

Vijender Kumar Jain vs Union Of India And Ors. on 10 December, 1985

Equivalent citations: 1986CRILJ1183, 29(1986)DLT118

JUDGMENT

Aggarwal, J.

(1) This order shall dispose of Criminal Writ No. 211 of 1985, Criminal Writ No. 212 of 1985, Criminal Writ No. 225 of 1985 and Criminal Writ No. 231 of 1985. Since all these petitions arise out of the same transaction we have decided to hear them together and dispose them of by one order. The relevant facts concerning each writ petition, we shall discuss separately.

(2) On 2nd July 1985 an information was received in the office of the Enforcement Directorate that Vijendar Kumar Jain along with Sundar Lal Baid and Uttam Prakash was likely to carry a huge amount of foreign exchange to Hongkong by Atitalia Flight No. AZ-786 which was to take off at 1.15 A.M. from Palam Airport on 3rd July 1985. The information further was that the foreign exchange was to be supplied to the aforesaid three persons after crossing the customs and security checks by some one.

(3) Acting upon this information a team of officers from the Enforcement Directorate stationed themselves at various spots at Palam. Airport in the early hours of 3rd July 1985. Vijendar Kumar Jain, Sundar Lal Baid and Uttam Prakash who. had gone inside the aircraft were disembarked and were searched. From the possession of the aforesaid three persons the following currencies were recovered : Vijendar Kumar Jain U.S. \$ 23,135 St. 3,488 D.M. 6,500 Japanese Yens 1,40,000 Hongkong \$ 390 Sundar Lal Baid U.S. \$ 20,003 520 Uttam Prakash U.S. \$ 10,150 470 (4) The residential premises of the aforesaid three persons were also searched and Indian currency, foreign exchange and some documents were recovered, as detailed in the seizure memos. .

(5) During interrogation Vijendar Kumar Jain and Sunder Lal Baid disclosed that the foreign currency was passed on to them by one Brij Mohan, an employee of Indian Airlines after all of them had crossed customs and security checks. Brij Mohan was summoned and interrogated. Brij Mohan denied to have passed on the alleged foreign currency to Vijendar Kumar Jain and his companions on the night of 2nd-3rd July 1985. Brij Mohan was shown to Vijendar Kumar Jain and his companions and they stated that the foreign currency was not passed on to them by Brij Mohan. Vijendar Kumar Jain stated that out of some personal enmity he had falsely involved Brij Mohan as the man who had passed on the foreign currency to him and. his companions and that actually one Rameshwar Dayal Aggarwal, resident of 200, Gagan Vihar, Shakarpur, Delhi is the person who had handed over to them the packet containing the foreign currency after they had crossed the customs and the security checks. Rameshwar Dayal Aggarwal. was summoned and he was shown to the aforesaid detenus and the detenus admitted that it was Rameshwar Dayal Aggarwal who had passed on the foreign currency to them. Rameshwar Dayal Aggarwal was interrogated and he made a

statement explaining the circumstances in which he had passed on the foreign currency to Vijendar Kumar Jain and his companions after they had crossed the customs and the security checks.

(6) The above are broadly the facts which resulted in. passing of the impugned detention orders dated 11th July 1985 by Shri K. K. Dwivedi, Joint Secretary to the Government of India against Vijendar Kumar Jain, Sundar Lal Baid, Uttam Prakash and Rameshwar Dayal Aggarwal.

(7) On 5th July 1985 the Directorate of Enforcement filed a complaint against the aforesaid detenus under section 56 of the Foreign Exchange Regulation Act, 1973. Applications for bail were moved by all the detenus on 5th July but they were rejected . by the Additional Chief Metropolitan Magistrate, New Delhi, and all the detenus were remanded to judicial custody until 19th July 1985. On 10th July 1985 Uttam Prakash and Rameshwar Dayal Aggarwal filed second petition turn bail which were posted for hearing on 12th July 1985 and 16th July 1985 respectively before the Additional Chief Metropolitan Magistrate. Vijendar Kumar Jain also filed a fresh petition for bail on 9th July 1985 which was posted for hearing on 12th July, 1985. It seems, Baid did not file any fresh application for bail. The bail petitions of Uttam Prakash, Rameshwar Dayal Aggarwal and Vijendar Kumar Jain were allowed on 30th August 1985.

