 17.04.2015 heard the detainee as well as the Investigating Officer and opined that there is sufficient cause for detention of the detainee and the Government on the recommendations of Advisory Board issued G.O.Rt.No.1370, General Administration (L & O) Department, dated 06.05.2015 confirming the order of detention for a period of 12 months from 01.04.2015.

In reply to para 4(c) of the affidavit, It is further stated that the documents served on the detainee are legible and readable and, in fact, the 2nd respondent asserts to have gone through all the documents and found that the translated copies are in order and all the documents supplied to the detainee are legible. Therefore, the 2nd respondent

prays for dismissal of the writ petition.

Sri C.V.Mohan Reddy, learned Senior Counsel for the petitioner, contends that the failure of 2nd respondent to inform the detainee in the language known to detainee that the detainee can make representation to the Detaining Authority, the Chief Secretary and the Advisory Board has resulted in breach of constitutional right under Article 22(5) of the Constitution of India and even if a representation is made, the detainee was prevented from making

an effective representation to the Government/Advisory Board as legible copies of documents considered by the detaining authority are not given to detainee. He places strong reliance upon **KAMLESHKUMAR ISHWARDAS PATEL's** case (1 supra) and **STATE OF MAHARASHTRA V. SANTOSH SHANKER ACHARYA**.

Sri Surya Prakash, learned Special Government Pleader appearing for the respondent, contends that the decisions relied upon by the petitioner are not applicable to the fact situation of the case on hand, for according to the learned Special Government Pleader, the Detaining Authority informed the detainee the three fold right available to the detainee to make representation in terms of Article 22(5) of the Constitution of India. He has specifically drawn the attention of this Court to the grounds of detention (Telugu and English) to show that the requirement of informing the detainee that he can make an effective representation to the three authorities has been complied with.

For the purpose of examining the contention urged by the petitioner, one of us has gone through the grounds of detention supplied in Telugu and also the order and the grounds of detention read in English and the order reads as under:

“He has right to make a representation to the detaining authority i.e., Collector & District Magistrate, Chittoor, Advisory Board and the Government against his detention and he has also a right to be heard personally by the Advisory Board if he so desires under Sec. 10 of A.P., Prevention of Dangerous Activities of Bootleggers Act, 1986.”

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However, Sri Sri Bukke Nagendra Naik, aged 30 years, s/o B.Ramja Naik, Caste by Sugali (ST), residing at Door No.9-602/1, Rajeev Nagar Colony, Near Railway Track, Piler Town and Mandal, Chittoor District, Andhra Pradesh State is informed that he has a:-

1. Right to make a representation against his order of detention to the Collector & District Magistrate, i.e., the detaining authority.
2. Right to make representation against this order of detention to the Chief Secretary Government of Andhra Pradesh.
3. Further informed that the matter will be referred to the Advisory Board within three weeks from the date of detention.

However, he has a right to make a representation in writing to the Advisory Board, when it is scheduled to meet the concerned in the matter.

It is also informed that he has a right to take assistance of any person of his choice before hearing of Advisory Board, such person shall not be legal practitioner. The Superintendent of Police, Chittoor is requested to take the detenu Sri Bukke Nagendra Naik, aged 30 years, s/o B.Ramja Naik, Caste by Sugali (ST), residing at Door No. 9-602/1, Rajeev Nagar Colony, Near Railway Track, Piler Town and Mandal, Chittoor District, Andhra Pradesh State into custody and handover him to the Superintendent of Central Prison, Kadapa, Kadapa District, A.P., immediately.”

Now, the point for consideration is - whether the detention of Bukke Nagendra Naik is contrary to Article 22(5) of the Constitution of India and the petitioner has successfully made out a case for releasing the petitioner from detention.

