Supreme Court of India
Prabhu Dayal Deorah Etc. Etc vs The District Magisrate, Kamrup & ... on 11 October, 1973
Equivalent citations: 1974 AIR 183, 1974 SCR (2) 12
Author: K K Mathew
Bench: Mathew, Kuttyil Kurien

PETITIONER:
PRABHU DAYAL DEORAH ETC. ETC.

Vs.

RESPONDENT:
THE DISTRICT MAGISRATE, KAMRUP & ORS.

DATE OF JUDGMENT11/10/1973

BENCH:
MATHEW, KUTTYIL KURIEN
BENCH:
MATHEW, KUTTYIL KURIEN
BEG, M. HAMEEDULLAH
MUKHERJEA, B.K.

CITATION:
1974 AIR 183 1974 SCR (2) 12
1974 SCC (1) 103
CITATOR INFO :
E&R 1974 SC 911 (2,8,9,10,13)
R 1974 SC 955 (7)
RF 1974 SC1336 (10)
E 1976 SC1207 (305)
RF 1979 SC 420 (22)
RF 1981 SC 28 (18)
R 1982 SC 949 (22)
R 1989 SC 491 (6)
R 1990 SC 231 (23)
R 1990 SC1455 (19)
RF 1992 SC 604 (60)

ACT:
Maintenance of Internal Security Act, 1971, s. 3(2)(e)-One of the grounds of detention vague-Validity of detention-Delay by Government in rejecting detenu's representation-Effect.

HEADNOTE:
The petitioner were detained by orders under s. 3(2)(a) of the Maintenance of Internal Security Act, 1971. The first ground of detention stated that the petitioners were responsible for unauthorised milling of paddy and smuggling

the resultant rice to Meghalaya for selling it at undue profit. The petitioners sent representations to the State Government raising various grounds against the validity of the orders of detention. The State Government rejected the representations. But even before that, and when the matter was pending before the Advisory Board, the petitioners filed petitions under Art. 32 for the issue or a writ of habeas corpus. It was contended that, (i) the grounds given in the detention orders were vague and indefinite that therefore the constitutional right of making a representation against the detention order was defeated and hence the detention orders were vitiated; (ii) there was inordinate delay by the Government in disposing of the representations of the petitioners; and (iii) the detaining authorities had not applied their minds to the facts or the cases with a view to determining the need for detaining the petitioners for preventing them from acting in any manner prejudicial to the maintenance of supplies and services essential to the community.

HELD : (Per Mathew and Mukherjea, JJ)

(i)The first ground of detention was vague and hence the detentions orders are vitated and the petitioners are entitled to be released from custody. [18G-H].

(a)The requirement of Art. 22(5) of the Constitution will not be satisfied unless the detenu is given the earliest opportunity to make a representation against his detention, and no opportunity to make the representation can be effective unless the detenu is furnished with adequate particulars of all the grounds of detention. [20A-B].

(b) The first ground postulated that the petitioners were indulging authorised milling of paddy and also in smuggling the resultant rice to laya for earning undue profit. It is an independent ground and refers past activities of the petitioners, namely, unauthorised milling of paddy smuggling of resultant rice to Meghalaya. It was not a case where the ground was that the petitioners were responsible for unauthorised milling of paddy for the purpose of smuggling the resultant rice to Meghalaya for earning undue profit, in which case, it could have been said that particulars about smuggling were not available, but that it was a natural inference that the unauthorised milling was for smuggling. [19D-F]

(c)The period during which the unauthorised milling of paddy had been carried on was not stated in the grounds of detention nor is there anything to indicate when and how the resultant rice was smuggled to Meghalaya. The grounds mentioned the seizure of paddy and rice from the unauthorised possession of the petitioners but gave no particulars as regards the unauthorised milling of paddy or the smuggling of the resultant rice to Meghalaya. The, fact that one of the grounds mentioned that paddy and rice had been unearthed and seized from the unauthorised possession of the petitioners would not necessarily lead to the

inference that the petitioners had been indulging in unauthorised milling of paddy, much less that they were smuggling the resultant rice to Meghalaya for earning undue profit. [18F-G;-20E-F]

(d) As one of the grounds communicated to the petitioners is found to be vague the detention orders must be pronounced bad. It could not be predicated that if the first ground was excluded the detaining authority would have passed the order of detention. [20C, E]

13

Keshav, Talpade v. Emperor, A.I.R. 1943 FC p. 1 (p. 8), Dr. Ram Krishan Bhardwaj v. The State of Delhi & Ors.; [1953] S.C-R. p. 708, Motilal fain v. State of Bihar & Ors. [1968] 3 S.C.R. p. 587, Mishrilal lain v. The District Magistrate, Kamrup & Ors. [1971] 3 S.C.R. p. 693, State of Bombay v. Atma Ram Sridhar Vaidya [1951] S.C.R. 167.

(e) This is not a case where one of the grounds of detention was merely vague. It is a case where the detaining authority did not apply its mind at all to one of the grounds of detention. If the detaining authority had no particulars before it as regards the smuggling it could not have been possible for the authority to have been satisfied that the petitioners were smuggling rice to Meghalaya. If there is any particular instance of smuggling of the kind in the mind of the detaining authority it would have been possible to specify the particular instance. [20G-21B] (f) The fact that the Advisory Board would consider the representations of the petitioners wherein they have also raised the contention that the grounds are vague would not in any way prevent this Court from exercising its jurisdiction under Art. 32. The detenu has a right under Art. 22(5) to be afforded the earliest opportunity for making a representation against the order of detention. That constitutional right includes within its compass the right to be furnished with adequate particulars of the grounds of the detention order. If this constitutional right of theirs is violated they have every right to come to this Court under Art. 32 complaining that their detention is bad. [21B-D].

(g) This is not a case of where any public interest was involved justifying the detaining authority under Art. 22(6), in not disclosing all the particulars. [22B-C]

Lawrence Joachim Joseph D'Souza v. State of Bombay [1956] S.C.R. 382 distinguished.

(h) If a ground communicated to the detenu is vague, the fact that the petitioners could have asked for further particulars, but they did not do go, is immaterial and would not be enough to salvage the orders of detention. That fact would only be relevant for considering the question whether the ground is vague or not. [22E-F]

(i) The gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in

accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of procedure. Social security is not the only goal of a good society. Our country is taking singular pride in the democratic ideals enshrined in its Constitution and the most cherished of these ideals is personal liberty. Therefore, whatever its impact on the maintenance of supplies and service,essential to the community may be, when a certain procedure is prescribed by the Constitution or the laws for depriving a citizen of his liberty, it is the duty, of the Court to see that the procedure is rigorously observed. [22G-23D]

(2) In view of the finding on the first question it is not necessary to consider the question whether the disposal of the representations by the Government was inordinately delayed; nor is it necessary to consider whether the detaining authority applied its mind to the other grounds in the detention order. [22F-G]

Per Beg, J. The petitioners have not proved that the detaining authority exceeded its power in detaining the petitioner on the grounds alleged against them, nor have they proved that their detentions had become subsequently illegal due to denial of their constitutional rights to make effective representations. [37D]

(1) (a) This Court can go into the question whether the grounds are so vague as to disable the petitioners from making effective representations against the detention orders or otherwise vitiated the detention orders. In doing so, the totality of relevant facts ,in circumstances of each case must be taken into account in determining whether the opportunity of effective representation has been denied. The alleged vagueness or want, of particulars, must be viewed in the context of the nature of activities alleged, the substance of the allegations, the contents of the representations made, and the effect they have actually produced. The fact that the case is still under consideration, within the legally fixed period of 10 weeks from the detention, before an Advisory-Board, which

14

has full power and jurisdiction to eliminate some grounds as vague or wanting in particulars and to determine the sufficiency or otherwise of the rest of the grounds and particulars supplied, cannot be ignored. [29C.,36F-H]

(b) In the present case, particulars of recoveries made from the premises of the mills were given; particulars of recoveries of rice and sugar said to have been hoarded in an unauthorised manner and the times and places, were given; the quantities recovered on each occasion as well as the qualities of the rice recovered were given. Therefore, the sentences at the beginning and the end of the detention orders, stating the grounds in each case, apparently constitute the conclusion or inferences reached from the

particulars given in the body. A document, in order to correctly understand its meaning, should be read as a whole. A perusal of the explanations submitted by the petitioner-, to the Government, wherein, after asserting that they were unable to understand, or make representations against the grounds of detention, because of vagueness, the petitioner proceeded to refute the allegations of fact makes it difficult to see how the petitioners were really prejudiced by the alleged vagueness. [28D-14; 29D-E]