(8) Before the order for bail was passed, as already stated, the detention orders under section 3(1) of the Foreign Exchange and Prevention of Smuggling Activities Act, 1974 had been passed against the said detenus on 11th July 1985 and served on them in jail. The grounds of detention were served on the detenus on 15th July, 1985. Representations were made by the detenus against their detentions but they were rejected by the detaining authority. After obtaining the opinion of the Advisory Board the detention orders were confirmed by the detaining authority.

(9) The crucial and important question that arises in these four petitions is whether a detention order can be passed when the detenu is already in jail and if so under what circumstances a detention order can. be passed against a person who is in detention or in jail. The matter under discussion is not res-integra and there are a catena of authorities on this subject. The leading authority seems to be Rameshwar Shaw v. District Magistrate, Burdwan and another, . The detenu in the said case was detained under the Prevention Act with a view to preventing him from acting in a manner prejudicial to the maintenance of public order. The petitioner therein was arrested on 25th January 1963. On 15th February 1963 when the order of detention was served on him, he was in jail custody. A contention was raised that in view of the fact that the detenu was already in jail there could be no apprehension of his acting in a manner prejudicial to the maintenance of public order and, therefore, the detention is malafide and vitiated. Mr. Justice Gajendragadkar (as his Lordship then was) speaking for the court came to the conclusion that a detention order could be passed against a person who is in jail but it will have to be determined in the circumstances of each case whether an order of detention can be passed against a person who is in jail. Their Lordships held as under: "AS abstract proposition of law, there may not be any doubt that S. 3(1)(a) does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail; but the relevant facts in connection with the making of the order may differ and that may make a difference in the application of the principle that a detention order can be passed against a person in jail. In dealing with this question, the consideration of proximity of time will not be

irrelevant. The antecedent history and the past conduct on which the order of detention would be based would, in such a case, be proximate in point of time and would have a rational connection with the conclusion drawn .by the authority that the detention of the person after his release is necessary. Where a person is undergoing imprisonment for a very short time and it is known that he would soon be released from jail, it may be possible for the authority to consider the antecedent history of the said person and decide whether his detention would be necessary after he is released from jail and if the authority is bona fide satisfied that such detention is necessary he can make a valid order of detention a few days before the person is actually released. On the other hand, if a person is sentenced to a long term of imprisonment, the authority cannot pass an order soon after the sentence is pronounced, directing the detention of the person after he is released from jail at the end of the long period of sentence imposed on him. Therefore, the question as to whether an order of detention can be passed against a person who is in detention or in jail, will always have to be determined in the circumstances of each case.

(10) Before an authority can legitimately come to the conclusion that the detention of the person is necessary to prevent him from acting in a prejudicial manner, the authority has to be satisfied that if the person is not detained, he would act in a prejudicial manner and that inevitably postulates freedom of action to the said person at the relevant time. If a person is already in jail custody, as a result of a remand order passed by a competent authority, it cannot rationally be postulated that if he is not detained, he would act in a prejudicial manner. At the point of time when an order of detention is going to be served on a person, it must be patent that the said person would act prejudicially if he is not detained and that is a consideration which would be absent when the authority is dealing with a person already in detention. The satisfaction that it is necessary to detain a person for the purpose of preventing him from acting in a prejudicial manner is thus the basis of the order under section 3(1)(a), and this basis is clearly absent in the case of a person already in jail custody. Therefore, the detention of the person in the circumstances of this case, is not justified by S. 3(1)(a) and is outside its purview. The District Magistrate, who orders the detention of the detenu acts outside his powers conferred on him by S. 3(1)(a) when he holds that it was necessary to detain the person in order to prevent him acting in a prejudicial manner.

