

Vinod Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Apr-23-1998

Reported in : 1998CriLJ4655

Judge : Binod Kumar Roy and ;P.K. Jain, JJ.

Acts : [National Security Act, 1980](#) - Sections 3(2), 3(4), 4(5), 7, 8 and 10; Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 - Sections 3(2); [Constitution of India](#) - Articles 21 and 22(5); Indian Penal Code (IPC) - Sections 302, 307, 323, 376, 379 and 411; Code of Criminal Procedure (CrPC) - Sections 161; [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) - Sections 3(1) and 11(1)

Appeal No. : Criminal Misc. Habeas Corpus Writ Petn. No. 33668 of 1997

Appellant : Vinod

Respondent : State of U.P. and ors.

Advocate for Def. : S.C. and ;A.G.A.

Advocate for Pet/Ap. : Amar Saran and ;Vijay Gautam, Adv.

Disposition : Petition allowed

Judgement :

P.K. Jain, J.

1. These two writ petitions have been filed by petitioners Vinod and Sunder respectively challenging the orders dated 8-5-1997 (separately against each of the petitioners) directing their detention under Section 3(2) of the National Security Act. The petitioners have prayed for issue of a writ in the nature of habeas corpus directing them to be released forthwith.

2. Petitioner Vinod surrendered before the C.J.M., Meerut on 5-5-1997 in case crime No. 163/97, under Sections 302/376 and 323, IPC, P.S., Sardhana, Meerut and he was taken into custody and thereafter sent to district Jail, Meerut. Petitioner Sunder was arrested in connection with the aforesaid case crime No. 163/1997 on 22-4-1997 and was detained in district jail in connection with the aforesaid case.

3. While both the petitioners were in jail in connection with the aforesaid case crime No. 163/ 1997, under Sections 302/376 and 323, IPC, P.S. Sardhana, district Meerut, the impugned orders dated 8-5-1997 passed separately by the District Magistrate, Meerut along with the grounds of detention Annexures 1 and 2 respectively was served upon them through jail authorities on 9-5-1997. Both the petitioners sent their representations as contained in Annexure 8 through jail authorities on 17-5-1997 to the State Government, the U.P. Advisory Detention Board, Lucknow and the Secretary Government of India Home Ministry. The District Magistrate, Meerut forwarded the representations to the State Government on 24-5-1997 which were received by the State Government on 25-5-1997. Since the representations were not accompanied by parawise comments of the District Magistrate the detaining authority was asked to send the parawise comments. The District Magistrate, Meerut sent the comments on 2-6-1997 which were received by the State Government on 5-6-1997. The State Government rejected the representations on 9-6-1997 and the fact about the rejection of the representations was communicated to the petitioners through the District Magistrate on 16-6-1997. The State Government had also placed the representations of the petitioners before the Advisory Board on 30-5-1997. The Advisory Board had heard the petitioners personally on 13-6-1997 and the Advisory Board had also fixed 13-6-

1997 for hearing of the petitioners case. Finally the Advisory Board sent the report dated 23-6-1997 which was again considered by the State Government and finally the order dated 1 -7-1997 confirming the detention order was passed which was issued to the petitioners on 2-7-1997.

4. Both the petitioners in their writ petitions stated that the grounds of detention as contained in Annexure 2 was served upon them which stated that on 21-4-1997 at about 1.00 a.m. each of the petitioners accompanied by his companions entered the house of Smt. Nishi and Smt. Charan Kaur in village Jhitkari and gave them severe beating causing fatal injuries to Smt. Charan Kaur. The two ladies were taken in a tractor to the police station. A report was lodged by one Anil Kumar on 21-4-1997 at 4.00 a.m. A case under Section 307, IPC case crime No. 163/1997 was registered against unknown persons. However, the statement of Smt. Nishi under Section 161, Cr.P.C. was recorded and in her statement she stated that she was subjected to gang rape by the petitioners and their companions and on 22-4-1997 at about 6.50 p.m. Section 376, IPC was also added. Smt. Charan Kaur succumbed to her injuries on 25-4-1997 and thereafter the case was converted to Section 302, IPC on 26-4-1997. It was stated in the grounds of detention that at the time of the said incident Sri Yash Pal Singh husband of Smt. Nishi on 20-4-1997 had gone to his brother-in-law's house and in his absence between the night of 20/21 -4-1997 Sunder alias Surendra alias Radha armed with iron rod and Vinod armed with a country made pistol, both the petitioners and one Pawan also armed with a country made pistol entered the house of Smt. Nishi and assaulted her and her mother-in-law. Sunder had given iron rod blow on the head of Smt. Charan Kaur whereupon she became unconscious and thereafter all the three accused persons abducted Smt. Nishi in the field of Shiv Dutta and thereafter they gang raped her one by one. Thereafter Smt. Nishi somehow managed to come back to her house and found her mother-in-law unconscious. Petitioners and co-accused Pawan were identified by her in the electric light. Some of the villagers had taken Smt. Nishi and her mother-in-law to the police station. Smt. Charan Kaur died on account of the injuries sustained by her. Because of the ghastly act of murder and rape by the accused persons including the petitioners an atmosphere of fear, insecurity and terror was prevailing on the villagers and in the nearby areas. On 27-4-1997 while constables Suresh Babu and Sharafat Ali were