(c) Assuming, however, that there was some infirmity or vagueness in some parts of the detention order containing the grounds it could not be said that it was of such a kind as to vitiate the detention order. [29-F]

(i) The question whether a detenu was or was not given due opportunity of making an effective representation in a particular case is largely a question of fact which must be decided after taking into account the totality of facts. [31H]

(ii) It is true that the detenu has a right under Art. 22(5) of the Constitution to be afforded the earliest opportunity of making a representation against the order. In the present case, that opportunity had been afforded to the detenus and they have made representations which included the grievance that some of the grounds were vague and indefinite. [31G]

(iii) The right of making the representation cannot be construed so unreasonably as to practically demolish the unchallenged power, under a constitutionally valid statutory provision, to consider and decide the objections contained in a representation. There may be cases where the grounds of detention may, prima facie, show that the detention is invalid or ordered for some collateral purpose in excess of the power to detain; or the facts indicating the denial of the right of making an effective representation may be so patent and clear that it would be an unnecessary prolongation of an illegal detention to wait for the Advisory Board. which is given under s. 11. 10 weeks time from the date of detention to make its report. When the Advisory Board has full power to consider every kind of representation against the grounds of detention the using a grievance that any grounds are too vague or indefinite to be understood or to enable the detenu to make an effective representation the detenu should ordinarily wait at last until the report has been made by the Advisory Board before he complains that he has been really deprived of any right under the Act. [32B-G].

(iv) Mere allegation of vagueness of grounds or insufficiency of particular,%, without calling upon the detailing authority to remedy the defect is not enough to vitiate a detention order. [30F].

Keshav Talpadc v. Emperor, A.I.R. 1943 p. 1 (P.8), Dr. Ram Krishan Bhardwaj v. The State of Delhi & Ors. [1953] S.C.R. p. 708, Motilal Jain v. State of Bihar & Ors., [1968] 3

S.C.R. p. 587, Mishrilal Jain v. The, District .Magistrate, Kamrup & Ors. [1971] 3 S.C.R. p. 693, Rameshwar Lal Patwari v. State of Bihar, [1968] 2 S.C.R. 505, The State of Bombay v. Atma Ram Sridhar Vaidya, [1951] S.C.R. 167, Lawrence Joachim Joseph D'Souza v. The State of Bombay. [1956] S.C.R. p. 382, Shibban Lal Saksena v. State of U.P.. [1954] S.C.R. 418, Pushkar Mukherjee & Ors. v. State West Bengal [1969] 2 S.C.R. 635, and Naresh Chandra Gonguli v. The State of West Bengal & Ors., [1960] 1 S.C.R. 411, referred to.

(d) The fact that a past occurrence used for forecasting probable future conduct of the detenu, could also be the subject matter of a prosecution for an offence would not affect the validity of preventive detention. [33B]

(e) The fact that the recovery of sugar was more than a year ago would not vitiate the detention order on the ground of its irrelevance. The recovery was not so remote ,is to be considered irrelevant in view of the recovery of

15

hoarded rice on later dates. It is the chain of events which, considered together, enabled the detaining authorities to form a reasonable apprehension regarding the future conduct of the detenus. Preventive detention orders involve forecasts. All that can be done is to give a statement of an apprehension in the form of grounds as to what the detenu is likely to do having regard to the particulars of past activities which may be given so that preventive detention for one of the purposes for which it can be ordered is shown to have become necessary in his case. The grounds and particulars must have a rational nexus with these purpose,. that is, they must be relevant. [33C-D,F].

Bhim Sen v. State of Punjab, [1952] S.C.R. 18 and Rameshwar Shaw v. District Magistrate, Buradwan & Anr., [1964] 4 S.C.R. 921, referred to.

(f) A distinction between grounds which are merely vague and those which ,ire extraneous and irrelevant should not be overlooked. Further particulars can be asked for by the detenu and supplied by the detaining authority to cure the defect in a vague ground, but an extraneous ground vitiates the detention order. If there is an extraneous or irrelevant ground, the court cannot separate the irrelevant from relevant. The Court can only order release of the detenu because an extraneous or irrelevant ground affected the decision to detain. [33G-H].

Tarapade De & Ors. v. The State of West Bengal, [1951] S.C.R. 212 @ 218219, followed.

(g) But, whether some of the grounds were only vague or were irrelevant and extraneous to the purposes of the Act, the detenu can make a representation against them to the Advisory Board. The Advisory Board has full jurisdiction to declare a detention invalid or to recommend, after excluding what may be vague or irrelevant, that the detention should continue. [34F]

(2) In those cases where detention is vitiated only on the ground that particulars were not supplied at the earliest reasonably possible opportunity so that the right of a detenu to make a representation is held to be defeated, the detention would, strictly speaking, not be vitiated ab-initio, but, it would become illegal only from the time when the infringement of the right to sufficient particulars to make a representation takes place. In the present case, Government has satisfactorily explained the time taken in considering the detenu's representation, and, therefore, it could not be said there was an undue delay which defeated the right of the detenu to make a representation. The representations show that the petitioners had disputed every single fact and made detailed allegations justifying the possession of the rice. Therefore- Government naturally had to take some time to verify the statements of the petitioners. [34G-H; 35E-F]

Babul Mitra v. State of West Bengal & Ors. A.I.R. 1973 S.C. 197, Khaidam lbocha Singh etc. v. Stare of Manipur, [1972] 1 S.C.R. 1022 and Deonarayan Mandal v. State of West Bengal, A.I.R. 1973 S.C. 1353, referred to.

(3)(a) It could not be said that the detaining authority had not applied his mind, on the contention that the allegations made against the petitioners were not true. It is not for this Court to consider the correctness or otherwise of the sections made on questions of fact in the returns filed by the Government.

(b) It could not also be said that the detaining authority had not applied its mind, because the Government had taken nearly three weeks to verify the details, so that, it must be presumed that they were not there before the detention was ordered. The Government could not be presumed to be in possession of all the facts taken into account by the detaining officer. The detaining officer had not consulted the Government before ordering detention. Therefore, the time taken by the Government in making the inquiries only shows that Government took care to verify the correctness of allegations made by the petitioners', or, in other words, that it, on the contrary, applied its mind to the facts of the cases. [36A-C]

(4) In a case of preventive detention where fairly triable questions of fact or law, which can be more appropriately gone into an, decided by an Advisory Board, are pending before the Board, the petition should be dismissed as prema-ture except in very exceptional circumstances. The Court, no doubt, must zealously protect the personal free-of citizens against arbitrary or unconstitutional invasions of it by executive authorities. But, to do that, it is not necessary to

16

stultify what is, in some respects, the more effective method of consideration of the whole case by an Advisory Board which could consider the sufficiency of grounds or

detention also. To allow the legally prescribed procedure for protection of personal liberty to operate freely and consistently with the social interests preventive detention is meant to safeguard, appears to be the path of judicial wisdom. Even if some of the grounds of detention are vague but others could reasonably satisfy the detaining authority that, to prevent much greater apprehended harm to social good from the anti-social activities of an individual, his preventive detention is imperative, the sufficiency of the remaining grounds of detention should be allowed to be determined by those charged with the duty to consider the question. The Court should not undertake to determine what really and substantially is only a question of sufficiency of grounds of detention. It is only where a vagueness or indefiniteness is disclosed which either makes the satisfaction quite illusory and unreasonable or which really disables a detenu from making an effective representation that the detention would be vitiated on such a ground. [37A-H; 38A-B]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petitions Nos. 1496 and 1497 of 1973.

Under Article 32 of the Constitution for issue of a Writ in the nature of habeas corpus.

S. V. Gupte, J. P. Bhattacharjee, D. N. Mukherjee, Dilip K. Hazarika and N. R. Choudhury, for the petitioner (in W.P. 1946/ 73).

J. P. Bhattacharjee, D. N. Mukherjee, Dilip K. Hazarika and N. R. Choudhury, for the petitioner in (W.P. No. 1497/73).

Niren De, Attorney-General of India and Naunit Lal for the respondents (in both the petitions).