(11) The question of dual detention was, again, considered in Masood Alam etc. v. Union of India and others, (2) and their Lordships of the Supreme Court (para 6) held :

"THERE is no legal bar in serving an order of detention on a person who is in jail custody if he is likely to be released soon thereafter and there is relevant material on which the detaining authority is satisfied that if free, the person concerned is likely to indulge in activities prejudicial to the security of the State or maintenance of public order."

(12) Their Lordships further after referring to the decision in Rameshwar Shaw (supra) observed : "NO-DOUBT, this decision does suggest that the order of detention can be served on the person concerned if and after he is acquitted in the said criminal proceedings, but in our view merely because the person concerned has been served while in custody when it is expected that he would soon be released that service cannot invalidate the order of detention. The real hurdle in making an

order of detention against a person already in custody is based on the view that it is futile to keep a person in dual custody under two different orders but this objective cannot hold good if the earlier custody is without doubt likely to cease very soon and the detention order is made merely with the object of rendering it operative when the previous custody is about to cease.

(13) In *Merugu Satyanarayanna v. State of Andhra Pradesh*, Mr. Justice D. A. Desai speaking for the court observed as follows : "WHERE a preventive order may have to be made against a person already confined to jail or detained, it must be present to the mind of the detaining authority that keeping in view the fact that the person is already detained a preventive detention order is still necessary. The subjective satisfaction of the detaining authority must comprehend the very fact that the person sought to be detained is already in jail or under detention. and yet a preventive detention order is a compelling necessity. If the subjective satisfaction is reached without the awareness of this very relevant fact the detention order is likely to be vitiated. Further, this awareness must find its place either in the detention order or in the affidavit justifying the detention order when challenged. The absence of this awareness would permit an inference that the detaining authority was not even aware of this vital fact and mechanically proceeded to pass the order which would unmistakably indicate that there was non-application of mind, to the most relevant fact and any order of such serious consequence resulting in deprivation of liberty, if mechanically passed without application of mind, is obviously liable to be set aside as invalid."

(14) A similar view was expressed by the same bench in *Biru Mahato v. District Magistrate, Dhanbad*, (4).

(15) In *Alijan Mian v. District Magistrate, Dhanbad*, a question arose whether a detention order could be passed against a person who is already in jail custody, pending criminal trial. A bench of the Supreme Court comprising of Mr. Justice A. P. Sen, Mr. Justice E. S. Venkataramiah and Mr. Justice R. B. Misra held as under : "IT may be pointed out at the very outset that the detaining authority was alive to the fact that the petitioners were in jail custody on the date of the passing of the detention orders as will be clear from the following statements in the grounds of detention : "The subject is in jail and is likely to be released on bail ...In the circumstances I am satisfied that if he is allowed to remain at large, he will indulge in activities prejudicial to the maintenance of public order." The position would have been entirely different if the petitioners were in jail and had to remain in jail for a pretty long time. In such a situation there could be no apprehension of breach of 'public order' from the petitioners. But the detaining authority was satisfied that if the petitioners were enlarged on bail, of which there was every likelihood, it was necessary to prevent them from acting in a manner prejudicial to public order."

(16) The last case on the subject which we may notice is *Ramesh Yadav v. The District Magistrate, Etah and others*, (6). A Division Bench of the Supreme Court comprising of Mr Justice Amrendra Natu Sen and Mr. Justice Ranganath Misra observed : "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. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised."

