

Narinder Singh vs Union Of India And Others on 4 December, 1985

JUDGMENT

D.K. Kapur, J.

1. The present Habeas Corpus petition has been instituted on the footing of delay as well as the fact that the petitioner is totally unconnected with the incidents which led to the order being passed under COFEPOSA. The order of detention was passed on 5th August 1985 under S. 3(1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 by the Administrator of the Union Territory of Delhi. The grounds of detention show that it is the result of the arrival of some consignment of 14 packages which arrived from Hong Kong on 9th April, 1984. The consignment was addressed to Gurcharan Singh care of Frigo India, 13/2, Jor Bagh Market, New Delhi, and was to be collected by Kuldip Singh of Faiz Road, Karol Bagh, New Delhi. The detention order is passed sixteen months later in respect of a person who was neither the consignee, nor consignor, nor collector of the parcel. The parcel was found to contain video cassette recorders, telephones, Sakura colour paper, fabrics and other household goods which were valued at Rs. 15 lakhs and odd. This petition could have been allowed immediately on the short ground that the detention order is highly belated. The requirement of law as laid down by the Supreme Court is that there should be close proximity of the incident and the detention order but if there is any delay caused by obtaining the facts the same could lead to the inference that there has been no real delay. In the present case, there is a delay of sixteen months. So, an explanation showing that the Department concerned was collecting material for sixteen months has to be made available. The counter-affidavit shows that the material was being collected up to October, 1984 or so but the delay thereafter is inexplicable. The explanation given is that Narinder Singh was absconding and the report of the Forensic Laboratory was received in December, 1984 and thereafter the case was filed under the Customs Act on 18th January 1985. The Collector of Customs sent a proposal for detention of the petitioner and four other persons for 8th February 1984 but the Department remained busy in connection with some other cases which were being dealt with and, therefore, no order of detention could be passed in this case. This is no explanation at all. The same has been rejected by this Court in a recently decided petition Narender Singh v. Union of India, Cr.W. No. 193 of 1985 decided on 29th November 1985, and similar explanations have been rejected in other cases.

2. Learned counsel relied on a judgment of the Supreme Court reported as AIR 1982 SC 1722 Ashok Narain v. Union of India in which the delay of eight months was treated as well spent in order to investigate the full circumstances of the case. Here investigation was complete in October 1984, while the detention order was passed on 5th August 1985. Thus, this explanation is of no avail. This might have explained the delay only up to October 1984 but not thereafter.

3. This was a short ground on which the petition could have been allowed and the detention order quashed. However, there is most striking point in this case which is that the grounds are entirely vague qua the petitioner. In order to appreciate this point, it must be noticed that the detention order was the result of a seizure made of fourteen packages which arrived in a particular flight from Hongkong and were covered by Air Way Bills No. 217-2706-5301 and 217-2748-7132 which were addressed to Gurcharan Singh c/o Frigo India, Jor Bagh Market, New Delhi and marked Self from Hongkong and the consignment covered under Air Way Bill No. 217-2643-7132 was collected by one Kuldip Singh resident of Faiz Road, Karol Bagh, New Delhi. When the parcel was opened it was found to contain valuable articles valued at Rs. 15 lakhs, as mentioned earlier in this judgment. The investigating authority noted that another similar consignment had arrived for Gurcharan Singh 21-3-1984 and this had been taken delivery of by one Mohinder Singh. In making investigation the residential premises of the Mohinder Singh were also searched and a paper slip was found which mentioned the Air Way Bill 217-2747-7132. Some other documents were also seized. As Narinder Singh, the petitioner, is the brother of Mohinder Singh, it was also thought that he was involved in the operations. The grounds of detention regarding Narinder Singh are as follows :-

(1) There was an information that two brothers S. Mohinder Singh and S. Narinder Singh r/o 16/544, Ram Nath Street, Karol Bagh, New Delhi were involved in a smuggling racket operating through CWC, Gurgaon Road, New Delhi and that one of their consignments covered by Airway Bill No. 217/2748-7132 consigned to one Gurcharan Singh, one of their associates was lying at C.W.C. pending customs clearance. Investigations made from Airlines cargo office revealed that earlier also a similar consignment covered by AWB No. 21-2707-5301 had arrived at Delhi on 21-3-84 by TG-303 from Hongkong consigned to same Sh Gurcharan Singh C/o Frigo India, 13/2, Jor Bagh Market, New Delhi and was cleared as unaccompanied baggage under transfer of the residence rules vide B.D. No. 6303 dt. 23-3-84 (TR. No. 771/84 dt. 25-3-84) Further scrutiny revealed that both the consignments (covered by AWB No. 217-1706-5301 and 217-2748-7132) were booked on the same date from Hongkong and delivery order of consignments covered by AWB No. 217-2706-5301 was collected by above said Mohinder Singh whereas the delivery order of other consignment covered by AWB No. 217-2743-7132 (which was still lying un cleared at C.W.C. Gurgaon Road, New Delhi) was collected by one Kuldip Singh of Faiz Road, Karol Bagh, New Delhi.

