Supreme Court of India
Vijay Kumar vs Union Of India & Ors on 24 February, 1988
Equivalent citations: 1988 AIR 934, 1988 SCC (2) 57
Author: M Dutt
Bench: Dutt, M.M. (J)

PETITIONER:
VIJAY KUMAR

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT24/02/1988

BENCH:
DUTT, M.M. (J)
BENCH:
DUTT, M.M. (J)
SHETTY, K.J. (J)

CITATION:
1988 AIR 934 1988 SCC (2) 57
JT 1988 (1) 448 1988 SCALE (1)443
CITATOR INFO :
RF 1989 SC 764 (20)
R 1990 SC1196 (16)

ACT:
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974-Challenging detention under.

HEADNOTE:
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This appeal was directed against the judgment of the High Court whereby the High Court had dismissed the writ petition of the appellant, challenging the validity of his detention under the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 ('The Act').

The Directorate of Revenue Intelligence (DRI) had information that the appellant was engaged in receipt, storage and disposal of smuggled goods on a large scale. On a specific information received on March 11, 1987, that large quantity of gold had been received by the appellant and stored at his instance in various premises, the DRI mounted a discreet surveillance in the vicinity of the appellant's residence, and seized 100 foreign-marked gold biscuits from Uttam Chand, a milk vendor. Uttam Chand disclosed that the said gold had been given to him by the

appellant. He also disclosed that the appellant had given him 300 gold biscuits, and the remaining 200 gold biscuits had been taken away from him by Raj Kumar alias Chhotu, the servant of the appellant. Raj Kumar alias Chootu disclosed that he had delivered the said 200 gold biscuits to one Bhuramal Jain. A search of Bhuramal Jain's residence resulted in the recovery of the said 200 gold biscuits. Thus, 300 smuggled gold biscuits were seized by the DRI officers on March 11. 1987.

A provisional order of detention of the appellant dated April 1. 1987 was passed by the respondent No.2, the detaining authority, under section 3(1) of the Act, and duly communicated to the appellant along with the grounds of detention dated April 1, 1987 by the detaining authority.

The case of the appellant was referred to the Advisory Board constituted under sub-clause (a) of clause (4) of Article 22 of the Con-

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stitution of India for its opinion, whereupon the Board submitted its report dated May 13, 1987, and the Central Govt. by its order dated June 24, 1987, in exercise of its powers under section 8(f) of the Act, confirmed the detention of the appellant, etc.

At this stage, it might be mentioned that before the order of detention was passed by the detaining authority, the appellant had been arrested on a charge under section 135 of the Customs Act, 1962.

The appellant challenged the order of detention as confirmed by the Central Government by a writ petition before the High Court which dismissed the same. Similar detention orders having been passed in respect of the said Uttam Chand, Bhuramal Jain and Raj Kumar alias Chhotu, they had also challenged their detentions by writ petitions before the High Court and the High Court had by the same judgment under appeal allowed their writ petitions and quashed the orders of detention. The appellant then appealed to this court for relief by special leave .

Dismissing the appeal, the Court,

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HELD: Per Murari Mohon Dutt, J.

It was not correct to say (as contended by counsel for the appellant) that the detaining authority was not aware of the fact that the appellant was already in detention on a charge under section 135 of the Customs Act. The detaining authority was fully aware of the fact of the arrest of the appellant as was evident from paragraph 13 of the grounds of detention. It is not necessary that in the order of detention such awareness of the detaining authority has to be indicated. It is enough if it appears from the grounds of detention that the detaining authority is aware of the fact that the detenu is already in detention. [5lC-E]

It was true that in Uttam Chand's case, the detaining authority had proceeded on the basis that the offence for

which he had been arrested and detained, was a bailable offence. But the question whether or not a particular offence for which a detenu has been detained, is a bailable or non-bailable offence, does not have any bearing on the question of passing an order of detention. Even though an offence is a non-bailable one, an accused may be enlarged on bail. Again, an offence for which a detenu has been put under detention, may be a bailable offence. [5lE-F]
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On a conspectus of a number of decisions of this Court. the Court was of the view that when a detenu is already under detention for an offence, whether bailable or non-bailable, the detaining authority will take into consideration the fact of detention of the detenu, and, as laid down by this Court in Smt. Sashi Aggarwal. v. State of U.P. (Writ Petition (Crl.) No. 735 of 1987 disposed of on 11.1.1988), there must be compelling reasons to justify his preventive detention in spite of the fact that he is already under detention on the charge of a criminal offence. There must be material for such compelling reasons and the material or compelling reasons must appear from the grounds of detention that will be communicated to the detenu. In other words, two facts must appear from the grounds of detention, namely (i) awareness of the detaining authority of the fact that the detenu is already in detention, and (2) there must be compelling reasons justifying such detention, despite the fact that the detenu is already under detention. [52F-H: 53A]

