# A. Sowkath Ali vs Union Of India & Ors on 1 August, 2000

## Equivalent citations: AIR 2000 SUPREME COURT 2662, 2000 AIR SCW 2828, 2001 (1) UJ (SC) 43, 2000 SCC(CRI) 1304, (2000) 8 JT 385 (SC), 2000 (10) SRJ 449, 2000 (5) SCALE 372, 2000 (3) LRI 695, 2000 (7) SCC 148, 2000 CRILR(SC&MP) 568, 2000 CRILR(SC MAH GUJ) 568, (2000) 5 SUPREME 318, 2000 CHANDLR(CIV&CRI) 11, (1999) 2 KER LJ 390, (1999) 2 KER LT 806, (1999) 3 RECCRIR 799, (2001) SC CR R 63, (2000) 3 EASTCRIC 995, (2000) MAD LJ(CRI) 776, (2000) 4 PAT LJR 113, (2000) 3 RECCRIR 583, (2000) 158 TAXATION 409, (2000) 29 ALLCRIR 2147, (2000) 5 SCALE 372, (2000) 41 ALLCRIC 683, (2000) 2 CHANDCRIC 209, (2000) 3 CURCRIR 95, (1999) 2 ANDHLT(CRI) 375

## Bench: N.S.Hegde, A.P.Misra

PETITIONER:
A. SOWKATH ALI

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 01/08/2000

BENCH:
N.S.Hegde, A.P.Misra

JUDGMENT:

MISRA, J.

The petitioner-detenu challenges the detention order dated 23rd December, 1999 passed by the State of Tamil Nadu under Section 3(1)(i) and (ii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short COFEPOSA). The challenge is based on number of grounds though learned counsel for the petitioner confined his submissions mainly on one ground which we shall be referring later. The short facts are, the Customs Officers of Directorate of Revenue Intelligence on the 2nd June, 1999 intercepted two passengers by name N. Prabhakaran and Mohd. Ibrahim Abbas at Anna International Air Port, Chennai as they were about to board a flight to Singapore. On a search of both the persons foreign currencies and travelling cheques of large amount were recovered from both of them. On 7th November, 1999 one Saravanan was

apprehended and his statement was recorded. This statement implicated the petitioner which describes how he has concealed the foreign currencies in chappals and condoms and attempted to send the same out of India through the aforesaid Prabhakaran and Mohd. Ibrahim Abbas. On 26th November, 1999 detenu was summoned to appear before the Directorate of Revenue Intelligence where his statement was recorded. He is said to have stated that he had started a travelling agency by name Kurunji Travels in Chennai when he came in contact with the said Saravanan. There were two other persons belonging to Colombo and Singapore who have decided to export foreign currencies illegally out of India. On the basis of this confessional statement detenu was arrested on 27th November, 1999 when he was already a remand prisoner. During the period of remand on 23rd December, 1999 the aforesaid impugned detention order was passed against the petitioner.

The main and only ground pressed by Mr. B. Kumar, learned counsel for the petitioner is that the detention order is liable to be set aside as there has been a suppression of vital and important document by the sponsoring authority (custom authority) from it being placed before the detaining authority. Submission is, it is an obligation of the sponsoring authority to place all relevant documents before the detaining authority for him to form his subjective satisfaction. Non-placement of any of such relevant document vitiates the detention order. In support his submission is that sponsoring authority placed the confessional statements of the aforesaid two co-accused persons, namely, N. Prabhakaran and Mohd. Ibrahim Abbas before the detaining authority but did not place their retractions from the said confession. This being a vital document, having bearing on the issue of detention of the petitioner and which was likely to affect the mind of the detaining authority hence its non-placement invalidates the detention order passed against the detenu. The grounds of detention clearly reveals that satisfaction of the detaining authority is also based on the confessional statements dated 6th September, 1999 of both the aforesaid two co-accused. Their retracted statements clearly reveals that it was made involuntary which is also described in the very first bail application filed by them before the Magistrate on the 5th June, 1999.

