

Dhananjoy Das vs District Magistrate & Anr on 16 August, 1982

Equivalent citations: 1982 AIR 1315, 1983 SCR (1) 122, AIR 1982 SUPREME COURT 1315, 1982 (2) SCC 521, (1983) 1 CRIMES 29, 1982 SCC(CRI) 488, 1982 CRIAPPR(SC) 265, 1982 UJ (SC) 683, 1982 CRILR(SC MAH GUJ) 420

Author: R.B. Misra

Bench: R.B. Misra, V.D. Tulzapurkar

PETITIONER:
DHANANJOY DAS

Vs.

RESPONDENT:
DISTRICT MAGISTRATE & ANR.

DATE OF JUDGMENT 16/08/1982

BENCH:
MISRA, R.B. (J)
BENCH:
MISRA, R.B. (J)
TULZAPURKAR, V.D.

CITATION:
1982 AIR 1315 1983 SCR (1) 122
1982 SCC (2) 521 1982 SCALE (1) 636

ACT:
Constitution of India-Article 22(5)-Rights of detenu.
National Security Act, 1980 -Section 3(3)-Grounds of
detention-Inclusion of paragraph in the nature of preamble
or introduction-Validity.
National Security Act, 1980 -Section 3(3)-Order of
detention-Proof of satisfaction of detaining authority
Extraneous evidence not admissible.
National Security Act, 1980 -section 3(3)-Grounds of
detention-Vagueness-Determination of.

HEADNOTE:
The appellant was detained by an order made under
section 3 (3) of the Act. The grounds of detention served on
him consisted of 4 paragraphs. The first part of paragraph 1
was admittedly introductory. The latter part of paragraph 1
was in the following terms:

"Shri Das has been playing a leading part in the current agitation on foreigners issue in collaboration with other active agitators who are leaders of AASU, Karmachari Parishad and Gana Sangram Parishad, by organising bundhs, non-cooperation programme, inciting people to violate law from time to time. Such activities have disturbed peaceful, tolerant and harmonious life of society".

Paragraphs 2 and 3 gave details as to the part played by the appellant in a programme relating to obstruction of road and rail traffic and violation of curfew by thousands of people. The first sentence of paragraph 4 stated: "Such activities of Shri Dhananjay Das are prejudicial to the interest of maintenance of public order."

The appellant challenged the order by a petition under Article 226 which was dismissed by the High Court.

In appeal, counsel for the appellant contended that paragraph 1 of the grounds was so vague that the order of detention must be quashed on that ground alone, that paragraphs 2 and 3 also suffered from vagueness for the reason that they did not mention certain necessary facts and that the facts

123

alleged in the grounds of detention only made out a case for maintenance of law and order and not of public order.

Counsel for the respondent submitted that paragraph 1 was only a prelude or introductory and it did not deal with the grounds on which the District Magistrate had his subjective satisfaction in passing the order.

Counsel for the appellant, on the other hand, relying on certain observations in Mohd. Yousuf Rather v. State of Jammu & Kashmir, contended that Article 22(5) provided for supplying of grounds and there could be no preamble or introduction to the grounds of detention. It was submitted that the District Magistrate himself had in his counter-affidavit treated paragraph 1 as constituting one of the grounds of detention although he had subsequently changed his position by filing a supplementary affidavit on the basis of a note made by him earlier in his correspondence with the State Government. Counsel contended that the order of detention was conclusive as to the state of mind of the person who made it and no such extraneous evidence was admissible.

Dismissing the appeal,

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HELD: The law is by now well settled that a detenu has two rights under Article 22(5) of the Constitution: (1) to be informed, as soon as may be, of the grounds on which the order of detention is made, that is, the grounds which led to the subjective satisfaction of the detaining authority; and (2) to be afforded the earliest opportunity of making a representation against the order of detention, that is, to be furnished with sufficient particulars to enable him to make a representation which on being considered may obtain

relief to him. The inclusion of an irrelevant or non-existent ground, among other relevant grounds, is an infringement of the first of the rights and the inclusion of an obscure or vague ground among other clear and definite grounds is an infringement of the second of the rights. It is by virtue of the second right that the detaining authority has to supply the material facts on the basis of which subjective satisfaction was derived for passing the order of detention and this is how the facts from which the inference is drawn also become a part and parcel of the grounds. [134 D-G]

(b) There is no bar to have introductory paragraphs in the grounds of detention. The observations in Mohd. Yousuf Rather's case do not indicate that there can be no preamble or introductory paragraph; those observations only mean that all allegations of facts which have led to the passing of the order of detention will form part of the grounds of detention. [129 G]

(c) Whether a particular paragraph in the grounds amounts only to a preamble or introduction or contains the grounds on the basis of which the detaining authority had the subjective satisfaction for passing the order is to be determined on the facts and circumstances of each case and it is open to the court to come to its own conclusion. [130 A-B]

124

(d) The grounds of detention must be in existence on the date of the order and the authority concerned has to be satisfied about them on the date of the order. The satisfaction of the detaining authority must be clear on the face of the order and no extraneous evidence is admissible to prove what actually weighed with the authority while passing the order. It is not what a party chooses to put as a gloss on the grounds of detention but it is the document itself which will be taken to be the proof of what weighed with the detaining authority while passing the order. [135 D-E-F]

Mohd. Yousuf Rather v. State of Jammu & Kashmir, (1979) 4 S.C.C. 370, explained.