(2) The consignment consisting of 14 package covered by airway bill No. 217-2748-7132 which had arrived from Hongkong by flight No. TG-303 dt. 9-4-84 consigned to one Gurcharan Singh C/o Frigo India 13/2 Jog Bagh Market, New Delhi "self" from Hongkong declared to be containing personal effects and lying pending customs clearance at shed No. 1 (AGG Godown) of C.W.C. Gurgaon Road, New Delhi, was examined on 24-4-84 by the officers of Customs (Preventive) Customs Collectorate, New Delhi, in the presence of two independent witnesses. As a result of which video cassette recorders, telephones, Sakura colour paper, fabrics and other household goods detailed as per Panchnama and its Annexure prepared on the spot, valued at Rs. 15,07,600/- were recovered. As no evidence documentary or otherwise,

for lawful import was available or accompanied the said consignment, the same was seized under S. 110 of the Customs Act 1962 on the reasonable belief that the goods had been attempted to be smuggled into India in contravention of the restrictions imposed on the import thereof and were liable to confiscation under the provisions of the Act *ibid*.

(3) Enquiries revealed that delivery order pertaining to above said consignment was received by one Kuldip Singh son of Shri Santokh Singh.

(4) In a follow up action, some incriminating documents and a paper slip bearing airway bill number of the consignment under seizure were recovered from the residential premises, 1st floor, 16/544, Ram Nath Street, Joshi Road, Karol Bagh, New Delhi under occupation of Shri Mohinder Singh and Narinder Singh, as a result of search conducted on 24-4-84 under the provisions of the Customs Act 1962. These documents and paper slip were taken into possession by the Customs Officers, being considered relevant to the aforesaid seizure case. As a result of search of residential premises T-2410, Faiz Road, Karol Bagh, New Delhi in occupation of Shri Kuldip Singh, nothing incriminating was found nor recovered. The business premises namely M/s. Reliance Traders, 105A, Shankar Road Market, New Delhi of Shri Mohinder Singh was searched but nothing incriminating was found or recovered there from. M/s. Frigo India, 13/2 Jor Bagh Market, New Delhi (business premises of one Shri Ravinder Singh) was also searched but nothing incriminating was found or recovered there from either.

(5) The business premises of Shri Narinder Singh namely, M/s. Unique Gift Centre, 67 Mohan Singh Place, Connaught Circus, New Delhi were searched on 26-4-84 but nothing incriminating was found or recovered. The residential premises of Shri Ravinder Singh Prop. M/s. Frigo India, 3/93, Gopi Nath Bazar, Delhi Cant were also searched on 26-4-84 as a result of which four marriage photographs of Mohinder Singh were recovered and taken into possession, considered relevant to the enquiry.

(6) Shri Kuldip Singh was summoned under S. 108 of the Customs Act 1962 for enquiries but he was not available and it was only on 28-04-84 that he surrendered and in his statement dt. 28-4-84 he *inter alia* stated that he went to Hongkong for the first time about 6-7 months back and brought some goods which were sold in the market that he brought children dresses, ladies suiting, cosmetics, T.V., V.C.R. etc. which were sold at goods prices and he earned profit of Rs. 1,000/- that in his another visit to Hongkong he came into the contract with one Gurcharan Singh who disclosed himself to be resident of Hongkong engaged in transport business that at the same time his friend Mohinder Singh started going to Hongkong/Bangkok, that they used to stay at Hotel Humfree; that Mohinder Singh used to bring goods from Hongkong and sell the same at Delhi; then when they were in Hongkong in the last week of January or beginning of February Gurcharan Singh came to their room and asked him (Kuldip) his Delhi address as he was to get some goods booked that

