

Surendra Alias Altaf Vs. State of Maharashtra and anr.

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Court : Mumbai

Decided On : Apr-29-2002

Reported in : 2002BomCR(Cri)628; 2002CriLJ4137

Judge : R.G. Deshpande and ;V.M. Kanade, JJ.

Acts : Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 - Sections 2, 3(1), 3(3), 12 and 13; Preventive Detention Act; Indian Penal Code (IPC) - Sections 34, 120B, 358, 384, 385, 387 and 506; [Constitution of India](#) - Articles 22(5), 32, 136 and 226

Appeal No. : Crl. W.P. No. 76 of 2002

Appellant : Surendra Alias Altaf

Respondent : State of Maharashtra and anr.

Advocate for Def. : Bharti Dangre and ;Fulzele, A.P.Ps.

Advocate for Pet/Ap. : S.A. Jaiswal and ;J.M. Gandhi, Advs.

Disposition : Petition allowed

Judgement :

V.M. Kanade, J.

1. These two petitioners are filed by the petitioners challenging the order of detention dated 31st October, 2001 (in Cri. Writ Petition No. 76/2002 detaining the petitioner) and 24th October, 2001 (in Cri. Writ Petition No. 59/2002 detaining the husband of the petitioner) respectively. The grounds of detention in both the cases are identical and both the detainees were involved in the same offences and hence both these petitions are being decided by this common judgment.

FACTS

The petitioner in Criminal Writ Petition No. 76/2002 is a student studying in LL.B. Part I and is 24 years old. The petitioner in Criminal Writ Petition No. 59/2002 is the wife of detenu Rakesh Lachhramani who is a young boy of 24 years of age. One Laxmikant Gupta who is the partner of Somras Distillers, filed an application on 11-4-2001 addressed to Shri Piulwant Kumar, Deputy Commissioner of Police, Crime Branch, Nagpur. In the said application, he has mentioned that on 11-4-2001 at 18.45 hours when he came to his office at Parwati Tower, Indora Chowk, he received a telephone call on his Mobile Phone No. 9823035000 from Mobile Phone No. 9822238184. He was told on the phone that the caller's name was Salimbhai and he demanded Rs. 25 lacs as ransom money and he was informed that the caller belongs to 'D Company.' He was threatened that if the money was not paid, he would be killed. The said Laxmikant, therefore, filed an application and discussed the matter with the Deputy Commissioner of Police, Crime Branch, Nagpur, and accordingly the Police kept surveillance. It later on transpired that the threatening calls were made in the name of Altafbhai and Salimbhai from Mumbai.

3. The Crime Branch Police advised the complainant to continue the discussion with the persons demanding ransom. It was accordingly decided in the discussion between the said Salimbhai and Altafbhai that the said Laxmikant would deposit Rs. 25 lacs in the office of Dolphin Courier, Gandhibag, Nagpur and the same would be sent to Dolphin Courier, Kalbadevi Branch at Mumbai. It was further agreed that the said amount of ransom would be handed over to a person showing the currency note of Rs. 10/-bearing No. 24 E 599896. The said Laxmikant informed the extortionist that he had deposited the money and asked them to accept it on 19-4-2001 at Mumbai.

4. The Crime Branch Police, Nagpur City, accordingly laid a trap and sought the help of Lokmanya Tilak Marg Police Station, Mumbai and they waited at the office of Dolphin Courier, Mumbai. Accordingly, the Manager of Dolphin Courier, Mumbai showed a note of Rs. 10/- to the detenu Rakesh while the petitioner-Surendra was standing on the road and holding a mobile phone. When the Police caught the petitioner-Surendra and Rakesh, no evidence was found to suggest that both these persons were either Salim or Altaf, because there was no registration on the Mobile Phone Number and it was purchased by making payment on the spot and prepaid Simcard was purchased. As such there was no evidence to show that either of these petitioners were the persons who made the threatening calls. After the petitioner-Surendra and Rakesh (husband of the petitioner in Petitioner No. 59/02) Were arrested, 4 other persons viz. Prakash Jagwani, Mahesh Bhateja, Vijaybhansingh Thakur and Kuttukhan s/o Ahamad Khan, were also arrested.