The Judgment of MATHEW and MUKHERJEA JJ. was delivered by MATHEW, J. A dissenting opinion was delivered by Beg, J. MATHIEW, J. The petitioners question the legality of the orders of detention dated 25-7-1973 passed by the District Magistrate, Kamrup, under s.3(2)(a) of the Maintenance of Internal Security Act, 1971, hereinafter referred to as the "Act", and pray for issue of writs in the nature of habeas corpus.

The orders of detention state that the detaining authority is satisfied that with a view to prevent the petitioners from acting in a manner prejudicial to the maintenance of supplies and services essential to the community in Kamrup District, it is necessary that they should be detained in Gauhati Jail with immediate effect until further orders. On 30-7-1973, the petitioners surrendered themselves before the Additional District Magistrate. On the same day, each of the petitioners was served with the order of detention and also the grounds of detention together with a letter informing him of his

right to make a representation against the order of detention to the State Government. The grounds of detention served upon the petitioner Prabhu Dayal Deorah read as follows :

" That you, being one of the partners and in the active management of M/s. Deora Flour and Rice Mills, Zoo Road, Gauhati and M/s. Srinivas Basudeo, Fancy Bazar, Gauhati are responsible for unauthorised milling of paddy in M/s. Deora Flour and Rice Mills at Zoo Road, Gauhati and smuggling of the resultant rice to Meghalaya for earning undue profit. You are also responsible for unauthorised hoarding of rice and sugar in the, premises of M/s. Deora Flour and Rice Mills at Zoo Road and M/s. Srinivas Basudeo at Fancy Bazar for the sole purpose of selling these commodities at higher prices in and outside Gauhati for profiteering.

"On 25-7-1973 the following quantities of paddy and rice were unearthed and seized from your unauthorised possession at Zoo Road (Deora Flour and Rice Mills) premises.

1.	Sali paddy	....147 bags
2.	Ahiu paddy	....207 bags
3.	Sali Mota rice (Arua)	.....239 bags
4.	Ahu rice 5. Joha rice	..... 8 bags
5.	Joha rice	......14 bags

"That on 4-1-1972, 191 bags of sugar were seized by the Supply Officials of Gauhati from your unauthorised possession at Messrs. Basudeo, Fancy Bazar, Gauhati. " That on 16-5-1972 the supply officials seized 105.03 quintals of rice from your unauthorised possession at Messrs. Srinivas Basudeo,. Fancy Bazar, Gauhati. "That you indulged in such trade activities which created acute scarcity and high prices of rice and sugar in Gauhati market.

"You are, thus acting in a manner prejudicial to the maintenance of supplies and services essential to the community as a whole in this district and your being at large has jeopardized the maintenance of' such supplies and services to the community."

The grounds of detention served on the petitioner Raj Kumar Deorah read as follows :

> "That you being a close associate of Shri Prabhu Dayal Deora s/o Late Basudeo Deora of Zoo Road, Gauhati and in the active management of Basudeo, Fancy Bazar, Gauhati, are responsible for unauthorised milling of paddy in Messrs. Deora Flour and Rice Mills at Zoo Road, Gauhati and smuggling of the resultant rice to Meghalaya for earning undue profit. You are also responsible for unauthorised hoarding of rice and sugar in the premises of Messrs. Deora Flour and Rice Mills at Zoo Road and Messrs. Srinivas Basudeo at Fancy Bazar for the sole purpose of selling these commodities at higher prices in and outside Gauhati for profiteering.
>
> "That on 25-7-1973 the following quantities of paddy and rice were unearthed and seized from your unauthorised possession at Zoo Road Deora 'Flour and Rice Mills premises)

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2. Ahu paddy ..207 bags

3. Sali Mota Rice (Arua) ..239 bags

4. Ahu rice ....8 bags

5. Joha rice ...15 bags

-L447SupCI/74 "That on 4-1-1972, 191 bags of sugar were seized by the supply officials of Gauhati from your unauthorised possession at Messrs.

Srinivas Basudeo, Fancy Bazar, Gauhati.

"That on 16-5-1972 the supply officials seized 105.03 quintals of rice from your unauthorised possession at Messrs. Srinivas Basudeo, Fancy Bazar, Gauhati.

"That you indulged in such trade activities which created acute scarcity and high prices of rice and sugar in Gauhati market.

"You are, thus acting in a manner prejudicial to the maintenance of supplies and services essential to the community as a whole in. this district and your being at large has jeo-

pardized the maintenance of such supplies and services to the community."

On 5-8-1973, each of the petitioners sent his representation to the State Government through the jail authorities of Gauhati raising various grounds against the validity of the order of detention. Both representations were rejected by the State Government on 28-8-1973 and their cases, together with their representations were sent by the State Government to the Advisory Board constituted under s.9 of the Act. Three contentions have been advanced on behalf of the petitioners in this Court: (1) that the grounds of detention were vague and so the petitioners were denied of their constitutional right to make effective representations against the orders of detention; (2)that there was inordinate delay in disposing of the representations by the Government and that was sufficient to vitiate the detention of the petitioners, and (3) that the detaining authority did not apply its mind to the facts of the cases to find out whether it was necessary to detain the petitioners for preventing them from acting in a manner prejudicial to the maintenance of supplies and services essential to the community.

The first ground for detention states that the petitioners are responsible for unauthorised milling of paddy in Deora Flour and Rice Mills and smuggling the resultant rice to Meghalaya for selling it for earning undue profit. The period during which the unauthorised milling of paddy has been carried on was not stated in the grounds of detention nor is there anything to indicate when and how the resultant rice was smuggled to Meghalaya for earning undue profit. The fact that the grounds

communicated to each of the petitioners mention the seizure of paddy and rice from the unauthorised possession of the petitioners from the mill in question on 25--7-1973 gives no particulars as regards unauthorised milling of paddy or the smuggling of the resultant rice to Meghalaya for earning undue profit. The first round of detention was, therefore, vague and that is sufficient to vitiate the detention orders. The learned. Attorney General, appearing for the respondents did not contend that the first ground of detention, taken by itself, was not vague, if smuggling of rice to Meghalaya referred to the past activities of the petitioners. But he said that the reasonable way to understand that ground is to read it in such a way as to imply that the smuggling of the resultant rice to Meghalaya was for earning undue profit and that smuggling was only the purpose for which unauthorised milling of paddy was done. In the return filed on behalf of the respondents, this is how the ground is read :

> "Detailed particulars have been given in the grounds as to the detection of unauthorised paddy and milled rice in the locked godowns of M/s. Deorah Rice and Flour Mills, Gauhati and in view of the circumstances stated in the previous paragraphs, the purpose of hoarding rice and milling paddy in unauthorised manner was to smuggle the goods for undue profits. The ground clearly and unambiguously states that the petitioner is responsible, for unauthorised milling of paddy in M/s. Deorah Rice and Flour Mills at Zoo Road, Gauhati for the purpose of smuggling the rice to Meghalaya for earning undue profits. The materials on which the latter part of the grounds i.e. smuggling of result and rice to Meghalaya for earning undue profits is based are the materials which have been mentioned in the preceding paragraphs and, as held earlier by this Hon'ble Court, are not necessary to be mentioned in the grounds".

There can be no doubt that the first ground postulated that the petitioners were indulging in unauthorised milling of paddy and also in smuggling the resultant rice to Meghalaya for earning undue profit. As already stated no particular instance of smuggling was given, no;the period during which the smuggling operation was carried on mentioned in the ground. We could have understood the contention of' the learned Attorney General if the ground had stated that the petitioners were responsible for unauthorized milling of paddy and that was for the purpose of smuggling the resultant rice to Meghalaya for earning undue profit. Then it could have been said that no particulars about the smuggling would be available as it was only a natural inference of the purpose of the unauthorized milling of paddy. We would have to adopt the vocabulary of humpty dumpty if we are to read the ground in the way in which it has been read in the return filed on behalf of the respondents. We have no hesitation in holding that the first ground is an independent around and refers to the past activities of the petitioners namely unauthorised nothing of paddy and the smuggling of the resultant rice to Meghalaya for earning undue profit.

It was said that grounds are nothing but "conclusion of facts and not complete recital of facts" and when article 22(5) of the Constitution says that the grounds on which the detention order has been made must be communicated to the detenu it 'Can only mean that the detaining authority must supply him with his conclusions of facts and the dictum of Kania, C.J., writing for the majority, in the State of Bombay v. Atma Rant Sridhar Vaidya(1) was cited in support of it. But we think that the

learned judge was careful enough to point out that if the representation has to be intelligible to meet the charges contained in the grounds, the information conveyed must be sufficient (1) [1951] S.C.R. 167, at 178.

to attain that end. In other words, the majority decision in that case assumed that the requirement of article 22(5) will not be satisfied unless the detenu is given the earliest opportunity to make a representation against the detention and that no opportunity to make the representation can be effective unless the detenu is furnished with adequate particulars of the grounds of detention.