In this case, the Court was unable to accept the contention of the appellant that there had been non-application of mind by the detaining authority to the relevant facts. The detaining authority besides being aware of the fact that the appellant was already in detention, had taken into consideration the relevant facts before passing the impugned order of detention under the Act, which was apparent from the grounds of detention. In the circumstances, the contention that the impugned order of detention should be struck down on the ground of non-application of mind by the detaining authority, was rejected. [53C-D]

It appeared from the observation made by the High Court that the appellant, without making any prayer before the Advisory Body for the examination of his witnesses or for giving him assistance of his friend, started arguing his own case, which in all probability, had given an impression to the members of the Advisory Board that the appellant would not examine any witness. The appellant should have made a specific prayer before the Advisory Board that he would examine witnesses, who were standing outside. The appellant had not made any such request to the Advisory Board. There was no reason for not accepting the statement of the detaining authority that the appellant had been permitted by the Advisory Board to have the assistance of an advocate or

a friend at the time of hearing, but the appellant had not availed himself of the same. In the circumstances, the court did not think that there was any substance in the contention of the appellant that the Advisory Board had acted illegally and in violation of the principles of natural justice in not examining the witnesses produced by the appellant at the meeting of the Advisory Board and in not
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giving permission to the appellant to have the assistance of his friend. [54H; 55A-C]

The appellant contended that both the Government and the detaining authority made unreasonable delay in disposing of the representations made by his wife and by himself, and that the representations were not considered independently inasmuch as the same were disposed of after the Advisory Board submitted its report, and in view of the above facts, the order of detention was illegal and invalid. [55D-E]

In regard to the representation of the appellant's wife dated 11.4.1987, it appeared from paragraph 2 of the additional affidavit of Mr. S.K. Choudhary, Under Secretary, Ministry of Finance, Department of Revenue, New Delhi, that comments from the DRI were received by the senior Technical officer on 28.4.1987. He could not take action on 28.4.1987 as hearing of the appellant's case before the Advisory Board was fixed on that date. He placed the matter with his note before the detaining authority on 30.4.87. It was apparent that the Senior Technical officer dealt with the matter immediately on getting the comments from the DRI and there was delay in putting up the matter before the detaining authority or the Government, as the case might be. [55F, H; 56D, E]

It was submitted on behalf of the appellant that the detaining authority had no jurisdiction to reject the representation when it was meant for the Government. Mr. Kuldip Singh, Additional Solicitor General pointed out on a reference to record that the detaining authority had not rejected the representation but only commented "merits rejection". The Court could not accept the contention of the appellant that the said comment of the detaining authority had influenced the mind of the Minister, who had considered the representation on behalf of the Government, and that there was no necessity for getting a comment from the detaining authority. Unless the comments of the relevant authorities are placed before the Minister, it will be difficult for him to properly consider the representation. There was no substance in the contention that any comment from the detaining authority would influence the mind of the Government. Such assumption was without foundation. The contention was rejected. [56H; 57A-D]

As regards the representation dated 23.4. 1987 of the appellant to the detaining authority, it was rejected as stated in the said additional affidavit, by the detaining authority on 4.5.87, and the Additional

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solicitor-General pointed out with reference to the records that file had not been forwarded to the Minister after the rejection of the representation by the detaining authority. In the Court's opinion, nothing turned on the fact that after the representation had been rejected, the relevant file had been sent to the Minister for his consideration. The Court was also told by the Additional Solicitor General that the report of the Advisory Board was dated May 13, 1987 and both the representations had been disposed of by the detaining authority and the Government on May 6, 1987, that is, much before the report of the Advisory Board. It was apparent that as the report of the Advisory Board was dated May 13, 1987, there was no foundation for the contention of the appellant that the consideration of the representations had been influenced by the report of the Advisory Board. [57D-H; 58A-B]

As regards the appellant's grievance that he was not supplied with the copies of the documents relied upon by the detaining authority along with the grounds of detention, there was no factual foundation in the complaint made by the appellant that he had not been supplied with the relevant documents along with the grounds of detention. [58D]

The contention of the appellant that the Government had not applied its mind while confirming his detention for the maximum period of one year as prescribed in section 10 of the Act, was, in the Court's opinion, devoid of any merit. Section 10 does not provide that in imposing the maximum period of detention, any reason has to be given. In confirming the order of detention, it may be reasonably presumed that the Government has applied its mind to all the relevant facts, and if it imposes the maximum period of detention, it cannot be said that the Government has not applied its mind to the period of detention. Under section lt of the Act, a detention order may, at any time be revoked or modified by the Government. The court did not think, in the circumstances, that the detenu was in the least prejudiced or that there had been non-application of mind by the Government to the question of period of detention of the detenu. [58E-H: 59A]

