# Union Of India & Anr vs Shrimati Chaya Ghoshal & Anr on 13 December, 2004

**Equivalent citations: AIR 2005 SUPREME COURT 428, 2005 (10) SCC 97, 2005 AIR SCW 6163, 2004 AIR SCW 6999, 2006 (1) AIR JHAR R 419, (2005) 25 ALLINDCAS 114 (SC), 2006 ALL MR(CRI) 560, 2006 (1) SCC (CRI) 257, 2005 (1) SRJ 499, 2005 (9) SCALE 531, 2005 (13) SCC 422, 2005 (8) SLT 753, 2004 (7) SLT 504, 2005 CRILR(SC&MP) 129, 2006 (1) SRJ 594, 2006 CRILR(SC MAH GUJ) 8, 2005 (2) CALCRILR 272, 2005 ALL MR(CRI) 500, 2005 (25) ALLINDCAS 114, 2004 (10) SCALE 375, 2006 (2) SCC (CRI) 257, (2006) 1 JCR 33 (SC), 2006 CRILR(SC&MP) 8, (2006) 37 ALLINDCAS 68 (SC), 2006 CHANDLR(CIV&CRI) 442, (2005) 1 EFR 436, (2005) 31 OCR 799, (2005) 2 RAJ CRI C 403, (2005) 1 RECCRIR 280, (2005) 1 ALLCRIR 27, (2004) 10 SCALE 375, (2005) 51 ALLCRIC 282, (2005) 1 CHANDCRIC 75, (2005) 1 ALLCRILR 464, (2005) 1 SUPREME 875, (2006) 1 EASTCRIC 186, (2006) 33 OCR 74, (2006) 1 RECCRIR 884, (2006) 54 ALLCRIC 308, (2006) 1 ALLCRILR 708, (2005) 4 CURCRIR 286, (2005) 7 SUPREME 774, (2005) 1 CRIMES 327, (2006) 1 RAJ CRI C 115, (2006) 2 RAJ LW 1242, (2006) 2 SCJ 610, (2006) 1 ALLCRIR 273, (2005) 9 SCALE 531, (2005) 4 CRIMES 279, (2004) 117 ECR 1050, 2006 (2) ANDHLT(CRI) 13 SC, (2006) 2 ANDHLT(CRI) 13**

**Author: Arijit Pasayat**

**Bench: Arijit Pasayat, S.H. Kapadia**

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           CASE NO.:
Appeal (crl.)  1474 of 2004

PETITIONER:
Union of India & Anr.

RESPONDENT:
Shrimati Chaya Ghoshal & Anr.

DATE OF JUDGMENT: 13/12/2004

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT, J.

Union of India and the Joint Secretary(COFEPOSA), Government of India, Ministry of Finance, Department of Revenue, (hereinafter referred to as the 'detaining authority') call in question legality of the judgment rendered by the Division Bench of the Calcutta High Court quashing the order of detention passed by the appellant No. 2 under Section 3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the 'COFEPOSA') directing detention of Rajen Ghosal(hereinafter referred to as the 'detenu').