5. After the arrest of the petitioners and the other persons, the report appeared in the Newspapers about their arrest and after reading the newspapers, 7 other complainants came forward and made complainants that they were also made to pay the ransom money and they were similarly threatened in the name of Salimbhai and Altaf. So far as the first complaint is concerned, it is one filed by Laxmikant, of which the charge-sheet was filed before the Judicial Magistrate, First Class, Court No. 5, Nagpur on 22-6-2001.

6. The prosecution took the voice test of the petitioner-Surendra and Rakesh as against the recorded message. However, the voice test proved to be inconclusive. The petitioner-Surendra and Rakesh were released on bail on 4-10-2001. In the meantime, the proposal for detention was forwarded on 24-7-2001 and the order of detention was passed on 31-10-2001. The order of detention was served on Surendra on 3-11-2001 and it was served on Rakesh on 25-10-2001. The grounds of detention were served on both of them immediately.

7. It must be pointed out at this stage that initially the detention order was issued against the four persons viz. Surendra, Rakesh and two others viz. Prakash Jagwani and Mahesh Bhateja. No order of detention was issued against the remaining two viz. Vijaybhan Singh Thakur and Kuttukhan s/o Ahamadkhan. The

detention order in respect of all these four persons is identical and the grounds of detention were also identical. The Advisory Board, however, gave its opinion that there was no sufficient cause for the detention of Prakash Jagwani and Mahesh Bhateja. However, the Advisory Board in its opinion in respect of the present petitioner-Surendra and Rakesh stated that there was substantial cause for their detention.

8. The Government, therefore, did not issue the order of detention in respect of Prakash Jagwani and Mahesh Bhateja but, however, issued detention orders in respect of the petitioner-Surendra and Rakesh.

9. It is necessary to point out that the detention orders in respect of both the detainees have been issued in the name of Surendra alias Altaf s/o Kanhaiyalal Mishra and in the name of Rakesh alias Salim s/o Khyanchand Lachhiramani. The entire order of detention proceeds on the basis that these two petitioners are the persons who have made telephone calls in the name of Altafbhai and Salimbhai.

10. The petitioners in these petitions, are challenging the order of detention passed by the respondents dt. 31-10-2001 and 24-10-2001 respectively under the provisions of the Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (hereinafter referred to as 'the said Act.')

11. We have heard Shri A. S. Jaiswal, the learned counsel appearing on behalf of the petitioner-Surendra alias Altaf Mishra and Shri J. M. Gandhi, learned counsel appearing on behalf of Smt. Rashmi wife of Rakesh Lachhiramani who had filed the petition on behalf of her husband Rakesh. We have also heard Mrs. Bharti Dangre, learned A.P.P. who appeared on behalf of the respondents in Criminal Writ Petition No. 76/2002 and Shri Fulzele, learned A.P.P. who appeared on behalf of the respondents in Criminal Writ Petition No. 59/2002.

12. The learned counsel appearing on behalf of the petitioners have argued on various grounds which are raised by them in their petition. They have also argued some of the grounds which are not specifically pleaded in the petitions. We have heard Mrs. Bharti Dangre, learned A.P.P. who appeared on behalf of the

respondents extensively on all the points which were urged by the petitioner. We have also heard Shri Fulzele, learned A.P.P. who appeared on behalf of the respondents. In addition to the arguments made by Shri Fulzele, learned A.P.P., Shri Fulzele, learned A.P.P. adopted the arguments which have been made by Mrs. Bharti Dangre, learned A.P.P. appearing on behalf of the respondents in Cri. W.P. No. 76/2002.