When this case was taken up earlier, in reply to this stand taken by the petitioner in ground no. 9(2) a reply was made by the respondent no.1 (Central Government) in para 3(2) of its counter affidavit which averred the following:

> (2) Para 9(2): With regard to the contentions in this para, it is submitted that there has not any suppression of material before the Detaining Authority as alleged. The retractions made by Prabakaran and Mohammed Ibrahim Abbas in their bail applications were placed before the Detaining Authority and orders of detention were passed against them on 19.7.1999. The bail petitions dated 27.11.1999 and retraction dated 30.11.1999 of the detenu were also placed before the Detaining Authority. Therefore the allegation that materials have been suppressed and not placed before the Detaining Authority is incorrect. Hence the satisfaction is not vitiated.

Since this reply was vague, this Court on 2nd May, 2000 directed the Central Government to file a short affidavit clarifying, whether the retraction statements made by both the co-detenu, at the time of passing of the detention order against the present detenu, were placed or not by the sponsoring authority before the detaining authority. In pursuance to the same an additional affidavit is filed by

one Tarsem Lal, Deputy Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi. This affidavit records:-

> With regard to the averments made in para 9(2) of the writ petition it is further submitted that the retractions of the co-accused were not placed before the Detaining Authority at the time of passing Detention Order against the detenu. The same Detaining Authority who had passed Detention Order against the co-accused was well aware of the retractions made by the co-accused when their Detention Orders were relied upon while passing the Detention Order against the petitioner. Therefore, there appeared no necessity to place the retractions of the co-accused before the Detaining Authority as the Detention Order against the co-accused just a few days before the Detention Order was passed against the petitioner.

Perusal of this last affidavit reveals that retractions of the said two co- accused were not placed before the detaining authority while considering the detention of the petitioner. The reason given is, since the same detaining authority passed the detention order as against the said two co-accused he was well aware of the retraction made by the said two accused. In other words the sponsoring authority did not feel it necessary to place the retractions of the said two co-accused. This was more as stated in the affidavit, as only few days before the impugned detention order, the same detaining authority passed the detention order against the said two co- accused. The time regarding passing of these two detention orders, at this point may be clearly stated. The detention order passed against the two co- accused was on the 19th July, 1999 while the detention order passed against the present petitioner is dated 23rd December, 1999, i.e., the period between the two detention orders is more than five months. This is not in dispute that the two detention orders were passed by the same detaining authority.

Learned counsel for the petitioner relied on State of U.P. Vs. Kamal Kishore Saini, 1998 (1) SCC 287. This was a case of preventive detention under Section 3(2) of the National Security Act, 1980 in which this Court with reference to the subjective satisfaction of the detaining authority held that non-production of relevant materials before the detaining authority, which in this case was an application of the co-accused and his statement made in the bail application alleging his false implication was not placed before the detaining authority. It is held that the order of detention is invalid and illegal. This Court approved the following finding recorded by the High Court to the same effect:-

> The High Court, therefore, was justified in holding that the assertion made in the return that even if the material had been placed before the detaining authority, he would not have changed the subjective satisfaction as this has never been accepted as a correct proposition of law. It is incumbent to place all the vital materials before the detaining authority to enable him to come to a subjective satisfaction as to the passing of the order of detention as mandatorily required under the Act. This finding

of the High Court is quite in accordance with the decisions of this Court in the case of Asha Devi v. K. Shivraj and S. Gurdip Singh v. Union of India.

In M. Ahamedkutty Vs. Union of India and Anr., 1990 (2) SCC 1, this Court was considering the detention of a detenu also under COFEPOSA Act, 1974. In this case this Court held, bail application and bail orders constitute vital material. Its non-consideration by the detaining authority or non- supply of its copy to the detenu is violative of Article 22(5) of the Constitution of India and hence the detention order was held to be illegal. This Court holds:-

Considering the facts in the instant case, the bail application and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired, and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenus right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case.

Based on this decision submission is, non-placement of retracted statements of the two co-accused, before the detaining authority, as it being vital document, vitiates the detention order. Further, the additional affidavit of Tarsem Lal on behalf of the Union of India, is now clear that it was not placed because the same was within the knowledge of the detaining authority. Secondly, this fact that the detaining authority had the knowledge of the retracted statement connotes if this is accepted to have influenced the mind of the detaining authority then it was incumbent on the authorities to have supplied the same to the detenue.