Naresh Chandra Ganguli v. State of West Bengal, [1960] 1 S.C.R. 411; Dr. Ram Manohar Lohia v. State of Bihar, [1966] 1 S.C.R. 709 and State of Bombay v. Atma Ram Sridhar Vaidya, [1951] S.C.R. 167, referred to.

In the instant case the tenor of the document only indicates that the three organisations named therein have been taking part in the current agitation on foreigners issue in the manner stipulated in paragraph 1, in which the appellant has also been playing a leading part. Paragraphs 2 and 3 deal with the specific part attributed to the appellant on specific days and at specific places. That is why the first sentence of paragraph 4 stipulates that such activities of the appellant are prejudicial to the interests of maintenance of public order and he was called upon to

make a representation against the allegations made in paragraphs 2 and 3 of the grounds. Significance must be attached to the difference in language used in the last sentence of paragraph 1 and the first sentence of paragraph 4. Paragraph 1 only contemplates that the various organisations have been taking part in the current agitation on foreigners issue in the various modes enumerated therein. The document read as a whole indicates that paragraph 1 of the grounds of detention is only by way of introduction or preamble. The vagueness in paragraph 1 cannot be made a ground of attack on the impugned order. [131 C-F; 131 A; 133 C-D]

2. The question whether a particular ground is vague will depend on the facts and circumstances of each case because vagueness is a relative term. What may be vague in one case may not be so in similar circumstances of another case. If the basic facts have been given in a particular case constituting the grounds of detention which enable the detenu to make an effective representation, merely because meticulous details of facts are not given will not vitiate the order of detention. [142 E-G]

Chaju Ram v. State of Jammu & Kashmir, (1970) 1 S.C.C. 536; Gopal Bauri v. District Magistrate, Burdwan & Ors., [1953] S.C.C. 522; Dr. Ram Krishan Bhardwaj v. State of Delhi & Ors., [1953] S.C.R. 708; Bhupen Deka v. State of Assam, (1981) Cri. L.J. 1743; Kamla Kanyalal Khusalani v. State of Maharashtra & Anr., (1981) 1 S.C.C. 748; Naresh Chandra Ganguli v. State of West Bengal, [1960] 1 S.C.R. 411; Masood Alam etc. v. Union of India & Ors.

125

[1973] 3 S.C.R. 268; Bidya Deb Barma v. District Magistrate, Tripura Agartala, [1969] 1 S.C.R. 562; and Vakil Singh v. State of Jammu & Kashmir, A.I.R. 1974 S.C. 2337, referred to.

In the instant case basic facts have been given in paragraphs 2 and 3 of the grounds of detention to enable the appellant to make an effective representation. [142 G]

3. The situation in Assam is a grave one and the agitation on the issue of foreigners has been going on for years and it has taken an ugly and serious turn, and the statement of facts made in paragraphs 2 and 3 of the grounds of detention, in the prevalent circumstances in Assam, relate to the maintenance of public order in view of the law laid down in Ashok Kumar v. Delhi Administration & Ors. [143 H; 144 A]

Dr. Ram Manohar Lohia v. State of Bihar [1966] 1 S.C.R. 709 and Ashok Kumar v. Delhi Administration & Ors., A.I.R. 1982 S.C. 1143, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 199 of 1982.

From the Judgment dated the 23rd February, 1982 of the High Court of Gauhati in Civil Rule No. 6 (HC) of 1982.

S. Rangarajan, Prabir Chowdhury, B.P. Maheshwari, Suresh Sethi and Miss Asha Rani Jain, for the Appellant.

A.M. Mazumdar, Advocate General of Assam and S.K. Nandy for the Respondents.

The Judgment of the Court was delivered by MISRA, J. The present appeal by certificate is directed against the judgment of the High Court of Gauhati dated 23rd of February, 1982 dismissing the petition under Art. 226 of the Constitution challenging the order of detention of the appellant.

The District Magistrate, Darrang passed an order of detention on 3rd of January, 1982 against the appellant under s. 3 (3) of the National Security Act, 1980. The order of detention along with the grounds was supplied to the appellant on the same day, that is, on 3rd of January, 1982. The appellant was also arrested on the same day. He made a representation on the 9th of January, 1982 through the Superintendent of Special Jail who forwarded the same to the Government on 10th of January, 1982. The State Government received the same on 11th of January, 1982 and it was rejected on 13th of January, 1982.