on patrolling duty in village Jhitkari they informed that on account of the gang rape incident the public order was adversely affected in the village. No lady of the village was ready to come out of her house to attend the call of nature and the nominated accused and members of their family were terrorising and threatening the witnesses to withdraw the case failing which they will face the consequences and there was likelihood of happening of some untoward incident. The information sent by the two constables was got enquired through S.S.I. Sri K.K. Kanaujiya and was found to be correct. Due to the fear and terror on account of the said incident the villagers have stopped to go to their fields and have started running away from the village and this conduct of the petitioners was against the public order and an application for bail was moved on behalf of the petitioners and there was likelihood of their being released on bail and it was apprehended that the petitioners after being released on bail may commit some ghastly crime which may further affect the public order.

5. Both the petitioners in their writ petitions alleged that the detention orders against the petitioners have been passed in a mala fide manner and by misusing of the provisions of the National Security Act. The petitioners in their writ petitions alleged that they are supporters of Bhartiya Janta Party and had opposed one Har pal Saini a candidate of Bahujan Samaj Party in the MLA election. Har Pal Saini lost election and the authorities have initiated the present action against the petitioners at the instance of the then Ruling Bahujan Samaj Party. On account of extraneous influence exerted by the interested elements concocted materials have been collected like beat report No. 40 dated 27-4-1997. The petitioners were not nominated in the First Information Report and it was for the first time that in her statement under Section 161, Cr.P.C. Smt. Nishi disclosed the involvement of the petitioners in commission of the crime. The petitioners have absolutely no criminal history and no specific crime is alleged against them in the past. Smt. Nishi has admitted enmity and criminal cases of the petitioners and their companions with her family members.

6. Both the petitioners have challenged the detention orders mainly on the ground that there was unreasonable and unexplained inordinate delay in disposal of the representations, that the petitioners were not provided with the real opportunity to

bring their friends before the Advisory Board; that it is a case of solitary incident occurring due to personal enmity and such facts did not furnish any valid or sufficient grounds on which the detention order under the National Security Act can be passed as the solitary incident occurring due to personal enmity has no intensity or potential effect to disturb the public order and lastly that there was no material to conclude that if released on bail the petitioners would again indulge in similar activity.

7. In Writ Petition No. 33668 of 1997 counter affidavit of Sri Hem Chandra, an Upper Division Assistant in Confidential Section 7, U.P. Civil Secretariat, Lucknow has been filed on behalf of respondent No. 1, counter affidavit of Deepak Singhal, now Commissioner Bareilly Division Bench, Bareilly, who was at the relevant time District Magistrate, Meerut has been filed for respondent No. 2 and counter affidavit of Sri Kamal Kumar Gupta who is now Deputy Jailor in district Jail, Meerut has been filed for respondent No. 4. No counter affidavit on behalf of the Union of India has been filed in both the petitions. In Writ Petition No. 33673 of 1997 for respondent No. 1 counter affidavit of one Gopal Dutta an Upper Division Assistant in Confidential Section 7, U.P. Civil Secretariat, Lucknow, has been filed whereas on behalf of respondents Nos. 2 and 4 counter affidavits of Sri Deepak Singhal and Sri Kamal Kumar Gupta have been filed. The contents in the counter affidavits filed in both the writ petitions are similar.

8. In the counter affidavits filed on behalf of the State it is stated that the petitioners' representation, dated 17-5-1997 was forwarded by the District Magistrate, Meerut to the State Government on 24-5-1997 which was received by the State Government on 25-5-1997. This representation was not accompanied by para wise comments of the detaining authority. The representation was, however, placed by the State Government before the Advisory Board on 30-5-1997 (in the case of petitioner Sunder on 25-7-1997). The District Magistrate, Meerut sent his para wise comments on 2-6-1997 which was received by the State Government on 5-6-1997. The comments of the detaining authority were placed before the Advisory Board on 6-6-1997. The petitioner's representation was examined and a detailed note was put by the Section concerned on 6/7-6-1997 (on 7-6-1997) in the case of petitioner Sunder). The Deputy Secretary examined the representation on