(17) In the above case the order of detention (dated September 16, 1984) was made at lime when the petitioner therein was confined in jail as an under trial prisoner in connection with certain pending criminal cases. Along with the detention order grounds of detention were also supplied. Five grounds were advanced in support of the order of detention. There grounds related to incidents of 1980 and one ground to an incident of 1983. The fifth ground was that the detenu is an active member of the inter-district gang enlisted as No. I.D. 64. The grounds of detention further mentioned as follows : "AT this time you were detained in the District Jail, Mainpuri and you have filed an application for bail in the court of law which is fixed for hearing on September 17, 1984, and there is positive apprehension that after having bail you will come out of the jail and I am convinced that .after being released on bail you will indulge in activities prejudicial to the maintenance of public order."

(18) From the judgment, it appears that in December 1981 an order for the detention of the petitioner therein was made and it was quashed by the Allahabad High Court on May 27, 1982. Their Lordships found that three grounds relate to the incidents of 1980 and they were State and not available to be Used in an order of detention passed in 1984. As regards the fourth ground relating to the incident of 1983 it was found that after a trial the petitioner therein had been acquitted and that ground, therefore, was not available to be used. It was in these circumstances that the court made the observations quoted earlier and quashed the order of detention.

(19) A reading of the various authorities cited above would show that the view expressed in Rameshwar Shaw (Supra) still holds the field. A detention order can be passed against a person who is in detention or in jail but the detention order or the grounds of detention served on the detenu must show that the detaining authority is aware of. the fact that the person against whom the detention order is being passed is already in jail, and if still the detaining authority finds it necessary to pass I he order of detention there has to be material before the detaining authority to reach the satisfaction. In arriving at the satisfaction an important factor would be antecedent history and the past conduct of the detenu. It would, naturally, depend on the facts and circumstances of each case whether a detention order should or should not be made in the case of a person who is already in jail.

(20) We have in die opening part of the judgment stated the broad facts that resulted in the passing of the impugned detention orders. We shall now deal with each case and notices fact pertinent to that case.

(21) Vijendar Jain (hereinafter referred to as 'Jain') and Sundar Lal Baid (hereinafter called 'Baid') in their statements dated 3rd July 1985 stated that the foreign currency was, passed on to them after customs checking and security check by Brij Mohan, an employee of Indian Airlines. Uttam Prakash merely stated that lifter customs checking he was given a plastic bag which contained whisky bottle and one packet containing foreign currency. He did not say that Brij Mohan or any other person had given the packets containing the foreign currency, On the basis of the statements made by jain and Baid, Brij Mohan was summoned on 4th July and his statement was recorded. We find that the statement of Brij Mohan was recorded in two stages. This is a little purling aspect to us. The break came at a crucial stage when Brij Mohan was questioned regarding the occurrence in question. The

first part of the statement clearly shows that Brij Mohan knew Jain very well and he was involved with him in the past in the smuggling activities. The statement regarding the occurrence in question which was recorded after giving a break for lunch Brij Mohan denied to have passed on the packets containing the foreign currency to Jain and his two companions. Brij Mohan was confronted with Uttam Prakash and Uttam Prakash stated that he was not the person who had passed on the packets containing foreign currency. Thereafter Brij Mohan was confronted with Baid and Jain and they also stated that Brij Mohan was not the person who had passed on the packets containing foreign currency. Jain clarified that he had named Brij Mohan on account of some personal grievance against him and that it was Rameshwar Dayal Aggarwal, an employee of the Indian Airlines at Palam, who had passed on the packets containing the foreign currency to them. (Jain did not give any details of his grievance against Brij Mohan.) Rameshwar Dayal Aggarwal was summoned that very day and his statement was recorded. Rameshwar Dayal Aggarwal stated that he knew Jain for the last one year" and that on the night of 2nd-3rd July 1985 he had at the request of Jain agreed to pass on the foreign currency to Jain and his companions after they had cleared through the customs check. He further stated that after Jain and his companions had cleared the customs check point and were sitting near the duty free shop he had given to each one of them one packet containing the foreign currency and thereafter he had quietly returned. He further stated that as an employee of the Indian Airlines he gets a free ticket for travel abroad once in three years, and that earlier on three occasions he had availed of that facility and that he had gone abroad after availing F.T.S. for himself and his family members and that on his those visits he had been bringing some petty items which he sold with the help of V. K. Jain at small profits. To a question "Did you know as to how much foreign exchange was in these packets and in which form ? Aggarwal replied : "No, I did not know. I had made it clear to Shri V. K. Jain that I shall be doing this for him the first and the last time. He further stated that at no time earlier he had passed on foreign exchange to V. K. Jain or any other outgoing passenger from India. He further stated that he had met the companions of Jain only on 2nd July 1985 at the house of Jain.