13. The learned counsel appearing on behalf of the petitioners and respondents, have cited number of judgments on each point. We, however, do not propose to discuss the submissions made by the petitioners and respondents on each and every point because we have come to the conclusion that the petitioner Surendra Mishra and Rakesh Lachhiramani (husband of the petitioner Smt. Rashmi in Cri. W. P. No. 59/02) are entitled to be released on one of the grounds urged and hence we will confine this judgment to the discussions of that ground alone. We would like to mention that we are not impressed by the submissions made by the petitioner's counsel on the other grounds. The counsel appearing on behalf of the petitioners contended that in the instant case the grounds of detention which are supplied by the respondents are identical and the grounds supplied to all four litigants, i.e. the present petitioned Surendra and Rakesh and the other 2 accused are identical to the last details and are the reproduction of the grounds supplied to each of them.

14. Shri S. A. Jaiswal, learned counsel appearing on behalf of the petitioner Surendra submitted that no role is attributed to the individual petitioners over and above that, so far as the petitioner Surendra and Rakesh are concerned, there is no material to show that the petitioner Surendra and Rakesh were the same persons who had made telephonic calls in the name of Altaf and Salim. He submitted that in the absence of this vital material, the detaining authority has proceeded on the presumption that Surendra is, in fact. Altaf the person who has made telephone calls and Rakesh is the person who made the telephone calls posing himself as Salim. He submitted that the voice testing expert had given his opinion that after comparing the voice of Surendra and Rakesh, it was not correct that it was the same voice as taped by the Police. Further, Shri J. M. Gandhi, learned counsel appearing on behalf of Smt. Rashmi wife of Rakesh submitted

that so far as Rakesh is concerned, the detaining authority has relied on the handwriting expert's opinion. However, the detaining authority was not supplied with the original handwriting of Rakesh. The counsel appearing on behalf of the petitioner submitted that though the various documents were discussed and considered, in the copy of the grounds on the basis of which finally the detaining authority had recorded its subjective satisfaction, these documents which were vital, were not supplied to the petitioner Surendra and Rakesh. Shri Jaiswal, learned counsel appearing on behalf of the petitioner Surendra relied upon the ground 'M' which reads as follows :

M- The petitioner submits that following documents are discussed and also considered in copy of grounds to base and record subjective satisfaction by detaining authority but following documents are not supplied.

A. The detaining authority has taken for granted that Surendra is alias Altaf (This is the name given to him) by Police and except Police record it is no where Surendra alias Altaf) and on that basis proceeded to consider his detention but at the same time, there is no evidence or report of voice testing expert and this is only the basis to prosecute him in Crime No. 179/01 dated 11-4-2001 please refer para 3.6.14 of copy of grounds.

B. At para 3.7.1 of copy of grounds it is stated that complainant one Yashwant made application on 8-1-01 to the Dy. Commissioner of Police. Crime Branch, Nagpur to provide security etc.

C. Several confessional statements of the petitioner and other co-accused/co-detenuess which are earlier referred in grounds.

D. At para 3.2.1 of copy of grounds the complainant Banwarilal Malu made application to Dy. Commissioner of Police on 25-5-2001.

E. In all 8 cases, it is referred at several place 'you and your associates' (you means petitioner) but there is no evidence or document on record to show his involvement except bare statement of Police.

F. At page 15 para 3.6.4 of copy of grounds document referred and discussed.

G. At page 17 at para 3.6.14 of copy of grounds documents referred and discussed.

H. At page 19 at para 3.7.2 of copy of grounds documents referred and discussed.

I. There are total 8 Cri. Cases pending against the petitioner and he has been released on bail in all cases but bail papers of only 5 cases filed and not of last 3 offences i.e. Crime No. 196/01. Crime No. 248/01 and Crime No. 3058/01.

J. At page 6 of copy of grounds it is stated that Rs. 5 lacs were demanded.

There are other so many relevant documents which are referred and relied but not supplied. The petitioner will demonstrate from record at the time of hearing the remaining documents.

However, fact remains that documents referred and relied are vital, relevant and material to base and record subjective satisfaction to pass detention order and non-filing is fatal and indicates mala fide and non-application of mind on the part of detaining authority. So on this count alone continued detention is bad in Law and liable to be set aside.

15. The respondent No. 1 has filed his reply and has given the following reasons.

As to ground M(A): The contentions made in this para of the ground M has already been discussed in reply of para No. 2 and ground 8 of the writ petition.