9-6-1997 and file was submitted to the Special Secretary the same day. The Special Secretary and Secretary Gopaniya Department examined the representation on 9-6-1997 itself (in the case of petitioner Sunder on 7-6-1997) and finally it was rejected by the State Government on 9-6-1997 (in the case of petitioner Sunder on 8-6-1997). The fact about the rejection of the representation was communicated to the petitioner by the State Government through District Authorities on 16-6-1997 (in the case of petitioner Sudner on 10-6-1997). These facts show that the petitioners' representation was decided expeditiously. The District Magistrate, Meerut sent his report to the State Government along with the detention order dated 8-5-1997 passed against the petitioners and all the materials and documents which have bearing upon, this order which was received on 12-5-1997. After examining it in detail the detention order was approved within 12 days from the date of detention order by the State Government that is, on 15-5-1997 as required by Section 3(4) of the Act. The fact about the approval of the detention order was communicated to the petitioners through District Authorities on 19-5-1997 and State Government reported to the Central Government about the approval of the detention order on 19-5-1997 and on the same day all papers including the detention order, grounds of detention and copies of the documents sent by the detaining authority to the State Government were also sent to the Central Government which were received by the Secretary Home Ministry, New Delhi on 22-5-1997 within 7 days from the date of approval as provided under Section 4(5) of the Act. The case of the petitioner was referred to the Advisory Board by the State Government on 24-5-1997 (on 23-5-1997 in the case of petitioner Sunder) under Section 10 of the Act by forwarding copy of the detention order, grounds of detention and all other connected papers well within 21 days from the date of actual detention of the petitioners. The representation of the petitioner was also placed before the Advisory Board on 30-5-1997 (on 27-5-1997 in the case of petitioner Sunder). The petitioners were heard by the Board in person on 13-6-1997. The report of the Advisory Board was received by the State Government in two parts through letter dated 23-6-1997. Thereafter the State Government again examined the entire matter of the petitioners in detail and since the State Government was of the view that the detention orders deserved to be confirmed, confirmation order for detention was issued on 2-7-1997 (on 1-7-1997

in the case of petitioner Sunder). The petitioners were informed by the State Government of the date fixed for hearing of the petitioners' case by the Advisory Board on 13-6-1997 and also that if the petitioners wanted to appear along with next friend (non-Advocate) they may bring their friends at the time of hearing which fact was communicated to the petitioners by the district authorities on 9-6-1997. The order of detention was thus valid and its validity can not be challenged on any ground as aforesaid.

9. In the counter affidavit filed by Sri Deepak Singhal on behalf of respondent No. 2 it is stated that the order dated 8-5-1997 was passed after consideration of the material placed before him and after being satisfied that there was reason to believe that the petitioner was likely to be released on bail and further there was reason to believe that after being released on bail he would further indulge in similar activities, prejudicial to the maintenance of public order, peace and tranquility and the same was served along with the grounds of detention and the relevant papers upon the petitioner through District Jail authorities on 9-5-1997. In the First Information Report of case crime No. 163/97 it was specifically stated that Smt. Nishi and Smt. Charan Kaur would tell about the particulars of the accused persons and during investigation Smt. Nishi gave out details of the incident as also the names and particulars of the accused persons involved in commission of the crime. The representation dated 17-5-1997 given by the petitioner was received through jail authorities the same day. The report from the S.S.P. was called for on the aforesaid representation and after receipt of the report of the Sponsoring authority para wise comments were prepared and representation along with the comments was sent to the State Government. Bail was granted to the petitioner after detention order was passed and the same was not in existence when the detention order was passed. It was incorrect to state that the impugned order was passed mala fide and by misusing of the provisions of the National Security Act. On the other hand, it was passed after receipt of the police report and other materials and after consideration of the same without any influence or ill will. The incident in question was clear case of breach of public order. The first informant was not an eye-witness and could not have named the accused persons and it was categorically stated in the First Information Report that the particulars of the accused shall be disclosed by the eye witnesses. The act of the petitioner is a

clear breach of public order, which was committed in an organised way and due to the offence committed by the petitioner along with his associates, the public order, peace and tranquility even the tempo of the society was affected particularly the women of the particular area were terrorised due to the incident of gang rape. It was stated that they were not inclined to go out side the jungle to attend the call of nature. The complainant and his family members were threatened and asked to withdraw the case failing which they would face serious consequences. There was reason to believe that the petitioner would be released on bail and after being released on bail he would again indulge in similar activities. It was wrong to allege that the bail application dated 7-5-1995 was either a forged document or collusively moved in connivance with the police. In fact the application was moved on behalf of the petitioner by Pairokar through his counsel. The petitioner was informed about his right to give representation about the detention and after receiving the information from the State Government the petitioner was informed through jail authorities the same day that the petitioner may appear before the Advisory Board in person or through the next friend but no such request was made by the petitioner. In the present case there were valid and reasonable grounds to take preventive action against the petitioners and the deponent has considered the entire material independently while passing the detention order.