In Dr. Ram Krishan Bhardwaj v. The State of Delhi and Others(1) Patanjali Sastri, J. speaking for the Court assumed that in Atma Ram Sridhar Vaidya's Case(2) the majority decision was that the detenu has the right to be furnished with full particulars to make an effective representation. The Court also said that the constitutional requirement must be satisfied in respect of each of the grounds communicated.

As one of the grounds communicated to the petitioners is found to be vague, the detention orders must be pronounced to be bad on the basis of a series of decisions of this Court (see The State of Bombay v. Atma Ram Sridhar Vaidya(1); Dr. Ram Krishan Bhardwaj v. The State of Delhi and Others(2); Motilal Jain v. The State of Bihar(3), and Mishrilal Jain 'v. The District Magistrate, Kamrup, and others(4). decisions followed the decision of the Federal Court in Keshav Talpade v. Emperor (5) where it was said:

> "If a detaining authority gave four reasons for detaining a man, without distinguishing between them, and any two or three of the reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one or two good reasons bad been before them."

We cannot predicate that if the first ground was excluded, detaining authority would have passed the order. The fact that one of the grounds mentions that paddy and rice had been unearthed and seized from the unauthorized possession of the petitioners from the rice mill in question on the date of the detention order would not necessarily lead to the inference that the petitioners have been indulging in unauthorized milling of paddy, much less that they were smuggling the resultant rice to Meghalaya for earning undue profit. it cannot, therefore, be said that the first ground, namely, that the petitioners are responsible for unauthorised milling of paddy and smuggling of the resultant rice to Meghalaya for earning undue profit, is a conclusion reached from the fact of seizure of paddy and rice on 25-7- 1973 or the seizure of rice on 16-5-1972 "from their unauthorized possession at Messrs. Srinivas Basudeo, Fancy Bazar, Gauhati."

These are not only cases where one of the grounds of detention was as vague, but also cases where the detaining authority did not apply its mind at all to one of the grounds of detention. If the detaining authority had no particulars before it as regards the smuggling operation, how was it possible for it to have been satisfied that the petitioners (1)[1953] S.C.R. 708. (2) [1951] S. C. R 167 at 178 (3) [1968] 3 S.C.R. 587. (4) [1971] 3 S.C. 693, (5) A.I.R. 1943 F.C.1, at 8.

were smuggling rice to Meghalaya for earning undue profit ? If there was any particular instance of smuggling of the kind in the mind of the detaining authority, it would have been possible for it to specify the particular instance at least in the grounds.

We think that the fact that the Advisory Board would have to consider the representations of the petitioners where they have also raised the contention that the grounds are vague would not in any way prevent this Court from exercising its jurisdiction under article, 32 of the Constitution. The detenu has a right under article 22(5) of the Constitution to be afforded the earliest opportunity of making a representation against the order of detention. That constitutional right includes within its compass the right to be furnished with adequate particulars of the grounds of the detention order. And, if their constitutional right Is violated, they have every right to come to this Court under article 32 complaining that their detention is bad as violating their fundamental right. As to what the Advisory Board might do in the exercise of its jurisdiction is not the concern of this Court. This Court is only concerned with the question whether any of the grounds communicated to the petitioners was vague which would preclude them from making an effective representation. We do not think that because the representations of the petitioners are pending consideration before the Advisory Board and the Advisory Board would also go into the question of the vagueness of the grounds communicated to them,, this Court should not exercise its jurisdiction under article 32. In other words we cannot agree with the proposition that because the Advisory Board was seized (if the matter when the writ petitions were filed and would also consider the contention of the petitioners in their representations that the ,,- rounds were vague, we should not interfere with the orders of detention on the ,core that one of the grounds communicated to the petitioners was vague. The Attorney General strongly relied on the decision of this Court in Lawrence Joachim Joseph D' Souza v. The State of Bombay(1). There it was held that if the nature of the activity for which detention was ordered was such that no better particulars could be given, the, detention order cannot be struck down as bad, In that case the ground of detention was that with the financial help of the Portuguese Government the petitioner there was carrying on espionage activities with the help of underground workers and that he was also collecting intelligence about security arrangements on the border area and was making the intelligence available to the Portuguese authorities. In answer to the contention that the ground was vague as no particulars were furnished, the Court first referred to the majority decision in Atma Ram Sridhar Vaidya's Case(2) as laying down that the constitutional right of a detenu under article 22(5) consists of two components, namely, the right to be furnished with the grounds of detention and the right to be afforded the earliest opportunity for making representation against the detention which implies the right to be furnished with adequate particulars of the grounds of detention to enable proper representation being made and then said (at p. 391) :-

"These rights involve corresponding obligations on the part of the detaining authority. It follows that the authority (1) [1956] S.C.R. 382.

(2) [1951] S.C.R. 167 at 178.

under a constitutional obligation to furnish reasonably definite grounds, as well as adequate particulars then and there, or shortly thereafter. But the right of the detenu to be furnished particulars, is subject to the limitation under article 22(6) whereby disclosure of facts considered to

be against public interest cannot be required. It is however to be observed that under article 22(6) the facts which cannot be required to be disclosed are these "which such authority considers to be against public interest to disclose."

No question of public interest is involved in the case in hand. At any rate, no such plea has been put forward in the, return. Whether we would have harkened to any such plea in this case, if put forward, is another matter. Any general observations in that judgment will have to be read in the light of the paramount consideration of public interest involved therein.

Nor are we satisfied that the fact that the petitioners could have asked for further particulars but that they did not do so, would be enough to salvage the orders of detention. The, right to call for particulars has been recognized in Atma Ram Sridhar Vaidya's Case (1) as flowing from the constitutional right to be afforded a reasonable opportunity to make representation. This Court said in Lawrence Joachim Joseph D' Souza's Case(2) that if the grounds are not sufficient to enable the detenu to make a representation, the detenu, if he likes may ask for particulars which would enable him to make the representation and the ?act that he had made no such application for particulars is, a circumstance which may well be taken into consideration, in deciding whether the grounds can be considered to be vague.

If a ground communicated to the detenu is vague, the fact that the detenu could have, but did not, ask for further particulars is immaterial. That would be relevant only for considering the question whether the ground is vague or not. In this view of the, matter, we do not think it necessary to consider the question whether the disposal of the representations by the Government was inordinately delayed and for that reason the detention orders are vitiated. Nor is it necessary for us to consider the other question whether the detaining authority did apply its mind to the other grounds mentioned in the grounds communicated to the petitioners.

The facts of the cases might induce mournful reflection how an honest attempt by an authority charged with the duty of taking prophylactic measure to secure the maintenance of supplies and services essential to the community has been frustrated by what is popularly called a technical error. We say, and we think it is necessary to repeat. that the gravity of the evil to the community resulting from anti- social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of procedure,. Observance of procedure has been the bastion against wanton assaults (1) [1951] S.C.R. 167. at 178.

(2) [1956] S.C.R, 382.

on personal liberty over the years. Under our Constitution, the only, guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law. The need today for maintenance of supplies and services essential to the community cannot be over-emphasized. There will be no social security without maintenance of adequate supplies and services essential to the community. But social security is not the only goal of a good society. There are other values in a society. Our country is taking singular pride in the, democratic ideals enshrined

in its Constitution and the most cherished of these ideals is personal liberty. It would indeed be ironic if, in. the name of social security, we would sanction the subversion of this liberty. We do not pause to consider whether social security is more precious than personal liberty in the scale of values, for, any judgment as regards that would be but a value judgment on which opinions might differ. But whatever be its impact on the maintenance of supplies and services essential to the community,'when a certain procedure is prescribed by the Constitution or the laws for depriving a citizen of his personal liberty, we think it our duty to see that that procedure is rigorously observed, however strange this might sound to some ears.

