Bombay High Court Shri Deepak G. Melwani vs The Union Of India & Others on 23 December, 1998 Equivalent citations: 1999 (5) BomCR 288, 1999 BomCR Cri, (1999) 2 BOMLR 290 Author: T C Das Bench: N Arumugham, T C Das ORDER T.K. Chandrashekhara Das, J. 1. These two writ petitions arise out of the detention orders passed on 3-2-1997 against the petitioners by the second respondent under section 3(1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974. The said orders came to be passed in the event of unearthing of a big haul of fraud on the provisions of F.E.R.A. and an amount of Rs. 469 crores have been siphoned out of the country in clandestine operations. In this Hawala racket, 14 persons were involved and they had conspired together in an organised manner and transacted the Hawala business whereby tried to weaken the Indian Foreign Exchange Reserves. 2. It is stated in the grounds of detention that as per the reliable information received by the Enforcement Directorate, Bombay, it came to light that certain persons by name Dilip Doshi, Dinesh Bhuva, Harshad P. Mehta with the active assistance of the persons such as Yogesh Mehta, Deepak Melwani (Petition No. 254 of 1998). Ramesh Nahar (petitioner in Writ Petition No. 1186 of 1998). Mahendra Sanklecha, Hemant Barot, Sanjay Udeshi, Dhankumar Shah, Nilesh Trivedi and certain Bank Officials of South Indian Bank, Nariman Point Branch, U.C.O. Bank, D.N. Road, Mumbai and also certain other nationalized and scheduled banks in Mumbai opened fictitious bank accounts and remittance against bogus imports were sent abroad through such bank accounts against forged documents. The role of the petitioners in this organized economical crime was that they were supplying necessary finance for remittance to the bogus bank accounts and receiving commission. Therefore, they were found to be the cogent and live link for committing organized violation of F.E.R.A. and making money by illegal means jeopardizing the balance of trade and weaken the foreign exchange reserve of the country. The role of detenus involved in the two petitions in this transactions is similar and this two Habeas Corpus petition are grounded on identical grounds. We therefore, propose to dispose of the above two writ petitions by this common judgment. 3. The learned Counsel for the petitioner Mr. Maqsood Khan relied on the facts and documents filed in Writ Petition No. 254 of 1998 for the purpose of his argument. As the facts are similar and identical we refer to those facts and documents for the purpose of this common judgment. 4. As is evident from the order of the detention passed on 3-2-1997 the petitioners were kept in jail with a view to preventing them in future from acting in any manner prejudicial to the conservation of Foreign Exchange and they were ordered to be kept in Yerawada Central Prison for the period of one year. Similar order has been clamped on 3-2-1997 against other participants of the transaction. The detention order was passed on 3-2-1997 but the same was served on the petitioner on 27-11-1997. 5. It is revealed from the pleadings of the case that on 29-9-1994 on the basis of the intelligence received by the officers of the Directorate of Enforcement, the residential premises of the petitioner in W.P. No. 254/98 was searched under section 37 of the F.E.R.A. The Indian currency worth Rs. 27,70,000/- and U.S. $ 11800 and some documents were recovered from the business premises and from the residential premises U.S. $ 300, H.K.

$ 30, Singapore $ 1, Japanese Yen 1,72,000 were also seized. While the business premises of the petitioner was being searched out, one Champalal Jain entered the premises and on search on his person and bag carried by him, officers recovered from him Indian Currency of Rs. 500/- denominations amounting to Rs. 10,00,000/-. The petitioner also made certain statements whereby he has conceded the transaction and the role played by him, though he has subsequently retracted those confessions. The petitioner was then released on bail. Again on 9-5-96 the petitioner's residential premises was searched and an amount of Rs. 80,000/- was seized. 6. The statement of the petitioner was recorded on 9-5-1996 in which the petitioner has admitted having paid an amount totalling to Rs. 110 crores to Shri Harshad Mehta, Mahendra Sanklecha, Dinesh Bhuva for the purpose of transferring the same outside India through Hawala Channel. Equivalent to Rs. 110 crores approximately comes to Rs. 30 million dollars. It was also disclosed that as per the understanding of the conspirators including the petitioner, petitioner benefited in that transaction to the tune of Rs. 45 lakhs by way of commission and out of that commission petitioner had paid commission to Mahendra Sanklecha, his close associate. It is further revealed in the statement made by the petitioner that the said transaction not only pertain to the cases registered against him in 1994 but it was continued to indulge in such activities even after 1994. 7. Mr. Somnath Pal, Jt. Secretary to Government of India, Ministry of Finance who filed affidavit in reply on behalf of the respondent Nos. 1 and 2 has stated that there were compulsive circumstances under which it has become necessary to detain the petitioners preventing them in future from acting in any manner prejudicial to the conservation of Foreign Exchange. In paragraph 7 of the affidavit of Mr. Pal he observed as follows : "Considering the antecedents, propensity, magnitude and the seriousness of the actitivies indulged in by the, the detention order under COFEPOSA Act, 1974 was issued against the petitioner with a view to preventing him from indulging in such activities prejudicial to the conservation of foreign exchange resources of the country. It is further submitted that there are no evidence to show that he had been gainfully employed in activities other than the prejudicial activities for which he is at present under detention." 8. Mr. Maqsood Khan, learned Counsel for the petitioner attacked the order of detention on several grounds as is usually done by the other detenus in such cases, which can be summarized as follows : (1) Order of detention was passed in a casual and caviller manner without application of mind by the detaining authority. (2) On going through the grounds of detention and documents and the material, it can be seen that the Detaining Authority has considered the materials piecemeal, not contemporaneously, for formulating the grounds of detention. Therefore, subjective satisfaction contemplated under Law as envisaged under Article 22(5) of the Constitution does not present in this case. (3) The detenu had asked for certain documents and it was not supplied and certain documents supplied were not legible for making effective representation to the authorities. Certain documents were in Gujarathi which is a language not known to the detenu and even the Detaining Authority does not know Gujarathi. Therefore, the petitioner was denied the right of making proper representation as envisaged under Art. 22(5)