10-11. In the counter affidavit filed by Sri Kamal Kumar Gupta on behalf of respondent No. 4 it is stated that the petitioner was detained in jail since 5-5-1997 (in the case of petitioner Sunder 23-4-1997) in case crime No. 163/1997, under Sections 302/376 and 323, IPC P.S. Sardhana, district Meerut. The order dated 8-5-1997 under Section 3(2) of the National Security Act was served upon the petitioner on 9-5-1997. Bail was granted to the petitioner in case crime No. 163/97 and he was released on bail in the said case on 30-6-1997. The petitioner submitted his representation against the detention order on 17-5-1997 alongwith 13 copies out of which 10 were sent to the Distirct Magistrate, Meerut on 17-5-1997 and one each copy was sent to the Home Secretary State of U.P. Lucknow and Home Secretary Government of India, New Delhi through registered post on 17-5-1997. The State Government rejected the representation of the petitioner and a radiogram was received on 14-9-1997 and the petitioner was informed the same day about rejection of the representation. (No detail in this regard is given in the

counter affidavit filed in writ petition on behalf of petitioner Sunder.) The detention order was approved by the State Government on 19-5-1997, the radiogram information was received on 20-5-1997 and it was conveyed to the petitioner the same day. Copy of the approval order was received on 31-5-1997 and on the same day it was served upon the petitioner. The petitioner was produced before the Advisory Board on 13-6-1997. By Government order dated 2-7-1997 (1-7-1997 in the case of petitioner Sunder) the detention order was confirmed and information was received by a radiogram dated 6-7-1997 and on the same day the petitioner was informed of the same. Three copies of the confirmation order was received on 9-7-1997, one copy whereof was served upon the petitioner on the same day. The radiogram regarding rejection of the representation by the Central Government was received on 27-7-1997 and on the same day copy of the radiogram was served upon the petitioner. Letter about the rejection of the representation by the Central Government was received on 20-8-1997 and the petitioner was served with the same the same day. On 12-6-1997 the petitioner was also informed that he was to appear before the Advisory Board on 13-6-1997 and was free to accompany by a friend (non-Advocate) while appearing before the Advisory Board. No rejoinder affidavit has been filed by the petitioners.

12. We have heard Sri Amar Saran, learned counsel appearing on behalf of the petitioners and Sri Tripathi, learned A.G.A. appearing on behalf of respondents Nos. 1, 2 and 4. None has appeared for respondent No. 3.

13. The first 4 submission of the learned counsel for the petitioners is that there has been inordinate and unexplained delay in disposal of the representations of the petitioners and, therefore, there is violation of Article 22(5) of the [Constitution of India](#) and consequently, the detention of the petitioners is illegal. The contention of the learned counsel for the petitioners is that even though the representation was submitted on 17-5-1997 it remained lying in the office of the District Magistrate, the detaining authority till 24-5-1997. No reason is at all assigned as to why the same was not forwarded to the State Government expeditiously. The District Magistrate sent his comments on 2-6-1997 which were received by the State Government on 5-6-1997. There is again no explanation why such a long time was taken in sending the comments to the State Government. Sri Tripathi,

learned A.G.A. appearing on behalf of respondents Nos. 1,2 and 4, on the basis of the records, points out that the representation was received in the office of the A.D.M. and it was placed before the District Magistrate on 24-5-1997. Thereafter the report of the Sponsoring authority viz., S.S.P. Meerut was called for and as soon as the same was received the representation was expeditiously forwarded to the State Government. It is further argued that at the level of the State Government there is absolutely no delay in disposal of the representation inasmuch as the representations were disposed of and finally rejected on 8-6-1997 in the case of petitioner sunder and on 9-6-97 in the case of petitioner Vinod. It is pointed out that in the counter-affidavit filed on behalf of State it is categorically stated that the comments of the detaining authority were received on 5-6-1997 and the counter affidavit filed on behalf of the State Government explains as to how the representations were dealt with by the State Government. There was thus, no delay in disposal of the representations by the State Government.

14. It is undisputed that Article 22(5) of the [Constitution of India](#) provides that where any person is detained in pursuance to an order made under any law providing for preventive detention the detaining authority is required to afford the detenu earliest opportunity of making representation against the detention order. In a catena of decisions of the Apex Court it has been settled that the right of the detenu of having earliest opportunity to make a representation against the order includes the right of the detenu to have the representation disposed of expeditiously and without inordinate and unexplained delay. It was held in the case of Khairul Haque v. State of West Bengal, (1969) 2 SCWR 529 that -

The fact that Article 22(5) enjoins upon the detaining authority to afford to the detenu the earliest opportunity to make a representation must implicitly mean that such representation must, when made, be considered and disposed of as expeditiously as possible, otherwise, it is obvious that the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning.