Next reliance is also placed in Ahamed Nassar Vs. State of Tamil Nadu and Ors. 1999 (8) SCC 473. This Court in this case observed as under:-

So far as the stand of the respondent with reference to the advocates letter dated 19.4.1999 is concerned it cannot be held to be a justifiable stand. These technical objections must be shunned where a detenu is being dealt with under the preventive detention law. A man is to be detained in the prison based on the subjective satisfaction of the detaining authority. Every conceivable material which is relevant and vital which may have a bearing on the issue should be placed before the detaining authority. The sponsoring authority should not keep it back, based on his interpretation that it would not be of any help to a prospective detenu. The decision is not to be made by the sponsoring authority. The law on this subject is well settled; a detention order vitiates if any relevant document is not placed before the detaining

authority which reasonably could affect his decision.

Learned senior counsel for the State Mr. R. Mohan submits, all the relevant materials were placed before the detaining authority but mere non-placement of the retractions of the said two co-accused would not have any effect on the validity of the detention order. This is because since the detaining authority both for the petitioner and the said two co-accused being the same and while passing the detention order against the said two co- accused, the said retractions were placed before him thus he was aware of the same. Thus, it is submitted its non-placement would not prejudice the subjective satisfaction of the detaining authority. Secondly not withstanding this, the detaining authority since passed detention order against the said two accused separately, thus non-placement of retractions of the said two accused while considering the case of the petitioner which is a different satisfaction would have no effect or be of any consequence. Similarly, learned senior counsel for Union of India Mr. T.L.V. Iyer also supported the submission made on behalf of the State and reiterated strongly that any document relating to the detention of the co-accused while considering their detention specially when it culminated in passing the detention order against them would have no relevance while considering the case of the present petitioner.

Mr. Mohan, learned counsel for the State further submits, it is only those documents which are relied on by the detaining authority, would have any relevance or could be said to have prejudiced the detenu if copies of the same are not supplied to him. But in the present case, the detaining authority has not arrived at his subjective satisfaction based on the confessional statement made by the said two accused hence question of any prejudice does not arise. The reference of the confessional statement of the said two accused was only made as a narration of fact. He relies on Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr., 1981 (3) SCC 317. This was also a case under the COFEPOSA. This Court held:

Failure to supply the documents and materials which are only casually or passingly referred to in the course of narration of the facts in the grounds of detention and are not relied upon by the detaining authority in making detention order, held, would not render the detention illegal.

Next he relied on Abdul Sathar Ibrahim Manik Vs. Union of India and Ors. 1992 (1) SCC 1. This is a case under COFEPOSA, where detenu was already in jail. The question was whether the bail application made by the detenu, and an order of its rejection, if not placed before the detaining authority, what would have its effect. It was held, it would not amount to the suppression of relevant material on the facts of this case as the detaining authority was aware of the actual custody of the detenu. It also held non- supply of the said two documents to the detenu would also not vitiate the detention order since they were only referred to and not relied on by the detaining authority. This Court held:

In the instant case, the fact are different. In the counter affidavit it is clearly stated that the bail application and the order refusing bail were not there before the sponsoring authority. Therefore, they were not placed before the detaining authority. The grounds do not disclose that the detaining authority had relied upon any of these two documents. On the other hand as already noted the detaining authority mentioned in the grounds that it was aware that the detenu was in custody but there is every likelihood of his being released on bail. This itself shows that these documents were not before the authority. Therefore it cannot be said that the documents referred to and relied upon in the grounds were not supplied to the detenu..It is not necessary to refer to in detail various decisions of this Court wherein it has been clearly laid down that the documents referred to or relied upon in the grounds of detention only are to be supplied.

It will therefore be seen that failure to supply each and every document merely referred to and not relied upon will not amount to infringement of the rights guaranteed under Article 22(5) of the Constitution. We may of course add that whether it has also formed the material for arriving at the subjective satisfaction, depends upon the facts and grounds in each case. In the instant case we are satisfied that these two documents were not placed before the detaining authority nor they were referred to or relied upon.