In **KMALESHKUMAR ISWARDAS PATEL**'s (1 supra) case, a Constitution Bench while considering the question whether an officer empowered to pass an order of detention by the Central Government or the State Government is required to consider the representation submitted by the detenu has held, as follows:

5. The Constitution, while permitting Parliament and the State Legislatures to

enact a law providing for preventive detention, prescribes certain safeguards in [Article 22](#) for the protection of the persons so detained. One such protection is contained in sub- clause (a) of Clause (4) of [Article 22](#) which required that no law providing for preventive detention shall authorise the detention of a person for a period longer than three months unless an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as Judges of a high Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for detention. The other safeguard is contained in clause (5) of [Article 22](#) which provides as under:

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

6. This provision has the same force and sanctity as any other provision relating to fundamental rights. [See : [State of Bombay v. Atma Ram Sridhar Vaidya](#)]. [Article 22\(5\)](#) imposes a dual obligation on the authority making the order of preventive detention: (i) to communicate to the person detained as soon as may be the grounds on which the order of detention has been made; and (ii) to afford the person detained the earliest opportunity of making a representation against the order of detention. [Article 22\(5\)](#) thus proceeds on the basis that the person detained has a right to make a representation against the order of detention and the aforementioned two obligations are imposed on the authority making the order of detention with a view to ensure that right of the person detained to make a representation is a real right and he is able to take steps for redress of a wrong which he thinks has been committed. [Article 22\(5\)](#) does not, however, 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 has to 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 recognized by [Section 21](#) of the General Clauses Act, 1897 though it does not flow from it. It can, therefore, be said that [Article 22\(5\)](#) postulates that the person detained has a right to make a representation against the order of detention to the authority making the order. In addition, such a representation can be made to any other authority which is empowered by law to revoke the order of detention.

14. [Article 22\(5\)](#) must, therefore, be construed to mean that the person detained has a right to make a representation against the order of detention which can be made not only to the Advisory Board but also to the detaining authority, i.e., the authority that has made the order of detention or the order for continuance of such detention, which is competent to give immediate relief by revoking the said order as well as to any other authority which is

competent under law to revoke the order for detention and thereby give relief to the person detained. 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.

38. Having regard to the provisions of [Article 22\(5\)](#) of the Constitution and the provisions of the [COFEPOSA Act](#) and the PIT NDPS Act the question posed is thus answered : Where the detention order has been made under [Section 3](#) of the COFEPOSA Act and the PIT NDPS Act by an officer specially empowered for that purpose either by the Central Government or the State Government the person detained has a right to make a representation to the said officer and the said officer is obliged to consider the said representation and the failure on his part to do so results in denial of the right conferred on the person detained to make a representation against the order of detention. This right of the detainee is in addition to his right to make the representation to the State Government and the Central Government where the detention order has been made by an officer specially authorised by a State Government and to the Central Government where the detention order has been made by an officer specially empowered by the Central Government, and to have the same duly considered. This right to make a representation 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 the failure to do so results in denial of the right of the person detained to make a representation.”

SANTOSH SHANKER ACHARYA’S case (2 supra) has arisen under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders and Dangerous Persons Act, 1981 (for short ‘the Maharashtra Act’). The Apex Court has examined the effect of non-communication to the detainee of his right of making a representation to the detaining authority and as to whether it constituted an infraction of constitutional right or not, the Apex Court has substantially considered the argument now advanced by the learned Special Government Pleader in this case and rejected, as follows:

“5. An analysis of the provisions of the Maharashtra Act indicates that [Section 3](#) empowered the State Government to issue an order of detention under sub- section (1) and the District Magistrate or Commissioner of Police on being authorised by the State Government could issue an order of detention under sub-section (2). When an officer exercises power and issues orders of detention under sub-section (2) then he is duty bound to report forthwith the fact of detention and the grounds on which the order of detention is made and/or other particulars to the State Government. On receipt of the report, the

grounds and the particulars from the officer concerned the State Government is required to approve the order of detention within 12 days, and if it is not approved within 12 days then it automatically lapses. Section 3 of the Maharashtra Act is quoted herein below in extenso for better appreciation of the analysis we have thus made:-