(22) As already stated the detention order was passed against Aggarwal on 11th July 1985 when Aggarwal was in jail in the complaint filed against him under section 56 of the Foreign Exchange Regulation Act. An application for bail was moved by Aggarwal on 5th July 1985 but it was rejected on 6th July 1985 and he was remanded to judicial custody until 19th July 1985. A second petition for bail was filed on 10th July 1985 and it was fixed for bearing before the Additional Chief Metropolitan Magistrate for 16th July 1985.

(23) From paras 6 and 7 of the grounds of detention it is clear that the detaining authority was aware of the detention of Aggarwal. We are willing to hold that in view of the bail application moved by Aggarwal the detaining authority, may have reasonably come to the conclusion that Aggarwal is likely to be allowed bail and freed. The important question that, to our mind, arises in the petition of Aggarwal is whether there was material before the detaining authority necessitating the passing of the detention order even if Aggarwal was free. We find no antecedent history or past conduct of Aggarwal indulging in prejudicial activities. There is no allegation by Jain and Baid that at any time earlier he was party to any prejudicial activity. We are informed at the bar that so far no action of any type has been taken against Brij Mohan. We find no material on which the detaining authority could be satisfied that if free Rameshwar Dayal Aggarwal was likely to indulge in prejudicial

activities.

(24) Mr. Mittal learned advocate for the detenu raised some further contentions but in the view we are taking, we need not go into those contention. We for the reasons stated allow the petition of Rameshwar Dayal Aggarwal and quash his detention.

(25) Uttam Prakash during interrogation disclosed that after doing his matriculation in 1964 he worked as a commission agent with Indira Goods Carriers and that he would get a commission of Rs. 10 for booking one truck and that for the last two or three years he owned his own truck, that he had never gone abroad and in July he decided to go to Hong Kong, that he talked to his brother-in-law Nand Lal about his proposed. visit to Honk Kong and that Nand Lal introduced him to Jain, that Jain said that he was going to Hong Kong in the first week of July and he (Uttam Prakash) should accompany him and he would purchase his ticket for Hong Kong as well as the F.T.S. for 500 dollars, that Jain further said to him that in view of the ticket and the F.T.S. he had to take some goods for him to Hong Kong and also bring some goods to India. Uttam Prakash further stated that Jain purchased a ticket for him for Hong. Kong and also 500 U.S. dollars and that on 2nd July 1985 he went along with Jain to the Airport. The detenu further stated that after customs checking he was given a plastic bag which contained a whisky bottle and one packet containing the foreign currency and he was asked to take care of it. The detenu further disclosed as to how he was searched and the foreign currency was recovered from him.

(26) The detent had filed a petition for bail which was rejected on 6th July; 1985 and he was remanded to judicial custody until 19th July 1985. The detenu filed the second petition for half on 10th July 1985 which was fixed for bearing on 12th July 1985. The petitioner was ordered to be released on bail on 30th August 1985 but in the meantime on 11th July 1985 the impugned order of detention was passed and, therefore, the bail order became ineffective.