The judgment of the High Court was affirmed. [59B]

Per K. Jagannatha Shetty, J. (concurring)

The first question was as to the legality of an order of detention of a person who was already in custody. The Law Report contains several decisions on this point and they furnish an instructive lesson for both l l sides. In all the cases, there is, however, one uniform principle stated

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and reiterated. It is this: the detaining authority must have awareness of the fact that the detenu is already in custody and yet for compelling reason his preventive detention is found necessary. [59C-D]

The question now raised was what should be the

compelling reason justifying the preventive detention if the person was already in jail and where one should find it? Is it from the grounds of detention or apart from the grounds of detention? [59D-E]

It was urged that apart from the grounds of detention, there must be some other material disclosed to the detaining authority that if the detenu was released on bail, he would again carry on the prejudicial activity. His Lordship did not think that the contention was sound. There cannot be any other material which can enter into the satisfaction of the detaining authority, apart from the grounds of detention and connected facts therein. The satisfaction of the detaining authority can not be reached on extraneous matters. The need to put a person under preventive detention depends only upon the grounds of detention. The activities of the detenu may not be isolated or casual. They may be continuous or part of a transaction or racket prejudicial to the conservation or augmentation of foreign exchange. Then, there may be need to put the person under preventive detention, notwithstanding the fact that he is under custody in connection with a case. There could not, however, be any uniform principle to be applied in this regard. Each case had to be judged on its own facts and grounds of detention. If the grounds are germane, it would be perfectly legitimate exercise of power to make an order of detention. [59E-G: 60B-C]

In this case, having regard to the nature of the grounds furnished to the detenu, there was hardly any justification to find fault with the order of detention [60C]

The next aspect which needed to be clarified was whether it was necessary for the concerned authority to give special reasons for directing the detention for the maximum period prescribed under the Act. It was urged that it was a must for the concerned authority to give special reasons, and if no such reasons were given, then, it amounted to non - application of the mind. The Court was unable to subscribe to this view. It was against the purpose and scheme of the COFEPOSA Act. The order made under section 3(1) is in the nature of an interim order. It is subject to the opinion of the Advisory Board under section 8(f) of the COFEPOSA Act. If the Advisory Board reports that there is in its opinion sufficient cause for the detention of the person, the concerned
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authority may confirm and continue the detention of the person for such period as it thinks fit. The expression "as it thinks fit" in section 8(f) of the Act indicates that the concerned authority after considering the report of the Advisory Board may fix any period for detention. The authority is not required to give any special reason either for fixing a shorter period or for fixing the maximum period prescribed under section 10. The opinion of the Advisory Board and the grounds of detention are the only basis for

confirming and continuing the detention. Section 11 provides for revocation or modification of the detention order at any time. When the power to revoke the order of detention could be exercised at any time, it is not necessary for the authority to articulate special reasons for continuing the detention for any period much less for the maximum period prescribed under the Act. [60D-E, G-H; 61E-G]

Rameshwar Shaw v. District Magistrate Burdwan, [1964] 4 SCR 921; Ramesh Yadav v. District magistrate, Etah, [1985] 4 SCC 232; Suraj Pal Sahu v. State of Maharashtra, [1986] 4 SCC 378; 391, Smt. Sashi Aggarwal v. State of U.P., (writ petition (Crl.) No. 735 of 1987 disposed of by this court on 11.1.1988) and Bharat v. District magistrate, [1985] Criminal Law Journal, 1976, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 9 of 1988.

From the Judgment and order dated 19. 10. 87 in the High Court of Delhi in Criminal Petition No. 239 of 1987.

D.D. Thakur, Harjinder Singh and N Malhotra for the Appellant.

Kuldip Singh, Additional Solicitor General, C.V. Subba Rao and Hemant Sharma for the Respondents.

The following Judgments of the Court were delivered: DUTT, J. This appeal by special leave is directed against the judgment of the Delhi High Court whereby the High Court dismissed the writ petition of the appellant challenging the validity of his detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, hereinafter referred to as 'the Act'.

Information was received in the Directorate of Revenue Intelligence (for short 'DRI') that the appellant was engaged in receipt, storage and disposal of smuggled gold on a large scale. On a specific information received on March 11, 1987 that large quantity of gold had been received by the appellant and stored at his instance in various premises, the DRI mounted a discreet surveillance in the vicinity of the residence of the appellant. Shorn of all details, it may be stated that 100 foreign marked gold biscuits, each weighing 10 Totals, were seized from Uttam Chand, a milk vendor. It was disclosed by Uttam Chand that the said gold had been given to him by the appellant. He also disclosed that the appellant had given him 300 gold biscuits. The remaining 200 gold biscuits were taken away from Uttam Chand by Raj Kumar alias Chhotu, the servant of the appellant. Raj Kumar alias Chhotu, however, disclosed that he had delivered the said 200 gold biscuits to one Bhuramal Jain of E/19, Ashok Vihar, Phase-I, New Delhi. The search of the residence of Bhuramal Jain resulted in the recovery of the said 200 biscuits of foreign marked gold from a zipper bag.