A Habeas Corpus Writ Petition under Article 226 of the Constitution of India, 1950 (in short the 'Constitution') was filed by the respondent No. 1, the wife of the detenu. The order of detention was primarily based on the ground that on the basis of information received on 8.1.2002 by the Special Investigation Branch, Kolkata Customs, seven containers of (7 x 20') and one container of (1 x 40') were offloaded, from the vessel of Vishakapatnam Port were detained and examined. The allegation was that few Kolkata based exporters have exported on 5.1.2002 readymade garments, ball pens and side rubber wheels grossly mis-declaring the quantity, description and value with an ulterior motive to avail undue drawback worth crores of rupees. Detenu who was the proprietor of M/s. Shyam Sunder Enterprises had exported some of the containers. After opening the consignments, substantial shortage in quantities were detected. It appeared that the goods were highly over invoiced and even mis-declared in respect of description of certain items. There was grave difference in the actual quantity and the quantity of garments and ball pens and side rubber wheels that were to be exported with that of those articles which were actually found in the container at the port. It was concluded that all these were done with the sole intention of getting huge amount of foreign currency. Investigations were done and a licenced clearing agent was interrogated and his statement was recorded under Section 108 of the Customs Act, 1962 (in short the 'Customs Act'). It appears that one Shri Anil Kumar Mahensaria was the brain behind the acts and the detenu was deeply involved in the concerned acts. Residence of the detenu was searched and he was arrested. He was interrogated at length about his accomplicity in the matter. He clearly stated that he was a person of limited means and had obtained Importer Exporter Code No. (in short the 'IEC'). He had allowed the same to be used and was only lending his Code for petty sums. The detenu was produced before the Chief Judicial Magistrate, Kolkata who remanded him to the judicial custody. During his detention further statements were recorded. Detenu was released on bail on 11th September, 2002. On the basis of the materials collected, it was felt that with a view to prevent him from continuing the illegal activities he was to be detained under COFEPOSA. The order of detention was passed on 20.11.2002 and he was arrested on 17.12.2002. The order of detention and the grounds of detention were duly served and he was made aware of his right to make representations to the Central Government and the Detaining Authority and also the Advisory Board. The representations made by the detenu were rejected. The order of detention was questioned by the respondent no.1 on several grounds; firstly it was submitted that there was unusual delay in passing the order of detention. The investigation process had started in January, 2002 but the order of detention was passed in November, 2002. After his release on bail there was nothing to show that he had continued to indulge in prejudicial activities of smuggling. Further there was unusual delay in executing the order of detention. Only one incident was referred in the grounds of detention to justify his detention. There was nothing to demonstrate continuing criminality and culpability to continue such action in future. There was non- application of mind while taking the decision to detain the detenu. Irrelevant materials were taken into consideration. Materials which were in the possession of the sponsoring

authority were not placed before the Detaining Authority. In any event there was unusual delay in disposing of the representations and there was no independent consideration by the Central Govt. as required under Section 11 of the COFEPOSA. The stand was opposed by the Detaining Authority. The counter affidavit was filed. A rejoinder was filed by the writ petitioner purportedly with a view to clarify some of the statements made in the counter affidavit. The High Court found that there was no unusual delay in passing the order of detention. But it was held that there was undue delay in initiating the process i.e. the proposal for detention by the sponsoring authority. It was held that there was unexplained delay in passing the order of detention. It was also held that there was unusual delay in executing the order of detention. While the other pleas of the detenu were rejected, it was observed that there was unexplained delay in disposing of the representations and the solitary instance highlighted by the Detaining Authority was not sufficient to justify the order of detention. The rejection of representation by Central Government was without application of mind.

Aggrieved by such judgment of the High Court, as noted above, this Appeal has been filed. It was submitted by the learned counsel appearing for the appellants that the High Court did not take note of the various relevant factors and on presumptions adverse inferences and surmises have been drawn. Having accepted that the investigation was going on and there was delay in completion of the investigation due to filing of Writ Petitions by the detenu and interim orders passed, a contrary view should not have been taken to hold that there was unusual delay in passing the order of detention. Similarly it was submitted that in spite of best efforts the detenu could not be apprehended and after about three weeks of sincere efforts he was arrested. That cannot be termed as unusual delay in executing the order of detention. The High Court attached undue importance to the fact that after the release on bail there was no allegation of the detenu indulging in any objectionable activity. It is the impact of the act and not the number of infractions which is relevant. Finally there was no unusual delay in disposing of the representations and the view of the High Court, that the Central Government had not in fact applied its independent mind and had merely rejected the representation on the ground that the Detaining Authority had rejected it, is not factually correct.