The order of detention was challenged by the appellant on two grounds : (1) that the grounds of detention were vague, and (2) that the facts narrated in the grounds related to law and order situation and not to public order. The High Court repelled both the grounds and dismissed the writ petition by its order dated 23rd of February, 1982. The High Court, however, granted a certificate for leave to appeal to this Court.

Before dealing with the contentions in this case on behalf of the parties it will be appropriate at this stage to refer to the grounds of detention which were served on the appellant :

"1. Sri Dhananjay Das, aged about 50 is the President of Purbanchalia Lok Parishad, Tezpur Unit. He is a contractor by profession. Sri Das has been playing a leading part in the current agitation on foreigners issue in collaboration with other active agitators who are leaders of AASU, Karmachari Parishad and Gana Sangram Parishad, by organising bundhs, non-cooperation programme, inciting people to violate law from time to time. Such activities have disturbed peaceful, tolerant and harmonious life of society.

2. In connection with the programme of Rasta Roko commencing from 0/50 hrs. of 31.12.81 to 1700 hrs. of 1.1.82 Sri Das in collaboration with others like Nabab Shahjamal, Biren Baishya etc. mobilised thousands of people from Parbatia, and other neighbouring areas of the town to give obstructions to motor vehicles on 31.12.81 and railway traffic on 1.1.82. At the instigation of Sri Das the people came in

large numbers violating prohibitory orders. On 1.1.82 the crowd was instigated by him and aforesaid associates to pelt stones, brickbats etc. on police personnel on duty. This led to greater violence in which railway slippers were burnt, and driver of fire-

brigade was shot at. Ultimately firing was resorted to and three persons died of bullet injury.

3. On 2.1.82, when the whole Tezpur Town was under

curfew, Sri Das along with his other associates mobilised people of Parbatia etc. and led a procession of thousands of people through curfew-bound areas raising slogans instigating people to violate curfew. This crowd had to be dispersed by use of force.

4. Such activities of Sri Dhananjoy Das are prejudicial to the interest of maintenance of public order. It is essential therefore that in order to prevent him from indulging in such like prejudicial acts, Sri Das is detained under National Security Act."

Shri Rangarajan, counsel for the appellant, seriously contended that the first paragraph of the grounds is so vague that the order of detention must be quashed on this ground alone. Shri A.M. Majumdar, Advocate General of Assam, on the other hand has contended that the 1st paragraph of the grounds was only a prelude or introductory and does not deal with the grounds on which the District Magistrate had his subjective satisfaction for passing the order of detention.

There is no doubt that if the first paragraph of the grounds constitute the grounds of detention, it is vague and the order of detention must be quashed on the ground of vagueness with regard to the statements contained therein. Therefore, the main question for consideration in this case is whether the first paragraph of the grounds is merely introductory or a preamble or a prelude. Shri Rangarajan contends that there could be no prelude or preamble to the grounds. Article 22 (5) of the Constitution provides for supplying the grounds of detention. In support of his contention he placed reliance on *Mohd. Yousuf Rather v. State of Jammu & Kashmir & Ors.*(1) In that case Dr. Singhvi for the State strenuously submitted that the first paragraph of the grounds supplied to the petitioner was of an introductory nature, that paragraphs 2, 3, 4 and 5 referred to the events which furnished the (1) [1979] 4 SCC 370.

background and that the penultimate paragraph alone contained the grounds of detention as such. He submitted that it was permissible to separate the introduction and the recital of events constituting the background from the grounds of detention and if that was done it would be apparent that the order of detention suffered from no infirmity. He sought to draw support for his submission from the decision in *Naresh Chandra Ganguli v. State of West Bengal.*(1) In that case sections 3 and 7 of the Preventive Detention Act 1950 were the subject matter of consideration and this Court held that the two sections read together contemplate that the copy of the order passed by the detaining authority under s. 3 (2) of the Act to be served on the detenu should contain, (1) a preamble reciting in terms one or more of the sub-clauses of cls. (a) and (b) of s. 3 (1) as its object or

objects, (2) the grounds contemplated by s. 7, namely, the conclusions of fact, which led to the passing of the order of detention, informing the detenu as to why he was detained, and (3) particulars, if and where necessary, but not those referred to in sub-ss. 3 and (4) of s. 3 of the Act. This case thus contemplated of a preamble or introductory part in the grounds of detention Shri Rangarajan for the appellant, however, contended that the view taken in N.C. Ganguli's case (supra) does not hold the field and he referred to the following observations made by Chinnappa Reddy J. in Mohd. Yousuf Rather's case (supra) :