Mohinder Singh took out one card from his pocket and gave to Gurcharan Singh for sending the goods at the given address; that the address given on the card was Frigo India 13/2 Jor Badh, New Delhi; that he knew that Prop. of Frigo India is the relative of Mohinder Singh; that in Delhi he met Gurcharan Singh for the first time in March 1984; that the Gurcharan Singh asked him to accompany him to the airport for taking the delivery order; that he accompanied Gurcharan Singh to the Airport but he was not sure whether delivery order was collected by him or not; that in the last week of March, Gurcharan approached him for getting one washing machine and one air-conditioner disposed of; that he with the assistance of Mohinder Singh sold the items to Ravinder Singh, having a shop of Jor Bagh; that he was not aware of the total price for which those items were sold but he got Rs. 500/- as his commission, that in the 1st week of April he and Mohinder Singh were again together in Hongkong; that when they went to get the packages of Mohinder Singh booked, they saw the same Gurcharan Singh packing some VCR's which were about 40-50; that on the being asked Gurcharan told that he will get the same cleared through Customs; that he also asked Gurcharan Singh get his baggage cleared, that Gurcharan Singh advised him to book one T.V. & V.C.R. and he could have to pay duty on TV, that as advised by Gurcharan he also got his goods booked; that he along with Mohinder returned to India on 5th April; that after 2-3 days Gurcharan met him in Delhi and gave his passport and order; that under temptation that he would get his V.C.R. cleared free of duty, he collected and delivery orders from the Airport and give the same to Gurcharan Singh along with the passport, that thereafter Gurcharan has never met him; that when the went home 25th April, he came to know that customs officers were hunting for him and he was frightened and concealed himself from place to place and ultimately as there was no option left open he surrendered himself before the Customs on 28th.

(7) In his further voluntary statement dt. 30th April, 1984 record under S. 108 of the Customs Act 1962, Kuldeep Singh admitted incriminating facts and his involvement in smuggling with Mohinder Narinder and Gurcharan Singh.

(8) Shri Kuldeep Singh was arrested at 1700 Hrs on 30-4-84 under S. 104 of the Customs Act 1962 and he was produced on 1-5-1984 in the court of Addl. Chief Judicial Magistrate, Patiala House, New Delhi and complaint was filed for his prosecution. In his bail application dt. 1-5-84 Shri Kuldeep Singh submitted that he was arrested on 27-4-1984 and was not produced before the court till that date (i.e. till 1-5-85) that copy of notice of the A.C.M.M. New Delhi had been served on customs deptt on 30-4-84 at 2.35 p.m. that he might be released on bail on such condition as the court might deem fit. The court remanded the accused to judicial custody and case was fixed for 2-5-84 when the bail application dt. 1-5-84 was rejected. The accused Shri Kuldeep again filed a bail application on 8-5-84 wherein it was submitted that he was in custody of Customs Officers from 1 p.m. dt. 27-4-84; that a telegram to that effect was sent of Collector of Customs, I.P. Estate, New Delhi to the effect that the accused was not produced on 30-4-84; that it was only on 1-5-84

at about 4 p.m. when he was produced in the court and was remanded to judicial custody till 2-5-84 that lawyers were on strike and were not allowed to enter the Court; that on 2-5-84 the application was dismissed on the ground of follow up action and the case was fixed for admission or denial on 8-5-84, that there could be any follow up action after the complaint; that the petitioner is in Jail since 2-5-84 and all investigations had been completed against him; that it was a fit case for grant of bail; that he be granted bail in the case pending trial. Shri Kuldeep Singh was bailed out by the court of ACMM, New Delhi on 16-5-84 on furnishing two sureties of an amount of Rs. 50,000/- each and personal bond of like amount and subject to the condition that he will not leave the country without the permission of the court.

(9) Shri Narinder Singh s/o Sardar Jogindar Singh r/o 16/544 Ram Nath Street, Joshi Road, Karol Bagh, New Delhi was summoned to the office on 7-5-84, 8-5-84, 9-5-84, 10-5-84, 11-5-84, 12-5-84, 13-5-84 and 14-5-84 in his statements recorded under S. 110 of the Customs Act, 1962, inter alia, stated that after completion of his studies he joined his uncle Sardar Darshan Singh dealing in waste papers and his shop in Azad Market; that he was helping his uncle for two years in buying waste papers; that after leaving the job with his uncle he was practically unemployed for the next two and half years; that he was helping his elder brother who had a shop at 67 Mohan Singh Place, New Delhi for which he was getting some pocket money that about a year back he took loan of Rs. 17,000/- approx from Indian Overseas Bank, Shankar Road for the purchase of three wheeler scooter which was attached to M/s Reliance Traders, a Gas Agency managed by his brother Sardar Gurcharan Singh for the transportation of gas cylinders on a contract of Rs. 1.50 per cylinder; that after two months he again purchased a three wheeler scooter on cash payment the cash for which was collected by him from his father and three brothers; that the scooter again attached to the Reliance Traders on the same contract basis as the first one; that he did not have any source of income except these three wheeler scooters; that on an average he had monthly income of Rs. 3,000/- per month; that he has got an Indian Passport No. S-704319 which was issued to him at Hongkong about three years back; that the passport was lost by him in India for which an FIR was lodged by him; that on the basis of FIR lodged a new passport was issued to him on which he travelled twice; that till the time he had travelled abroad in total about five or six times, every time to Hongkong/Bangkok; that on every trip which used to to be pleasure trip, the duration of his stay used to be a week or less than that; that for the first time he went in 1981 and last in 1984; that for the last time he visited Hongkong was in April 1984 and before that in March, 1984; that both the time he was alone when he left India; that in March 1984 the exact date not known to him, he stayed in Happy Guest House, Chungking Mansion, Knowloon side in Hongkong; that during his stay in Hongkong S. Narinder Singh in Sher-E-Punjab Hotel where he was having his dinner; that Kuldeep Singh who is resident of Delhi at T-2419, Faiz Road, Karol Bagh, New Delhi, introduced him to one of his friend Gurcharan Singh who was with him at that time; that Gurcharan Singh was introduced as businessman, but the nature of business was not disclosed; that Kuldeep Singh did not disclose the name of Hotel in