In response learned counsel appearing for the detenu and the respondent No. 1 submitted that the High Court had analysed the factual position in great detail. Allegations regarding unexplained delay were not refuted specifically and bald denials were not sufficient, particularly when a man's liberty and freedom were in issue. No material was placed to substantiate the stand taken about the procedure followed and steps taken. It was submitted that the judgment of the High Court is based on appreciation of the factual position by applying correct law. It was submitted that as observed by this courts even representation to President of the country is sufficient. In other words, rejection of representation by the detaining authority cannot be a ground of rejection by Central Government.

It is submitted that revocation under Section 11 can be done by the Central Government, independent application of mind by it was necessary.

Section 11(1) of COFEPOSA reads as follows:

> "11. Revocation of detention orders - (1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897, a detention order may, at any time, be revoked or modified -
>
> (a) notwithstanding that the order has been made by an officer of a State Government, by that State Government or by the Central Government;
>
> (b) notwithstanding that the order has been made by an officer of the Central Government, or by a State Government by the Central Government."

In any event, it was submitted, the detenu was released on 23.8.2003 and more than one year has passed, the detenu had suffered detention for more than eight months and after considerable length of time it would not be proper to send him back.

Before dealing with rival submissions, it would be appropriate to deal with the purpose and intent of preventive detention. Preventive detention is an anticipatory measure and does not relate to an offence, while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the Executive is convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the concerned law. The action of Executive in detaining a person being only precautionary, normally the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to detention. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance, with great latitude in the exercise of its discretion. The Detaining Authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty of citizens would loose all their meanings provide the justification for the laws of prevention detention. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State or corroding financial base provides grounds for satisfaction for a reasonable prognostication of possible future manifestations of similar propensities on the part of the offender. This jurisdiction has at times been even called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment for individual liberty. "To, lose our country by a scrupulous adherence to the written law" said Thomas Jefferson "would be to lose the law itself, with life, liberty and all those who are enjoying with us, thus absurdly sacrificing the end to the needs". This, no doubt, is the theoretical jurisdictional justification for the law enabling prevention detention. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other.

The constitutional philosophy of personal liberty is an idealistic view, the curtailment of liberty for reasons of States' security, public order, disruption of national economic discipline etc. being envisaged as a necessary evil to be administered under strict constitutional restrictions. In Smt. Ichhu Devi v. Union of India (AIR 1980 SC 1983), this judicial commitment was highlighted in the following words:

> "The Court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade".
>
> "This is an area where the Court has been most strict and scrupulous in ensuring observance with the requirement of the law and even where a requirement of the law is breached in the slightest measure, the Court has not hesitated to strike down the order of detention".

In Vijay Narain Singh v. State of Bihar (AIR 1984 SC 1334), Justice Chinnappa Reddy in his concurring majority view said:

> ".....I do not agree with the view that those who are responsible for the national security or for the maintenance of public order must be the sole Judges of what the national security or public requires. It is too perilous a proposition. Our Constitution does not give as carte blanche to any organ of the State to be the sole arbiter in such matter....."

[Page 1336 (of AIR)] ".....There are two sentinels, one at either end.

The legislature is required to mark the law circumscribing the limits within which persons may be preventively detained and providing for safeguards prescribed by the Constitution and the Courts are required to examine, when demanded, whether there has been any excessive detention, that is whether the limits set by the Constitution and the legislature have been transgressed.....".

In Hem Lall Bhandari v. State of Sikkim (AIR 1987 SC 762 at page 766), it was observed:

> "It is not permissible in matters relating to the personal liberty and freedom of a citizen to take either a liberal or a generous view of the lapses on the part of the officers.....".

In Sunil Fulchand Shah v. Union Of India and Ors. (2000 (3) SCC

409) a Constitution Bench of this Court observed that a person may try to abscond and thereafter take a stand that period for which detention was directed is over and, therefore, order of detention is infructuous. It was clearly held that the same plea even if raised deserved to be rejected as without substance. It should all the more be so when the detenu stalled the service of the order and/or detention in custody by obtaining orders of Court.