The petitioners are entitled to be released from custody. We make the rule nisi absolute and order the immediate release of the petitioners from custody. BEG, J. The petitioners Prabhu Dayal Deorah and Raj Kumar Deorah, have filed separate petitions for writs of habeas corpus and orders of release after investigating questions raised by them against their detention orders dated 25-7- 1913 made following a Police raid on 25-7-1973 at the stores of the Deorah Flour and Rice Mills at Zoo Road, Gauhati. The identically worded orders of the District Magistrate, Kamrup, against them state that the detaining authority is satisfied that, with a view to preventing them from acting in a manner prejudicial to the maintenance of supplies and services essential to the community in the Kamrup District, it is necessary that they be detained at Gauhati Jail with immediate effect until further orders. The orders mentioned that they are being passed under Section 3 (2) (a) of the Maintenance of Internal Security Act, 1971 (hereinafter referred to as 'the Act). The orders also intimate that grounds of detention will be served on the detenus within five days.

On 30-7-1973, soon after each petitioner had surrendered in the Court of a Magistrate on that very date, the District Magistrate, Kamrup, sent the grounds of detention to each petitioner with a letter informing the detenu of his right to make a representation against the order by which he had been detained and also that he has a right, if he so desires, to appear before the Advisory Board, to which his case would be submitted within before thirty days of the detention.

Th grounds of detention served upon Prabhu Dayal Deorah on the afternoon of 30-7-1973 read as follows "That you, being one of the partners and in the active management of M/s. Deora Flour and Rice Mills, Zoo Road, Gauhati and M/s.

Srinivas Basudeo, Fancy Bazar, Gauhati are responsible for unauthorised milling of paddy in M/s. Deora Flour and Rice Mills at Zoo Road, Gauhati and smuggling of the resultant rice to Meghalaya for earning undue profit. You are also responsible for unauthorised hoarding of rice and sugar in the premises of M/s. Deorah Flour and Rice Mills at Zoo Road and M/s. Srinivas Basudeo at Fancy B@ for the sole purpose of selling these commodities at higher prices in and outside Gauhati for profiteering.

That on 25-7-73 the following quantities of paddy and rice were unearthed and seized from your unauthorised possession at Zoo Road (Deora Flour and Rice Mills) premises.

1. Sali Paddy ...147 bags.

2. Ahu Paddy ...207

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    begs
              3.    Sali mota rice (Arua)    ...239
    begs.
4.    Ahu rice                 .....8
    bags.
5.    Joha rice                ..   15
    bags.
 That on 4-1-1972191   bags   of
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sugar were seized by the Supply officials of Gauhati from your unauthorised possession at Messrs. Srinivas Basudeo, Fancy Bazar, Gauhati.

That on 16-5-72 the Supply officials seized 105.03 quintals of rice from your unauthorised possession at Messrs. Srinivas Basudeo, Fancy Bazar, Gauhati.

That you indulged in such trade activities which created acute scarcity and high prices of rice and sugar in Gauhati market.

You are, thus acting in a manner prejudicial to the maintenance of supplies and services essential to the community as a whole in this district and your being at large has jeopar- dised the maintenance of such supplies and services to the community.

sd/- Illegible 30-7-72 District Magistrate, Kamrup".

The grounds of detention served on the, afternoon of 30-7- 1,973 upon Raj Kumar Deorah read as follows:

> "That you being a close associate of Shri Prabhu Dayar Deora S/o Late Basudev Deora of Zoo Road. Gauhati and in the active management Basudeo, Fancy Bazar, Gauhati, are responsible for unauthorised milling of paddy. in Messrs. Deora Flour and Rice Mills at Zoo Road, Gauhati, and smuggling of the resultant rice to Meghalaya for earning un-
>
> due-profit. You are also responsible for unauthorised hoarding of rice and sugar in the premises of Messrs. Deora Flour and Rice Mills at Zoo Road and Messrs. Srinivas Basudeo at ties at higher prices in and outside Gauhati for profiteering. That on 25-7-73 the following quantities of paddy and rice were unearthed and seized from your unauthorised possession at Zoo Road (Deora Flour and Rice Mills premises).
>
> ```
> 1.    Sali paddy                        ...147
> bags.
> 2. Ahu paddy                      ...207 bags.
> 3.Sali Mota rice (Arua) ..239 bags.
> 4. Ahu rice                       ....8 bags.
> 5. Joha Rice                        ..15 bags.
> ```

That on 4-1-72, 191 bags of sugar were seized by the supply officials of Gauhati from your unauthorised possession at Messrs. Srinivas Basudeo, Fancy Bazar, Gauhati.

That on 16-5-72 the supply officials seized 105.03 quintals of rice from your unauthorised possession at Messrs. Srinivas Basudeo, Fancy Bazar, Gauhati.

That you indulged in such trade activities which created acute scarcity and high prices of 'rice and sugar in Gauhati market. You arc, thus acting in a manner prejudicial to the maintenance of supplies and services essential to the community as a whole in this District and your being at large has jeopardi- zed the maintenance of such supplies and services to the community.

Sd/-

District Magistrate Kamrup"

On 5-8-1973, Prabhu Dayal Deorah sent his representation to the State Government through the Jail authorities of Gauhati. He alleged in his Habeas Corpus petition dated 13- 8-1973 to this Court that his representation had not been disposed of by the State Government till then. Apart from complaining that the grounds served upon him were so vague and devoid of particulars as to nullify his constitutional right of making a representation against the order of detention, he also alleged that, as a criminal prosecution had commenced against him on 28-7-1973, for the alleged unauthorised possession of hoarded rice on 25-7-1973, a detention order against him, on the basis of this allegation, was illegal as the charge against him could be dealt with in the course of the criminal prosecution. The petitioner denied the correctness of the allegation that he had hoarded rice in an unauthorised fashion. He claimed to have the authority. to keep the rice in question at Zoo Road, Gauhati, on the ground:

"That the aforesaid Deorah Rice and Flour Mill used to get paddy from Food Corporation of India for the purpose of milling and the said mill did rice milling job only as a licencee under the Rice Milling (Regulation) Act of paddy allotted by the Food Corporation of India and given for the purpose of milling by other authorised persons".

As regards 191 bags of sugar seized on 4-1-1972 from M/s. Srinivas Basudeo, Fancy Bazar, Gauhati, of which also Prabhu Dayal Deorah was a partner, the petitioner claimed that it was covered by a licence (Annexure 'g' to the petition), the annexed copy of which showed that it was a provisional licence renewed on 27-3-1973 retrospectively for the years 1971 and 1972. Accordingly to the detaining authorities this did not prevent the possession of sugar seized from being unauthorised at the time of its seizure. As regards 105.03 quintals of rice seized on 16-5-72, the petitioner denied "any seizure of rice from the unauthorised possession of M/s. Srinivas Basudeo on 16-5-72F. He went on to explain that, as the firm had a licence for dealing in rice, the possession of it could not be unauthorised. In this way, at least the seizure of rice was admitted, but, what was disputed was that its possession was unauthorised on 16- 5-72. The reply of the detaining authorities, set out in the

affidavit of the Joint Secretary to the Government of Assam, was that there was no licence for this rice and that this was released only after a warning and directions were given to the petitioner as to how it should be dealt with. Raj Kumar Deorah had denied connection with both the partnerships mentioned above. It is, however, clear from the affidavit filed in reply that he was found at the premises at the time of the seizure on 25--7-1973. He also repeated the explanations given by Prabhu Dayal Deorah such as that the rice was held on behalf of the Food Corporation of India or of M/s. P. K. Gogoi & Co., or "other authorised persons'. The detaining, authorities had found the allegations to be false after contacting the Food Corporation and M/s. Gogoi & Co. It was also revealed by the returns made in this Court that the petitioners, who were present when the stores were raided, had run away from the premises on one pretext or another and that nobody there could explain how the storage of all the rice found boarded was authorised. The replies filed also showed that the sources of the total quantities seized had remained unexplained and that the quantities recovered were not shown to be covered by required authority or licences under the law.

The petitioners had tried to controvert the allegations made against them by the detaining authority but had not succeeded in satisfying the Government of Assam about the correctness of their stands either on questions of fact or of law raised by them. Their lengthy representations submitted to the Govt. on 6-8-1973 had been rejected on 28-9-1973, by the Govt. of Assam after due inquiries into allegations made by the petitioners. Their cases, with their representations, had been sent by the Government of Assam to the Advisory Board constituted under Section 9 of the Act. The Advisory Board, before which the petitioners' cases are pending, had the jurisdiction to consider all the contentions of the detentes on questions of fact and law arising in their cases. The Board had to report to the Government within ten weeks from the date of detention "as to whether there is or not sufficient cause for the detention of the person concerned". The recommendation of the Advisory Board to release a detenu was binding on the Government.