which he was staying, that during the conversation in Sher-E-Punjab Hotel Kuldip enquired whether he can dispose of an air conditioner, washing machine, fridge at Delhi; that he replied that if the items were duty paid the same can be disposed off to one of his relative Sh. Ravinder Singh at his shop because he was dealing in such type of goods; that he also gave the visiting card of Ravinder Singh, Fridge India, 13/2, Jor Bagh Market, New Delhi; that during their rest of the stay at Hongkong they never met again; that in Delhi he met Kuldip at Gurdwara Bangla Sahib, the exact date not known to him; that at that time both Gurcharan and Kuldip were together; that Kuldip Singh gave him the passport and the Airway Bill with a request to bring the delivery order from the airport; that no authority letter was given to him; that Kuldip Singh gave him the documents for collecting the delivery order because he (Mohinder) was going to the airport to collect his own delivery order for his personal baggage booked from Hongkong; that Kuldip Singh told him that the delivery order will be collected by them at his shop in Mohan Singh place; that the delivery order Gurcharan Singh was collected by him on the same day from an Air India Office by showing his (Gurcharan) passport; that whether the delivery order for his own baggage was collected on the same day was not known to him; that when he was parking his scooter near Rivoli Cinema Kuldip Singh called him and he gave him the delivery order, at that time Kuldip Singh along with Gurcharan Singh were in a white Ambassador DLY car the number he did not notice; that after two days Kuldip Singh gave him a ring at his residence for the disposal of washing machine and an air conditioner that he asked Kuldip to go to his brother-in-law Ravinder Singh and told him that one of his friend Kuldip was coming to him in connection with the sale of air-conditioner and washing machine; that he did not know for how much the goods were sold and whether any customs paid documents were given to Ravinder Singh or not; that he met Kuldip Singh after a few days who disclosed to him that he had earned a commission of Rs. 500/- from the sale of the said goods to Shri Ravinder Singh of Frigo India; that he declined to have any commission from the said amount; that in April '84 he went again to Hongkong with an intention of settling in Manila and to see the demands of Handicrafts in Hongkong for which his brother had an export license, that in Hongkong he stayed for 5 days Hamphery Guest House; that he left for India on 4th or 5th April, 1984; that at Hongkong airport he met with Kuldip Singh who was also leaving for India on the same flight; that before his departure he booked one suitcase as an unaccompanied baggage for Delhi containing besides some personal effects one dinner set; that in the flight when he and Kuldip were sitting on the adjacent seat, Kuldip asked for his assistance in disposal of VCR's, telephones and Fabrics, etc. which he had booked for Delhi; that he told Kuldip that he would only assist if the goods were duty paid; that he was away to Bombay when his house was searched by the Customs Officer on 24-4-84; that on being shown the 162 seized documents from his residence on 24-4-84, he identified the signature of Narinjan Singh and his wife Satinder Kaur on them; that except two-three baggage receipt in his name all pertains to his elder brother Narinder Singh only who can explain about them; that on being shown a diary containing 166 pages in the name of his brother Gurcharan Singh Arora recovered from his house, he identified the