of the Constitution of India. (4) There is undue delay in executing the detention order which has vitiated the detention order. Though the detention order was issued on 3-2-1997, it was executed only on 27-11-1997. (5) No nexus has been established between clamping of the detention order and the prejudicial actitivies. In other words there are no enough material that the petitioner had continued the prejudicial activities from 1994 to 1997. Mr. Maqsood Khan also cited various decisions of this Court and Supreme Court to fortify his argument, but we don't think it necessary to refer to all those decisions, in the interest of brevity. However, we refer to some of the decisions cited to by both the sides at appropriate stage. 9. We think that ground Nos. 1 to 2 can be considered together because the those grounds over lap each other and those grounds were coming into the gamut of non application of mind and subjective satisfaction. 10. Learned Counsel for the petitioner Mr. Maqsood Khan submits that though the detention order along with the grounds and documents as communicated to the petitioner contains 4240 pages and 275 documents and the latest letter considered by the Authorities of 30th Jan. 1997 which was received by the Detaining Authorities only on 3-2-1997 and the same day the detention order was issued. In this circumstances, the learned Counsel argues that it is humanly impossible to consider all the materials contemporaneously and formulate the grounds of detention even if one sits the whole 24 hours. These circumstances, he asserts overwhelmingly to show that the detention order was passed mechanically and in a caviller manner without proper application of mind. The learned Counsel also pointed out that in pages 87 and 105 of the grounds of detention, different types of typewriting was used, which goes to show that it was subsequently added portion and that the grounds therein were not formulated contemporaneously. All these circumstances will go to show that the, order was prepared in piecemeal. He further points out that the Detaining Authority was just copying the grounds of Proposing Authority and the order is passed mala fide. 11. Before we examine the contentions of the petitioner, we have to consider the reply filed by the respondents against these allegations. On a careful scrutiny of the reply affidavit filed on behalf of the respondents, we are quite satisfied that every serious allegation contained in the writ petition has been effectively and successfully met by the respondents. The reply affidavit was filed by Shri Somnath Paul, Jt. Secretary, Government of India, who was appointed to substitute the place of Shri J.N. Varma, who issued order of detention. In paragraph 7 of the reply he has stated in reply to the allegation of mala fide thus : "As regards averments in para 9 of the petition it is submitted that consequent to the actions initiated in the case of transfer of foreign exchange of a staggering amount of more than Rs. 469 cores involving S/Shri Harshad Mehta, Sanjay Udeshi, Mahendra Sanklecha, Dhankumar Shah, Nilesh Trivedi, Dinesh Bhuva etc. it was observed that the petitioner was one of the persons who made payment to Shri Dinesh Bhuva, Shri Harshad Mehta for transferring the same outside India under the guise of fake import documents. Based on the above information, the resedential premises of the petitioner were searched on 9-5-1996 as a result of which Indian currency of Rs. 80,000/- was recovered and seized under panchanama. The statement of the petitioner was recorded on 9-5-96 in

which the petitioner has admitted having paid amounts totalling to Rs. 110 crores to S/Shri Harshad Mehta, Mahendra Sanklecha, Dinesh Bhuva for the purpose of transferring the same outside India through Hawala channel, that the equivalent amount of Rs. 110 crores in U.S. Dollars comes to approx. 30 Million U.S. Dollars; that as per their understanding (including the petitioner) with Shri Harshad Mehta and Shri Dinesh Bhuva, the petitioner also benefitted to the tune of Rs. 45 lakhs by way of commission and out of that amount viz. 45 lakhs, the petitioner had paid commission to Shri. Mahendra Sanklecha, his close associate." 12. So also the suppression of material facts and non-disposing of the representation sent by the detenu were also dealt with in paras 9, 14, 15 and 30. We do not think it necessary to discuss them in detail here. We only record findings that there is no merit in the contention of the petitioner. 13. Next we have to consider the main plank of argument of the Counsel for the petitioner with regard to the non-application of mind. Let us first examine the reply to those allegations as stated in paragraph 24 of the reply affidavit: "As regards averments made in para 22 (xii) of the petition that it is incumbent upon the Detaining Authority to disclose the Hon'ble Court as to on what date the proposal for detention was mooted by the Sponsoring Authority, the date on which it was placed before the Screening Committee, the date on which the Screening Committee cleared the same etc. it is submitted that these dates are not at all relevant for the purpose of calculating delay or alleging paucity of time. Consideration of a case for preventive detention is a continuous process in the hands of Detaining Authority. Sometimes more information/developments are asked for arriving at the subjective satisfaction. Moreover the Detaining Authority is an expert agency having special inclination and skill to scan the material on record and arrive at subjective satisfaction. No thumb of rule can be applied in this regard to stipulate any time. In the case of petitioner detention order has been passed on 3-2-97 taking into consideration the material received and developments taken place upto 30-1-97. This is evident from the date of document at S. No. 209 of the list of documents and pages 4238-4239 of the compilation of relied upon documents. As regards the contention of the petitioner that the detaining authority did not apply its mind but abdicated his functions to the Sponsoring Authority and that the grounds of detention were taken verbatim as in the proposal submitted by the Sponsoring Authority etc. it is submitted that it is totally incorrect for the petitioner to make such allegations. The detaining authority has passed this detention order after proper application of mind on the material placed before it and after being satisfied about the need to issue such an order. The grounds of detention and the documents relied upon speak for itself. The allegations made in this para are nothing but a baseless accusation and an attempt on the part of the petitioner to purposely shy away from the realities of the case." 14. So also in reply filed by Shri S.L.J. Gallyot, Asst. Director of Enforcement Directorate, Bombay, he has stated that : In para 8 he has stated : "As regards averments made in para 22(xii) of the petition, that it is incumbent upon the detaining authority to disclose the Hon'ble Court as to what date the proposal for detention was mooted by the Sponsoring Authority, the date on which placed before