Next reliance is on Mohd. Shakeel Wahid Ahmed Vs. State of Maharashtra and Ors. 1983 (2) SCC 392. This was a case, where this Court approved non-placement of the order passed by the Advisory Board of another detenu detained under an identical ground, in the same transaction to have any affect in the passing of a detention order against the other detenu. But this does not mean that non-placement of relevant documents in a case would also have no effect. In fact, it is not necessary to place any documents which is being relied for another detenu even in an identical case but when the sponsoring authority places any such document of another co- detenu, which is likely to prejudice the mind of the detaining authority and do not place the other document which inherently co-relates such document then in this context such a document become relevant which may have effect on the subjective satisfaction of the detaining authority.

Having considered the submission for the respondent, so far the case of Ummu Saleema (Supra) and Abdul Sathar (Supra), they were cases of non-supply of such documents which were only casually or passingly referred in the course of narration of facts but were not relied upon by the detaining authority in making the detention order. The law on this subject is well settled that it is only the documents referred to in the ground of detention and relied upon by the detaining authority, are to be supplied to the detenu and not what was casually and passingly referred therein. The facts in the present case are different about which, we shall be referring it in detail later. This is sufficed to say, the reference of the confessional statement of the two co-accused was not made merely by way of the narration of facts or casually. The

> question raised in the present case is, whether sponsoring authority was right in placing the confessional statements of the said two co-

accused, which were documents in their detention proceedings and, if placed, whether non placing of the retraction made by the said two accused which inherently co-relates the confessional statement, before the detaining authority, affects the subjective satisfaction of the detaining authority. The non-supply of any relevant documents to the detenu effects his right to make his representation hence is violative of Article 22(5) of the Constitution of India. But for the present, we are in this case considering a stage earlier, i.e., what should and what should not be placed before the sponsoring authority and consequentially on the facts of the present case the non-placement of the retraction does or does it not effect the subjective satisfaction of the detaining authority. Hence the said two decisions, on the facts of this case under consideration are not relevant.

Next reliance is in the case of Rajappa Neelakantan Vs. State of T.N. & Ors. ,2000 (2) SCALE 642. This case refers to the non-placement of a document which was relevant in the proceeding of another detenu. In that case what was not placed was the records of the proceedings of the co-detenu who was the co-traveller. The submission was, had those records being placed, the detaining authority would have come to a different conclusion. The Court held :

> We cannot appreciate the said contention for two reasons. First is that the detention order in respect of the present petitioner should be based principally on the facts centred on what he had done in collaboration with his co- traveller. In other words, if the detention order and the connected records relating to the co-traveller were to be placed before the detaining authority there could possibly be an apprehension that the detaining authority would be biased against the petitioner because of the various allegations contained therein. Second is that the detaining authority cannot be said to be totally ignorant of the fact that Radhakrishnan Prabhakaran was also detained under a separate order, for, the aforesaid detention order against Radhakrishnan Prabhakaran was passed by the same detaining authority just six days prior to the impugned detention order. So we do not see much force in the said ground raised now.
>
> This decision strongly states that the detention order of the petitioner should be based principally on the facts centered round the facts of his case not on the fact and proceedings of the other co-traveller. In fact, placing the record of the other co-traveller, if was made, there possible could be an apprehension that the detaining authority would be biased by what is said against the petitioner in those proceedings. The Court alternatively also holds that the detaining authority cannot be said to be totally ignorant about the detention of the co-traveller under a separate order as the same detaining authority passed the order just six days prior to the impugned detention order. It is the observation of the later portion of the said quotation on which strong reliance is made for another part of his submission, viz., even if not placed, as in the present case, as detaining authority was the same he was aware of that fact so no prejudice in formation of his opinion could be said to have been

caused because of its non-placement. So far to this later part, the facts of this case are distinguishable from our case as the difference of time between the two detention orders in the reported case was only six days, while in the present case it is more than five months.