signature of his father; that at page 165 some accounts showing the disposal of goods had written in his hand; that figures 70,000 pertains to one Jagjit Kaur and Sant Sethi of Hongkong; that they used to meet him in India and he used to stay with them in Hongkong; that this account was dictated by them and written by him; that he don't know as it was not collected by him; that the same might be pertaining to him (Mohinder) so he (Gurcharan) did not remove the same from the diary; that rest of the figures of account regarding disposal of the goods in this diary pertains to Mr. Sethi who can explain them; that he had given a one room accommodation to Mr. Sethi during his stay in Delhi; that usually at the time of evening tea they used to meet and he maintain his accounts; that a ledger note book and a telephone diary pertains to his father; that Mohinder Singh had admitted his meeting with Kuldip Singh during his last two trips in Hongkong; that baggage booked by Gurcharan Singh and Narinder Singh came to Delhi by the same flight and delivery order for both the consignments were collected on the same day; that shipments of Kuldip Singh and Narinder had been booked on the same address i.e. D-26, Rouse Avenue near Minto Bridge, New Delhi; that after seeing various pages of his diary Mohinder stated that he met Mr. & Mrs. Sant Sethi in Bombay with one Bharat and Lallu; that they were planning to export some artificial jewellery from India; that he had made the entry of estimated money which was to be spent for the job; that he did not know whether export was done or not; that the amounts like 70,000, 50,000, 35,000, 10,000 etc. are the amounts which were offered by Bharat & Lallu; that T.V. and VCRs mentioned on pages were brought by Mr. Sethi and his family to India that Mr. Sethi and his family used to bring gifts for Mohinder Singh from Hongkong, that large amounts of various places have been written by Mohinder Singh showing sale of purchase of goods like VCRs, press, TVs, telephones and watches etc., that he did not know about the figures like 1,20,000, 1200, 1650-96 100 pieces and 212 pieces etc. Further summons were issued to Shri Mohinder Singh on 11-6-84, 25-6-84, 2-7-84, 10-7-84, 18-7-84, 23-7-84 and 8-10-84 but he intentionally avoided the service of summons on him. Shri Mohinder Singh was arrested on 14-5-84 under S. 104 of the Customs Act 1962 and released on the same day on personal bond of Rs. 20,000/- with two sureties in the amount of Rs. 20,000/- each.

(10) Shri Ravinder Singh was summoned to the office and he in his statement dt. 26-4-84 recorded under S. 108 of the Customs Act 1962 while admitting the recovery of four marriage photographs of Mohinder Singh from his house stated inter alia that his sister-in-law is married to Mohinder Singh; that he knows Mohinder for the last 4 months; that he also knows Narinder brother of Mohinder Singh for the last 7 or 8 months; that he knew that Mohinder Singh has been visiting countries like Hongkong, Singapore, quite frequently, that Mohinder Singh had sold one air-conditioner and one washing machine, both made in Japan to him for Rs. 18,000/- about 15/20 days back but no customs duty paid documents were given to him; that he had further sold these items but could produce the same on demand; that he was a regular visitor to C.W.C.; that he denied to have taken release of any goods from C.W.C. consigned to Frigo India 13/2 Jor Bagh, New Delhi or was

informed about the consignment having been arrived at the said address; that he did not know any Gurcharan Singh; Shri Ravinder Singh was not available at his residence/business premises after that. The various summons issued to him were received back unserved. Finally, in compliance to the summons, he appeared on 30-7-84 and 31-7-84 and in his statements recorded under S. 108 of the Customs Act 1962 inter alia stated that the address given on the two airway bills having numbers 217-2706-5301 and 217-2748-7132 which were shown to him that of his shop in Jor Bagh i.e. 12/2, Frigo India, Jor Bagh Market, New Delhi; that he had the clearance of two consignments from C.W.C. on 12-10-84 at the instance of Mohinder Singh; that one was covered by AWB No. 217-2601-145 consigned to Kuldeep Singh known to him very well as he was working at 67 Mohan Singh Place with Mohinder Singh; that he signed on the B.D. No. 16701 dt. 12-10-83 as Kuldeep Singh at the request of Mohinder Singh and the contents declared by him on the B.D. was "person used effect, misc. goods crockery & Cutlery" as told by Mohinder Singh; that he also got cleared another consignment consigned to Mohinder Singh against AWB No. 217-2601-1156 also on the authority letter given by Mohinder Singh despite his (Mohinder) presence there; that in spite of the authority letter given to C.W.C. but the goods were got cleared by Ravinder Singh; that on the B.D. he declared the contents on behalf of Mohinder Singh as used personal effects and also signed on behalf of Mohinder Singh; that Mohinder Singh had been visiting Hongkong quite frequently and also used to go to C.W.C. frequently for clearance of goods, Shri Ravinder Singh has contradicted his own statement on 31-7-84 recorded under S. 108 of the Customs Act 1962 wherein he has stated that he knew Narinder Singh for the last 7 or 8 years whereas in his previous statement dt. 26-4-84 Ravinder Singh has stated that Narinder Singh was known for the last 7 or 8 months that in his earlier statement he has stated that he knew Mohinder Singh for the last 4 months whereas in the other statement he had admitted to have gone with Mohinder to C.W.C. and got the consignment of Mohinder & Kuldeep released through his contacts; that he new that Mohinder Singh and Narinder Singh were frequent visitors to Hongkong and Bangkok and used to bring the goods from there for selling them in India that he had seen Narinder Singh and Mohinder Singh C.W.C. many times. Shri Ravinder Singh was arrested on 31-7-84 under S. 104 of the Customs Act, 1962 and released on the same day on personal bond (Rs. 25,000/-) with one surety in the amount of Rs. 25,000/-.