So far as the pivotal question whether there was delay in disposal of the representation is concerned, same has to be considered in the background of Article 22(5) of the Constitution. A constitutional protection is given to every detenu which mandates the grant of liberty to the detenu to make a representation against detention, as imperated in Article 22(5) of the Constitution. It also imperates the authority to whom the representation is addressed to deal with the same with utmost expedition. The representation is to be considered in its right perspective keeping in view the fact that the detention of the detenu is based on subjective satisfaction of the authority concerned, and infringement of the constitutional right conferred under Article 22(5) invalidates the detention order. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. The stringency and concern of the judicial vigilance that is needed was aptly described in the following words in Thomas Pacham Dales' case: (1881 (6) QBD 376:

> "Then comes the question upon the habeas corpus. It is a general rule, which has always been acted upon by the Courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process with extreme regularity the Court will not allow the imprisonment to continue."

Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely needed to examine the question of illegal detention with utmost promptitude. The writ of habeas corpus is a device of this nature. Blackstone called it "the great and efficacious writ in all manner of illegal confinement". The writ has been described as a writ of right which is grantable ex dobito justitae. Though a writ of right, it is not a writ of course. The applicant must show a prima facie case of his unlawful detention. Once, however, he shows such a cause and the return is not good and sufficient, he is entitled to this writ as of right.

In case of preventive detention no offence is proved, nor any charge is formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. (See Rex v. Nallidev (1917 AC 260); Mr. Kubic Dariusz v. Union of India and others (AIR 1990 SC 605). But at the same time, a person's greatest of human freedoms, i.e., personal liberty is deprived, and, therefore, the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however, technical is mandatory. The compulsions of the primordial need to maintain order in society, without which enjoyment of all rights, including the right of personal liberty would lose all their meanings, are the true justifications for the laws of preventive detention. This jurisdiction has been described as a "jurisdiction of suspicion", and the compulsions to preserve the values of freedom of a democratic society and social order sometimes merit the curtailment of the individual liberty. (See Ayya alias Ayub v. State of U.P. and another (AIR 1989 SC 364). To lose our country by a scrupulous adherence to the written law, said Thomas Jafferson, would be to lose the law, absurdly sacrificing the end to the means. No law is an end itself and the curtailment of liberty for reasons of State's security and

national economic discipline as a necessary evil has to be administered under strict constitutional restrictions. No carte blanche is given to any organ of the State to be the sole arbiter in such matters.

Coming to the question whether the representation to the President of India meets with the requirement of law it has to be noted that in Raghavendra Singh v. Superintendent, District Jail, Kanpur and Ors. (1986 (1) SCC 650) and Rumana Begum v. State of Andhra Pradesh and Anr. (1993 Supp (2) SCC 341) it was held that a representation to the President of India or the Governor, as the case may be, would amount to representation to the Central Government and the State Government respectively. But this cannot be allowed to create a smokescreen by an unscrupulous detenu to take the authorities by surprise, acting surreptitiously or with ulterior motives. Where the order (grounds) of detention specifically indicate the authority to whom the representation is to be made, such indication is also part of the move to facilitate an expeditious consideration of the representations actually made.

While dealing with a habeas corpus application undue importance is not to be attached to technicalities, but at the same time where the court is satisfied that an attempt has been made to deflect the course of justice by letting loose red herrings the Court has to take serious note of unclean approach. Whenever a representation is made to the President or the Governor instead of the indicated authorities, it is but natural that the representation should indicate as to why the representation was made to the President or the Governor and not the indicated authorities. It should also be clearly indicated as to whom the representation has been made specifically. The President as well as the Governor, no doubt are constitutional Heads of the respective Governments but day to day administration at respective levels are carried on by the Heads of the Department-Ministries concerned and designated officers who alone are ultimately responsible and accountable for the action taken or to be taken in a given case. If really the citizen concerned genuinely and honestly felt or is interested in getting an expeditious consideration or disposal of his grievance, he would and should honestly approach the really concerned authorities and would not adopt any dubious devices with the sole aim of deliberately creating a situation for delay in consideration and cry for relief on his own manipulated ground, by directing his representation to an authority which is not directly/immediately concerned with such consideration.