[Section 3.](#) (1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

[Section 8](#) specifically provides that a detainee must be communicated the grounds on which the order of detention has been made as soon as may be, but not later than 5 days from the date of detention. This mandatory obligation is both on the authority who passes an order of detention either under sub-section (1) or under sub-section (2). In other words, if the State Government issues an order of detention under sub-section (1), or if the officer empowered issues an order of detention under sub-section (2) then the same must be communicated to the detainee not later than 5 days from the date of detention. It is no doubt true that in latter part of sub-section (1) of [Section 8](#) it has been categorically mentioned that an earliest opportunity of making a representation against the order to the State Government should be afforded. But that does not make the State Government the detaining authority as soon as the factum of detention is communicated by the person concerned exercising power under sub-section (2) as provided under sub-section (3) thereof nor does it take away the power of entertaining a representation from a detainee so long as the order of detention has not been approved by the State Government. Section 8(1) of Maharashtra Act is quoted herein below in

extenso:-

Section 8(1): When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.

It is undoubtedly true that [Section 8\(1\)](#) in terms, provides for a representation of being made to the State Government but, in a case where an officer other than the State Government issues an order of detention under sub section (2) of [Section 3](#) his powers as the detaining authority to deal with the representation under the provisions of [Section 21](#) of the Bombay General Clauses Act, 1904, cannot be said to be taken away merely because [Section 8\(1\)](#) specifically provides for making a representation to the State Government. Section 14(1) of the Maharashtra Act is quoted herein below in extenso for better appreciation of the point in issue together with [Section 21](#) of the Bombay General Clauses Act, 1904:-

[Section 14\(1\)](#): Without prejudice to the provisions of [Section 21](#) of the Bombay General Clauses Act, 1904, a detention order may, at any time, be revoked or modified by the State Government, notwithstanding that the order has been made by an officer mentioned in sub-section(2) of [section 3](#)."

[Section 21](#): Where by any Bombay Act (or Maharashtra Act), a power to issue notifications, orders, rules or by-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or by-laws, so issued.

If the contention of Mr. Deshpande to the effect that the moment an order of detention issued by an order under sub-section (2) of [Section 3](#) of the Act is communicated to the State Government under sub-section (3) of the said Section thereof the State Government becomes the detaining authority, and therefore, the power under [Section 21](#) of the Bombay General Clauses Act cannot be exercised by the said detaining authority is correct, then it has to be found out as to under which contingency Section 14 of the Maharashtra Act would apply. To our query neither Mr. Deshpande nor Mrs. Ramani, learned counsel appearing for the State Government could indicate any situation when such power could be exercised. It is too well known a principle of construction of statutes that the legislature engrafted every part of a statute for a purpose and the legislative intention is that every part of the statute should be given effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. We are cognizant of the principle ex majori cautela but it is difficult for us to apply the said principle to Section 14 of the Maharashtra Act and even hold the same to be tautologous in as much as it has never been shown as to what was the necessity for the legislature to protect the power under [Section 21](#) of the Bombay General Clauses Act, to an order of detention made under the

Maharashtra Act. The only logical and harmonious construction of the provisions would be that in a case where an order of detention is issued by an officer under sub-section (2) of [Section 3](#) of the Act, notwithstanding the fact that he is required to forthwith report the factum of detention together with the grounds and materials to the State Government and notwithstanding the fact that the Act itself specifically provides for making a representation to the State Government under [Section 8\(1\)](#), the said detaining authority continues to be the detaining authority until the order of detention issued by him is approved by the State Government within a period of 12 days from the date of issuance of detention order. Consequently, until the said detention order is approved by the State Government the detaining authority can entertain a representation from a detainee and in exercise of his power under the provisions of [Section 21](#) of Bombay General Clauses Act could amend, vary or rescind the order, as is provided under Section 14 of the Maharashtra Act. Such a construction of powers would give a full play to the provisions of [Section 8](#) (1) as well as [Section 14](#) and also Section 3 of the Maharashtra Act. This being the position, non-communication of the fact to the detainee that he could make a representation to the detaining authority so long as the order of detention has not been approved by the State Government in a case where an order of detention is issued by an officer other than the State Government under sub-section (2) of Section 3 of the Maharashtra Act would constitute an infringement of a valuable right of the detainee under [Article 22\(5\)](#) of the Constitution and the ratio of the Constitution Bench decision of this Court in Kamlesh Kumars case would apply notwithstanding the fact that in Kamlesh Kumars case the Court was dealing with an order of detention issued under the provisions of COFEPOSA.