It is the case of the detaining authority that the appellant Vijay Kumar had, at the instance of one Dubai based smuggler Mohideen, agreed to receive and dispose of smuggled foreign marked gold biscuits in Delhi, which would be supplied to him by two men of Mohideen, named Chandra Bhan and M.P., for a monetary consideration. It is alleged that pursuant to that arrangement, the appellant had received in all 1150 biscuits of foreign marked gold of 10 Tolas each from the said Chandra Bhan and M.P. between the end of January 1987 and March 7, 1987. A part of this quantity of smuggled gold was' alleged to have been delivered by the appellant to one Prakash Luniya and another part of it was, from time to time, stored by the appellant in the residence of Uttam Chand, who had been engaged by the appellant to store such smuggled gold on behalf of the appellant for a monetary consideration. As stated already, 300 smuggled gold biscuits were seized by the DRI officers on March 11, 1987. These 300 gold biscuits each weighing 10 Tolas, that is, in all 3000 Tolas, were valued at Rs.92,33,620.

A provisional order of detention of the appellant dated April 1, 1987 was passed by the respondent No. 2, Mr. Tarun Roy, Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi, the detaining authority, under section 3(1) of the Act, with a view to preventing the appellant from dealing in the smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods. The order of detention and the grounds of detention both dated April 1, 1987 were duly communicated to the appellant by the detaining authority.

The case of the appellant was referred to the Advisory Board constituted under sub-clause (a) of clause (4) of Article 22 of the Constitution of India for its opinion whether there was sufficient cause for the detention of the appellant. The Advisory Board, after hearing the petitioner, submitted its report dated May 13, 1987. The Central Government by its order dated June 24, 1987, in exercise of its powers conferred by section 8(f) of the Act, confirmed the detention of the appellant and directed that under section 10 of the Act the appellant would be detained for a period of one year from the date of his detention, that is, from April 2, 1987.

At this stage, it may be stated that before the order of detention was passed by the detaining authority, the appellant Vijay Kumar was arrested on a charge under section 135 of the Customs Act, 1962.

Being aggrieved by the order of detention as confirmed by the Central Government, the appellant challenged the same by filing a writ petition before the Delhi High Court and, as stated already, the High Court dismissed the writ petition. Hence this appeal by special leave Before considering the contentions of the parties, it may be stated here that similar detention orders were passed in respect of the said Uttam Chand, Bhuramal Jain and Raj Kumar alias Chhotu. They also challenged their detentions by filing writ petitions before the Delhi High Court. The High Court, however, by the same judgment under appeal allowed their writ petitions and quashed the orders of detention.

It is urged by Mr. Thakur, learned Counsel appearing on behalf of the appellant, that the detaining authority was obliged to consider before passing the order of detention that the detenu was already in detention on a charge under section 135 of the Customs Act, but there is no indication in the order

of detention that such consideration was made or that the detaining authority was aware that the appellant was already under detention. It is submitted that as there has been non-application of mind by the detaining authority as to the said fact of detention, the order of detention is illegal and invalid.

Further, it is submitted by the learned Counsel that while the offence under section 135 of the Customs Act is a non- bailable one, the detaining authority proceeded on an erroneous assumption that the offence was bailable. In support of that contention, the learned Counsel has drawn our attention to the fact, as recorded by the High Court, that the detaining authority stated in his counter-affidavit that he was aware at the time of passing the detention order that Uttam Chand was in jail, but there was every likelihood of his being released from jail, as the offence under section 135 of the Customs Act was a bailable one. It is urged by the learned Counsel that the detaining authority was not at all justified in passing the order of detention on such assumption.

It is not correct to say that the detaining authority was not aware of the fact that the appellant was already in detention on a charge under section 135 of the Customs Act. Indeed, in paragraph 13 of the grounds of detention, it has been categorically noticed by the detaining authority that Bhuramal Jain, Uttam Chand, Narender Kumar, Raj Kumar and the appellant were all arrested by the DRI officers on March 13, 1987 and produced before the Additional Chief Metropolitan Magistrate, New Delhi. Thus, the detaining authority was fully aware of the fact of the arrest of the appellant. It is not necessary that in the order of detention such awareness of the detaining authority has to be indicated. It is enough if it appears from the grounds of detention that the detaining authority is aware of the fact that the detenu is already in detention.