As to ground M(B): The contentions made in this para of grounds M is denied. The application of Shri Yashwant Sangla has already been supplied to the petitioner and annexed at index B on page No. 399.

As to ground M(C): All the confessional statements of the petitioner and his associates recorded during the course of investigation which are referred in the grounds of detention have been supplied to the petitioner.

As to ground M(D): The application made by Shri Banwarilal S/o Bhawarlal Malu dated 25-4-2001 is annexed at index B at page Nos. 98 and 99.

As to ground M(E): The contention made in this para of this ground has already been discussed in reply of ground B of this writ petition and the relevant documents have already been supplied to the petitioner.

As to ground M(F):- The documents in para No. 3.6.4 of the grounds of detention i.e. a letter written by Salim alias Rakesh is annexed at index B on page No. 367.

As to ground M(G):- In para No. 3.6.14 of the grounds of detention, the sample handwriting of dated 26-5-2001 is supplied and annexed at index B on page No. 368 and the memorandum panchanama of Rakesh alias Salim is annexed at index B on page Nos. 359 to 361 and the seizure memo of an old notebook of Rakesh's natural handwriting was seized as per seizure memo which is annexed at index B at page Nos. 362 to 363.

As to ground M(H):- Para No. 3.7.2 of the grounds of detention is mentioned on page No. 22 and not on 19 as alleged. In para No. 3.7.2 of the grounds of detention it is mentioned that the complainant received the threatening calls from Salim and Altaf and their conversion was recorded by the complainant on audio cassette. And during investigation the said audio cassette was seized as per memorandum panchanama from the complainant, hence, it was not supplied to the petitioner.

As to ground M(I): The contention made in this para of ground No. M has already been discussed in reply of grounds Nos. D and L of this writ petition.

As to ground M(J):__The contentions in this para of the ground are denied. The relevant documents were supplied to the petitioner along with the grounds of detention. Hence, there is no non-application of mind on the part of respondent No. 2. The detention order being legal should be maintained. At page No. 6 of copy of grounds it is stated that Rs. 20 lakhs were demanded as ransom and not 5 lakhs as alleged in this para. In fact, in the month of September 2000, Salim alias Rakesh made telephonic calls to the complainant of P. Stn. Tahsil Cr. No. 131/2001 and demanded Rs. 20 lakhs as ransom. The complainant avoided his demand 8/10 times. Again in last week of the September 2000 Salim alias Rakesh made telephonic calls to the complainant and threatened him to kill by sending

shooters. Due to this, the complainant sent Rs. 7.5 lakhs through Thakkar Angadiya Courier as per discussion on telephone with Salim alias Rakesh. And on 17th and 18th April 2001 Salim alias Rakesh made telephonic calls to the complainant two/three times on his mobile phone and demanded Rs. 5 lakhs which has already been mentioned in page , No. 7 of the grounds of detention.

As to ground No. N:- The contentions made in first para of this ground is denied. It is specifically mentioned in para No. 6 of the grounds of detention that the detenu was released on bail in all the offences and subjective satisfaction is recorded in paras 7 to 10 of the grounds of detention.

In all the 8 cases registered against the petitioner and his associates, there is a mention of MC remand of the petitioner and filing of the charge-sheet while passing the detention order passed on 31-10-2001. The petitioner was released on bail in all the 8 cases which is specifically mentioned in para No. 6 of the grounds of detention. The detention order was passed after subjective satisfaction which is recorded in para Nos. 7 to 10 in the grounds of detention.

As to ground No. O:- The contentions made in this ground pertain to respondent No. 1, hence, need no comments.