6. The counsel appearing for the State strongly relied upon the decision of this Court in [Veeramani vs. State of Tamil Nadu](#) (1994) 2 Supreme Court Cases 337, wherein an order of detention had been issued under the provision of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest- Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (hereinafter referred to as [Tamil Nadu Act](#)). According to the learned counsel for the State the provisions of the said Act are in pari materia with the Maharashtra Act with which we are concerned in the present appeals and this Court in Veeramani (supra) had recorded a conclusion that the question of detaining authority revoking the order after such approval does not arise and the power preserved by virtue of the provisions of [General Clauses Act](#) is no more exercisable. In the aforesaid case the Court considered several earlier decisions of the Court under the provisions of COFEPOSA and was of the view that the observations made therein could not apply to cases arising under other Preventive Detention Act including the [Tamil Nadu Act](#). Veeramani (supra) also relied upon the judgment of this Court in [State of Maharashtra vs. Sushila Mafatlal Shah](#) (1988) 4 SCC 490, for the ultimate conclusion. In our considered opinion this decision does not assist the respondents in any manner inasmuch as the Court in Veeramani (supra) has considered the situation that emerged subsequent to the date of approval of the order of

detention by the State Government and not prior thereto. As has been stated earlier, it may be difficult to contend that even after the approval of the order of detention by the State Government the detaining authority would still be competent to entertain and dispose of a representation in exercise of the powers under [Section 21](#) of Bombay General Clauses Act, but this decision cannot be said to be an authority to hold that even before the approval of the order of the detaining authority the detaining authority does not possess the power under [Section 21](#) of the Bombay General Clauses Act. Such a conclusion would make the entire provision of Section 14 of the Maharashtra Act redundant and otiose. Then again the Court had fully relied upon the observations of this Court in [State of Maharashtra vs. Sushila Mafatlal Shah](#) (supra) and the judgment of Sushila Mafatlal Shah (supra) has been directly considered and overruled in the Constitution Bench decision in Kamlesh Kumars case(supra). It would also be appropriate to notice that even in [Raj Kishore Prasad vs. State of Bihar](#) (1982) 3 Supreme Court Cases 10, though the Court did not entertain the contention that detaining authority under the provisions of [National Security Act](#) has a right to consider the representation on the ground that the order of detention had been approved by the State Government yet it had been observed that constitutionally speaking a duty is cast on the detaining authority to consider the representation which would obviously mean that if such representation is made prior to the approval of the order of detention by the State Government. This being the position, it goes without saying that even under the Maharashtra Act a detainee will have a right to make a representation to the detaining authority so long as the order of detention has not been approved by the State Government and consequently non-communication of the fact to the detainee that he has a right to make representation to the detaining authority would constitute an infraction of the valuable constitutional right guaranteed to the detainee under [Article 22\(5\)](#) of the Constitution and such failure would make the order of detention invalid. We, therefore, see no infirmity with the impugned judgment of the Full Bench of the Bombay High Court to be interfered with by this Court. These appeals accordingly fail and stand dismissed.”

From the ratio laid down by the Apex Court in these cases, an order of detention to be constitutionally compliant must in letter and spirit satisfy the requirements of Article 22(5) of the Constitution of India. In the case on hand, the allegation that the Detaining Authority failed to intimate the right of representation to the authorities referred to above cannot be accepted as valid and tenable. The grounds of detention in categorical terms informed to detainee the available right of representation and the forum to which a representation could be made by the detainee. As already noted, once the intimation of the alleged right of representation to the authorities is informed in the

order of grounds of detention, by mere reference to the decisions referred to above, the order of detention cannot be interdicted and the petitioner is released.