The relevant provisions of the Act regulating the procedure and, powers of the Board may be set out here:

> "Sec. 10. Reference to Advisory Board.-Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within thirty days from the date of detention under the order, place before the Advisory Board constituted by it under Section 9 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer, also the report by such officer under subsection (3) of Section 3.
>
> 11. Procedure of Advisory Boards.-(1) The Advisory Board shall after considering the materials placed before it and, after calling for such further information it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within ten weeks from the date of detention.

(2) The, report of the Advisory Board shall specify in a separate part thereof the, opinion of the Advisory Board as to, whether or not there is sufficient cause for the detention of the person concerned. (3) When there is a difference, of opinion among the, members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion. of the Board.

(4) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in; which the opinion of the Advisory Board is specified, shall be confidential.

12. Action upon the report of Advisory Board.-(1) In any case where the Advisory Board has reported that there. is in its opinion sufficient cause for the detention of a person,. the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forth with".

Three contentions have been advanced on behalf of the petitioners in an attempt to assail the legality of their detentions. They are : firstly, that the grounds are too vague and indefinite so that the detention orders are vitiated particularly because the Constitutional right of making an effectual representation against the detention orders is defeated; secondly, that there was inordinate delay in disposing of the representations of the petitioners which, by itself, was enough to vitiate the continued detention of the petitioners; and, thirdly that the detain- ing authorities had not applied their minds to the facts of the cases with a view to determining the need for detaining the petitioners for preventing them from acting in any manner prejudicial to the "maintenance of supplies and services essential to the community". I will take up each of these three grounds seriatim.

On the first question, there is considerable dispute between the two sides as to whether any ground is really vague. The learned Attorney General conceded that the first two paragraphs of the grounds would be vague if they were to constitute separate grounds and were to be considered in isolation from the succeeding paragraphs giving particulars. This, however, is not, according to the Attorney General, the correct way of reading the document constituting the grounds with their particulars. It is submitted that it is obvious that the first two sentences are conclusions based upon the particulars of recoveries made from the premises of M/s. Deorah Flour and Rice Mills at Zoo Road, Gauhati, and of M/s. Srinivas Basudeo at Fancy Bazar, Gauhati. The alleged responsibility of the petitioners for smuggling to Meghalaya, where it was being sold at higher rates, was said to be nothing more than a reasonable inference from patent facts, Similarly, the last two paragraphs, alleging indulgence in "trade activities which created scarcity and high prices of rice and sugar in Gauhati Market" and the prejudice caused to the "maintenance of supplies and services essential to the

community as a whole in this district" and the effect of leaving the petitioners "at large" are said to be inferences and forecasts resulting from particulars of recoveries of rice and sugar said to have been found boarded in an unauthorised manner at the times and. places shown there. The three dates on which recoveries of hoarded sugar and rice were made, that is to say, 4-1-1972, 16-5-1972, and 25-7-1973, were stated. The places from which the recoveries were made ,ire also clearly specified. The quantities of rice and sugar recovered on each occasion are given. So far as the recovery of rice on 25-7-1973 is concerned, the five qualities of rice recovered are also mentioned. It was this particular, about qualities of rice which made it possible to say that no part of the rice recovered could be a part of "Winter Lahi Paddy" allotted to the Deorah Flour and Rice Mills by the Food 'Corporation of India at Gauhati.

It has been very fairly and properly conceded by the learned Counsel for petitioners that seriously disputed questions of fact cannot be Properly decided by this Court upon a writ petition under Article 32 of the Constitution. Moreover, it lies within the power and province of the detaining authorities to investigate and consider the correctness of the explanations given by the detenus of the recoveries made. It is apparent that they have not accepted the versions of the petitioners either about the sources of supplies of the quantities of sugar and rice shown to have been recovered or about the alleged authority. or licence possessed by the petitioners at the times when the recoveries were made. They had also not accepted the correctness of the assertion of Raj Kumar Deorah that he had nothing to do with the two partnership firms involved. We are unable, upon the materials on record and in the proceedings before us now, to declare that the allegations constituting the grounds of detention are baseless. Nor doe,-, that really fall within our province to determine. We can, however, go into the question whether the grounds are so vague as to disable the petitioners from making effective representations against the detention orders or otherwise vitiate the detention orders. If we accept the interpretation put by the Attorney General upon the grounds of detention, they could not be said to be vague although they could be said to be badly drafted. The sentences at the beginning and end of the document stating the grounds in each case apparently constitute the conclusions or inferences reached from the particulars given in the body. of the document. I do not see why the basic principle that a document,, in order to correctly understand its meaning, should be read as whole should not be applied here. After perusing the copies of the lengthy explanations submitted by the petitioners to the Government, where, after asserting that they were unable to, understand or make representations against the grounds of detention, because of vagueness, they proceed to refute the allegations of fact contained in the particulars of the recoveries made, it is difficult to see how the petitioner were really prejudiced by the alleged vagueness or infirmity in' drafting the grounds, Assuming, however, that there was some infirmity or vagueness in some parts of the documents containing the grounds, can it be said that it was of such a kind as to vitiate the detention orders? This Court, following the principles laid down in Keshav, Talpade v. Emperor,(1) has held in some cases that even if some of the grounds ,ire vague the detention is vitiated. I am, respectfully, unable to concur with this view.

The principle laid down in Talpade's case (Supra) was with reference to grounds, some of which were good and the others extraneous to the purposes for which detention could be ordered. Moreover, there was no question there of a scrutiny of grounds by an Advisory Board which could separate the good from the bad.

The Federal Court said (at page 8) "If a detaining authority gives four reasons for detaining a man, without distinguishing between them, and any two (1) A.I.R. [1943] F.C. p. 1 and p. 8.

or three of the reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one or two good reasons had been before them.

The cases cited before us to contend that vagueness of grounds given for detention would vitiate detention orders were,: Dr. Ram Krishan Bhardwaj v. The State of Delhi & Ors.(1) Motilal fain v. State, of Bihar & Ors.;(2) Mishrilal fain v. the District Magistrate, Kamrup & Ors.(3) Rameshwar Lal Patwari v. State of Bihar;(4) and the State of Bombay v. Alma Ram Sridhar Vaidya.(5).

In Vaidya's case (Supra) the Bombay High Court had allowed a Habeas Corpus petition because the grounds did not give the time, place, and nature of the activities indulged in by the petitioner so that his right to make a representation was defeated, although, the Bombay High Court had also held that the particulars, which were subsequently supplied to the detenu by the Commissioner of Police, were enough to enable him to make an effective representation. A Bench of five Judges of this Court held that there had been no contravention of the constitutional right to make a representation. It was explained there that grounds which have to be communicated to the detenu were conclusions from facts, constituting particulars, all of which need not be conveyed to the detenu simultaneously. The particulars supplied subsequently were enough to remove the uncertainty from the grounds. If what may appear vague can be made definite by supplying particulars afterwards, it follows that, a fortiori vagueness in the earlier ,or any other part of a document may be removed by the particulars contained in the remaining parts of the very document containing grounds. It was also held by this Court in Lawrence Joachim Joseph Disouza v. The State of Bombay.(6) that the detenu has a right to call for particulars. This implied that mere alleged vagueness of grounds or insufficiency of particulars, without calling upon the detaining authority to remedy this defect, may not be enough to vitiate a detention order.

In Rameshwar Lal Patwari's case (Supra) reliance was placed on Shibban Lal Saksena v.State of U.P.,(7) and Keshav Talpade- v. King Emperor's case (Supra), but all the grounds were found to be vitiated. It was held after examining one ground after another page 514) :

> "In this case at least two grounds are vague, one ground is found to be false and of the remaining in one there is no explanation and in the other there is a lame excuse that the driver of the truck did not furnish the full information.
>
> (1) [1953] S.C.R. p. 708.(2) 119681(3) S.C.R. p. 587 (3) [1971](3) S.C.CI p. 693.(4) [1968](2) S.C.R. 505.
>
> (5) [1951] S.C.R. 167, (6) [1956] S.C.R. p 382
> (7) [1954] S.C.R. 418,

> The case is thus covered by our ruling that where some grounds arc found to be nonexisting or are cancelled or given up, the detention cannot be justified. It is further covered by our decisions that if the grounds are not sufficiently precise and do not famish details for the purpose of making effective representation the detention can be ques- tioned".