lt is true that in Uttam Chand's case, the detaining authority proceeded on the basis that the offence for which he was arrested and detaining was a bailable offence. Although there is no such statement of the detaining authority in regard to the appellant, it may be assumed that he was also of the impression that the offence under section 135 of the Customs Act, for which the appellant was arrested and detained in jail, was a bailable offence. But, the question whether or not a particular offence, for which a detenu has been detained, is a bailable or non-bailable offence, does not, in our opinion, have any bearing on the question of passing an order of detention. Even though an offence is a non-bailable one, an accused may be enlarged on bail. Again, an offence for which a detenu has been put under detention, may be a bailable offence. It has been observed by this Court in Rameshwar Shaw v. District Magistrate, Burdwan, [1964] 4 SCR 921 that whether an order of detention can be against a person who is already in detention or in jail, will always have to be determined in the facts and circumstances of each case. Again, in Ramesh Yadav v. District Magis-

trate, Etah, [1985] 4 SCC 232 it has been ruled by this Court that merely on the ground that an accused in detention as an under-trial prisoner was likely to get bail, an order of detention under the National Security Act, should not ordinarily be passed.

The position has been made clear in Suraj Pal Sahu v. State of Maharashtra, [1986] 4 SCC 378. While reiterating the principles of law laid down in Ramesh Yadav's case (supra), this Court further observes where the offences in respect of which the detenu is accused are so inter-linked and

continuous in character and are of such nature that these affect continuous maintenance of essential supplies and thereby jeopardize the security of the State, then subject to other conditions being fulfilled, a man being in detention would not detract from the order being passed for preventive detention.

In a recent decision in Smt. Sashi Aggarwal v. State of U. P., Writ Petition (Crl.) No. 735 of 1987 disposed of on 11.1.1988, this Court has made a review of all the decisions on the point. One of us, (Jagannatha Shetty, J.) speaking for the Court observed as follows:

> "Section 3 of the National Security Act does not preclude the authority from making an order of detention against a person while he is in custody or in jail, but the relevant facts in connection with the making of the order would make all the difference in every case. The validity of the order of detention has to be judged in every individual case on its own facts. There must be material apparently disclosed to the detaining authority in each case that the person against whom an order of preventive detention is being made is already under custody and yet for compelling reasons, his preventive detention is necessary."

On a conspectus of the above decisions, we are of the view that when a detenu is already under detention for an offence, whether bailable or non-bailable, the detaining authority will take into his consideration the fact of detention of the detenu and, as laid down in Sashi Aggarwal's case (supra), there must be compelling reasons to justify his preventive detention in spite of the fact that he is already under detention on a charge of a criminal offence. There must be material for such compelling reasons and the material or compelling reasons must appear from the grounds of detention that will be communicated to the detenu. In other words, two facts must appear from the grounds of detention, namely, (1) awareness of the detaining authority of the fact that the detenu is already in detention and (2) there must be compelling reasons justifying such detention, despite the fact that the detenu is already under detention.

In the instant case, it has been already noticed that the detaining authority was aware of the fact that the appellant was arrested and produced before the Additional Metropolitan Magistrate, New Delhi. The grounds of detention also disclosed compelling reasons that the appellant should be preventively detained under the Act in spite of his detention on a charge under section 135 of the Customs Act. It is not the case of the appellant that the grounds of detention do not disclose compelling reasons. All that has been urged on behalf of the appellant is that there has been non-application of mind by the detaining authority of the fact of detention of the appellant. We are, however, unable to accept the contention made on behalf of the appellant that there has been non-application of mind by the detaining authority to the relevant facts. The detaining authority, besides being aware of the fact that the appellant was already in detention, has taken into consideration the relevant facts before passing the impugned order of detention under the Act, which is apparent from the grounds of detention. In the circumstances, the contention that the impugned order of detention should be struck down on the ground of non-application of mind by the detaining authority, is rejected.

It is next contended on behalf of the appellant that the Advisory Board acted contrary to the principles of natural justice in not examining the witnesses of the appellant whom the appellant wished to examine in rebuttal of the allegations made in the grounds of detention and also in not considering the request of the appellant to have the assistance of his friend before the Advisory Board. In order to consider this contention, a few facts may be stated. On April 29,1987, the Advisory Board held its meeting. On April 27, 1987, the appellant made a representation to the Advisory Board. In that representation, it has been stated by the appellant "I want to produce in rebuttal of the allegations made against me, Shri Raj Kumar, Uttam Chand and Shri Narender as my witnesses. They are present and they may be examined in rebuttal of the allegations made against me in the grounds of detention." A copy of this representation dated 23.4.1987 was filed before the Advisory Board on 29.4.1987. This fact has not been denied in the affidavit of the respondents.