(11) Summonses under S. 108 of the Customs Act 1962 were issued in favor of Shri Narinder Singh s/o Sardar Joginder Singh resident of 16/544, Ram Nath Street, Joshi Road, Karol Bagh, New Delhi, on 5-5-84, 11-6-84, 25-6-84, 2-7-84, 18-7-84, 23-7-84, 10-9-84, 12-9-84 and 1-10-84 to appear before the Superintendent of Customs (Preventive) New Delhi but he intentionally avoided the service to summons on him and thus did not appear before the aforesaid Customs authority.

(12) Shri Gurcharan Singh in compliance to summons under S. 108 of the Customs Act, 1962 appeared before the Superintendent Customs (Preventive) on 28-9-1984, 29-9-84 and 1-10-84 and in his statement stated inter alia that his father is a resident

of Hongkong since 1966; that he went to Hongkong in 1972 and worked in a radio factory up to 1977; that he came to India in 1977 and returned to Hongkong in 1978; that he joined as Driver in Sethi Enterprises & Cargo Booking Agency in 1979 owned by Rajinder Pal Sethi; that this Co. used to transport the Air Cargo of passengers for other countries; that there he came in contact with Mohinder Singh resident of Karol Bagh, New Delhi, who used to book his cargo through that Company for Delhi; that he was not aware of the contents of the cargo; but it used to be very heavy; that he could smell Mohinder's involvement in smuggling by seeing their size and dimensions of the packages; that during discussion Mohinder revealed him that he (Mohinder) was getting cargo cleared from Delhi by illegal means that in that way he (Mohinder) was having profit from Rs. 10.15 thousands per trip; that in the end of 1981, Mohinder shifted the cargo booking from their company to another company M/s. Union Transport Air Gargo Co., for Delhi; that from 1980 to February, 1984 Mohinder met him about 15 times; that twice he met along with one Kuldip Singh when he (Gurcharan) was driver in that Co., that Kuldip was also visiting his company to book the cargo; that cargo booked by Kuldip Singh was also similar to that of Mohinder's cargo; that Mohinder and Kuldip usually used to stay together at New Hamprest Guest House; that on demand made by Mohinder Singh at Hongkong in February, 1984, he (Gurcharan) paid HK Dollars 15,500/- to him on the condition that the equivalent Indian currency (Rs. 30,000/-) will be returned to him in Delhi; that he along with Mohinder's wife came to Delhi on 9-2-84 on a return ticket; that Mohinder told him that he (Mohinder) will follow after booking the cargo; that at Delhi Airport Narinder Singh brother of Mohinder Singh introduced to him to one Narinjan Singh, as his elder brother a big officer in Bank looking after the money matters of their family; that they came to receive Mohinder's wife; that Narinjan gave him (Gurcharan) Rs. 2,000/- through Narinder; that he paid Rs. 660/- as Customs duty out of that money, that Narinder had already met him in 1983 in Hongkong; that Mohinder was usually getting loan from Sethi & others for the purchase of goods to be booked for Delhi; that Mohinder used to return the loan out of the currency he used to smuggle out from India; that his passport and return ticket was sent to Mohinder Singh through his friend for getting his return seat O.K., that before his departure for India from Hongkong Mohinder Singh requested him to leave his ticket and passport with Narinder for getting his returned ticket back confirmed; that he came to Delhi 3-4 times to get his passport and ticket from Mohinder and stayed at Sonu Guest House, Delhi; that on 7-4-84 he asked Mohinder to return his passport and ticket as the latter was valid only up to 9-8-84 but Mohinder told him that the same were lying with the Thai Airlines Office; that Mohinder asked him (Gurcharan) to sign three blank paper so that the same could be utilised for making an application for extension of validity of the ticket; that Mohinder came to him at his village in last week of April and disclosed that he had booked certain cargo valued Rs. 8 lacs approx. on his passport which has been seized by the Customs and asked him to be away from the house that Mohinder visited his village three four times and advised him to proceed to Hongkong via Kathmandu or any other city; that he also threatened him not to disclose his (Gurcharan) identification in case there was any

enquiry; that Mohinder also told him about clearance of earlier consignment on his name; that he denied any knowledge about the booking of both the consignments that he had not signed any paper except that three blank papers; that Mohinder disclosed to him that the goods were brought by him (Mohinder) in his (Gurcharan) name at the instance of Ravinder Singh; that Mohinder told him that Ravinder usually assists Mohinder and Narinder in getting the goods cleared and the disposal thereof; that either Mohinder or his associate has forged his signature on the documents shown to him; that Mohinder told him that he (Mohinder) had already cleared an earlier consignment by forging his signatures, that he denied knowing the business of residential premises of Ravinder Singh.