Where, however, a person alleging infraction of personal liberty tries to act in a manner which is more aimed at deflecting the course of justice than for protection of his personal right, the Court has to make a deliberate balancing of the fact situation to ensure that the mere factum of some delay alone is made use of to grant relief. If a fraud has been practiced or perpetrated that may in a given case nullify the cherished goal of protecting personal liberty, which obligated this Court to device guidelines to ensure such protection by balancing individual rights and the interests of the nation, as well.

In R. Keshava v. M.B. Prakash and Ors. (2001 (2) SCC 145) it was observed by this Court as follows:

> "We are satisfied that the detenu in this case was apprised of his right to make representation to the appropriate Government/authorities against his order of detention as mandated in Article 22 (5) of the Constitution. Despite knowledge, the

> detenu did not avail of the opportunity. Instead of making a representation to the appropriate Government or the confirming authority, the detenu chose to address a representation to the Advisory Board alone even without a request to send its copy to the authorities concerned under the Act. In the absence of representation or the knowledge of the representation having been made by the detenu, the appropriate Government was justified in confirming the order of detention on perusal of record and documents excluding the representation made by the detenu to the Advisory Board. For this alleged failure of the appropriate Government, the order of detention of the appropriate Government is neither rendered unconstitutional nor illegal".

Aforesaid aspects were highlighted in Union of India v. Paul Manickam (2003 (8) SCC 342).

On bare perusal of the High Court's judgment it appears that the High Court had not properly appreciated the factual scenario. It had in fact noted that there was some delay in passing the order of detention. It referred to the Writ Petitions filed before the Calcutta High Court and the orders passed in those cases. It also noted that the proposal was sent on 4.7.2002 and the statement of the detenu was recorded on 16.7.2002. The proposal for detention was considered by the Central Screening Committee on 18.9.2002 and after consideration of all relevant materials, the order of detention was passed on 20.11.2002. The details of the various steps taken were filed before the High Court. It appears that after the process of investigation started in January, 2002 consequent upon seizure of goods was on 24.1.2002. Writ Petition No. 145 of 2002 was filed in the Calcutta High Court and an interim order was passed staying further effect on the summons and maintenance of status quo of examination of goods. Reply was filed on 12.2.2002. Another Writ Petition No. 366 of 2002 was filed on behalf of the detenu on 20.2.2002. The High Court passed a direction for personal appearance of detenu on 28.2.2002. The date of personal appearance was adjourned to 5.3.2002. On 8.3.2002 the Writ Petition was dismissed for non-prosecution. Another application was filed by another concern. Thereafter various statements were recorded. The interim order passed on 29.1.2002 was vacated and the judgment was delivered on 8.5.2002; summons were issued to the detenu and information was sought for in terms of the High Court's order dated 6.5.2002. In between Writ Petition No. 573 of 2002 was filed. Summons were issued and the matter was further heard by the Calcutta High Court. Ultimately the detenu was traced on 16.7.2002 and statements were thereafter recorded and after he was remanded to judicial custody, his statements were recorded. Show cause notices were issued to the detenu and the proprietor of the concern and Anil Kumar and Clearing House Agent. On 9.8.2002 the detenu retracted from his earlier statement. Finally the Central Screening Committee considered the proposal on 18.9.2002. It was referred to the Detaining Authority and after discussions and supply of documents in October, 2002 the records, which were voluminous were placed before the Detaining Authority who asked for orders passed by the Chief Judicial Magistrate dated 2.9.2002 and 11.9.2002. Copies of orders of the Chief Judicial Magistrate regarding extension of judicial custody and grant of bail were received on 15.11.2002 and the order of detention was passed on 20.11.2002. Above recital of the factual scenario clearly goes to show that there was really delay much less unusual in passing the order of detention. On that score, the High Court's findings prove to be contrary and indefensible.