Reverting to the facts of this case as we have observed above, it cannot be said that reference of the confessional statement of the co-accused was made either in a causal way or by way of narration of facts. We find in the grounds of detention, not only there is reference of the two co-accused persons but the confessional statements of both the said two co-accused were exhaustively recorded in the grounds of detention. We are quoting hereunder the part of the confessional statement made by both of the said two co-accused which formed part of the grounds of detention which reveals for itself, whether it was referred casually or as a narration of fact. The confessional statement as recorded of one of the co-accused Thiru Prabakaran is:

Thiru Prabakaran in his voluntary statement dated 3.6.99 inter alia stated that during the course of his job at Selection Air Travels, Chennai he came into contact with Thiru Saravanan; that Thiru Saravanan used to send persons often to Singapore and at times he himself used to visit Singapore; that about back Thiru Saravanan enquired whether he could go to Singapore and whether he was habituated in taking capsules; that on enquiry by him Thiru Saravanan informed that foreign currency would be made into small capsule form and covered with condom which had to be taken to Singapore by swallowing the same and handed over to the person named by Thiru Saravanan and for which Thiru Saravanan would give him Rs.8,000/-; that Thiru Saravanan informed him that he would send another person with him, who would explain everything to him, that according to Thiru Saravanans plan, Abbas met him on 2.6.99 at his office and took him to a room in Burka Lodge where Abbas taught him as to how to swallow each capsule by taking Fanta and Thiru Abbas also swallowed capsules along with him; that at that time Thiru Abbas gave him a pair of chappals informing him that the same were given by Thiru Saravanan and asked him to put them on and that foreign currencies were kept concealed in them; that earlier Thiru Saravanan had given money for purchase of new pant and shirts as he was going for the first time to Singapore and further he would give new chappals wherein you were going to keep concealed some foreign currency notes and would reach the chappals through Thiru Abbas and that whenever Thiru Saravanan visited Chennai, he used to stay at Victory Mansion at Triplicane;

that Thiru Saravanan did not have any other address at Chennai and he also did not know his Trichy address or your Trichy telephone number.

Similarly, the confessional statement recorded of the other co- accused, namely, Thiru Mohamed Ibrahim Abbas referred to in the ground of detention is also quoted hereunder:

> Thiru Mohamed Ibrahim Abbas in his statement dated 4.6.99 stated inter alia that he used to visit Singapore and bring in goods for sale at Chennai; that he visited Singapore twice in May; that on the second occasion when he was staying in Chennai, waiting to receive the sale proceeds of the goods sold by him, he met Thiru Kader of Colombo at the Mannady Mosque when he introduced Thiru Saravanan to him; that Thiru Saravanan told him that he would give a chance for visiting Singapore, Rs. 5,000 can be earned in a journey for a day or two and Thiru Saravanan would inform him the date of his journey to Singapore through the said Thiru Kader; that accordingly at the time of the third visit, when he contacted Thiru Kader on telephone, he asked him to book his tickets for journey from Chennai to Singapore on 2.6.99 and from Singapore to Chennai on 4.6.99 and to meet Thiru Saravanan at entrance of Burka Lodge at Mannady at 5.00 a.m. on 2.6.99 when he would be waiting there; that accordingly he met Thiru Saravanan and he took him to a room in that lodge where he had kept two big Fanta bottles and capsules containing foreign currency and taught him to swallow the said capsules; that as he was hesitant, Thiru Saravanan encouraged him saying that as he was well built, he could swallow the capsules; that Thiru Saravanan also informed that Thiru Prabakaran of Kurinji Travels also was to go with him and asked him to give 50 capsules to Thiru Prabakaran for him to swallow; that Thiru Saravanan also further informed him that he was having a pair of chappals and asked him to give them to Thiru Prabakaran and ask him to wear; that Thiru Saravanan asked him to immediately fetch Thiru Prabakaran in an auto, swallow the capsules and reach the airport in time and gave money for expenses, that Thiru Saravanan also informed him that at Singapore Airport a person would identity both of them by their pants and shirts and to whom both of them have to hand over the capsules and the chappals containing foreign currency; that the officers showed him a photo album saying that the said album belong to the family olf Tmt. Renuka of Triplicane and that he identified Thiru P. Saravanan inn two of the photographs and singed on them and informed that he did not know Thiru Saravanans address.

The following paragraph which is ground (1) {xvi} of the detention shows the link of the petitioner with the said two co-accused and inference adversely is drawn against the detenu based on their confessional statements which is apparent by the use of the following words, in the manner as set out above, which is quoted hereunder:

> by investing and arranging to send out of India the aforesaid foreign exchange through Tvl. Prabakaran and Mohamed Ibrahim Abbas in the manner as set out above, you have acted in a manner prejudicial to the conservation of foreign exchange. {Emphasis supplied} Finally, in para 4 of the grounds of detention it is recorded:-
>
> While arriving at the subjective satisfaction to detain you under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, the State Government have taken into consideration all the facts and materials referred to and

relied upon in these grounds mentioned above and also the statements, mahazars, etc. accompanying thereto.