This decision was followed in the case of Mahesh Kumar Chauhan v. Union of India, 1990 Cri LJ 1507 : (AIR 1990 SC 1455) and in a large number of cases. A constitution Bench of the Supreme Court in Jayanarayan Sukul v. State of West

Bengal, (1970) 1 SCC 219 : 1970 Cri LJ 743 : (AIR 1970 SC 675) while highly deprecating the conduct of appropriate authorities in unduly and unreasonably delaying the consideration and disposal of a representation observed as follows (para 11 of AIR 1990 SC):

The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities.

15. Section 8 of the National Security Act also provides that the detaining authority shall afford the detenu earliest opportunity of making a representation against the order to the appropriate government. Apart from the provisions contained in Section 8 the detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution. This constitutional requirement has to be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty - the highly cherished right - which is enshrined in Article 21 of the Constitution. True there is no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of words was 'as soon as may be' occurring in Article 22(5) of the Constitution reflect that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay. What is reasonable despatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention.

16. Learned counsel for the petitioners with reference to some decisions of the Apex Court and of this Court has strenuously argued that in the instant case there is absolutely no explanation furnished by the authorities concerned as to why the petitioners' representation was not considered for a period of 7 days between 17-5-97 to 24-5-97 and why the comments of the Sponsoring authority were not obtained before 2-6-97. It is also argued that the explanation furnished by Sri Tripathi, learned A.G. A. during arguments does not find support from the counter-affidavit filed on behalf of the State or the detaining authority. He contends that the Court is not required to go through the Government records to fish-out point supporting the detention. In support of his submission he has relied upon a decision of the Apex Court reported in AIR 1981 SC 1621, Kirit Kumar v. Union of India. In the said decision in paragraph 11 the Hon'ble Supreme Court has observed that it was not open to the Court to have waded through the confidential file of the Government in order to fish-out a point against the detenu.

17. In support of his submissions that there has been inordinate, undue and a unexplained delay, learned counsel for the petitioners has placed reliance upon the cases of K.O. Shaikh v. District Magistrate, 1996 Cri LJ 1981 :AIR 1996 SC 2998, M.K. Chauhan v. Union of India, 1990 Cri LJ 1507 :AIR 1990 SC 1455, Nazir v. Union of India, 1997 JIC 778, Raj Kshore v. State of Bihar AIR 1983 SC 320, Vijay Kumar v. State of Jammu and Kashmir AIR 1982 SC 1023 AIR 1982 SC 1 Ratan Singh v. State of Punjab, Harish Pahwa v. State of U.P. AIR 1981 SC 1126 and Ram Avatar v. State of U.P., 1997 Cri LJ 1616 (a decision of this Court).

18. In the case of K.D. Shaikh v. District Magistrate, Ahmedabad, 1996 Cri LJ 1981 : (AIR 1996 SC 2998), the facts were that the petitioners were detained in jail in pursuance of the orders dated 16th August, 1995, passed by the District Magistrate, Ahmedabad and District Magistrate, Surat under Section 3(2) of the Prevention of Black Marketing & Maintenance of supplies of Essential Commodities Act, 1980. The representations were rejected by the State Government on or around 14-9-95 when letter was sent to the detenu informing about the decision taken on their representations. The State Government in its counter-affidavit has stated that the representation dated 23-8-95 by the wife of K.D. Shaikh was received by the Chief Minister's office on 25-8-95 and was sent to

the office of the Secretary, Food and Civil Supplies Department which was received in the office of the Secretary on 29-8-95. The representation was thereafter sent to the Special Branch of Food and Civil Supplies Department and was received there on 1-9-95. The said Branch put up a note on the said representation on 6-9-95 as there were around 40 to 50 representations which were pending for disposal during the said period. It was stated that the representations were taken up chronologically and, therefore, the petitioners' representation came to be put up for disposal on 6-9-95 as 5-9-95 was holiday being Sunday. The file was cleared by the Section Officer on 7-9-95 and by the Department also the same day. The Deputy Secretary and the Secretary cleared it on 8-9-95 and the file was submitted to the Hon'ble Minister for Civil Supplies who cleared it on 12-9-95 as 9-9-95 and 10-9-95 were government holidays. The Court held that since the Constitution as also the Act specifically provide that the detenu shall be given the earliest opportunity of making a representation against the order of detention, it is implicit that there is a corresponding duty on the authorities to whom the representation is made to dispose of the representation at the earliest or also the constitutional and the statutory obligation to provide the earliest opportunity of making a representation would lose both its purpose and meaning. After making a reference to a large number of cases the Court in para No. 22 observed that in Mohiuddin AIR 1987 SC 1977 and Rama Dhondhu's AIR 1989 SC 1861 cases (supra), it was provided that inordinate and unexplained delay in the disposal of representation would make the continued detention of a person, illegal and unconstitutional. In *Devi Lal Mahto v. State of Bihar* AIR 1982 SC 1548, the continued detention was held to have become bad on account of the indifferent attitude of the government in not attending to the representation for about 10 days. On the facts of K.D. Shaikh's case (AIR 1996 SC 2998; para 22) the Court observed as follows :-