It is submitted by the learned Counsel of the appellant that when there is a specific prayer in the said presentation that the appellant would like to examine certain witnesses who were present outside, the Board room, the Advisory Board acted illegally and in violation of the principles of natural justice in not giving the appellant an opportunity to examine the witnesses. Further, it is submitted that the Advisory Board should have also allowed the appellant to have the assistance of his friend, who was also waiting outside the Board room, in defending the appellant before the Advisory Board. Affidavits of the said witnesses and also of the friend, who was to assist the appellant, were filed before the High Court in support of the allegation that they were all present and waiting outside the Board room.

Mr. Tarun Roy, the detaining authority, filed a counter-affidavit wherein he stated that the appellant did not ask for the examination of these witnesses though he stated so in his representation regarding the examination of the witnesses. The appellant himself explained his case before the Advisory Board and kept silent as to whether his witnesses were present outside or whether he would like to examine them in rebuttal of the charges made against him. Further, it is stated in the affidavit that the appellant did not bring his friend with him to assist him, although he had stated in his representation that he might be permitted the assistance of an advocate or a friend at the time of hearing. The allegations of the appellant that he was denied his right to examine witnesses or the assistance of a friend have been stated by the detaining authority in his affidavit as totally false. It has been also averred by the detaining authority in his affidavit that the appellant was permitted by the Advisory Board to have the assistance of an advocate or a friend at the time of hearing, but the appellant did not avail himself of the same.

A similar contention was raised before the High Court. The High Court, after referring to the affidavit of the detaining authority, has observed that it was for the detenu at the time of hearing to submit to the Advisory Board that his witnesses, who were present outside the Board room, should be examined, and that he should also be allowed assistance of his friend. Referring to the report of the Advisory Board dated May 13, 1987, the High Court points out that while the appellant Vijay Kumar, Raj Kumar and Uttam Chand appeared in person, Bhuramal Jain was represented by his Counsel before the Advisory Board. The Advisory Board did consider the representation of Vijay Kumar and heard him and also the co-detenus It appears from the observation made by the High Court that the appellant, without making any prayer before the Advisory Board for the examination

of his witnesses or for giving him assistance of his friend, started arguing his own case, which in all probability, had given an impression to the members of the Advisory Board that the appellant would not examine any witness. The appellant should have made a specific prayer before the Advisory Board that he would examine witnesses, who were standing outside. The appellant, however, did not make any such request to the Advisory Board. There is no reason for not accepting the statement of the detaining authority that the appellant was permitted by the Advisory Board to have the assistance of an advocate or a friend at the time of hearing, but the appellant did not avail himself of the same. In the circumstances, we do not think that there is any substance in the contention made on behalf of the appellant that the Advisory Board acted illegally and in violation of the principles of natural justice in not examining the witnesses produced by the appellant at the meeting of the advisory Board and in not giving permission to the appellant to have the assistance of his friend.

The appellant's wife sent a representation dated 11.4.1987 to the Government and the appellant also sent a representation dated 23.4.1987 to the detaining authority. It is the contention of the appellant that both the Government and the detaining authority made unreasonable delay in disposing of the representations. It is also complained that the representations were not considered independently inasmuch as the same were disposed of after the Advisory Board submitted its report. It is submitted that in view of the above facts, the order of detention turns out to be illegal and invalid and should be quashed.

In regard to the representation of the appellant's wife dated 11.4.1987, we may refer to the additional affidavit affirmed by Mr. S.K. Chaudhary, Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi, on behalf of the respondents. In paragraph 2 of the additional affidavit it has been stated as follows:

> "I submit that in the above case, the petitioner's wife's representation dated 11.4.1987 was received by the office of the Ministry of State for Finance on 21.4.1987 and from that office, it was received in COFEPOSA Unit on 22.4.1987, on which date, the comments from the Directorate of Revenue Intelligence were called for. The comments from the said Directorate were received on 27.4.1987 at 5.35 p.m. These comments were received by the Senior Technical officer on 28.4.1987. He, however, could not take action on 29.4.1987 as the hearing of the petitioner's case was fixed before the Advisory Board on that date. The Senior Technical officer put his note on 30.4.1987 to the Detaining Authority. The Detaining Authority was, however, on leave on 1.5.1987 and 2nd May and 3rd May 1987, being holidays, the Detaining Authority passed orders on 4.5.1987 rejecting the representation of the petitioner's wife and forwarded the file to the Minister of State for Finance for his consideration on behalf of the Central Government. The Minister rejected the representation on 6.5.1987 and the file was received in the section concerned on 7.5.1987. Thereafter, the memo regarding rejection of the representation was issued on 8.5.1987."