Thus para 4 of the grounds of detention leaves no room of doubt and makes it absolutely clear that the State Government have taken into consideration and relied upon, all the facts and material referred to in the ground of detention mentioned above. When the ground of detention itself records that State Government has taken into consideration and relied upon what is stated in these grounds, which includes the confessional statement of the two co- accused persons, then it cannot be submitted, in passing the order of detention, the detaining authority has not relied on the same. Hence the sponsoring authority has placed the confessional statements and the detaining authority had relied upon the same. Thus, on the facts of this case the above decisions would have no application.

There can be no doubt, it was not necessary, while considering the case of the petitioner-detenu, to place all or any of the document which is relevant relied in the proceedings of a co-accused, but where the sponsoring authority opts out of his own volition to place any document of the other co- detenu, not merely as a narration of fact but reiterating in details the confession made by him, then it cannot be said it would not prejudice the case of the detenu. If this has been done it was incumbent for the sponsoring authority to have placed their retraction also. As held in Rajappa Neelakantan case (supra), the placement of document of other co-accused may prejudices the case of the petitioner. In the first place the same should not have been placed, but if placed, the confessional statement and the retraction, both constituting a composite relevant fact both should have been placed. If any one of the two documents alone is placed, without the other, it would affect the subjective satisfaction of the detaining authority. What was the necessity of reproducing the details of the confessional statement of another co-accused in the present case? If the sponsoring authority would not have placed this then possibly no legal grievance could have been made by the detenu. But once the sponsoring authority having chosen to place the confessional statement, then it was incumbent on it to place the retraction also made by them. In our considered opinion, its non-placement affects the subjective satisfaction of the detaining authority. This Court has time and again laid down that sponsoring authority should place all the relevant documents before the detaining authority. It should not withhold any such document based on his own opinion. All documents, which are relevant, which have bearing on the issue, which are likely to affect the mind of the detaining authority should be placed before him. Of course a document which has no link with the issue cannot be construed as relevant.

So far the submission that detaining authority in both being the same, presumption should be drawn that he was aware of the retraction and its non- placement would not affect his subjective satisfaction cannot be accepted, specially, firstly, where the difference between the two orders being more than five months and secondly such a

conjectural possibility should not be drawn in a preventive detention cases. It is difficult for any authority to remember each and every document which were on the file of the other co- detenu before passing the detention order. It would be too dangerous a proposition to accept to infer that he would have known it, specially when there is a gap of more than five months and where no such affidavit is filed by the detaining authority. How can another person speak about the mind of another person. So we have no hesitation to reject the same. In this context, alternative submission for the petitioner is, in case he remembered the retraction and this being relevant document in arriving at the subjective satisfaction, then it was the duty of the respondent authority to have supplied its copy to the detenu which has not been done in the present case. For all the aforesaid reasons we have no hesitation to hold the impugned detention order suffers from patent illegality.

Lastly, submission on behalf of the State is on the principle of severability based on Section 5A, which is quoted hereunder:

5A. Grounds of detention severable.- Where a person has been detained in pursuance of an order of detention under sub-section (1) of Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are (i) vague, (ii) non-existent, (iii) not relevant, (iv) not connected or not proximately connected with such person, or (v) invalid for any other reason whatsoever, and it is not therefore possible to hold that the Government or officer making such order would have satisfied as provided in sub-section (1) of Section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the3 said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds.

This stipulates when detention order is based on two or more grounds then such order of detention shall be deemed to have been made separately. Thus such detention order shall not be deemed to be invalid on the ground that one of such grounds is vague, non-existent, not relevant or not proximately connected.