As to ground No. P:- The detention order Was issued on 31 -10-2001 and the counsel for the petitioner made a representation to the Commissioner of Police, Nagpur which was received on 15-11-2001 by this office and reply to that effect was sent to the Chairman, Advisory Board, c/o Secretary, (Preventive Detention), Home Department (Spl.) Mantralaya Mumbai 400 032 on 21-11-2001. The detention order issued by respondent No. 2 has been approved by Government Under Section 3(3) of the M.P.D.A. Act, 1981 (Amendment of 1996) vide Government Order Dated 9-11-2001. In view of the approval by Govt. petitioner's right in para No. 11 of the grounds of detention dated 31-10-2001 to represent against detention to the detaining authority i.e. respondent No. 2 stands terminated. Hence, the contention made in this ground is denied.

As to ground No. Q:- The contentions made in the ground and denied. In fact, the copies of the representation made by the counsel for the petitioner were submitted

to the Chairman Advisory Board and the State Government on 21-11-2001 which is mentioned in para No. 8 of reply of representation to the Advisory Board. Hence, there is no violation of fundamental right of petitioner under Article 22(5) of the [Constitution of India](#).' The respondent has given his reply to Ground M(A) by stating that the contentions made in the said ground M, have been discussed in reply to para 2 to ground B of the petition. Para 2 of the reply reads as follows :

As to para No. 2: The petitioner and his associate Rakesh Khyanchand Lachhiramani made threatening calls of killing the complainant Shri Laxmikant Chhotalal Gupta of P. Stn. Panchpaoli Cr. No. 179/ 2001 Under Sections 384, 385, 387, 506(b), 120(B), 34, I.P.C. for ransom under the name of Altafbhai and Salimbhai from Mumbai. On Telephonic discussion between the petitioner, his associate Rakesh alias Salim and complainant, it was decided that the complainant will deposit Rs. 25 lakhs in the office of Dolphin Courier. Grandhibagh, Nagpur and the same amount will be handed over to the person showing the Rs. 10 currency note bearing No. 24 E 599896 at Dolphin Courier Kabadevi Branch, Mumbai. As per the discussion, the complainant informed the said person who demanded money on telephone that he had deposited the money and asked to accept it on 19-4-2001 at Mumbai and also informed Crime Branch, Nagpur. On 19-4-2001, Crime Branch Nagpur City, sought the help of Mumbai Police, laid trap at. Dolphin Courier, Kalbadevi Branch, Mumbai. When the petitioner and his associate Rakesh came into Dolphin Courier's entrance room, petitioner's association Rakesh showed Rs. 10 currency note bearing No. 24 E 599896 to the employee of Dolphin Courier as it was already decided between petitioner's associate Rakesh and complainant and demanded the money. At the same time, petitioner and his associate was caught by police raid handed. During the investigation it was disclosed that the petitioner made telephonic calls to the complainant in the name of Altaf and his associate Rakesh Lachhiramani in the name of Salim. The complainants of P. Stn. Sitabuldi Cr. No. 248/2001 Under Sections 385, 387, 120(B), 506(b) 34, IPC and Panchpaoli P. Stn. Cr. No. 179/2001 under Sections 384, 358, 387, 506(b), 120(B), 34, I.P.C. recorded the voice of accused who were threatening them for ransom in the name of Salimbhai and Altafbhai. The crime Branch Police recorded specimen conversion of the petitioner and his associate Rakesh Lachhiramani and sent it to the Scientific

Officer and Asstt. Chemical Examiner C.B.I., New Delhi along with the audio cassettes recorded by complainants of Police Station Sitabuldi Cr. No. 248/2001 Under Sections 385, 387, 120(B), 506(b), 34, I.P.C. and Panchpaoli P. Stn. Cr. No. 179/2001 Under Sections 384, 385, 387, 506(b), 120(B), 34, I.P.C. for analysis and identification of the voice. The voice analysis test was inconclusive, as the recording was not comparable. However, this was not considered while making detention order, which is based on other material on record.