the Screening Committee, the date on which the Screening Committee cleared the same etc. It is submitted that the grounds of detention are not only based on the statement of the detenu but include various crucial documents such as retractions of co-accused, reaction of the Department, Scrutiny of the reports received from the various banks such as copies of Bill of Entry, Invoices, Account Opening Form, transcripts of such accounts etc. It is submitted that the date of last document relied upon is 30-1-1997 i.e. item No. 209 at pages 4238-39 of the list of relied upon documents. Further details regarding additional material sent from the date of proposal submitted by the Sponsoring Authority till the issue of the detention order are as under : 1. Date of joint proposal sent to Head quarters in receipt of petitioner and other co-accused. 19-7-1996 2. Date of Clearance by Headquarters Screening Committee 19-8-1996 26-8-1996 3. Additional materials sent queries raised/ replied thereto and comment sent on various representations received from the detenu, co-detenus and other persons involved in this to Headquarters. 19-8-1996 22-8-1996 23-8-1996 26-8-1996 4. Date of clearance by Central Screening Committee 17-9-1996 5. Further additional materials sent on queries raised/replied thereto and comments sent on various representations received from the detenu, co-detenus and other persons involved in this to Headquarters. 18-9-1996 1-10-1996 9-10-1996 16-10-1996 11-11-1996 2-12-1996 3-12-1996 16-12-1996 23-12-1996 7-1-1997 Thus from time to time, spade work was done and the material was carefully considered by the detaining authority and only after arriving at his subjective satisfaction, the impugned order of detention was issued against the petitioner as well as other co-accused. It is asserted that the detention order against the petitioner was issued expeditiously on war footing with the aid and assistance of Head Office of Directorate of Enforcement, Hew Delhi as well as Officers from Mumbai who were sent from time to time as per the exigencies and call of H.O. and Ministry. Matter was taken up on war footing and the spade work was done from time to time as above. It is further submitted that all the relevant files of the Sponsoring Authority and the Ministry as well would be placed before this Hon'ble Court for perusal during the course of the hearing." In para 9 of reply he has stated : "As regards the contention of the petitioner that the detaining authority did not apply its mind but abdicated his functions to the Sponsoring Authority and that the grounds of detention were taken in verbatim as in the proposal submitted by the Sponsoring Authority etc. It is submitted that it is totally incorrect to observe in the above fashion. The job of the Sponsoring Authority is to place all documents before the Ministry who arranges for clearance by the Central Screening Committee consisting of very Senior Officials of Government of India, such as Director, General, ORL, Officials of C.B.I., Law Ministry and others. Thereafter the officials of the Ministry submits the necessary details before the Joint Secretary who if arrives at the subjective satisfaction that a preventive detention is warranted, he issues Detention Order and if he is not satisfied no detention order is issued. Therefore, the above observations of the petitioner is nothing but a result of his own imagination of himself and none else. It is further asserted that the proposal submitted by the Sponsoring Authority to the Ministry through its Headquarters at New Delhi only contains the bare

facts of the case in brief depicting the role attributed by each person involved therein whereas the grounds of detention against the persons where detention order is issued are very exhaustive giving details of the respective pages of the documents sought to be rolled upon. In the instant case, documents relied upon are running into more than 4000 pages and the grounds of detention are running into 175 pages. It is imperative to state here that the Joint proposal submitted by the Sponsoring Authority contains only 26 pages. I crave leave to rely upon judgments of this Court, the decision in Zahoor Peshiman, Kawade and others." In para 10 he has stated : As regards averments in paras 22(xiii) and (xiv) it is submitted that, spade work was done from time to time. However, grounds of detention, were formulated contemporaneously and signed on 3-2-1997. There has been no "Piece Meal" formulation but it is a "compendious formulation" done at time." 15. In view of the above pleadings, in the reply of the respondent, we do not think there is any merit in the conclusion of the contention of the Counsel with regard to the above two points. In this context we would advert to some of the contentions of the Counsel for the petitioner. Petitioner Counsel strenuously argued that the last document which was relied upon by the detaining authority received on 3-2-1997 and the same day order has been passed. The order contains documents 4240 pages and 274 items and issuing of the order on the same day, it has to be presumed that the order has been passed without properly applying the mind and the detaining authority simply endorsing the view of the sponsoring Authority. The order was passed by not considering all the materials contemporaneously for formulating the grounds. The learned Counsel based his argument only on some presumptions. If these presumptions are held to be correct, then there is no difficulty to accept the contention of Counsel for the petitioner. But these presumptions can be drawn only on the back ground of each case. The learned