Reliance is placed on Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala & Ors., 1985 (Suppl.) SCC 144. This was a case where retraction of confession made by the detenu not referred to in the grounds of detention. This court in view of Section 5A held that detention order should not vitiate on the ground of non-application of mind if subjective satisfaction arrived at on the basis of other independent objective factors enumerated in the grounds. The Court held:

If even ignoring the facts stated in the confession by the detenu the inference can still be drawn from other independent and objective facts mentioned in the grounds, then the order of detention cannot be challenged merely by the rejection of the inference drawn from confession. In the present case the authorities came to the conclusion that the detenus were engaged in smuggling relying on several factors viz., the search and seizure in detenus room and recovery of gold biscuits, the detenus failure to explain the importation of those gold biscuits, the secretive manner in which the gold biscuits were kept, the connection with various dealers and the statements of the employees of the dealers that the detenus used to come with gold bars etc. These materials were in addition to the statements and confessions made by the detenus under Section 108 of the Customs Act. So even if those statements which were retracted as such could not be taken into consideration, there are other facts independent of the confessional statement as mentioned hereinbefore which can reasonably lead to the satisfaction that the authorities have come to. In view of Section 5-A of the COFEPOSA Act there was sufficient material to sustain other grounds of detention even if the retraction of confession was not considered by the authorities.

Next reliance is on Madan Lal Anand Vs. Union of India & Ors., 1990 (1) SCC 81. This case also is with reference to non-placement of retraction and with reference to Section 5A and relying on the Prakash Chandras case (supra) held:

In the instant case, even assuming that the ground relating to the confessional statement made by the detenu under Section 108 of the Customs Act was an inadmissible ground as the subsequent retraction of the confessional statement was not considered by the detaining authority, still then that would not make the detention order bad, for in the view of this Court, such order of detention shall be deemed to have been made separately on each of such grounds. Therefore, even excluding the inadmissible ground, the order of detention can be justified. The High Court has also overruled the contention of the detenu in this regard and, in our opinion, rightly.

Learned counsel for the petitioner on the other hand places reliance on Hosbhiarpur Improvement Trust Vs. President, Land Acquisition Tribunal & Ors., 1990 (2) SCC 625 (P. 633). This Court held:

Mr. Dalveer Bhandari relying on Section 5-A of the Act urged that the order of detention should not be deemed to be invalid or inoperative merely on the ground that some extraneous materials were placed before the detaining authority since those alleged extraneous materials have no bearing on the validity of this impugned order which can be sustained on the material set out in the grounds of detention itself Placing reliance on decision of this Court in Prakash Chandra Mehta v. Commissioner and Secretary, Government of Kerala (1985 Suppl. SCC 144) wherein it has been observed that the grounds under Article 22 (5) of the Constitution do not

mean mere factual inferences but mean factual inferences plus factual material submitted that in the present case the factual material set out in the grounds of detention alone led to the passing of the order with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order. We are unable to see any force in the above submission. What Section 5-A provides is that where there are two or more grounds covering various activities of the detenu, each activity is a separate ground by itself and if one of the ground is vague, non-existent, not relevant, not connected or not proximately connected with such person or invalid for any other reason whatsoever, then that will not vitiate the order of detention.

This case considered the aforesaid decisions relied on behalf of the State.

Firstly, we find the question of severability under Section 5-A has not been raised by the State in any of the counter affidavit, but even otherwise it is not applicable on the facts of the present case. Section 5A applies where the detention is based on more than one ground, not where it is based on single ground. Same is also decision of this Court in unreported decision of Criminal Appeal No. 1790 of 1996, Prem Prakash Vs. Union of India & Ors. decided on 7th October, 1996 relying on K. Satyanarayan Subudhi Vs. Union of India & Ors., 1991 (Suppl. 2) SCC 153. Coming back to the present case we find really it is a case of one composite ground. The different numbers of the ground of detention are only paragraphs narrating the facts with the details of the document which is being relied but factually, the detention order is based on one ground, which is revealed by Ground 1 {xvi} of the ground of detention which we have already quoted hereinbefore. Thus on the facts of this case Section 5A has no application in the present case.

For all the aforesaid reasons and for the findings we have recorded, we hold that the impugned detention order dated 23rd December, 1999, suffers from patent illegality and thus cannot be sustained. Accordingly, the same is quashed and petitioner is ordered to be set at liberty forthwith unless wanted in connection with some other case. Writ Petition is allowed no costs.