16. From the above reply, it is clear that, so far as ground M(A) is concerned, these vital documents have not been supplied to the petitioners. The respondent has stated that the voice analysis test is inconclusive. However, this was not considered while making detention order which is based on the other material on record. Shri Jaiswal, learned counsel appearing on behalf of the petitioner submitted that thus the subjective satisfaction of the detaining authority has been vitiated on account of non-supply of vital material. He submitted that the position on this issue is well settled. He relied on the Division Bench decision of this Court in Criminal Writ Petition No. 165/90 decided on 21st March, 1990 (Shri Abdul Karim Ishaque Mansuri v. Shri L. Hainglians), wherein this Court has held that:

Where the vital and relevant documents have not placed before the detaining authority, the subjective satisfaction of the detaining authority vitiates and, therefore, the detention order cannot be sustained.

The learned counsel also relied upon the Division Bench Judgment of this Court, reported in 1999 (4) Mh LJ 229 in the case of Mohammed Ilyas Ahmed v. State of Maharashtra, wherein this Court has observed that: 'non supply of some of the documents of incriminating nature amounted to denial of an opportunity to make effective representation and on that count the detention order is invalid. Shri Jaiswal, learned counsel further submitted that one bail application and order of bail passed by the Magistrate and one bail order, were not supplied to the detaining authority and as a result the subject satisfaction of the detaining authority was vitiate. He relied upon the judgment of Division Bench of this Court in the case of Lilavati Ramchandra Gaikwad v. Satish Sahney, Commissioner of Police Greater Bombay reported in 1996 (2) Mh LJ 316 wherein it is observed that:

'Bail order, being a vital and material document, its not having been placed before the detaining authority, resulted in impairing the subjective satisfaction of the detaining authority and hence on that count the order of detention is bad in law.' The Division Bench while passing the said order has relied on the various judgments of the Apex Court and ratio laid down in the said judgment of the Apex Court has been followed by the Division Bench.

17. Shri Jaiswal, learned counsel appearing on behalf of the petitioner also submitted that since the grounds of detention in respect of the petitioner Surendra and Rakesh and two others whose detention order was revoked, were identical and the Government had revoked the detention order in respect of the other two persons on the opinion of the Advisory Board, there was no reason why the petitioner Surendra and Rakesh herein should continue to remain in jail and the Government ought to have revoked their detention order also. It is submitted that the Government had authority to revoke the order of detention even if the Advisory Board had given favourable opinion in respect of the detention. He relied upon Section 12 of the said Act. Section 12 reads as follows :

Section 12(1): In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the State Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period prescribed by Section 13, as it thinks fit.

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

Perusal of Section 12 of the said Act, would indicate that the continuous detention of a citizen even after an affirmative report is given by the Advisory Board is optional inasmuch as the detainee even then could be released. The learned counsel for the petitioner submits that the State Government, therefore, had acted arbitrarily in not revoking the detention order of the petitioner Surendra and Rakesh when the detention order of other two persons who were similarly situated, was revoked and they were released. Shri Jaiswal, learned counsel appearing on

behalf of the petitioner, relied upon the case decided by the Allahabad High Court in the matter of Wazir Yadav v. State of U.P. reported in wherein the Allahabad High Court has taken into consideration the observation made by the Apex Court in the case of the District Magistrate v. Kulbirchand 1990 SCC 538 wherein the Supreme Court has observed as follows :

Special leave granted arguments heard. After hearing learned counsel for the parties, we are distressed to find that there was complete non-application of mind on the part of the learned Judges. While it is true that they were entitled to come to a particular conclusion upon the facts of a given case, they could possibly have quashed the impugned order of detention merely on the ground that detention orders in similar cases had earlier been revoked. Each case has to be decided on its own facts. Accordingly, the appeal succeeds and is allowed. The judgment and order of the High Court are set aside and it is directed to dispose of the writ petition as expeditiously as possible and in any event, not later than four weeks from today.

18. Shri J. M. Gandhi, learned counsel appearing on behalf of the detenu Rakesh also raised same contentions and relied upon the ground (d) which reads as follows:

Ground (d) :

That, the so called subjective satisfaction of detaining authority is prima facie unsustainable since the very fact of release of detenu on bail and his attitude of due compliance of the conditions of bail is not at all taken into consideration. The bail orders though placed on record but are not looked into, which is an apparent error on the part of the detaining authority.

Ground (f): That, maximum of the documents supplied to the detenu are unclear, illegible and not readable which amounts to deprivation of fair opportunity to detenu.