(27) The reasons for passing the detention order, are contained in para 7 of the grounds and it. leads as follows : "On the basis of the statements and documents mentioned hereinabove. I have no hesitation in arriving at the conclusion that you have related the provisions of Foreign Exchange Regulation Act 1973. I am also satisfied that your action has affected the foreign exchange resources of the country adversely Even though prosecution proceedings under the Foreign Exchange Regulation Act. 1973 have been initiated against you and adjudication proceedings are likely to be instituted, I am satisfied that in view of the material referred to herein above, it is necessary to detain you under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to prevent you from indulging in activities prejudicial to the augmentation of country's foreign exchange resources."

(28) We are willing to agree with the learned counsel for the respondents that in view of the bail application moved by the detenu Uttam Prakash, the detaining authority could have reasonably come to the conclusion that Uttam Prakash is likely to be freed on bail. The important question that arises in the case of Uttam Prakash also is whether there was material before the detaining authority necessitating the making of the detention order even if the detenu was admitted to bail. We find past record of the detenu indulging any prejudicial activity. The detenu was going to Hong Kong for the

first time. This is the solitary instance against the detenu. We find no material on which the detaining authority could reach the satisfaction that if free Utam Prakash was likely to indulge in activities prejudicial to the augmentation of country's foreign exchange resources.

(29) Shri Herjinder Singh learned advocate for the detenu Uttam Prakash raised sonic mote contentions but in the view we are taking of the case we need not go into the other contentions urged by Mr. Herjinder Singh . We allow the petition and quash the order of detention of Uttam Prakash.

(30) The detenu Baid in his interrogation on 3rd July and 4th July 1985 disclosed that he originally came from Bikaner, Rajasthan and that he has been living in Delhi for the last about' 15 years and engaged in the business of diamond and stones. that for the last two or three years he was operating his business from Surat where another brother of his is also engaged in the same business, that in May 1985 his business in diamond was not yielding much profits and during discussion with his elder brother Nirmal Chand Jain alias Nirmal Chand Baid alias Kahi at Delhi he suggested him to smuggle gold from outside into India, that his brother further advised him to invest money and join Jain in acquiring foreign exchange for smuggling gold into India from Hong Kong, that after some time he arranged Rs. 4 lakhs and gave the same to Nirmal Chand Jain for arranging foreign exchange, that on 3rd July 1985 Nirmal Chand introduced him to Jain who also invested Rs. 4 lakhs for the purchase of dollars and pounds. The detenu further made a statement regarding the events of 2nd and 3rd July 1985 and recovery of the foreign exchange from him.

(31) As in other cases Baid had also filed an application for bail on 5th July 1985 which was rejected on 6th July 1985 and he was remanded to Judicial custody until 19th July 1985. The only distinguishing feature in this case is that he had not filed any further petition for bail.

(32) We are willing to agree with the learned counsel for the respondents that the detaining authority may have reasonably come to the conclusion that in case Baid moves a petition for bail he was likely to be released on bail.

(33) Shri Vohra learned advocate for the petitioner vehemently contended that in view of the fact that the petitioner was already in jail there was no relevant material before the detaining authority justifying the making of the impugned detention order.

(34) We regret, we are unable to agree in this contention of Mr. Vohra. According to the petitioner before he succumbed to the suggestion of his brother Nirmal Chand Jain to deal in the smuggling of gold from outside into India he was doing the business in diamonds and stones. The petitioner has stated that he was introduced to Jain by his brother and he and Jain both invested Rs. 4 lakhs each and purchased foreign currency which was later on passed on to them after the customs and security checks. It seems, Nirmal Chand Jain was associated with the detenu Jain in the smuggling activities. The officials of the Enforcement Directorate made efforts to interrogate Nirmal Chand Jain but he absconded and did not make himself available for interrogation. Large quantity of foreign exchange was recovered from the detenu. We find that there is material on the record on which the detaining authority could arrive at its satisfaction that in case the detenu was freed on bail he is likely to

indulge in prejudicial activities.