"It is impossible to agree with the submission of Dr. Singhvi. The annexure to the order of detention detailing the grounds of detention has been fully extracted by my learned brother Shinghal J. We are unable to see how factual allegations such as those contained in the paragraphs 1 to 5 of the grounds of detention can be said to be merely introductory or as constituting the background. In Naresh Chandra Ganguli v. State of W.B. what was read by the Supreme Court as the 'preamble' was the recital in terms of section 3 (1) clause (a) and (b) of the Preventive Detention Act, namely : that the detenu was being detained in pursuance of a deten-

tion order made in exercise of the power conferred by section 3 of the Preventive Detention Act on the ground that the detenu was acting in a manner prejudicial to the maintenance of public order as evidenced by the particulars given thereafter. The particulars given in the subsequent paragraphs, the Court said, constituted the grounds. We do not understand Naresh Chandra Ganguli v. State of W.B. as laying down that it is permissible to dissect or trisect the grounds of detention into introduction, background and 'grounds' as such. There is no warrant for any such division. The distinction made in Naresh Chandra Ganguli case between the 'preamble', meaning thereby the recital in terms of the statutory provision and the 'grounds' meaning thereby the conclusions of fact which led to the passing of the order of detention does not justify any distinction being made between introductory facts, background facts, and 'grounds' as such. All allegations of fact which have led to the passing of the order of detention are 'grounds' of detention. If such allegations are irrelevant or vague the detenu is entitled to be released."

Shinghal J., with whom Sarkaria J. concurred, however, did not go to the extent of saying that there cannot be a preamble or introduction to the grounds. According to the counsel for the appellant the observations made by Chinnappa Reddy J. would be taken to be the observations made by the Full Court inasmuch as he agreed with the view expressed by Sarkaria and Shinghal JJ.

Be that as it may, the observations referred to above do not indicate that there can be no preamble or introductory para in the grounds of detention. There is no bar to have introductory paragraphs in the grounds. The observations only mean all allegations of facts which have led to the passing of the order of detention will form part of the grounds of detention. It is, therefore, difficult to accept the contention that there could be no introductory para in the grounds.

Whether a particular paragraph in the grounds amounts only to a preamble or introduction is to be determined on the facts and circumstances of each case and it is open to the Court to come to its own conclusion whether that paragraph is only an introductory para or contains the grounds on the basis of which the detaining authority had the subjective satisfaction for passing the order of detention.

'Preamble' has been defined in the Oxford English Dictionary to mean a preliminary statement in speech or writing; an introductory paragraph, section, or clause; a preface, prologue, introduction. It has further been defined there as "an introductory paragraph" or part in a statute, deed, or other document setting forth the ground and intention of it." The preamble thus betokens that which follows.

The first part of paragraph 1 of the order of detention in the instant case is admittedly introductory where it says :

"Sri Dhananjoy Das, aged about 50 years is the President of Purbanchalia Lok Parishad, Tezpur Unit. He is a contractor by profession."

The dispute is about the nature of the latter part of paragraph 1. It says :

"Sri Das has been playing a leading part in the current agitation on foreigners issue in collaboration with other active agitators who are leaders of AASU, Karmachari Parishad and Gana Sangram Parishad, by organising bundhs, non-cooperation programme, inciting people to violate law from time to time. Such activities have disturbed peaceful, tolerant and harmonious life of society."

Paragraphs 2 and 3 of the grounds of detention deal with specific instances of the activities of the appellant. The penultimate paragraph 4 of the grounds says :

"Such activities of Sri Dhananjoy Das are prejudicial to the interest of maintenance of public order."

Significance must be attached to the language used in the last sentence of the 1st paragraph and the 1st sentence of the last paragraph, the former says:

"Such activities have disturbed peaceful, tolerant and harmonious life of society."

While the latter i.e., the 1st sentence of the last paragraph 4 states that :

"Such activities of Sri Dhananjoy Das are prejudicial to the interest of maintenance of public order."

The tenor of the document indicate that the appellant has been playing a leading part in the current agitation on foreigners issue in collaboration with other active agitators who are leaders of AASU,

Karmachari Parishad and Gana Sangram Parishad by organising bundhs, non-cooperation programme, inciting people to violate law from time to time. It only indicates that the three organisations have been taking part in the current agitation on foreigners issue in the manner stipulated in the first paragraph, in which the appellant has also been playing a leading part. Paragraphs 2 and 3 of the grounds deal with specific part attributed to the appellant on specific days and at specific places. That is why the first sentence of the last paragraph 4 stipulates such activities of Sri Dhananjoy Das are prejudicial to the interests of maintenance of public order and the appellant was called upon to make a representation against the allegations made against him in paragraphs 2 and 3 of the grounds. The first paragraph only contemplates that the various organisations have been taking part in the current agitation against the foreigners issue in the various modes enumerated therein.