Counsel proceeds his argument on the premise that only after the Detaining Authority receives the last document dated 30-1-1997, on 3-2-1997 the detaining authority had considered all the materials and formulated the grounds. He also cited various decisions of the Supreme Court and various High Court such as Mohd. Abubukul v. Union of India, 1981 Bom.C.R. 551 : 1982 Cri.L.J. 53, Ashwini Kumar v. State of Maharashtra, (sic), Krishan Murari Aggarwala v. Union of India, , O. Chinnappa Reddy v. R.B. Misra, Cri.W.P. No. 165/86, Cri.W.P. No. 733/97, Cri.W.P. No. 55/92, Cri. W.P. 193/86, Cri. W.P. 731/97, Cri. W.P. 569/97, etc. We have perused these decisions and we find its unnecessary to discuss about those decisions for the purpose of this case as they are distinguishable on the factual matrix of each case. However, we have to discuss here certain observations contained in the judgements of this Court in the case reported in 1987 Cri.L.J. 1798 because the petitioner's Counsel strongly relied on this decision to support his contentions. A Division Bench of this Court in that case held thus : "It appears that there is a grave misunderstanding on the part of the detaining authority of the correct import of our decisions on the subject given earlier. We have been at pains to emphasize that the detention order is passed on the basis of the subjective satisfaction of the detaining authority, which satisfaction is to be arrived at by applying mind to all the material available on the record. We thought that it

is elementary that the grounds of detention have to be culled from the materials in question after considering it together a time. It is only the satisfaction so arrived at which can be considered valid in the eye of law. For then alone it satisfied the test of a conclusion arrived at on the basis of the totality of the circumstances taken together. We had pointed out that this test cannot be satisfied if the documents are considered piecemeal. When the grounds are formulated and the order is passed already and kept ready earlier on the basis of the material then available and such grounds and order are merely endorsed from time to time after considering the documents received subsequently whether read in isolation or together with the earlier documents, it makes a mockery of law and can hardly satisfy the test of a conclusion drawn by considering all the material together. Where the conclusions are predrawn and the documents received subsequently are only referred to, to confirm or endorse the said conclusions, the process indulged in is not of forming a subjective satisfaction but one of finding reasons to support the pre conceived formulations. That is exactly what the detaining authority has done in the present case. Such an approach can hardly be countenanced. We once again reiterate in as clear terms as is possible for us to do that the grounds of detention have to be formulated and the order has to be passed only after considering all the material together and at a time. The checking of the fresh material received with the grounds already formulated and the order kept ready is nothing but a pretense of following the law and is a fraud upon it." 16. First of all, the observations made in the judgment has no relevance to the facts of the case. In Aswani Kumar's case, it has come out that the grounds of detention were formulated on 1st July, 1986 and the documents received subsequently were relied on and supplied to the detenu. It is in this context, the above observation was made by the Court. This is not the case here, which is quite different. It has not come out in this case that grounds for detention were formulated before receiving the entire documents as stated by the statement in reply of the respondent. In this case we have seen only document which was received on 3-2-1997 is a letter written by Shri, Y.D. Mehta who is one of the conspirators of this racket. In that letter he has highlighted that he is not satisfactory (satisfied) with the investigation carried out in this case and he requested the matter to be investigated by independent agency. He was also complaining against non release of "Mangal Sutra" and gold bangles. Strictly speaking this document has nothing to do with the petitioner. As we have observed earlier, identical order has been passed on the same day involving 10 detenus and Harshad Mehta is one of detenus and the aforesaid document had no relevancy as far as petitioners' case is concerned. All the materials supplied along with order may not be relevant for all the detenus equally in the organized prejudicial activities as revealed in this case; some documents may be relevant to some detenus and some other documents may not be necessary for other detenus because in a conspiratorial offences, different conspirators have different role. Materials relevant to them may differ from person to person. In fact as far as petitioner is concerned, this document is not at all relevant or necessary. But since the authority was passing identical order on the same day against entire members of the racket, all the materials relevant to the detenus

was found place in the material supplied along with the order. One important thing we have to notice in dealing with this matter is that what is the purpose of supplying the material along with detention order and whether the detaining authority has actually relied on that documents to arrive at his conclusion as observed by the Supreme Court in in Khudiram Das v. The State of West Bengal and others. In para 6 of the judgement, Supreme Court has referred the decision in Dr. Ram Krishan Bhardwaj v. The State of Delhi, 1953 S.C.R. 708, in which it is observed: ". . . .. the petitioner has the right under Article 22(5) as interpreted by this Court by a majority 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. We are of opinion that this constitutional requirement must be satisfied with respect to each of the grounds communicated to the person detained." 