In both these cases, we have to read the old story of lethargy of the State Government. In the first case, the representation dated 23-8-95 was received in the office of the Chief Minister on 25-8-95 and was ultimately disposed of on 12-9-95 and the order was communicated to the detenu on 14-9-95. During this period, the file was being processed in the government departments. It is pointed out in the counter-affidavit that the representation, on being received in the office of the

Chief Minister on 25-8-95 was sent to the Secretary, Food & Civil Supplies Department, where it was received on 29-8-95. The internal movement of the file thus took four days. The representation was then sent to the Special Branch where it was received on 1-9-95. The representation was taken up by the Special Branch on 6-9-95. The inactivity in taking up the representation for six days is explained by showing in the counter-affidavit that there were about 40 to 50 representations pending for disposal and they were taken up chronologically. This indicates that the representation was placed in the queue and was not given precedence over other representations, which are not said, in the counter-affidavit, to relate to detention orders. Even if they related to preventive detention, then such of those which were ready for disposal and in respect of which comments from various departments had been gathered and other formalities completed should have been disposed of immediately and should not have been kept pending on the ground of 'chronological disposal' by saying that representations filed earlier by other detenus were still to be disposed of. The chronology must be broken as soon as a representation is ready for disposal.

The argument was made on behalf of the respondents on the basis of a decision in *State of U.P. v. Shakeel Ahmad*, (1996) 1 SCC 337, that this Court had ignored the delay of over 23 days in disposal of the representation. The court repelled such arguments and held that this decision is of no help to the respondents as necessary facts on the basis of which the Court came to the conclusion that there was no delay in disposal of the representation, have not been set out. All that has been said that 'in the facts and circumstances of this case, the delay in disposal of the representation of about 23 days also is not fatal'. Moreover, the period of detention had already expired and, therefore, what was laid down therein would be of no assistance to the respondents.

19. In *K.D. Shaikh's case* (AIR 1996 SC 2998) the Hon'ble Court has held the detention of the petitioners to be illegal on account of inordinate delay in disposal of the representation.

20. In *Mahesh Kumar Chauhan's case* (AIR 1990 SC 1455) (*supra*) the facts were that the petitioner-appellant was detained in exercise of the powers conferred by

Section 3(1) of the [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) with a view to preventing the detenu from engaging in transporting and concealing smuggled goods and dealing in smuggled goods otherwise than by engaging in keeping smuggled goods. The appellant challenged the detention order and admittedly the representation dated 21-8-89 was received in the office of Joint Secretary, Department of Revenue, Ministry of Finance on 23-8-89 and the same was forwarded to the concerned sponsoring authority on 25-8-89. The Sponsoring Authority sent his comments only on 11-9-1989. Thereafter, the representation along with the comments was processed and put up before the Minister of State for Revenue, who considered and rejected the same on 15-9-1989 subject to the approval of the Finance Minister. On 18-9-89 the file was received back from the Finance Minister's office and the memorandum was issued on 19-9-1989 rejecting the representation. The Delhi High Court dismissed the writ petition of the petitioner. In Special Appeal the Supreme Court referring to the case of Rama Dhondu Borade v. V.K. Saraf Commr. of Police, (1989) 3 SCC 173 : 1989 Cri LJ 2119 : (AIR 1989 SC 1861), has observed that in the same decision it has been pointed out what is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid in that regard (para 8 of AIR 1990 SC 1455):

We hasten to say in this connection that in spite of the facts this Court in a series of decisions has repeatedly and consistently laid down the rule in precise and clear terms that all the procedural safeguards prescribed in under Article 22(5) of the [Constitution of India](#) should be scrupulously and strictly observed - one of which as ingrained in our system of judicial interpretation, being that the detenu shall be afforded an earliest opportunity of making a representation against the validity of the order of detention clamped upon him and that representation should be considered and disposed of as expeditiously as possible.