The other plea which found favour with the High Court related to alleged unusual delay in execution of the order of detention. Here again the High Court had fallen into grave error in holding that there was no material justifying the delay. It is to be noted that the order of detenton was passed on 20.11.2002 and the arrest was done on 17.12.2002. From the materials on record it appears that after the order of detention was passed efforts were made to arrest the detenu. In fact the police authorities were requested to co-operate in the matter and the detention order was sent to the office of the Commissioner of Police Lal Bazar Police Head Quarters on 20.11.2002. Identification particulars including photographs of the detenu as required by the police for execution of the order were sent to the Commissioner of Police on 26.11.2002. In spite of keeping the house under surveillance by the concerned officers and the police officers, he could not be traced. Finally he was arrested on 27.12.2002. It is not a case where there is unusual gap between the date of the order of detention and the actual arrest. The various steps taken by the authorities as noted above clearly indicate that all possible efforts were being taken to arrest the detenu, but he successfully evaded arrest. The High Court was not justified in coming to the conclusion that there was unusual delay in executing the order of detention.

So far as the finding of the High Court that there was only one incident is really a conclusion based on erroneous premises. It is not number of acts which determine the question as to whether detention is warranted. It is the impact of the act, the factual position as highlighted goes to show that the financial consequences were enormous and ran to crores of rupees, as alleged by the Detaining Authority. The High Court seems to have been swayed away that there was only one incident and none after release on bail. The approach was not certainly correct and the judgment on that score also is vulnerable. At the cost of repetition it may be said that it is not the number of acts which is material, it is the impact and effect of the act which is determinative. The High Court's conclusions in this regard are therefore not sustainable.

Residual question is whether there was unusual delay in disposing of the representation and whether the Central government had not applied its mind to the representation independently. The High Court has again failed to notice that materials on record clearly show that there was independent application of mind by the Central Government It did not reject the representation merely on the ground that the Detaining Authority had rejected it. The order of rejection itself makes this position clear. From the details which were submitted before the High Court it appears that there were two representations each addressed to the Detaining Authority and the Central Government, which were considered and rejected.

In law the President or the Governor, as the case may be, cannot be impleaded as a party. Therefore, there is no question of their explaining as to what happened after representation was received by the office of the President or the Governor, as the case may be. The Central Government or the Detaining Authority are also not authorized and competent in law to say what happened after representation is received in the office of the President or the Governor, as the case may be. The Detaining Authority or the concerned authority of the Central Government has to explain the action taken by the said authority after receipt of the representation by it. The factual position also does not justify the conclusion drawn by the High Court about the unexplained delay in disposal of the representation and/or non-application of the mind by the Central Government. Looked at from any

angle the order of the High Court is unsustainable and it is therefore set aside.

Both the authorities have dealt with the representation with utmost expedition. A plea appears to have been taken before the High Court that there was no explanation offered for keeping the representation unattended after its receipt. It has to be noted that the Detaining Authority and/or the Central Government and/or the State Government, as the case may be, have to explain the action taken on the representation after it had reached the concerned authority. The representation should be received by a person authorized to receive it. The Detaining Authority or the concerned authority of the Central Government may have authorized some members of the staff to receive representation or any official document. If the representation is handed over to or served on a person who is not authorized to receive it the concerned authority cannot be held responsible if any delay is occasioned on account of inaction by such unauthorized person. If any dispute is raised about the authority of the person to whom the representation is claimed to have been handed over or served, the person making the representation on behalf of the detenu or the detenu, as the case may be, has to establish as to on whom the service was effected and he had authority to receive the document in question.

The residual plea about the desirability to continue the detention and whether there is any live link between the alleged act which formed the foundation for detention continuing is a matter for the Detaining Authority to decide. Let a decision in this regard be taken within a month and order in that regard be served on the detenu. If the Detaining Authority is of the view that further continuance will be desirable, the detenu shall surrender to serve the remainder the period of detention as was indicated in the order of detention. If the Detaining Authority feels that it is not desirable then in that event the detenu need not surrender.

The appeal is allowed and disposed of in the aforesaid terms.