The petitioner failed to establish that there is, in fact, failure on the part of Detaining Authority to inform the available right to represent.

Thus, the ground urged before us is without material and liable to be rejected.

The petitioner made half hearted effort that the subjective satisfaction recorded by the 2nd respondent is unsustainable and the order on this ground is liable to be set aside. The scope of judicial review on the substantive satisfaction of Detaining Authority is no more *res integra*. The detenue is accused in as many as 7 crimes in different police stations of Chittoor and Kadapa districts. The release of detenue on bail, according the material relied upon by the 2nd respondent, disclosed that recourse of grave and forest offences in which the detenue is shown as one of the accused persons, is unabated. The detenue is allegedly involved in felling and exporting red sanders which is resulting in deforestation and loss of national wealth. The object of preventive detention and subjective satisfaction of the detaining authority are considered by the Apex Court in **HARADHAN SHAH v. STATE OF WEST BENGAL** as under:

“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. The, basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one, case a person is punished to prove his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in [section 3](#) of the Act to prevent.

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The principles which can be broadly stated are these. First merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate, issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It 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.”

In **KHUDIRAM DAS V. STATE OF WEST BENGAL AND OTHERS**, the Apex Court held thus:

“Now it is clear on a plain reading of the language of sub- sections (1) and (2) of [section 3](#) that the exercise of the power of detention is made dependent on the subjective satisfaction of the detaining authority that with a view to preventing a person from acting in a prejudicial manner; as set out in sub-clauses (i), (ii) and (iii) of clause (a) of sub-section (1), it is necessary to detain such person. The words used in sub-sections (1) and (2) of [section 3](#) are "if satisfied" and they clearly import subjective satisfaction on the part of the detaining authority before an order of detention can be made. And it is so provided for a valid reason which becomes apparent if we consider the nature of the power of detention and the conditions on which it can be exercised. The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief 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. Patanjali Sastri, C.J., pointed out in [State of Madras v. V. G. Row](#)(1) that preventive detention is "largely precautionary and based on suspicion" and to these observations may be added the following words uttered by the learned

Chief Justice in that case with reference to the observations of Lord Finlay in *Rex v. Halliday*,⁽²⁾ namely, that "the court was the least appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based". This being the nature of the proceeding, it is impossible to conceive how it can possibly be regarded as capable of objective assessment. The matters which have to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of the surrounding circumstances and other relevant material, would be, likely to act in a prejudicial manner as contemplated in any of sub-clauses (i), (ii) and (iii) of clause (1) of sub-section (1) of [section 3](#), and it 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 be 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 fitted to decide them. It must in the circumstances be held that the subjective satisfaction of the detaining authority as regards these matters constitutes the foundation for the exercise of the power of detention and (1) A.I.R. 1952 S.C. 597. (2) [1917] A.C. 260 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 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. This would clearly show that the power of detention is not a quasi-judicial power. It was, however, sought to be contended on behalf of the petitioner, relying on the observation of this Court in [Bhut Nath Mata v. The State of West Bengal](#)⁽¹⁾ that the exercise of the power of detention "implies a quasi-judicial approach", that the power must be regarded as a quasi-judicial power. But we do not think it would be right to read this observation in the manner contended on behalf of the petitioner. This observation was not meant to convey that the power of detention is a quasi-judicial power. The only thing which it intended to emphasise was that the detaining authority must exercise due care and caution and act fairly and justly in exercising the power of detention.