(35) Shri Vohra next contended that the detenu made representations on 19th August 1985 and 3rd October 1985 and there was undue delay in the consideration of the said representations and that vitiates the detention order. We find from the record that the detenu made three representations against bids detention; the first representation. he made to the detaining authority on 19th August 1985, the second representation he made to the Minister of Finance (the representation does not bear any date) and the third representation dated 3rd October 1985 before the Chairman, Advisory Board. The first representation was considered and rejected on 3rd September 1985, the second representation was considered and rejected on 16th September 1985 and the last representation was considered on 8th November 1985.

(36) We have carefully gone through the record and we do not find any undue delay in the consideration of the representations submitted by detenu. The first representation was considered and rejected within about two weeks. There is also nothing to show that there was any undue delay in the consideration of the second representation. The present petition was filed. on 14th October 1985 soon after the filing of the third representation. The requirement of the law is that after any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. The order of detention, as already stated, was made on 11th July 1985; the grounds of detention were served on 15th July. It is clear that there was no delay in affording opportunity to the detenu to make a representation against the order of detention. We are of the view .that the slightest inaction on the part of the detaining authority cannot be made the basis for quashing the detention order. It has to be found out if any prejudice has been caused. We find that no prejudice has been caused to the detenu in the consideration of his representations by the concerned authorities.

(37) Shri Vohra contended that a copy of the grounds of detention translated in Hindi was served on the detenu and the said copy showed that foreign currency recovered was 2003 dollars and in the copy of the grounds in English the amount mentioned is 20,003 dollars and that in the representation dated 3rd October 1985 the detenu wrote that a true and correct Hindi translation of the grounds of detention be supplied to him but no true and correct Hindi translation of the grounds of detention, as demanded by him, was supplied to him and this has resulted in a great prejudice in making the representation.

(38) There is no doubt that there is a clerical error in the copy of the grounds of detention translated in Hindi served on the petitioner and instead of 20,003 dollars 2003 dollars is written.

(39) We find that in the first representation there is no complaint regarding the above error. In fact, in the representation, the petitioner has written that foreign exchange equivalent to Rs. 2.50,357 is alleged to have been recovered from him. The representation submitted is in English and is also signed in English. It is clear from the said representation that the petitioner was under no mistake that the allegation against him is that 20,003 dollars were recovered from him. Also, it appears that

the petitioner is conversant with English language. In the second representation also there is no complaint regarding the said error and the petitioner has written that foreign exchange equivalent to Indian Rs. 2,50,357 is alleged to have been recovered from him. In the last representation also there is no complaint regarding the said error. Only the detenu wrote that a true and correct translation of the grounds of detention be supplied to him. In ground No. 2 of the said representation, the petitioner has written that foreign exchange equivalent to Indian Rs. 2,50,357 is alleged to have been recovered from him. From the above it is clear that the detenu. was very well aware that the allegation against him is that 20,003 dollars were recovered from him.

(40) Shri Vohra next contended that this is a single instance of violation of Foreign Exchange Regulation Act against the detenu and the detenu is being prosecuted for violation of the Foreign Exchange Regulation Act and action under the Preventive Detention Act is not justified.

(41) In Alijan Mian v. District Magistrate, Dhanbad and others, , a Bench of the Supreme Court held that : "PREVENTIVE detention is an anticipatory measure and does not relate to an offence while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. In the circumstances the pendency of a criminal prosecution is no bar to an order of preventive detention, nor is an order of preventive detention a bar to prosecution it is for the detaining authority to have the subjective satisfaction whether in such a case there are sufficient materials to place the person under preventive detention in order to prevent him from acting in a manner prejudicial to public order or the like in future.