Ground (k): That, the detention of other persons implicated in the same incidents in which the detenu was implicated were quashed and set aside by Advisory

Board and hence the detenu also deserves the same on the ground of parity.

Shri Gandhi, the learned counsel also , relied upon number of judgments wherein similar view is taken by the Apex Court and by various High Courts.

19. Mrs. Bharti Dangre, learned A.P.P. appearing on behalf of the respondents vehemently opposed all the submissions made by the learned counsel for the petitioners. She has relied upon the number of judgment on all the points raised by the petitioners. As already stated, we are not impressed by the other submissions made by the counsel appearing on behalf of the petitioners and in view of the various judgments cited before us, we accept the contentions raised by Mrs. Bharti Dangre, learned A.P.P. appearing on behalf of the respondents in respect of the other grounds raised in the petition. In respect of the ground of non-supply of the vital documents, however, Mr. Dangre, learned A.P.P. vehemently argued that the said defect would not vitiate the subjective satisfaction of the detaining authority. She relied upon the various judgments of the Apex Court and submitted that the High Court while exercising its jurisdiction under Article 226 of the [Constitution of India](#), should not re-examine the subjective satisfaction arrived at by the detaining authority. For that purpose she relied upon the judgment reported in : 1974 CriLJ702 Anil Dev v. State of West Bengal. She relied upon para 4 of the said judgment which reads as follows at Page 703-704; of Cri LJ :

A swallow cannot make a summer ordinarily, and a solitary fugitive act of criminality may not normally form the foundation for subjective satisfaction about the futuristic judgment that the delinquent was likely to repeat his offence and thereby prejudicially affect the maintenance of supplies and services essential to the community. In this context, we have to remember that the Parliament, whether we like it or not, has in its wisdom entrusted the extraordinarily power to imprison a citizen based on the subjective satisfaction of Government or other officer specified in the statute with a view to inhibit prejudicial activities of the type mentioned in the statute. This is a measure of social defence which is a break with the basics of criminal jurisprudence. But the law of preventive detention is a different field of criminology which has its own guidelines, and we have to go by them without telescoping into them what a Criminal Court expects in a trial of an

accused brought before it. The key fact at the core of the statute is that given subjective satisfaction of the appropriate authority, judicial review is excluded except within a narrow area. Within that area the Court, of course, is the sentinel on the quiviva, but beyond it is out of bounds for the forensic exploration. Our jurisdiction, therefore, is confined to the examination of violations of those guidelines which have been woven into a consistent fabric by the decisions of this Court over the years.

Mrs. Bharti Dangre relied upon the judgment of the Apex Court in the case of Smt. Hemlata Kantilal Shah v. State of Maharashtra reported in : 1982 CriLJ150 . She invited our attention to para 15 of the judgment which is reproduced herein below at page 157; of Cri LJ :

It is needless to say that the High Court under Article 226 of the Constitution and the Supreme Court either under Article 32 or under Article 136 of the Constitution do not sit on appeal on the orders of preventive detention. The normal law is that when an isolated offence or isolated offences is or are committed, the offender is to be prosecuted. But, if there be a law of preventive detention empowering the authority to detain a particular offender in order to disable him to repeat his offences, it can do so, but it will be obligatory on the part of the detaining authority to formally comply, with the provisions of sub-article (5) of Article 22 of the [Constitution of India](#). The High Court under Article 226 and the Supreme Court under Article 32 has to see whether the formalities enjoined by Article 22(5) have been complied with by the detaining authority. If the formalities have been complied with, the Court cannot examine the materials before it and find that the detaining authority should not have been satisfied on the materials before it and detained the detenu under the Preventive Detention Act, for that is the function of an appellate Court.