Similarly, in Mishrilal Jain's case (Supra), although each of the two grounds was found to be vague, it was held, relying upon the cases of Rameshwar Lal Patwari (Supra), Pushkar Mukherjee & Ors. v. State of West Bengal(1), aid Motilal Jain's case (Supra), and Keshav Talpade's case (Supra), that, even if one of the two grounds was vague, it would vitiate the detention. It was noticed, in this case, that the petitioner's contention was that he had no effective opportunity of making a representation because the grounds were vague. His complaint to the Govt., which included the grievance that the grounds were vague, had been rejected.

In Motilal Jain's case (Supra), after examining the various cases decided by this Court, Bench of six Judges of this Court held that the grounds under consideration there included one, ground which was vague and another which was non-existent with the result that the detenu did not get an effective opportunity to satisfy the Advisory Board about the insufficiency of the grounds of detention. In Dr. Ram Krishan Bhardwaj's case (Supra), a detention, under. Section 3 of the Preventive Detention Act of 1952, was held to be vitiated on the ground that one of the grounds was vague so that his constitutional safeguard, by getting an opportunity of making a representation against his detention had been impaired. This was a decision under the provisions of an enactment of 1952.

In none of the cases cited before us was the question raised or decided whether, in a case where representations including those against vagueness of grounds, were made and were pending before an Advisory Board, which had full power to consider all objections on questions of fact and law and to reject any particular ground or grounds for vagueness or irrelevance and to recommend appropriate action after considering whether the residue was sufficient for detention, the detenu could be held to have been really deprived of the right to make a representation. It is true that the detenu has a right under Article 22(5) of the Constitution to be afforded the earliest opportunity of making a representation against the order. That opportunity had been afforded to the detenus before us and they had made representations which included the grievance that some of the grounds were so vague and indefinite so as not to be intelligible.

With great respect for the views of my learned brethren, with which I regretfully differ, it seems to me that the question whether a detenu was or was not given due opportunity of making an effective representation, in a particular case, is largely a question of fact which must (1) [1969] (2) S.C.R. 635.

be decided after taking into account the totality of facts. It cannot be satisfactorily decided by merely looking at the grounds of detention in every case. There can be no really binding authority unless some principle is laid down on a question which has to be determined primarily on the particular facts of each case.

The Advisory Board is given ten weeks' time from the date of detention, by provisions of Section 11(1), to make its report. The validity of Section 11(1) has not been challenged before us on the ground of conflict with Article 22(5). The right of being afforded the earliest possible opportunity of making a representation is one thing and the right of having it considered and decided within a parti- cular time is another. But, the right of making the representation cannot be construed so unreasonably as to practically demolish the unchallenged power, under a constitutionally valid statutory provision, to consider and decide the objections contained in a representation. There may be, occasionally, cases where the grounds of detention may, prima facie, show that the detention is invalid or ordered for some collateral purpose in excess of power to detain, or; the facts indicating denial of the right of making an effective representation may be so patent and clear that it would be an unnecessary prolongation of an illegal detention to wait for the opinion of the Advisory Board. Such cases would, however, be exceptional. When the Advisory Board has full power to consider every kind of representation against grounds of detention, including a grievance that any grounds are too vague or indefinite to be understood or to enable a detenu to make an effective representation, the detenue should ordinarily wait at least until the report has been made by the Advisory Board before complaints that he has been really. deprived of any right under the Act. If the provisions of Section 11(1) of the Art ,ire valid he could not complain that he has been denied a constitutional right of making a representation merely because his case could remain pending for decision before an Advisory Board for ten weeks. More- over, that is not a ground for assailing either of the two detentions before us.

As the matter is pending before the Advisory Board, it is not really necessary for us to give a definite or final opinion on the question whether any of the grounds supplied to the petitioners is vague. I also think that it is not necessary to give a decision, at this stage, on the correct interpretation to be placed upon the grounds of detention. I will content myself by indicating the lines on which cases like the ones before us should be decided.

I may mention here two cases cited by the Attorney General to submit how the grounds supplied may be interpreted. In Naresh Chandra Ganguli v. The State of West Bengal & Ors.,(1) a distinction was made between the objects of detention, which sometimes find a place in grounds, and the particulars which contain facts on which the grounds are based. It was held here that the grounds., read in the

1) [1960] (1) S.C.R. 411.

context of particulars supplied, were neither vague nor irrelevant. In Lawrence Joachim Joseph DSouza's case (Supra), it was held that, having regard to the nature of the activity for which preventive detention was ordered, no better particulars could be given.

It has to be borne in mind that preventive detention is not punitive detention. Hence, the mere fact that a past occurrence, used for forecasting probable future conduct of the detenu, could also be the subject matter of a prosecution for an offence, would not affect the validity of preventive detention.

Preventive detention orders involve forecasts, in general terms, based on past conduct of which particulars can be given. It is certainly not possible to give particulars of future anticipated conduct. All that can be done is to give a statement of an apprehension in the form of grounds as to what the detenu is likely to do, having regard to the particulars of past activities which may be given, so that preventive detention, for one of the purposes for which it can be, ordered, is shown to have become necessary in his case. The grounds and particulars must necessarily have a rational nexus with these purposes, or, in other words, must be relevant.

One of the questions argued was whether the reference to recovery of sugar so long ago as 4-1-1972 did not vitiate the detention order on the ground of its irrelevance. In reply , reliance was placed upon two decisions of this Court where it was held that mere references to past activities would not vitiate a detention order as that is not irrelevant in forecasting future conduct. These cases were : Bhim Sen Vs. State of Punjab, (1) and Rameshwar Shaw Vs. District Magistrate, Burdwan & Anr.(2) The recovery of 199 bags of sugar on 4-1-1972 was not so remote as to be considered irrelevant, particularly as hoarded rice was also recovered on 16-5-1972, and then, finally, came the discovery of hoarded rice on 25-7-1973. it is this chain of events which, considered together, enabled the detaining authorities to form a reasonable apprehension as to the future conduct of the detenus.

A distinction between grounds which are merely vague and those which are extraneous or irrelevant often tends to be over-looked. Particulars of vague grounds can be, as seen already, supplied even later so as to show that the grounds were justified. If not supplied, the detenu can also ask for them. But no amount of particulars of it would cure the defect of a ground given which is extraneous to the purposes for which preventive detention may be ordered. Any such ground would vitiate the detention order at its inception. At any rate, this Court could not separate the extraneous or irrelevant ground from the proper and the relevant ones. it could only order the-release of detenu because something extraneous to the legally authorised objects of detention had also affected the decision to detain.

(1) [1952] S.C.R. 18.

(2) [1964] (4) S.C.R. 921.

-L447Sup.Cl/74 In Tarapade De & Ors. v. the State of West Bengal, (1) a Bench of five Judges of this Court explained the distinction between the vague grounds and irrelevant grounds and said that they do not stand on the same footing. It Said at page 218-219) :

> "We are unable to accept the contention that 'vague grounds' stand on the same footing as 'irrelevant grounds'. An irrelevant ground has no connection at all with the satisfaction of the Provincial Government which makes the order of detention. For the reasons stated in that judgment we are also unable to accept the contention that if the grounds are vague and no representation is possible there can be no satisfaction of the authority as required under Section 3 of the Preventive Detention Act. This argument mixes up two objects. The sufficiency of the grounds, which gives rise to the satisfaction of the Provincial Government, is not a matter for examination by the

> Court. The sufficiency of the grounds to give the detained person the, earliest opportunity to make a representation can be examined by the court, but only from that point of view. We are therefore unable to accept the contention that the quality and characteristic of the grounds should be the same for both tests. On the question of satisfaction, as has been often stated, one person may be, but another may not be, satisfied on the same grounds. That aspect however is not for the determination of the court, having regard to the words used in the Act. The second part of the enquiry is clearly open to the court under article 22(5). We are therefore unable to accept the argument that if the grounds are not sufficient or adequate for making the representation the grounds cannot be sufficient for the subjective satisfaction of the authority".