(13) Shri Gurcharan Singh was arrested at 1700 hrs on 2-10-84 under S. 104 of the Customs Act 1962 and he was produced on 3-10-84 in the Court of ACMM, New Delhi along with a complaint and sanction for prosecution.

In his bail application dt. 3-10-84 filed in the Court of Shri B. B. Gupta, ACMM, New Delhi, Shri Gurcharan Singh inter alia submitted that he was innocent and was not connected with the case. The bail application was rejected.

Another bail application dt. 3-10-84 moved by Shri Gurcharan Singh in the Court of Addl. Sessions Judge inter alia submitted that the applicant had not concealed anything; that the applicant had truthfully declared the goods by filing proper declaration form; that there was no intention of smuggling by the applicant and that the applicant was innocent and not connected with the case. The bail application was rejected by the Court on 5-10-1984.

Another bail application dt. 5-10-84 moved by before the Delhi High Court on 12-10-84 was also rejected by the Hon'ble Court.

Criminal Misc.(M) No. 1090 of 1984 moved by Shri Gurcharan Singh in the Hon'ble Delhi High Court was rejected by the Court. Shri Gurcharan Singh has moved another bail application dt. 31-10-84 in the Court of ACMM, New Delhi. He was granted bail in the sum of Rs. 25,000/- with two sureties in the like amount to the satisfaction of the trial Court, vide Delhi High Court's orders dt. 30-1-85.

(14) A show cause notice dt. 22-10-85 under S. 124 of the Customs Act 1962 has been issued to Shri Kuldip Singh, Mohinder Singh, Narinder Singh, Ravinder Singh and Gurcharan Singh.

The show cause notice to Shri Gurcharan Singh was served upon him on 23-10-84 through the Superintendent, Central Jail, Tihar, under proper acknowledgment.

(15) The acknowledgement so received from Shri Gurcharan Singh and two other documents viz. Baggage-Declaration form No. 6303 dt. 23-3-84 transfer of residence form No. 771/84 of 23-3-84 were sent to the Central Forensic Science Lab on 23-11-84 for examination/verification of signs on the two documents with his signatures on the acknowledgement obtained in token of the service of

show-cause notice upon Shri Gurcharan Singh.

(16) Vide report dt. 17-12-84, Central Forensic Science Laboratory, they opined that sufficient writing characteristics ticks were not found common between the signatures marked Q3 (i.e. signs on acknowledgment receipt in token of receipt of the show cause notice through superintendent, Central Jail, Delhi) and other set of signatures marked A1 & A2 (i.e. signs on Baggage declaration form No. 6303 dt. 23-3-84 and the transfer of Residence Form 771/84 dt. 23-3-84) which have their common authorship. As per this report, documents marked A1 and A2 have common authorship while document marked Q2 have a different authorship.

(17) Replies to show cause notice dt. 20-10-84 have also been received.

(18) Complaint under the Customs Act 1962 for prosecution of S/Shri Mohinder Singh, Narinder Singh and Narinder Singh was filed on 17-1-85 in the Court of A.C.M.M., Patiala House, New Delhi. The Court proceedings are in progress.

(19) On the basis of the entire material on record, the Administrator of the Union territory of Delhi is of the considered opinion that you have been smuggling goods into India and also engaging in transporting, concealing and keeping smuggled goods. Even though prosecution and adjudication proceedings have already been initiated against you, the Administrator is satisfied that you should be detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to preventing you from smuggling goods into India and also preventing you from engaging in transporting, concealing and keeping smuggled goods.

(20) While passing the detention order under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, the Administrator of the Union territory of Delhi has relied on the material contained in the statements and documents mentioned in the enclosed list. A copy of these grounds and copies of statements and documents, free translated into Hindi/Punjabi, a language known to you are also enclosed.

(21) If you wish to make a representation against your detention to the Administrator of the Union territory of Delhi and to the Central Government, you may do so, address it to the Administrator, Union territory of Delhi, Raj Niwas, Delhi or the Central Government, as the case may be, and forward the same through the Superintendent, Central Jail, Tihar, New Delhi.

(22) If you desire to make any representation to the Advisory Board, you may address it to the Chairman, Advisory Board (COFEPOSA) State, High Court of Delhi, Sher Shah Road, New Delhi and forward the same through the Superintendent, Central Jail, Tihar, New Delhi. You are further informed that you shall be heard by the Advisory Board in due course, if the Board considers it essential to do so, or if you so desire".

3A. It is not for mere completeness that the entire grounds have been set out but only to show how the set of grounds are vague qua Narinder Singh.