It appears from paragraph 2 of the affidavit extracted above that comments from the DRI were received by the Senior Technical officer on 28.4.1987. He, however, could not take action on 29.4.1987 as hearing of the appellant's case was fixed before the Advisory Board on that date and,

accordingly, he placed the matter with his note on 30.4.1987 before the detaining authority. Mr. Thakur, Counsel for the appellant, demurs to the dealing of the matter by the Senior Technical officer and not by the detaining authority himself. We do not think that any objection can be raised on this account. It is apparent that the Senior Technical officer dealt with the matter immediately on getting the comments from the DRI so that there was no delay in putting up the matter before the detaining authority or the Government, as the case may be. Whatever steps he had taken must have been on behalf of the detaining authority and for expedition. Although he received the comments on 28.4.1987, he could not take action on 29.4.1987, as the hearing of the appellant's case was fixed before the Advisory Board on that date. It can be reasonably inferred from this statement that it was necessary for the Senior Technical officer to be present before the Advisory Board with the relevant records and, consequently, a day's delay in putting up the matter before the detaining authority was quite justified.

It is, however, complained that when the representation was made to the Government, it was not at all justified on the part of the detaining authority to reject the representation. In other words, it is submitted, the detaining authority had no jurisdiction to reject the representation when it was meant for the Government. It is true that the said S.K. Chaudhary has stated in his affidavit that the detaining authority rejected the representation of the appellant's wife by his order dated 4.5.1987. Mr. Kuldip Singh, the learned Additional Solicitor General, however, points out on a reference to the record, that the detaining authority did not reject the representation, but only commented "merits rejection." Thus, a wrong statement has been made in the affidavit. Even though the position is altered, yet it is submitted by the learned Counsel for the appellant that the comment of the detaining authority "merits rejection" had influenced the mind of the Minister, who considered the representation on behalf of the Government. Counsel further submits that there was no necessity for getting a comment from the detaining authority inasmuch as any comment by him against the detenu would influence the mind of the Government. We are unable to accept the contention. In our view, unless the comments of the relevant authorities are placed before the Minister, it will be difficult for him to properly consider the representation. There is no substance in the contention that any comment from the detaining authority would influence the mind of the Government. Such assumption is without any foundation. The contention in this regard is, accordingly, rejected.

As regards the representation dated 23.4.1987 of the appellant to the detaining authority, it appears from the statement made in paragraph 3 of the said additional affidavit that it was rejected by him on 4.5.1987. There is a further statement that after such rejection, the file was forwarded to the Minister of State for Finance for his consideration on behalf of the Central Government and the Minister rejected the representation on 6.5.1987. It is contended by Mr. Thakur, learned Counsel for the appellant, that as the representation was addressed to the detaining authority, there was no necessity for forwarding the file to the Minister after the representation was rejected by the detaining authority. The learned Additional Solicitor General, however, points out with reference to the records, that the file was not forwarded to the Minister after the rejection of the representation by the detaining authority. There was, therefore, a mistake in the statement made in paragraph 3 of the said additional affidavit. In our opinion, nothing turns out on the fact that after the representation was rejected the relevant file was sent to the Minister for his consideration.

We are also told by the learned Additional Solicitor General that the report of the Advisory Board is dated May 13, 1987 and both the representations were disposed of by the detaining authority and the Government on May 6, 1987, that is, much before the report of the Advisory Board and, as such, there is no question of the consideration of the representations of the appellant and his wife being influenced by the report of the Advisory Board. It is apparent that as the report of the Advisory Board is dated May 13, 1987, there is no foundation for the contention of the appellant that the consideration of the representations was influenced by the report of the Advisory Board.

It is urged by the appellant that he was greatly prejudiced as he was not supplied with the copies of the documents that were relied upon and taken into consideration by the detaining authority along with the ground of detention and that such documents, as asked for by him, were given to him only on 20.5.1987 and, therefore, there was a delay of 28 days. A similar contention was advanced before the High Court. According to the respondents, the documents were all supplied to the appellant with the grounds of detention. In his representation, the appellant had asked for four documents and the High Court was satisfied that all these four documents had, in fact, been supplied to the appellant. Accordingly, it has been observed by the High Court that the appellant cannot make any grievance that these documents were supplied to him only on 20.5.1987 and not along with the grounds of detention. There is, therefore, no factual foundation in the complaint made by the appellant that he was not supplied with the relevant documents along with the grounds of detention.

The last point that has been urged on behalf of the appellant is that the Government has not applied its mind while confirming the detention of the appellant for the maximum period of one year from the date of detention as prescribed in section 10 of the Act. It is submitted that some reason should have been given why the maximum period of detention is imposed on the appellant. This contention, in our opinion, is devoid of any merit. Section 10 of the Act provides, inter alia, that the maximum period for which any person may be detained in pursuance of any detention order shall be a period of one year from the date of detention or the specified period. Section 10 does not provide that in imposing the maximum period of detention, any reason has to be given. In confirming the order of detention, it may be reasonably presumed that the Government has applied its mind to all the relevant facts and, thereafter, if it imposes the maximum period of detention, it cannot be said that the Government has not applied its mind as to the period of detention. In any event, under section 11 of the Act, a detention order may, at any time, be revoked or modified by the Government. In the circumstances, we do not think that the detenu was in the least prejudiced or that there has been non-application of mind by the Government to the question of period of detention of the detenu. This contention of the appellant also fails. No other point has been urged in this appeal.