Shri Rangarajan sought to derive support for his contention from averments made in paragraph 5 of the counter affidavit filed by the District Magistrate on 24th of January, 1982 wherein it has been stated that ground No 1 is clear, specific and eloquent which provided all the opportunities to the detenu to submit his representation. This averment was in reply to the allegation made in the writ petition that paragraph 1 of the grounds was vague and indefinite. Therefore, on the own showing of the District Magistrate, he treated paragraph 1 as constituting one of the grounds of detention. Later on he sought permission of the Court to file a supplementary affidavit, which was allowed. In the supplementary affidavit he averred that paragraph 1 of the grounds constitute only a preamble or introductory para and the grounds on which he had subjective satisfaction for passing the order of detention against the appellant were contained in paragraphs 2 and 3 of the grounds of detention. In support of the application for permission to file a supplementary affidavit by way of clarification he relied on the parawise comments made by him which he had sent to the Government under his memo. No. DCM. 49/81/29 dated 15th of January 1982 with a copy to the Senior Government Advocate. While dealing with paragraphs 9 and 10 of the petition the District Magistrate had commented that para 1 of the grounds of detention is of the nature of introduction and para 4 is of the nature of conclusion. It was also submitted for the appellant that the District Magistrate having once admitted in the counter affidavit that para 1 of the grounds of detention constitute grounds of detention he could not subsequently turn turtle and say that it was only by way of introduction or preamble and he could not have been allowed to change his position by filing a supplementary affidavit. The order of detention, said the counsel, is conclusive as to the state of mind of the person who made it and that no extraneous evidence can be taken into consideration to prove that state of mind and hence any additional evidence such as the note made by the District Magistrate was not admissible to prove that the rule has been complied with. Such evidence could not have been given by the District Magistrate in view of the earlier affidavit dated 24th of January, 1982 expressly saying that paragraph 1 is the ground which is clear, specific and eloquent. In support of his contention he placed reliance on *Dr. Ram Manohar Lohia v. State of Bihar*.⁽¹⁾ The Advocate General of Assam, on the other hand, has contended that the counter affidavit filed earlier by the District Magistrate was just in reply to the averments made in the writ petition and therein it was stated that ground No. 1 of the grounds of detention was vague and indefinite and in reply thereto the District Magistrate denied the vagueness of that ground. The District Magistrate, however, has clarified the position in his para-wise comments which he had sent to the Government by memo.

No. DCM. 49/81/29 dated 15th of January, 1982. He clarified the position that paragraph 1 of the grounds of detention was only a preamble or introduction. This was done by him long before the filing of the writ petition itself and, therefore, the supplementary affidavit filed by him clarifying the position cannot be said to be an after- thought and the High Court accepted the position that the District Magistrate did not take into consideration the statement of facts made in paragraph 1 of the grounds of detention.

The grounds of detention read as a whole leave no room for doubt that paragraph 1 of the grounds of detention was only by way of introduction or as a preamble. In substance, it only indicates the *modus operandi* adopted by the various organisations to the current agitation on foreigners issue in Assam. The 2nd and 3rd paragraphs of the grounds of detention allege a specific part played by the appellant in that agitation. On a perusal of grounds of detention as a whole we are satisfied that the view taken by the High Court that the 1st paragraph of the grounds of detention was only a preamble, prelude, or introductory para is correct. If this be the position then the vagueness in the 1st paragraph cannot be made a ground of attack on the impugned order.

The Advocate General feebly sought to contend that assuming that 1st paragraph of the grounds also constituted the grounds for detention there was no vagueness in as much as the material facts detailed in paragraphs 2 and 3 were sufficient to enable the appellant to make an effective representation. For example, *bundh* referred to in paragraph 1 has been detailed in the 2nd paragraph, non-cooperation referred to in paragraph 1 has also been clarified by necessary implication in para 2 in as much as Rasta Roko programme or creating obstacles in the roads necessarily helped the non-cooperation by preventing people from attending their offices or performing their statutory duties.

In the view that we have taken that the 1st paragraph of the grounds is only introductory it is not necessary to deal with this aspect of the matter at length.

This takes us to the vagueness in paragraphs 2 and 3 of the grounds of detention which specifically refer to the part played by the appellant in the agitation on specific dates.

In ground No. 2 it has not been mentioned that Nabab Shahjamal and Biren Baishya etc. were leaders or even connected with any of the organisations mentioned in ground No. 1. It was not even stated that all the instances referred to took place in Tezpur town. It has also not been stated what were exactly the acts of instigation by the detenu. The place and the manner of inciting people who came in large numbers to violate prohibitory orders or to pelt stones has not been mentioned.

In ground No. 3 no particulars were given about when the order of curfew was promulgated and by whom. It is only baldly stated that the detenu "with his other associates mobilised people of parbatia etc." The people assembled had come from other places. These places were not mentioned. None of the details of the slogans by way of instigating people to violate the curfew had been mentioned and thus grounds Nos. 2 and 3 also suffer from vagueness and this was quite sufficient to vitiate the proceedings.