But that does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. The Courts have

by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subjected to judicial scrutiny. The basic postulate on which the courts have proceeded is that the subjective satisfaction being a condition precedent for the 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 to the exercise of the power would not be fulfilled and the exercise of the power would be bad. There are several grounds evolved by judicial decisions for saying that no subjective satisfaction is arrived at by the authority as required under the statute. The simplest case is whether the authority has not applied its mind at all; in such a case the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied. *Emperor v. Shibnath Bannerji* (2) is a case in point. Then there may be a case where the power is exercised dishonestly or for an improper purpose : such a case would also negative the existence of satisfaction on the part of the authority. The existence of 'improper purpose', that is, a purpose not contemplated by the statute, has been recognised as an independent ground of control in several decided cases. The satisfaction, moreover, must be a satisfaction of the authority itself, and therefore, if, in exercising the power, the authority has acted under the dictation of another body as the Commissioner of Police did in [Commissioner of Police v. Gordhandas Bhanji](#)(3) and the Officer (1) A.I.R. 1974 S.C. 806.

(2) A.I.R. 1943 F.C. 92.

(3) [1952] S.C.R. 135.

of the Ministry of Labour and National Service did in *Simas Motor Units Ltd. v. Minister of Labour and National Service*(1) the exercise of the power would be bad and so also would the exercise of the power be vitiated where the authority has disabled itself from applying its mind to the facts of each individual case by self-created rules of policy or in any other manner. The satisfaction said to have been arrived at by the authority would also be bad where it is based on the application of a wrong test or the misconstruction of a statute. Where this happens, the satisfaction of the authority would not be in respect of the thing in regard to which it is required to be satisfied. Then again the satisfaction must be grounded on materials which are of rationally probative value'. *Alachindar v. King*. (2 The grounds on which the satisfaction is based must be, such as a rational human being can consider 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. [Pratap Singh v. State of Punjab](#) (3). If there are to 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.

There is also one other ground on which the subjective satisfaction reached by an authority can successfully be challenged and it is of late becoming increasingly important. The genesis of this ground is to be found in the famous words of Lord Halsbury in *Sharp v. Wakefield*(4 "..... when it is said that something is to be done within the discretion of the authorities-that something is to be done according to the rules of reason and justice, not according to private opinion-according to law and not humour. It is to be, not arbitrary, vague, fanciful, but legal and regular."

So far as this ground is concerned', the courts in the United States have gone much further than courts in England or in this country. The United States courts are prepared to review administrative findings which are not supported by substantial evidence, that is by "such relevant findings as a reasonable man may accept adequate to support a conclusion". But in England and in India, the courts stop-short at merely inquiring whether the grounds on which the authority has reached its subjective satisfaction are such that any reasonable person could possibly arrive at such satisfaction. "If", to use the words of Lord Greene, M. R., in *Associated Provincial Picture (1)* [1964] All. E.R. 201.

(2) A.I.R. 1950 F.C. 129..

(3) A.I.R. 1964 S.C. 72.

(4) [1891] A.C. 173, at 179.

[Houses Ltd. v. Wednesbury Corporation](#)(1)-words which have found approval of the House of Lords in *Smith v. East Eilor Rural District Council*(2) and *Fswcoit Properties Ltd. v. Buckingham County Council*(3)-the authority has "come. to a conclusion on so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere". In such a case, a legitimate inference may fairly be drawn either that the authority "did not honestly form that view or that in forming it, he could not have applied his mind to the relevant facts". *Ross v. Papadopollos*. (4) The power of the court to interfere in such a case is not as an appellate authority to override a decision taken by the statutory authority, but as a judicial authority. which is concerned, and concerned only to see. whether the statutory authority has contravened the law by acting in excess of the power which the legislature has confided in it. It is on this ground that the order of preventive detention made by the District Magistrate in [Debu](#)

[Mahto v. State of West Bengal](#)⁽⁵⁾ was struck down by this Court. There, in that case, one single solitary act of wagon breaking was relied upon by the District Magistrate for reaching the satisfaction that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of supplies and services to the community, it was necessary to detain him. This Court pointed out subject to certain reservations that it was difficult to see how "one solitary isolated act of wagon breaking committed by the petitioner could possibly persuade any reasonable person to reach the satisfaction that unless the petitioner was detained he would in all probability indulge in further acts of wagon breaking". This Court did not go into the adequacy of or sufficiency of the grounds on which the order of detention was based, but merely examined whether on the grounds given to the detenu, any reasonable authority could possibly come to the conclusion to which the District Magistrate did. It is true that this ground in a sense tends to blur the dividing line between subjective satisfaction and objective determination but the dividing line is very much there howsoever faint or delicate it may be, and courts have never failed to recognise it.