17. As per the said decision the material required to be furnished to the detenu are those material which are necessary and sufficient to enable him to make representation which on being considered may give relief to him. In this case, undoubtedly the aforesaid letter dated 30th January 1997 has nothing to do with the petitioner. In fact, so far as the petitioner is concerned, it is an unnecessary document. Simply because unnecessary document is supplied to the detenu on the day of issuing the order will not ipso facto create a presumption that order has been issued without the application of mind. Even in the absence of such material, the grounds and material supplied to the petitioner have become full and complete which are sufficient for the petitioner to make representation as warranted by the mandate of Constitution under Article 22(5). Therefore, considering the argument of the learned Counsel that such lengthy order running into 275 items and 4240 pages cannot be humanly possible to be prepared and formulated one, one single day namely, the 3rd February, 1997 and therefore, the Court should assume that there has has been no application of mind on the part of the detaining authority while passing the detention order, cannot be accepted because it does not cause any prejudice to the detenu. The materials supplied in Aswani Kumar's case received after issuing the detention order. Therefore, the observations made therein will have no application to the facts of this case. The observation made in that case that the checking of fresh material received with the grounds already formulated and the order kept ready is nothing but a pretense of following the law and is a fraud. With great respect, this observation cannot be accepted in its sweep as an absolute rule. The human mind never works uniformly. Different human brain works differently on different factual matrix. It depends on the different trait one forms in his thinking process on deciding the matters. There may be some persons who may churn the entire facts in mind days together and come to a final decision. There are yet another persons who can come to an immediate conclusion as and when he considers the materials. There are some individuals who take an tentative decision kept in mind some days and material which he receives from time to time and ask to himself whether his tentative decision was correct or liable to be altered in the light of the fresh material. This process may continue till one takes a final decision. The Court cannot probe into the mental process or thinking mecha-

nism of an authority. In the given case, observation in Aswini Kumar may be acceptable, as we observed earlier, in that case after taking final decision, the decision was changed on the basis of materials received subsequently. Therefore, the aforesaid decision cannot be held to be considered as an authority that formulation of the ground on the materials available by the detaining authority should be formulated on one sitting on one day. To hold so, is something which is held to be contrary to the human conduct and behaviour. The formulation of grounds contemporaneously does not mean that it should be formed in single sitting and consider all the materials together. This is as pointed out earlier, the mental process differ from individual to individual. What is important to examine whether the authority made the order has properly applied mind on all materials and come to the subjective satisfactory conclusion, we hold that authority has demonstrably established that subjective satisfaction recorded in after considering all the materials received on or before 3-2-1997. 18. Receipt of the document dated 30-1-97 is quite immaterial. In this context it is profitable to refer the judgment of the Supreme Court in A. Alangarasamy v. State of Tamil Nadu and another, . In this case, the translation received by the detenu gives two versions on different meaning and the Supreme Court has held unless two versions does not cause any prejudice to the detenu, thereto cannot set up a ground to vitiate the proceedings. In para 5 of its judgment the Supreme Court has held : "We have considered the matter ourselves. We are also not impressed with this submission, The alleged difference between the two version is not consequential. The order of detention and grounds accompanied clearly spelt out why the detenu was being detained. We are not persuaded to hold that the two versions are so different as to cause any prejudice to the detenu. We, therefore, agree with the High Court and dismiss the appeal." 19. In the light of the above observations of the Supreme Court, if any defect in consideration or in supplying the documents if at all committed, unless it does not cause any prejudice to the detenu in making representation, this will not vitiate the detention order. 20. In order to counter the argument of the petitioner's Counsel, Mr. R.M. Agarwal appearing for the respondents has brought to our notice the decision of this Court in Smt. Sharifa Abubakar Zariwala v. The Union of India & others, reported in (1996) II L.J. 205. In the said decision, this Court has made a reference to the decision rendered in A.K. Gopalan v. Union of India, . It is held in para 7 : Merely because one document is supplied to the detaining authority on 23-6-1995, it cannot be inferred that the order made by the detaining authority on 26-6-1995 suffers from non application of mind on the detaining authority to apply its mind. 21. He also brought to our notice the decision of this Court in Smt. Shobha v. Kawade v. The Union of India, reported in 1996(2) All.M.R. 551. The Division Bench of this Court relied upon another decision of this Court in the case of Mohammed Ahmed Ibrahim v. Union of India, Criminal Writ Petition No. 397 of 1992. In the said decision it was observed : "However, we can certainly presume approximate time one would require to go through the cumulation of 262 documents and to apply one's mind to the basic facts which emerge from the perusal of those documents. After scanning this evidence, the detaining authority has to formulate grounds

and then satisfy himself subjectively about the need of the detention order. All these things, according to the detaining authority, we done on 9th April, 1991 itself. We can presume on the basis of the facts placed before us that what was left to the disposal of the Detaining Authority was at best 1/2 day." The Bench further observed : "There was no time left for the detaining authority to go into the voluminous record placed before it and the order appears to have been passed honestly believing whatever was proposed by the sponsoring authority. This, needless to say, will not be permissible in Law, subjective satisfaction of the detaining authority can never be delegated to anybody and he cannot act mechanically on the basis of the proposal submitted by the sponsoring authority." The Bench also observed as under : "No presumption can be raised either about the application of mind or about the non-application of mind merely on the basis of the period between receipt of proposal for detention and passing of order of detention. There may be cases in which the facts may be so glaring