21. The Apex Court after referring to the decisions in Khairul Haque v. State of West Bengal reported in (1969) 2 SCW 529, Jayanarayan Sukul v. State of West Bengal, (1970) 1 SCC 219 : 1970 Cri LJ 743 : (AIR 1970 SC 675), Shaik Hanif v. State of West Bengal, (1974) 1 SCC 637 : (AIR 1974 SC 679) Cri LJ 606), Raisuddin v. State of U.P, (1983) 4 SCC 537 : (AIR 1984 SC 46) : (1983 Cri LJ

1785) and Frances Coralie Mullin v. W.C. Khambra (1980) 2 SCC 275 : 1980 Cri LJ 548 : (AIR 1980 SC 849) has observed as follows (paras 16 and 17 of AIR 1990 SC 1455):-

Now the unchallengeable legal proposition that emerges from a host of decisions, a few of which we have referred to above, is that a representation of a detenu whose liberty is in peril and depraved should be considered and disposed of as expeditiously as possible, otherwise the continued detention will render itself impermissible and invalid as being violative of the constitutional obligation enshrined in Article 22(5) of the Constitution and if any delay has occurred in the disposal of a representation, such delay should be explained by the appropriate authority to the satisfaction of the Court.

In spite of the weighty pronouncements, of this Court making the legal position clear, it is still disquieting to note that on many occasions the appropriate authorities cause considerable delay in considering and disposing of representations and also exhibit culpable indifference in explaining such delay. We feel that in case the appropriate authority is unable to explain personally the delay at various stages, then it will be desirable indeed appropriate for the concerned authority or authorities at whose hands the delay has occurred to individually explain such delay.

22. On the facts of the case the Apex Court held that 'except merely mentioning that the representation was forwarded to the concerned sponsoring authority on 25-8-1989 and the comments from the sponsoring authority were received by the Department on 11-9-1989, there is absolutely no explanation as to why such a delay had occurred. Therefore, in the light of the proposition laid down in Rama Dhondurao Borade's case, 1989 Cri LJ 2119 : (AIR 1989 SC 1861) (albeit), we have no other option except to allow this appeal on the ground that this undue and unexplained delay is in violation of the constitutional obligation enshrined in Article 22(5) of the [Constitution of India](#) rendering the impugned order invalid.'

23. In the case of Rattan Singh v. State of Punjab AIR 1982 SC 1 the facts were that the appellants were detained under Section 3(1) of the [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#). On 19th

April, 1981 the detenu through his Advocate sent two representations drafted on behalf of the petitioner to the superintendent of Central Jail, Amritsar, one of which was addressed to the Joint Secretary, Department of Home, Government of Punjab Chandigarh and the other to the Secretary, Union Ministry of Finance, Department of Revenue, New Delhi. The Jail Superintendent was requested by the aforesaid letter that the representations be forwarded to the State Government and the Central Government after obtaining the signatures of the detenu thereon. According to the Jail Superintendent the representation of the detenu was forwarded to the State Government. Under Secretary to the Government of India, Ministry of Finance (Department of Revenue) COFEPOSA Unit, New Delhi averred that no representation by or on behalf of the detenu relating to his detention was received by the Central Government and as such the question of any delay in the disposal of such a representation does not arise. However, the P.P.S. (I) Superintendent Central Jail, Amritsar averred in his affidavit that the representation of the detenu was forwarded to the Punjab Government. The Apex Court in appeal observed that the Superintendent should either have forwarded the representation separately to the Government concerned or else he should have forwarded them to the State Government with a request for the onward transmission of the other representation to the Central Government. Someone tripped somewhere and the representation addressed to the Central Government was apparently never forwarded to it, with the inevitable result that the detenu has been unaccountably deprived of a valuable right to defend and assert his fundamental right to personal liberty. May be that the detenu is a smuggler whose tribe (and how their numbers increase) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them and if freedom and liberty are to have any meaning in our democratic setup, it is essential that at least those safeguards are not denied to the detenus. Section 11(1) of COFEPOSA confers upon the Central Government the power to revoke an order of a detention even if it is made by the State Government or its officer. That power, in order to be real and effective, must imply the right in a detenu to make a representation to the Central Government against the order of detention. The failure in this case on the part either of the Jail Superintendent or the State Government to forward the

detenu's representation to the Central Government has deprived the detenu of the valuable right to have his detention revoked by that Government. The continued detention of the detenu must therefore be held illegal and the detenu set free.

24. In the case of *Raj Kishore Prasad v. State of Bihar* AIR 1983 SC 320, the Apex Court observed that Article 22(5) enjoins a duty on the detaining authority to communicate the grounds of detention to the person detained and also to afford him earliest opportunity of making a representation against the order of detention. This constitutional obligation has been statutorily recognised in Section 8 of the Act with a specific provision.... Constitutional mandate was that the detaining authority must afford a reasonable opportunity to the detainee to make a representation. This Court in several decisions spelt out a duty of the detaining authority to consider the representation as expeditiously as possible.