Mrs. Bharti Dangre, learned A.P.P. appearing on behalf of the respondents also invited our attention to the judgment of the Apex Court reported in : 2000 CriLJ3944 in the case of Smt. Phulwari Jagadambaprasad Pathak v. R.H. Mendonca. She invited our attention to para 17 of the said judgment which is reproduced herein below : at page 3949; of Cri LJ :

From the grounds of detention and the papers enclosed with it copies of which were served on the detenu it is clear that the detaining authority based his subjective satisfaction on a series of contemporaneous incidents in which the detenu was involved. The satisfaction was not based on a single or stray incident. In the in-camera statements separate incidents of criminal activities of the detenu were stated. The assertions are not assailed as untrue nor can they be said to be irrelevant for the purpose of the order. On such materials on record it cannot be said that there was no basis for the detaining authority to feel satisfied that the detenu was either himself or as a member or leader of a gang habitually committed or attempted to commit or abetted the commission of any of the offences stated in Section 2(b-1). Therefore, the contention raised by learned counsel for the petitioner that the conclusion arrived at by the detaining authority that the detenu was a 'dangerous person' within the meaning of Section 2(b-1) was vitiated cannot be accepted. In our view the detention order under challenge does not suffer from any infirmity.

Mrs. Bharti Dangre, learned A.P.P. also submitted that though the voice testing report was not supplied because the opinion of the expert was that the test was inconclusive, yet the detaining authority had relied on the other material and, therefore, on that ground, it cannot be said that the subjective satisfaction is vitiated. She further submitted that similarly merely because an application for bail and bail order was not supplied, it was not a defect which would result in vitiating the subjective satisfaction of the detaining authority. She further submitted that in respect of Rakesh, the letter which he had sent, was compared with the other 7 specimen of his original hand writing which were also obtained. She submitted that, therefore, there is enough material before the detaining authority in order to arrive at the conclusion that the petitioner Surendra and Rakesh were, in fact, the same persons who had made telephone calls and the threatening letters. She submitted that though the grounds of detention were identical, the role attributed to each of the petitioners, was separately mentioned in the grounds and, therefore, there was no question of parity being shown to the petitioners.

20. We are unable to accept the submissions made by Mrs. Bharti Dangre in respect of the said ground mentioned above. It is no doubt true that while

exercising the jurisdiction under Article 226 of the Constitution, the High Court should be slow to review the subjective satisfaction of the detaining authority. However, in the instant case, it is an admitted position that the grounds of detention in respect of all the four detainees are identical. It is further an admitted position that the order of two detainees was revoked by the State Government. No detention order has been issued in respect of two other accused who were also involved in the same transaction as alleged by the prosecution. So far as the present petitioner Surendra and Rakesh are concerned, there is no sufficient material on record to show that, in fact, they had made a telephone call as Salim and Altaf in view of the fact that the voice test taken by the expert does not show that it was the voice of the petitioner Surendra and Rakesh. This relevant and vital material was neither supplied to the present petitioner Surendra and Rakesh nor considered by the detaining authority which is admitted by him in para 2 of the reply. So far as the specimen handwriting of Rakesh is concerned, the vital 7 documents where the original handwriting was obtained by the Investigating Agency, were neither supplied to the petitioners nor produced before the detaining authority. It is apparent that the detaining authority has proceeded on the presumption that the petitioner Surendra and Rakesh are the same persons who had called the complainants posing themselves as Salim and Altaf. It is further an admitted position that even after the arrest and detention of the petitioner Surendra and Rakesh, people continued to receive calls in the name of Salim and the Police had received complaints to that effect. The detaining authority was not supplied with the bail orders wherein stringent conditions were imposed on the petitioner Surendra and Rakesh and an undertaking was obtained from them that, they would not commit these offences again along with the other stringent conditions imposed. In the above circumstances, we are of the opinion that the State Government had acted arbitrarily in not revoking the order of detention Of the present petitioner Surendra and Rakesh.

21. In the result, the Criminal Writ Petitions are allowed. The orders of detention passed against the petitioner Surendra alias Altaf S/o. Kanhaiyalal Mishra and Rakesh alias Salim S/o. Khyanchand Lachhiramani dtd. 31-10-2001 and 24-10-2001 respectively are quashed and set aside. The said detainees are directed to be released forthwith if not required in any other case.