and so short that the Detaining Authority may pass the detention order on the very same day when the proposal is received. Therefore, we do not propose to lay down that if detention order is passed on the same day on which proposal is received or immediately thereafter, the order of detention will be bad. But in the present case, we are sure that the evidence is so voluminous and the time left with the Detaining Authority was so short that the only conclusion which can be reached is that here is non application of mind on the part of the Detaining Authority to the material placed before him and, therefore, the order of detention and the consequent declaration under section 9(1) both will have to be struck down." 22. Mr. Agarwal also relied upon the decision of the Division Bench of this Court in Meena Mahendra Vakharia v. K.L. Verma and others, reported in (1997) II L.J. 41. In that case where two compilations running into 850 pages for the offence punishable under F.E.R.A. in which it is observed as : "In the facts of the case before us, a perusal of the grounds of detention would clearly show that reference to panchanama dated 20-11-1992 is merely a causal or passing reference. It is neither a basic document nor a material on which the order of detention is primarily based, nor is it the pith & substance of primary facts on which the order of detention is primarily based, nor is it the pith & substance of primary facts on which the grounds of detention have been formulated. Indeed, in our view, it is more in the nature of a subsidiary fact in the pending investigation in the offences punishable under the Indian Penal Code and the Foreign Exchange Regulations Act. In the view that we have taken in regard to the nature of this document viz. panchanama dated 20th November, 1992, there is no substance even in the second limb of the first contention raised by Mr. Karmali. This conclusion of ours is independent of the provisions of section 5-A of the COFEPOSA Act." 23. It is also very important to refere to the observations of Hon'ble Sri Das, J., in the decision of the Supreme Court in Tarapada De and others v. The State of West Bengal, . In para 11, it has been observed thus : "The same important questions have been raised in this appeal by 100 detenu against an order of a Bench of the Calcutta H.C. as were raised by the detenu in the appeal of the State of Bombay in which judgment has just been delivered. One additional point raised in this appeal was that

the fact that a large number of fresh orders of detention were made"overnight" indicates bad faith on the part of the authorities, for the authorities could not have applied their minds to each individual case. I am unable to accept this contention as correct. The authorities had already applied their minds to the suspected activities of each of the detenus & were satisfied that with a view to prevent them from doing some prejudicial act of a particular kind, it was necessary to make an order of detention against them under the local Acts. There being doubt as to the validity of the local Acts & the Preventive Detention Act having been passed in the meantime the question was to make a fresh order under the new Act. The minds of the authorities having already been made up as to the expediency of making an order of detention against them, an elaborate application of mind, such as is now suggested, does not appear to me to be necessary at all. I do not think there was any failure of duty on the part of the authorities which will establish bad faith on their part. In my view, for reasons stated in my judgment in the other appeal, there being no proof of any mala fides on the part of the authorities, no fundamental rights of the petitioners have been infringed. In the case of each of the detenus, apart from the common ground, there was one or more specific grounds of detention which are quite sufficient to enable the detenu concerned to make his representation. Therefore, the question of supplementary particulars does not arise at all. In my opinion the conclusions arrived at by Roxburgn, J., were correct & well founded & therefore, this appeal should be dismissed . ... Appeal dismissed." 24. In the aforesaid case also there is second detention order has been passed and the allegations of bad faith was rejected by the Supreme Court. Merely because second order was on the same day and the last document referred was received by the detaining authority on the same day will not create a presumption that there was non-application of mind and order passed mala fide. 25. In view of the above decision and discussion, based on this decision, we do not think that the detention order is vitiated by non-application of mind on piecemeal consideration of documents. As we observed earlier, identical orders have been passed against 10 persons. Some of the documents having no bearing on the case of the petitioner, it is immaterial that such document was received by the Detaining Authority on the date on which the order was signed and it cannot lead to conclusion that the Detaining Authority has passed the said order in casual and caviller manner without proper application of mind and the ground has not been formulated contemporaneously. 26. Based on the documents, the learned Counsel for the petitioner has advanced yet another argument that the Detaining Authority has considered the documents and materials piecemeal. This is again another side of the points discussed earlier. On the basis of the above decision, this limb of argument of the Counsel for the petitioner falls to the ground. 27. The next point is point No. 3. It has been argued by the Counsel for the petitioner Mr. Maqsood Khan that certain documents which has been asked for has not been supplied and supplied documents were not legible for making effective representation. We have to consider in detail this ground with reference to the pleadings of the parties. The petitioner has raised his contention on the ground No. 8 of the writ petition. He submits that the