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Now, the proposition can hardly be disputed that if there is before, the District Magistrate material against the detenu which is of a highly damaging character and having nexus and relevancy with the, object of detention, and proximity with the time when the subjective satisfaction forming the basis of the detention order was arrived at, it would be legitimate for the Court to infer that such material must have influenced the District Magistrate in arriving at his subjective satisfaction and in such a case the Court would refuse to accept the bald statement of the District Magistrate that he did not take such material into account and excluded it from consideration. It is elementary that the human mind does not function in compartments. When it receives impressions from different- sources, it is the totality. of the impressions which goes into the making of the decision and it is not possible to analyse and dissect the impressions and predicate which impressions went into the making of the decision and which did not. Nor is it an easy exercise to erase the impression created by particular circumstances so as to exclude the influence of such impression in the decision making process. Therefore, in a case where the material before the District Magistrate is of a character which would in all reasonable-probability be likely to influence the decision of any reasonable human being, the Court would be most reluctant to accept the ipse dixit of the District Magistrate that he was not so influenced and a fortiori, if such material is not disclosed to the

detenu, the order of detention would be vitiated, both on the ground that all the basic facts and materials which influenced the subjective satisfaction of the District Magistrate were not communicated to the detenu as also on the ground that the detenu was denied an opportunity of making an effective representation against the order of detention.

But in the present case we do not find that there is any such infirmity vitiating the order of detention against the petitioner. The material in the history-sheet of the petitioner which was not disclosed to him referred to two circumstances. One was that the petitioner had picked up the habit of committing thefts of copper wires and he committed thefts of copper wires and the other was that there were several thefts of transformers from villages like Betrabad, Uttar Lakshipur, Sultanganj and Nandlalpur. So far as the first circumstance is concerned, it was merely a generalisation based on the three incidents referred to in the grounds of detention and it did not refer to any other incidents of theft of copper wires besides the three enumerated in the grounds of detention. It did not, therefore, constitute any additional material prejudicial to the petitioner which could be said to have gone into the formation of the subjective satisfaction of the District Magistrate and the non-disclosure of it to the petitioner did not have the effect of invalidating the order of detention. The second circumstance was not directed against any activity of the petitioner at all. It merely provided the background of the social malady which must have been exercising the mind of the authority charged with the administration of law and order when it said that there were several thefts of transformers from Betrabad, Uttar Lakshipur, Sultanganj and Nandlalpur villages and it was in the context of this back-ground that the three incidents referred to in the grounds of detention were considered by the District Magistrate. What were alleged against the petitioner were only the three incidents set out in the grounds of detention. The thefts of transformers referred to in the second circumstance were not attributed to the petitioner. They merely provided the backdrop of the prevailing situation in the area and did not constitute material prejudicial to the petitioner which ought to have been disclosed to him. There was, therefore, no material before the District Magistrate, other than the three incidents set out in the grounds of detention, which went into the formation of the subjective satisfaction of the District Magistrate and which ought, therefore, to have been communicated to the petitioner. Ground (c) must accordingly be rejected.”