(42) The petitioner was found possession of a large quantity of foreign currency. On his own showing he had invested Rs. 4 lakhs for purchasing the foreign currency. He had joined hands With Jain who has been indulging in smuggling activities for a long time and on a large scale. The brother of the petitioner also seems to be an associate of Jain. The foreign currency was attempted to be smuggled out in a planned and pre-meditated manner. The .foreign currency was passed onto the detenu after he had cleared the customs and security checks. On these facts the detaining authority seems fully justified in coming to the conclusion that the detenu might repeat his illegal act. in future also and that his detention was necessary to preventing him from repeating the same in future.

(43) Shri Vohra next contended that third degree method was used against the detenu and the statement made by him is not voluntary. The counsel referred to a medical certificate dated 30th July 1985 filed on. the record. The medical certificate shows that the detenu on his first medical examination in jail was found to have the following injuries : (1)Bruises on buttocks; (2) Swelling wrist (both); (3) Bruises in back region. The certificate does not show on which date the detenu was examined. We find no material to hold that the statement was obtained from Baid under duress or coercion.

(44) We hold that the order detaining Sunder Lal Baid is legal and valid and we dismiss his petition.

(45) Lastly we come to the case of Vijendar Kumar Jain. He seems to be the master-mind behind the smuggling activities. Jam during interrogation stated that he obtained passport in 1981 and since

then he has gone to Singapore, Manila, Bangkok etc. 11 or 12 times and each time he has been bringing goods and selling them on profit in India. He further stated that. on 2nd and 3rd July he, Baid and Uttam Prakash were going to Hong Kong and that they were off-loaded from the aircraft and on search of their person foreign currency was recovered. Jain further stated that he had purchased the ticket for Baid and Uttam Prakash and had also purchased F.T.S. dollars for these two persons from American Express Bank. He further stated that in April 1985 he came into Contact with Nirmal Chand Jam and he had suggested to him for bringing gold from Hong Kong. He further deposed regarding his visit to Hong Kong in June 1985. He further stated that it was Nirmal Jain who had introduced him to Brij Mohan, a loader of Indian Airlines. Jain had applied for bail on 5th July; his application was rejected on 6th July and he was remanded to judicial custody up to 19th July 1985. He had filed the second petition for bail which was pending when the impugned order of detention was made. He was found carrying a large amount of foreign currency. The planned and premeditated manner in which he had obtained the foreign currency, in our view, fully justified the detain authority in coming to the conclusion that the detenu is likely to continue with his prejudicial activities unless he is detained under the Preventive Detention Act.

(46) Shri B. R. Handa learned advocate for V. K. Jain contended that the representation submitted by the detenu was considered after a delay of 17 days and this vitiates the order of detention. The representation was submitted by the detenu to the detaining authority on 12th August 1985. The detaining authority vide communication dated 29th August 1985 informed the detenu that his representation has been carefully considered but it is regretted that the same has been rejected. The detaining authority in its reply has stated how the representation dated 12th August 1985 received in the Ministry on 14th August 1985 was dealt with. We do not find any undue delay in the consideration of the representation. In any case, in our view, no prejudice has been caused to the petitioner.

(47) Shri Handa next contended that material documents such as air-ticket, boarding ticket, passengers manifest were not placed before the detaining authority and that if these documents had been placed before the detaining authority, the detaining authority may have come to a different conclusion. We are unable to see how the documents mentioned above were relevant in the facts and circumstances of this case. It is an undisputed fact that the petitioner had boarded the plane and he was off-loaded from the plane. The documents mentioned by the learned counsel, in our view, were not material at all in influencing the mind of the detaining authority one way or the other.

(48) We find that the detention of the petitioner Vijendar Kumar Jain is fully justified. We dismiss his petition.

(49) In the result, Criminal Writ No. 212 of 1985 by Shri Rameshwar Dayal Aggarwal and Criminal Writ No. 231 of 1985 by Shri Uttam Prakash are allowed and their detention orders are quashed. Criminal Writ No. 225 of 1985 by Sundar Lal Baid and Criminal Writ No. 211 of 1985 by Vijendar Kumar Jain are dismissed.