detenu was on bail in 1996 for the period of 9 months granted by the learned Chief Metropolitan Magistrate, Bombay. The application for bail and order granting bail to the petitioner for the incident of 1994 was material and those documents were suppressed from the Detaining Authority. Those documents, even on demand were not supplied to the detenu. This has infringed his right to make representation as envisaged under Article 22(5) of the Constitution of India. 28. This allegation has been met by the respondent in reply filed by Jt. Secy. Government of India in Paragraph 6. It is stated therein that the subjective satisfaction arrived at is based only on the materials as listed in the list of documents relied upon and the same have been duly furnished to the petitioner. The documents which has been referred to in the para 8 in the writ petition has not been related to the petitioner and therefore, it was extraneous material and therefore, not relevant. In the circumstances, the petitioner cannot have any grievance. But the learned Counsel for the petitioner has argued that in view of the decision of this Court in Mohd. Hussan v. Secy. Govt. of Maharashta, reported in 1982 Cr. L.J. 1848, the documents requested for by the detenu has to be supplied even if it is not relevant. The learned Counsel drew our attention to the observation of the Division Bench of this Court in the aforesaid decision in para 17 : "We may therefore, summarise the law laid down by the Supreme Court on the point as follows :- (a) the copies of all the documents which are relied upon in or which form the basis of the grounds of detention must be supplied to the detenu along with the grounds of detention (b) the documents which are not relied upon or do not form the basis of the detention order but which are merely referred to casually and incidentally as and by way of narration of facts in the grounds of detention need not be supplied to the detenu (c) however, even such documents, if the detenu requests for the same have to be supplied to him for whether they are relevant to his defence or not is for the detenu to decide and not for the detaining authority to judge." 29. The learned Counsel for the petitioner also brought to our notice decision of the Supreme Court by S. Murtaza Fazal and A. Varadarajan, AIR 1979 SC 1047. 30. It is true that as per the norms laid down by this Court, the documents which are not related or was not forming the basis of the detention order, but which are merely referred to casually and incidentally as and by way of narration of facts of grounds of detention, need not be furnished to the detenu such documents. But if demanded by the detenu, then it has to be supplied to him irrespective whether they are relevant or irrelevant. We quite see the substance of contention of the learned Counsel. As averred in reply affidavit by Jt. Secy., Government of India, the documents relating to bail application and order granting bail to the petitioner has not been even casually referred to in the grounds of detention. Therefore, we find that merely demand of some documents which are not referred to even casually and they are not relevant at all with regard to the ground of detention, cannot be insisted upon by the petitioner and consequently non supply of those documents, in our view, does not vitiate the order of detention as it does not cause any prejudice to the petitioner. In view of this, this point also we have to hold against the petitioner. 31. Another limb of argument of Shri Maqsood Khan with regard to the documents which were supplied to the

petitioner in language not known to him. The document supplied to him was in Gujarathi which is not known to the detenu. The petitioner also contended that even the Detaining Authority does not know the language of Gujarathi. Therefore, it cannot be said that the Detaining Authority has passed detention order after having subjectively satisfied. In short, what is pleaded by the petitioner was that the Detaining Authority does now know the script of Marathi and Gujarathi. The documents containing at page Nos. 589, 995, 996, 961, 962, 3818 and the documents at page Nos. 1395, 1396, 1397 of the compilation of documents are in Marathi language. Unless it is translated in English, the Detaining Authority was not in the position to understand those documents. Therefore, the Sponsoring Authority must have supplied English Translation of these documents to the Detaining Authority in English in which case, according to the Counsel for the petitioner, petitioner is also entitled to such copies of translation in English language of those documents. Therefore, it is imperative on the part of the Detaining Authority to submit translation of those documents to the petitioner. Failure to do so shall vitiate the detention order. 32. Reply of the respondent in this regard is that the pages referred to by the petitioner in this writ petition as above, page 589 was already in English language and can be understood by the Detaining Authority. Similarly page 1397 which is prescription of medicines which gives name of medicines in English and English translation of pages 1395 and 1396 are available on page Nos. 3826 and 3827 respectively in the compilation. Therefore, the ground taken by the petitioner in this regard has no substance. We find that the aforesaid ground has been satisfactorily explained by the Joint Secretary. 33. Another objection also we have to dispose of along with this. Certain pages of the order is not legible. Certain documents supplied to the petitioner is not legible particularly pages 49, 51, 344, 388, 487, 488, 496, 564 etc. In reply it is stated by the respondent that those documents are not illegible as alleged. In fact the petitioner has acknowledged the receipt of these documents as legible copies. Therefore, there is no merit in the contention of the petitioner. We find that this explanation also is satisfactory and does not affect the detention order. So also the case of legibility of the photographs supplied to the detenu, the respondent denied the allegations. Respondent's case is that though the photographs are not as good as original, it cannot be said that those are totally illegible. Those photographs are of those, familiar to the petitioner as they are of the co-accused and account holders. However, no prejudice is said to have been caused to the detenu on this count. The point No. 3 is disposed of accordingly. 34. Further point is with regard to the delay in executing the detention order. It has come out that the detention order was passed on 3-2-1997 and the petitioner was arrested only on 27-11-1997. Petitioner submits that this delay vitiates the detention order. It has come out in the affidavits filed by the respondent that the detenu was absconding and several attempts were made to serve the detention order on him which were proved to be futile. At last the authorities had to move a petition before the Court for cancellation of his bail and then only the petitioner could be served the detention order. The delay thus caused only on account of the petitioner and as such the detention order does not vitiate on that account. 35.