For the reason aforesaid, the judgment of the High Court is affirmed and the appeal is dismissed.

JAGANNATHA SHETTY, J. I agree respectfully with the Judgment of my learned brother M.M. Dutt, J., but I add a few words of my own on the ever recurring question.

The first question is as to the legality of an order of detention of the person who was already in custody. The Law Report contains several decisions on this point and they furnish an instructive lesson for both sides. In all the cases, there is, however, one uniform principle stated and reiterated.

It is this: The detaining authority must have awareness of the fact that the detenu is already in custody and yet for compelling reason his preventive detention is found necessary.

The question now raised is what should be the compelling reason justifying the preventive detention if the person is already in jail and where one should find it? Is it from the grounds of detention or apart from the grounds of detention? It was urged that apart from the grounds of detention there must be some other material disclosed to the detaining authority that if the detenu is released on bail he would again carry on the prejudicial activities.

I do not think that the contention is sound. There cannot be any other material which can enter into the satisfaction of the detaining authority, apart from the grounds of detention and the connected facts there in. The satisfaction of the detaining authority cannot be reached on extraneous matters. The need to put the person under preventive detention depends only upon the grounds of detention. The activities of the detenu may not be isolated or casual. They may be continuous or part of a transaction of racket prejudicial to the conservation or augmentation of foreign exchange. Then there may be need to put the person under preventive detention, notwithstanding the fact that he is under custody in connection with a case. As said by Sabyasachi Mukharji, J. in Suraj Pal Sahu v. State of Maharashtra, [1986] 4 S.C. 378 at 391.

> "...But where the offence in respect of which the detenu is accused are so interlinked and continuous in character and are of such nature that these affect continuous maintenance of essential supplies and thereby jeopardize the security of the State, then subject to other conditions being fulfilled, a man being in detention would not detract from the order being passed for preventive detention."

There cannot, however, be any uniform principle to be applied in this regard. Each case has to be judged on its own facts and on its own grounds of detention. If the grounds are germane it would be perfectly legitimate exercise of power to make an order of detention.

In the instant case, having regard to the nature of the grounds furnished to the detenu I agree with my learned brother, that there is hardly any justification to find fault with the order of detention.

The next aspect which needs to be clarified is whether it is necessary for the concerned authority to give special reasons for directing the detention for the maximum period prescribed under the Act. It was, urged that it is a must for the concerned authority to give special reasons. And if no such reasons are given, then it amounts to non application of the mind. The decision of the Madhya Pradesh High Court, (Gwalior Bench) in Bharat v. District Magistrate, 1986 Criminal Law Journal, 1976 was relied upon in support of the contention. There it was observed (at p.

186).

> "We did not find in the records consideration of relevant circumstances that obtained on the date when the confirmation was made in each case. No reasons are given as to why the authority concerned considered it necessary to continue detention in each

> case for maximum period of twelve months. Whether the objective sought to be fulfilled in each case could be subserved by fixing the period of continued detention for a lesser period was not at all considered.

We are unable to subscribe to this view. It is against the purpose and scheme of the COFEPOSA Act. The order made under Section 3(1) is in the nature of an interim order. It is subject to the opinion of the Advisory Board under Section 8(f) of the COFEPOSA Act which provides:

8. Advisory Board For the purposes of sub-clause (a) of clause (4) and sub clause (c) of clause (7), of Article 22 of the Constitution:

xxx xxx xxx xxx xxx xxx xxx xxx xxx

(f) in every 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 and in every 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 forthwith. "

If the Advisory Board reports that there is in its opinion sufficient cause for the detention of the person, the concerned authority may confirm and continue the detention of the person for such period as it thinks fit. The expression "as it thinks fit" in Section 8(f) of the Act indicates that the concerned authority after considering the report of the Advisory Board may fix any period for detention. The authority is not required to give any-special reason either for fixing a shorter period or for fixing the maximum period prescribed under Section 10. The opinion of the Advisory Board and the grounds of detention are the only basis for confirming and continuing the detention, for any period, even upto the maximum period prescribed. Section 11 provides for revocation of detention order. The detention order may at any time be revoked or modified. When the power to revoke the order of detention could be exercised at any time, it is not necessary for the authority to articulate special reasons for continuing the detention for any period much less for the maximum period prescribed under the Act.

S.L. Appeal dismissed.