The law is by now well settled that a detenu has two rights under Art. 22 (5) of the Constitution : (1) to be informed, as soon as may be, of the grounds on which the order of detention is made, that is, the grounds which led to the subjective satisfaction of the detaining authority, and (2) to be afforded the earliest opportunity of making a representation against the order of detention, that is, to be furnished with sufficient particulars to enable him to make a representation which on being considered may obtain relief to him. The inclusion of an irrelevant or non-existent ground, among other relevant grounds is an infringement of the first of the rights and the inclusion of an obscure or vague ground among other clear and definite grounds is an infringement of the second of the rights. Therefore in this view of the legal position if the grounds are vague and indefinite that would amount to an infringement of the second right of the appellant. It is by virtue of the second right that the detaining authority has to supply the material facts on the basis of which subjective satisfaction was derived for passing the order of detention and this is how the facts from which the inference is drawn also become a part and parcel of the grounds. Therefore, the important question is whether grounds Nos. 2 and 3 are so vague as to infringe the second right of the appellant conferred by Art. 22 (5) of the Constitution.

Shri Rangarajan referred to Dr. Ram Manohar Lohia v. State of Bihar and Ors.(1) wherein the Constitution Bench held :

"If on its face an order of detention is in terms of the rule, ordinarily, a court is bound to stay its hands and uphold the order. When an order is on the face of it not in terms of the rule, a court cannot enter into an investigation whether the order of detention was in fact in terms of the rule. So the State cannot be heard to say or prove that an order was in fact made to prevent acts prejudicial to public order though the order does not say so...The order is conclusive as to the state of the mind of the person who made it and no evidence is admissible to prove that state of mind. Extraneous evidence such as the note made by the District Magistrate was not admissible to prove that the rule has been complied with."

There is no denying the fact that the ground of detention must be in existence on the date when the order was passed and the authority concerned has to be satisfied about the grounds of detention on the date of the order and the satisfaction of the detaining authority must be clear on the face of it from the grounds of detention and no extraneous evidence is admissible to prove what actually weighed with the detaining authority while passing the order of detention.

It must, however, be kept in mind that it is not what a party choose to put a gloss on the grounds of detention but it is the document itself which will be taken to be the proof of what weighed with the detaining authority while passing the order of detention and it is for the Court to decide whether certain paragraphs of the grounds of detention were only by way of introduction or preamble or constitute the grounds of detention itself. As observed earlier, we have meticulously perused the grounds of detention and the tenor of the document read as a whole indicates that the 1st paragraph of the grounds of detention is only by way of introduction or preamble.

Before dealing with this question of vagueness about paragraph No. 2 and 3 of the grounds we would like to deal with certain authorities which have been cited on behalf of the appellant to indicate what constitutes the grounds of detention. In the State of Bombay v. Atma Ram Sridhar Vaidya (1) this Court held :

"Clause (5) of Art. 22 confers two rights on the detenu, namely, first, a right to be informed of the grounds on which the order of detention has been made, and secondly, to be afforded the earliest opportunity to make a representation against the order; and though these rights are linked together they are two distinct rights. If grounds which have a rational connection with the objects mentioned in s. 3 are supplied, the first condition is complied with. But the right to make a representation implies that the detenu should have information so as to enable him to make a representation, and if the grounds supplied are not sufficient to enable the detenu to make a representation, he can rely on the second right. He may if he likes ask for further particulars which will enable him to make a representation. On an infringement of either of these two rights the detained person has a right to approach the court, and even if an infringement of the second right under Art. 22 (5) is alone established he is entitled to be released."

As observed earlier it is on account of the second right that it becomes necessary to give facts on which the conclusion is based. By now it is well settled that the grounds of detention constitute the facts also on which the conclusion has been drawn.

The learned counsel for the appellant cited various cases by way of example in which in somewhat similar situation the grounds of detention were branded as vague. In Chaju Ram v. State of Jammu and Kashmir(2) the grounds charged the detenu with having conspired with some leaders of Democratic Conference and having incited landless people of R.S. Pura Tehsil to forcibly occupy the land comprised in Nandpur Mechanised Farm and to have persuaded them to resist violently any attempt to evict them. No details of the leaders of the conference or of the persons incited or the dates on which he conspired or incited the squatters or the time when such conference took place, were mentioned. In the facts and circumstances of the case it was held by this Court :

"It would be impossible for anybody to make a representation against such grounds. These grounds, on the authorities of this Court, too numerous to be cited here, must be held to be vague."

The next case cited was that of Gopal Bauri v. District Magistrate Burdwan & Ors.(1) The grounds which had been furnished to the detenu in that case described the occurrences of two successive days, namely, March 20 and 21, 1973. Ground No. 1 charged the detenu with regard to the incidence of March 20, 1973 that he with other associates committed theft of ball bearings and wheels of the bucket carriages of the rope-way lines near Harishpur village and the supply of sand to the collieries was suspended. Likewise, about the incidence of March 21, 1973 the second ground charged the detenu that he with other associates committed theft of ball bearings and wheels of the bucket carriages from the rope-way lines at Palashbon village causing suspension of supply of sand to the

collieries. The detenu was not communicated the names of the particular associates from whose possession recovery of the stolen articles, the subject matter of thefts disclosed in the two grounds, was made and on the facts and circumstances of that case it was found that the grounds of detention were vague.