Regarding the last point, Mr. Maqsood Khan submits that there is no nexus between the detention order and prejudicial activities. The petitioner was arrested twice by the Enforcement Directorate in 1994, first on 30-9-1994 in connection with the seizure of 27,70,000/- and was released on bail on 4-10-1994 on strict conditions. Thereafter he was again arrested on 6-10-1994 in respect of seizure of 10 lakhs from Shri Champalal Narsingnmal Jain. Jain and he was released on bail on 8-10-1994. On third time he was arrested on 9-5-1996 with mala fide intention and detention order was passed on 3-2-1997. Therefore, Counsel for the petitioner Mr. Maqsood Khan submits that the very nexus of live link is snapped between the prejudicial activities and the passing of the detention order. He also submits that he was released on bail in 1996 and he was continued to remain in bail for 9 months. Therefore, he did not have any opportunity to continue this prejudicial activities and order of detention in that context is mala fide. He cited various decisions of the Supreme Court to bring home his argument. The learned Counsel for Union of India Mr. R.M. Agarwal brought to our notice various details of steps taken by detaining authority in which Jt. Secretary, Government of India, to bring out the circumstances necessitating passing of the detention order. Para 7 of the reply in this context is profitable to be extracted here :- "As regards averments in para 9 of the petition, it is submitted that consequent to the actions initiated in the case of transfer of foreign exchange of a straggering amount of more than Rs. 469 crores involving S/Shri. Harshad Mehta, Sanjay Udeshi, Mahendra Sanklecha, Dhankumar Shah, Nilesh Trivedi, Dinesh Bhuva etc. it was observed that the petitioner was one of the persons who made payments to Shri Dinesh Bhuva, Shri Harshad Mehta for transferring the same outside India under the guise of fake import documents. Based on the above information, the residential premises of the petitioner were searched on 9-5-96 as a result of which Indian currency of Rs. 80,000/- was recovered and seized under panchanama. The statement of the petitioner was recorded on 9-5-96 in which the petitioner has admitted having paid amounts totalling to Rs. 110 crores to S/Shri Harshad Mehta, Mahendra Sanklecha, Dinesh Bhuva for the purpose of transferring the same outside India through Hawala channel, that the equivalent amount of Rs. 110 crores in U.S. Dollars comes to approx. 30 Million U.S. Dollars; that as per their understanding (including the petitioner) with Shri Harshad Mehta and Shri Dinesh Bhuva, the petitioner also benefitted to the tune of Rs. 45 lakhs by way of commission and out of that amount viz. 45 lakhs, the petitioner had paid commission to Shri Mahendra Sanklecha, his close associate." 36. In the additional reply affidavit filed by Sri. S.L.J. Gaylot for and on behalf of the Detaining Authority and Sponsoring Authority also it is stated in para 4 that the live link has not been snapped. The Sponsoring Authority was investigating the multicrore import scam since February, 1996 and the involvement of detenus is also spread over till February, 1996. The materials are available to show that the petitioner still possesses a threat of propensity and potentiality in continuing prejudicial activities. It has come out in the statements made by Dinesh Buva and Harshad Mehta with whom the detenu had transactions, had admitted having received amounts from detenue and others for transfer of funds against bogus import

documents till February, 1996. The statement made by Harshad Mehta on 12-6-1996 stated that N.M. and Deepak Melwani were working as Financiers of Dinesh Buva and Mehta. Advisory Board also has opined that there is sufficient cause for preventive detention against the petitioner. The detaining authority has relied upon the statement of Sanjay Udeshi to hold that the petitioner still has not lost the propensity and potentiality to continue Hawala transactions. Affidavit filed on behalf of the detaining authority and Sponsoring Authority discloses ample circumstances to indicate the existence of live link of the prejudicial activities and the clamping of detention order is not completely snapped. It may be pointed out that the petitioner himself admitted in his statement that on 3 occasions he was arrested for F.E.R.A. violation apart from his arrest on 30-9-1994, 6-10-1994, 10-5-1996. According to us those circumstances are relevant and valid so far as the Detaining Authority is concerned to form his subjective satisfaction. Sufficiency of such circumstances, however, is not at all matter for our consideration. On the perusal of the affidavit, we are quite satisfied that there is sufficient reason for the detaining authority for clamping the detention order against the petitioners. In these circumstances, all the four points are found against the petitioner and we find that no ground has been made out on behalf of the petitioner to quash the detention order. 37. In these circumstances, we find no reason to interfere in the order passed by the Detaining Authority. Writ petition fail and are dismissed. Rule discharged. Certified copy expedited. 38. Writ petition dismissed.