4. The question is whether these grounds are not vague qua Narinder Singh. It is significant that the name of Narinder Singh occurs at various places but there is no specific ground regarding him. For instance, in the very opening word, it is said that there was an information that Mohinder Singh and Narinder Singh were involved in a smuggling racket. No example of that smuggling racket is forthcoming nor any information is disclosed. So, this is clearly vague ground. The next reference to Narinder Singh is in para 4, where it is mentioned that the premises situated at 16/544, Ram Nath Street, Joshi Road in occupation of Mohinder Singh and Narinder Singh were searched and some recoveries were made. There is no reference in this paragraph to what was searched and from whom searches were made. Were the searched articles lying on the table ? or in any almira ? or were they recovered from any person ? There is vagueness to the connection of Narinder Singh to the recoveries. All these become more significant because Narinder Singh was not in India during that period. He was in Kenya from April, 84 to April, 85. The exact date being 8th April, 1984 and 20th April, 1985, as per affidavit sworn at Nairobi, Annexure-A to the petition. So, recovery could certainly not be made from Narinder Singh in person.

5. Then the next reference is to the business premises of Narinder Singh, Unique Gift Centre, Mohan Singh Place, which was searched on 26th April, 1984, but nothing incriminating was found. So, this is not the ground for detaining Narinder Singh.

6. Then the next reference to Narinder Singh is in the statement of facts relating to Mohinder Singh where he states that during his stay at Hongkong he met a friend of his brother Narinder Singh the friend being Kuldeep Singh. This Kuldeep Singh appears to be the same person, who went to collect the consignment in question. So, it can be said that brother of Narinder Singh admitted that he (Narinder Singh) is a friend of Kuldeep Singh, who was smuggling the consignments in question.

7. The next reference to Narinder Singh is in the statement of Ravinder Singh when he says that he knows Narinder Singh for the last 7 or 8 months and he knew Mohinder Singh had been visiting countries like Hongkong and Singapore frequently. The same statement is repeated and is to the effect that they had been bringing goods from Hongkong and Bangkok for selling them in India. There is no reference to smuggling. At another place, there is a reference that Gurcharan Singh had gone to receive Mohinder Singh's wife when Narinder Singh had given him Rs. 2,000/- for payment of custom duty out of which Rs. 660/- were utilised.

8. The only other reference to Narinder Singh in the statement of Kuldeep Singh in para 7 which is to the effect that according to Kuldeep Singh he was involved in smuggling with Narinder Singh Mohinder Singh and Gurcharan Singh, etc.

9. The question is, are there any grounds in this entire statement or is it a mere narrative extending over 23 pages or is it a set of grounds for detaining Narinder Singh ? If it is a set of grounds for detaining Narinder Singh, it seems that Narinder Singh is conspicuously absent in most of the narrative. These are references to him, which could not possibly be in connection with smuggling activity. There is the allegation in the first para and there is admission by Kuldeep. It seems that nobody can make a representation qua such a set of grounds of detention. They are unlike any other grounds of detention reproduced in various judgments. The object of the Constitution is to provide a

fundamental right in Art. 22 regarding preventive detention. The protection is provided by Art. 22(5). This Article directs that the authority making a detention order has to communicate the ground on which the order has been made and to give an opportunity to the detenu to make a representation against the order. The communication of the grounds is one of the essentials for making representations so certainty is essential. The Supreme Court has held in a series of judgments that if the grounds are vague or uncertain, then the detention has to be quashed. The law had eventually crystallised that even if one of the grounds is vague or uncertain, then the detention has to be quashed.

10. By S. 5-A of the COFEPOSA Act, a departure has been made to say that even if the grounds are vague the order will not be set aside provided that some of the grounds are not vague or non-existent. The exact provision is as follows :-

"5-A. Grounds of detention severable -

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

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are -

(i) vague

(ii) non-existent,

(iii) not relevant

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever, and it is not therefore possible to hold that the Govt. or Officer making such order would have been satisfied as provided in sub-section (1) of S. 3 with reference to the remaining ground or grounds and made the order of detention;

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

11. This Section shows that if some of the grounds are vague or non-existent or not relevant or not connected or for any similar reason the detention will not be set aside. But what happens if all the grounds are vague, non-existent, not relevant or not connected. Obviously, it will follow that the detention order will be invalid. The reading of the grounds of detention shows that either there is

non-application of mind because it has not been noticed that Narinder Singh is out of the country and nothing has been recovered from him nor has he ever been involved in any smuggling incident that can be pointed out. His mere friendship or relationship with other who may be involved, does not appear to be the ground for detention. So, either the grounds are non-existent or are so vague that they are non-existent. The entire set of grounds have been reproduced to show how they are vague and non-existent qua Narinder Singh. These observations will have no application to the grounds qua the other persons. For these reasons this Habeas Corpus petition is allowed. The detention order is set aside and the petitioner is directed to be set at liberty, unless required to be detained under any other order.

12. Petition allowed.