In *Dr. Ram Krishan Bhardwaj v. State of Delhi & Ors.*(2) one of the grounds of detention mentioned was that:

"You have been organising the movement (Praja Parishad Movement) by enrolling volunteers among the refugees in your capacity as President of the Refugee Association of Bara Hindu Rao."

This ground was held to be vague and even though the other grounds were not vague, the detention was held to be not in accordance with the procedure established by law and was therefore illegal.

In *Bhupen Deka v. State of Assam*(1) only ground No. 1 was germane to the supplies and services essential to the community. The other grounds did not pertain to maintenance of supplies and services essential to the community. The Court on the facts held that :

"...there is nothing in the ground to show disclosure of any material fact as to when, where, how and in what manner the bundhs, picketings, satyagraha had taken place and how and in what manner they affected the supplies and services essential to the community. There is not a single specific date or time of the bundhs, picketings, satyagraha nor is there any indication as to how the "supplies and services"

essential to the community were affected." In the circumstances the order of detention was declared invalid and void on the ground of vagueness.

Shri Rangarajan also referred to *Kamla Kanyalal Khushalani v. State of Maharashtra & Anr.*(2) to contend that this case has added new dimension to various features of and concept of liberty enshrined in Art. 21. In the above case this Court observed :

"This Court in *Maneka Gandhi v. Union of India*(3) has widened the horizon of Article 21 and added new dimensions to various features of and concept of liberty enshrined in Article 21. In view of the decision in the aforesaid case, Article 22(5) of the Constitution assumes a new complexion and has to be construed liberally and meaningfully so as to permit the legislature to impose the minimum possible curbs on the precious rights of a citizen, by virtue of preventive detention. If a procedure under Article 21 has to be reasonable, fair and just, then the words 'effective representation' appearing in Article 22(5) must be construed so as to provide a real and meaningful opportunity to the detenu to explain his case to the detaining authority in his representation. If the words 'effective representation' are interpreted in an artificial or fanciful manner, then it would defeat the very object not only of Article 22 (5) but also of Article 21 of the Constitution."

The Advocate General of Assam, however, on the other hand cited cases in which in similar situations the grounds were not branded as vague. He referred to Naresh Chandra Ganguli v. State of West Bengal (supra). In that case the argument was that the grounds contained in paragraph 4 were vague and indefinite and not enabling the person detained to make his representation. It appeared from the said paragraph that the detenu in that case intended to proceed to Delhi on October 9, 1958 with a view to instigate plans against the personal security of the Prime Minister. The place, date and purpose of the planned nefarious activities had all been stated as clearly as could be expected. The argument, however, was that it was necessary to state the details of the plans hatched in Delhi. This Court dealing with the point observed :

"There are several answers to this contention. Paragraph 4 has reference to something which was apprehended but lay in the womb of the future. From the nature of the fact that it was not an event which had already happened but what was apprehended to be in the contemplation of the detenu and his associates, if any, no further details of the plan could possibly be disclosed."

Reliance was placed in that case on the State of Bombay v. Atma Ram Sridhar Vaidya (supra) wherein it was held that vagueness is a relative term. It was observed further:

"Its meaning must vary with the facts and circumstances of each case. What may be said to be vague in one case may not be so in another, and it could not be asserted as a general rule that a ground is necessarily vague if the only answer of the detained person can be to deny it. If the statement of facts is capable of being clearly understood and is sufficiently definite to enable the detained person to make his representation, it cannot be said that it is vague. Further, it cannot be denied that particulars of what has taken place, can be more definitely stated than those of events which are yet in the offing. In the very nature of things, the main object of the Act is to prevent persons from doing something which comes within the purview of any one of the sub-clauses of cl. (a) of s. 3 (1) of the Act."

Next reliance was placed on Masood Alam etc. v. Union of India & Ors. (1). In this case also the order of detention was challenged on the ground of vagueness of some of the grounds. Reference was specially made to the last two lines of ground No. 1 relating to the collection of Rs. 700 for Youth Majlis and to grounds Nos. 2 and 3. In the facts and circumstances of the case this Court held :

"If the last two lines are read, as they should be, along with the remaining contents of ground No. 1 it cannot be said that the petitioner was unable to tender his explanation with respect to the allegation contained therein. Quite clearly, the exact point of time and the people from whom small amounts were collected could not possibly be stated with precision. Grounds Nos. 2 and 3, as is clear, contain precise details in the various clauses enumerated therein. According to ground No. 2 the petitioner has extra- territorial loyalties and, therefore, he is a threat to security of India and this conclusion is arrived at on the basis of the instances stated in cls. (a) to

(d) which are precise and definite. Similarly, ground No. 3 says that the petitioner has been exciting communal feelings among the Muslims in India and contributing to communal disturbances in Aligarh city and this conclusion is based on instances stated in cls. (a) to

(d) which are precise and definite. The instances under both these grounds are relevant and germane to the object which is sought to be achieved by s. 3 of the Act for the purpose of detaining persons who are likely to act in a manner prejudicial to the security of the State or maintenance of public order."