The Apex Court in **G.REDDIEIAH v. GOVERNMENT OF ANDHRA PRADESH**

considered the scope and purpose of preventive detention vis-à-vis the offences

under the Forest Act. The relevant portion reads as follows:

“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. Even, as early as in 1975, the Constitution Bench of this Court considered the procedures to be followed in view of Articles 19 and 21 of the Constitution. [In Haradhan Saha v. State of West Bengal & Ors.](#) (1975) 3 SCC 198, the Constitution Bench of this Court, on going through the order of preventive detention under Maintenance of Internal Security Act, 1971 laid down various principles which are as follows:-

".....First; merely because a detainee is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second; the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under [the Code](#) of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third; where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardize the security of the State or the public order.

Fourth; the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate (sic) the order.

Fifth; the order of detention is a precautionary measure. It 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."

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A reading of the grounds of detention clearly indicate that the detainee had been indulging in various activities in felling and smuggling red-sanders and he was habitually committing the same and was unmindful of wastage of national forest wealth and public order. It also

shows that it was not a solitary or stray incident but continuously maintaining his activities commencing from 22.02.2010 till 09.10.2010 in destroying the forest wealth. It clearly shows that he is habitually committing these offences.

On going through all the details relating to various offences, incidents and activities, we are satisfied that the conclusion of Detaining Authority that by invocation of normal procedure, the activities of the detainee cannot be controlled is acceptable.

We also hold that Detaining Authority is well within its powers in passing the impugned order of detention. Further, we are also in agreement with the reasoning of the High Court which, by a detailed judgment, upheld the order of detention.

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The grounds of detention running into 60 pages and the order of detention to 5 pages clearly demonstrate various details about the involvement of the detainee violating the provisions of IPC, the A.P. Act and the Rules. The details furnished in the grounds of detention clearly show the application of mind on the part of the Detaining Authority. It is not the case of the detainee or the appellant that the required relevant and relied on materials have not been furnished which prevented him from making effective representation to the Government. The detailed report of the Inspector of Police and Sponsoring Authority clearly show that the detainee was a master mind in organising the felling of red-sanders trees owned by the Government and also providing vehicles for illegally transporting the red-sanders wood, hiring of labourers from the fringe forest villages and responsible for destruction of valuable governmental property. It also shows that it was he who operated gang for destruction of the national wealth causing deforestation leading to ecological imbalance affecting the community as a whole.

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In a matter of detention, the law is 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. Once the Detaining Authority is subjectively satisfied about the various offences labelled against the detainee, habituality in continuing the same, difficult to control him under the normal circumstances, he is free to pass appropriate order under [Section 3](#) of the 1986 Act by fulfilling the conditions stated therein. We have already concluded that there is no infirmity either in the reasonings of the Detaining Authority or procedure followed by it. We are also satisfied that the detainee was afforded adequate opportunity at every stage and there is no violation of any of the safeguards. In these circumstances, we reject the

contention raised by learned senior counsel for the appellant.

14) Though an attempt was made to nullify the order of detention by drawing our attention to the latest decision of this Court reported in *Rekha vs. State of Tamil Nadu* (2011) 5 SCC 244, on going through the factual position and orders therein and in view of enormous activities of the detainee violating various provisions of [IPC](#), the [A.P. Act](#) and the Rules, continuous and habituality in pursuing the same type of offences, damaging the wealth of the nation and taking note of the abundant factual details as available in the grounds of detention and also of the fact that all the procedures and statutory safeguards have been fully complied with by the Detaining Authority, we are of the view that the said decision is not applicable to the case on hand. On the other hand, we fully agree with the reasoning of the Detaining Authority as approved by the Government and upheld by the High Court.”

In the earlier part of our order, we have referred to the criminal cases in which the detainee is involved and was habitually committing various offences. The offences alleged against the detainee are that the alleged detainee in association with likeminded persons is felling, cutting and smuggling red sanders, causing loss to the national wealth. The proximity of cases and the repetition of same offences when the detainee is enlarged on bail is taken note by the Detaining Authority in exercising the power under Section 3(2) of the Act. We are satisfied that there is no infirmity or illegality in the order of detention against the detainee viz., Bukke Nagendra Naik.

The writ petition fails and is accordingly dismissed.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date:14.10.2015

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