It, however, seems to me that whether some of the grounds are merely vague or are irrelevant and extraneous to the purposes of the, Act, the detenu can make a representation against them in such a way that it may be considered by the Advisory Board. The Advisory Board has full jurisdiction- to declare a detention invalid or to recommend that, after excluding what may be vague or irrelevant, the detention should continue. So far as the Courts considering Habeas Corpus petitions are concerned, they cannot enter into sufficiency of grounds for detention. They can only declare the detention vitiated on the ground that some of the grounds supplied are irrelevant or are so vague that no effective representation is possible against them. In those cases where detention is vitiated because particulars were not supplied at the earliest reasonably possible opportunity, so that the right of a detenu to make a representation is held to be defeated and on no other ground, the detention would, strictly speaking, not be vitiated ab initio, but, it would become illegal only from the time when the infringement of the right to sufficient particulars to make a representation takes place. This takes us to the question whether the alleged delay in considering the petitioners' representations was suffi- (1) [1951] S.C.R. 212 @ 218-219 cient to vitiate their detentions on the ground of infringement of their constitutional right to make representations against them.

In support of the second ground of attack-that the period of nearly three weeks taken by the Govt. in rejecting the petitioners representations was so long as to defeat the right of petitioners to make a representation-the decisions cited before us on-behalf of the petitioners were : Babul Mitra v. State of West Bengal & Ors.,(1) Khaiden Ibocha Singh etc. v. State of Manipur.(2) On the other hand, the learned Attorney General has relied on Deonarayan Mondal v. State of West Bengal(3) in which it was held that where the Govt. has satisfactorily explained the time taken in considering the detenue's representation, there could not be said to be an undue delay which defeated the right of a detenu to make a representation.

In the cases before us, there is no complaint that the Govt. had not forwarded the petitioners' representations to the Advisory Board within a reasonable time or that the Advisory Board had taken an unduly long time over the petitioners, cases. As already indicated above, the Advisory Board is given ten weeks' time, under Section 1 1 (1) of the Act, within which to make the report on a detenu's case. If this provision is valid (it may be repeated that its validity is not challenged here), it could not be said that there is under delay in deciding a case if there is no infringement of this provision. And, if there is an infringement of this provision in a case that would provide an

independent ground for invalidating the detention.

The only grievance of the petitioners id, this respect is that the Govt. had deprived them of their rights of making representations because it took too long to reject their representations on 28-8-1973 during the pendency of their petitions in this Court. Copies of their representations to the Govt. filed by the petitioners show that, they have disputed every single fact, alleged illness, absence from Gauhati, given names of persons from whom the rice was alleged-to have come, set up possession of licences to cover the quantities recovered in addition to taking the plea of the vagueness of the grounds of detention. The Govt. of Assam would naturally take sometime to verify the cor- rectness of the allegations of fact made by the petitioners. I find that the affidavits filed on behalf of the Govt. have sufficiently explained the delay.

Coming to the last and third ground of attack, that the detaining authorities had not applied their minds to the facts of the petitioners' cases, the basis of this attack is two fold : firstly, that the allegations made against the petitioners were not true; secondly, that the Govt. of Assam had taken nearly three weeks to verify the details, so that it must be presumed that they were not there before the detention was ordered.

As regards the first of the two grounds, I have to repeat that it is not for this Court to consider, as a rule, the correctness or otherwise of the assertions made on questions of fact in the returns field. The (1) A.I.R. 1973 S.C. 197. (2) [1973] (1) S.C.R. 1022. (3) A.I.R. 1973 S.C. 1353.

matter is still pending before the Advisory Board which can examine them. We cannot, by holding that the detaining authorities had come to some incorrect conclusion, infer that they must have failed to apply their minds to the allegations made and facts ascertained by them. The detailed affidavits filed in reply show that they had fully applied their minds to the conflicting versions on questions of fact. As regards the second ground, it is enough to point out that the Govt. of Assam could not be presumed to be in possession of all the, facts taken into account by the detaining officer. The detaining officer had not consulted the Govt. of Assam before ordering detention. Therefore, the reasonable time taken by the Govt. of Assam in making enquiries only shows that it took care to verify the correctness of allegations made by the petitioners, or, in other words, that it really applied its mind to the, facts of their cases.

As the petitioners' cases are still pending before the Advisory Board, I think we ought to observe that any opinion which we may have expressed, in the course of discussion of matters argued before us, on questions pending before the Advisory Board, would not preclude the Board from going into either questions of fact or of law raised by the petitioners before the Advisory Board All that we could and should hold here is that the petitioners have not established an infringement of their constitutional right under Article 22(5) to be afforded the earliest opportunity of making effective representations against their detention orders on the facts of the cases before us. They have, in fact, made representations, including those against alleged vagueness of some grounds, to the Advisory Board. Power has been expressly ,given to the Board by Section 1 1 (1) of the Act, to can for further information, even suo moto,. from the appropriate Government, if it deems it necessary to do so. The whole opinion of the Board is not confidential under Section 11(4) of the Act. The effectiveness

of the representations made by the detenues could only be guaged after the Advisory Board has given its opinion. The question whether the grounds of detention show that the detention is ab initio illegal must, it seems to me, be kept distinct from the question whether they are so vague and devoid of particulars as to amount to a denial of the right to make an effective representation at the earliest opportunity. The totality of relevant facts and circum- stances of each case must be taken into account to determine whether the opportunity of effective representation has been denied. The alleged vagueness or want of particulars, must be viewed in the context of the nature of activities alleged, the substance of the allegations made, the contents of actual representations made, and, last but not the least, the effect they have actually produced. And, in considering the last mentioned question, the, fact that the case is still under consideration, within the legally fixed period of ten weeks from the detention, before an Advisory Board, which has full power and jurisdiction to eliminate some grounds as vague or wanting in particulars and to determine the sufficiency or otherwise of the rest of the grounds and particulars supplied, cannot be ignored. if matters in dispute, including disputed questions of fact, relating to the validity of a detention had necessarily to be determined in this Court whenever a Habeas Corpus petition is filed, it is difficult to see why the principle could not be extended so that an under trial prisoner, charged with the commission of an offence, could insist that the, question of his innocence or guilt be tried and determined by this Court directly pending his trial by a court of competent jurisdiction. In a case of preventive detention where fairly triable questions of fact or law, which can be more appropriately gone into and decided by an Advisory Board, are pending before the Board, the petition should be dismissed as premature barring very exceptional circumstances as already indicated above.

I In Halsbury's "Law of England (1111 Edn. (Vol. II) p. 46), wefind :

> "Although the Habeas Corpus Act, 1816, enables the return to be controverted, and a total absence of jurisdiction, or matters in excess of jurisdiction, may be alleged and proved by affidavit, facts alleged on the return which were within the jurisdiction of a court cannot be controverted".
>
> I find that the petitioners before us have neither proved an excess of power to detain on grounds alleged against them nor that their ed by affidavit, facts alleged on the return which were within the jurisdiction of a court cannot be controverted".

No doubt this Court must zealously protect the personal freedom of citizens against arbitrary or unconstitutional invasions of it by executive authorities. But, it does not appear to me to be necessary, in order to do that, to stultify what is, in some respects, the more effective method of consideration of the whole case by an Advisory Board which could consider sufficiency of grounds of detention. In this respect the Board could do more than we could ordinarily do in exercise of our writ issuing jurisdiction. To allow the legally prescribed procedure for protection of personal liberty to, operate freely and consistently with the social interests preventive detention is meant to safeguard appears to be the path of judicial wisdom.

A Habeas Corpus proceeding should test the legality of a detention and not the draftsmanship of the officer who passes a detention order or sends the grounds of his satisfaction. Even if some of the

grounds of detention are vague but others could reasonably satisfy the detaining authority that, to prevent much greater apprehended harm to social good from the anti-social activities of an individual, his preventive detention is imperative, the sufficiency of the remaining of detention should be allowed to be determined by those charged with the duty to consider this question. We cannot indirectly do what we have repeatedly held to be not possible for this Court to do directly, or, in other words, we should not undertake to determine what is, really and substantially only a question of sufficiency of grounds of detention.

Some vagueness seems often unavoidable and can almost invariably be discovered if we search assiduously for it among grounds of satisfaction relating to future course of conduct of an individual about which the detaining authority has to attempt a reasonable and honest forecast. It is only where a vagueness or indefiniteness is disclosed which either makes the satisfaction quite illusory and unreasonable or which really disables a detenu from making an effective representation that a detention is vitiated on such a ground. I am not at all satisfied that this is the position in the case before us.

The consequence of the views held and expressed by me above is that I would dismiss these writ petitions.

ORDER In view of the majority judgment, the rule nisi is made absolute. We direct the immediate, release of the petitioners from custody.

V.P.S.