State of Bombay v. Atma Ram Sridhar Vaidya (supra) was sought to be distinguished by the Advocate General and referred to the following observations made by the Court:

"This however does not mean that all facts leading to the conclusion mentioned in the grounds must be conveyed to the detained person at the same time the grounds are conveyed to him. The facts on which the conclusion mentioned in the grounds are based must be available to the Government, but there may be cases where there is delay or difficulty in collecting the exact date or it may not be convenient to set out all the facts in the first communication. If the second communication contains no further conclusion of fact from facts, but only furnishes all or some of the facts on which the first mentioned conclusion was founded it is obvious that no fresh ground for which the order of detention was made is being furnished to the detained person by the second communication which follows sometime after the first communication."

Next reliance was placed on Bidya Deb Barma v. District Magistrate, Tripura, Agartala.⁽¹⁾ In that case also the impugned order was challenged on the ground of vagueness inasmuch as the ground did not give any details since no particulars of time, place and circumstances had been mentioned and relevant and irrelevant matters had also been included. In the circumstances of the case this Court negated the contention and observed:

"The grounds begin by stating generally what the activities were. They consisted of instigation of tribal people to practise jhuming and preventing the authorities from delivering paddy to Government under the procurement schemes. This instigation it is said was through mass and secret meetings and resulted in violent resistance to Government. Having said this the grounds then specify the places where and the dates on which the meetings were held and the date on which and place at which the resistance took place. In our judgment more detailed information was not necessary to give the detenus an opportunity to make their representations."

In Vakil Singh v. State of Jammu & Kashmir⁽¹⁾ this Court observed:

"'Grounds' within the contemplation of s. 8 (1) of the Act means 'materials' on which the order of detention is primarily based. Apart from conclusions of facts 'grounds'

have a factual constituent, also. They must contain the pith and substance of primary facts but not subsidiary facts or evidential details. This requirement, as to the communication of all essential constituents of grounds was complied with in the present case. The basic facts, as distinguished from factual details, were incorporated in the material communicated to the detenu. He was told the name of the notorious PAK agent and courier...through whom he was supplying the information about the Indian Army. He was informed about the places in Pakistan which he was visiting. He was further told that in lieu of the supply of this information he had been receiving money from Pakistan. Nothing more was required to be intimated to enable him to make an effective representation. The facts which were not disclosed were not basic facts and their non-disclosure did not affect the petitioner's right of making a representation."

After analysing the various cases cited on either side we are of the view that the question whether a particular ground is vague will depend on the facts and circumstances of each case because vagueness is a relative term. What may be vague in one case may not be so in similar circumstances of the other case. If the basic facts have been given in a particular case constituting the grounds of detention which enable the detenu to make an effective representation, merely because meticulous details of facts are not given will not vitiate the order of detention. We have meticulously examined paragraphs 2 and 3 of the grounds of detention and we are satisfied, that basic facts have given to enable the appellant to make an effective representation. Of course, it would have been better if other minute details had also been given.

Lastly we take up the plea raised on behalf of the appellant that the facts alleged in the grounds of detention only make out a case for maintenance of law and order and not of public order. The difference between the expressions 'law and order' and 'public order' has been the subject matter of consideration by this Court on various occasions. In *Dr. Ram Manohar Lohia v. State of Bihar* (supra) this Court observed:

"What was meant by the 'maintenance of public order' was the prevention of disorder of a grave nature, a disorder which the authority thought was necessary to prevent in view of the emergent situation created by external aggression; whereas the expression 'maintenance of law and order' may mean prevention of disorder of comparatively lesser gravity and of local significance only."

Again, the distinction was brought out in *Ashok Kumar v. Delhi Administration & Ors.*, (1) to which one of us was a party. This Court observed:

"The true distinction between the areas of "public order" and "law and order" lies not in the nature or quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of "law and order" and "public order" is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore

touch the problem of law and order while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order."

The situation in Assam is a grave one and the agitation on the issue of foreigners has been going on for years and it has taken an ugly and serious turn, and the statements of facts made in paragraphs 2 and 3 of the grounds of detention in the prevalent circumstances in Assam relate to the maintenance of public order in view of the law laid down in the above case.

For the foregoing discussion the appeal must fail. It is accordingly dismissed.

H.L.C.

Appeal dismissed.