25. Considering the facts of that case the Court observed that the representation was made on October 19, 1981 and it was rejected on November 16, 1981, the very date on which the report of the Advisory Board was also received. There was thus a delay of 28 days in considering the representation. It is, therefore, necessary to examine the explanation preferred by the respondents as to how the representation was dealt with. It is admitted that the representation was received in the office of respondent 1, the State of Bihar, on October 20, 1981. On October 20, 1981 a copy of the representation was sent to the District Magistrate, Gopalganj, the detaining authority. The District Magistrate returned the representation with his comments on October 31, 1981 and it was received, in the Department of Home (Special) on November 4, 1981. On November 5, 1981 it was examined by the Deputy Secretary, Home (Special) Department. On November 6, 1981, it was received by the Special Secretary Home (Special) Department, who endorsed it to the Chief Minister on November 30, 1981. The District Magistrate took more than 9 days in examining the representation and in forwarding his comments and for this there is no explanation. But for the provision contained in Section 8, which requires the representation to be made to the appropriate government, the District Magistrate as a detaining authority would have been under an obligation to examine the representation. Even though he received it on October 22, 1981, he forwarded his comments on October 31, 1981.

In this connection there is an affidavit of one Rajendra Prasad Singh, Deputy Collector of Gopalganj. He is not the detaining authority. As stated in his affidavit even though the District Magistrate was asked to send his comments by special messenger latest by October 27, 1981, the District Magistrate sent his comments on October 31, 1981, presumably by post which was received by State Government on November 4, 1981. Barring giving out the dates there is not the slightest explanation for the delay by District Magistrate as also the State Government. Even the rotating of the files from the Deputy Secretary to the Special Secretary and then the Chief Minister has taken unusually long time. On the whole we consider in the circumstances of this case delay of 28 days in disposing of the representation as inordinate delay which would vitiate the order. Therefore, on this short ground we quash and set aside the detention order.

26. In the case of *Harish Pahwa v. State of U.P.* (supra) AIR 1981 SC 1126, the Apex Court while considering the question of inordinate and unexplained delay in disposal of the representation of the detenu observed that the order of detention is dated 16th May, 1980 and the representation made by the appellant against it from Varanasi Jail bears date the 3rd June, 1980. The State Government received the representation on the 4th June, 1980 but for two days no action was taken in connection with it. On the 6th of June, 1980 comments were called for from the Customs authorities with regard to the allegations made in the representation and such comments were received by the State Government on the 13th June, 1980. On the 17th of June, 1980, the State Government referred the representation to its Law Department for its opinion which was furnished on the 19th of June, 1980. The rejection of the representation was ordered on the 24th of June, 1980 and it was communicated to the jail authorities two days later.

The case of the State is that the representation was with the Customs authorities who were formulating their comments from 7th June, 1980 to the 12th of June, 1980 and that representation was under the consideration of the Government for four days from 13th June, 1980 to 16th June, 1980, of its Law Department from 17th June, 1980 to 19th June, 1980 and then again under its own consideration for six days from 19th June, 1980 to 24th June, 1980.

27. 'In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of affairs in the matter of consideration of representation made by persons detained without trial. There is no explanation at all as to why no action was taken in reference to the representation on 4th, 5th and 25th of June, 1980. It is also not clear what consideration was given by the Government to the representation from 13th June, 1980 to 16th June, 1980 when we find that it culminated only in a reference to the Law Department, nor it is apparent why the Law Department had to be consulted at all. Again, we fail to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of the Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional.'

28. We do not feel it expedient to swell the judgment by referring the other pronouncements relied upon by the learned counsel for the petitioners. It is undisputed that the settled legal proposition which has emerged by a galaxy of judicial pronouncements of the Apex Court as well as of this Court is that the representation of the detenu whose liberty is curtailed and is in peril should be considered and disposed of as expeditiously as possible without any inordinate delay and in the absence of plausible explanation for delay in disposal of the representation the continued detention of the detenu will render itself impermissible and violative of the constitutional obligation enshrined in Article 22(5) of the [Constitution of India](#).

29. Sri Tripathi, learned counsel appearing on behalf of the State has strenuously argued that having regard to the administrative exigencies and priorities in some cases the Apex Court has ignored short delays in disposal of the representation of a detenu. It is contended that now a days the government and its functionaries are pre-occupied with such onerous duties that they hardly could get time to consider and decide the representation with utmost promptitude and because of some pre-occupations some short delays are bound to take place in disposal of the representation which should be ignored while considering the question of delay in disposal of the representation. Reference has been made to some cases specially to AIR 1973 SC 197, Babul Mitra v. State of West Bengal, (1993) (3) JT (SC) 666 : (1993 AIR SCW 2305) Suit. Kamlabai v. Commr. of Police, Nagpur and (1996) 1 SCC 337, State of U.P. v. Shakeel Ahmad.

30. In the case of Babul Mitra because of the peculiar situation the State was preoccupied, one month's delay in disposal of the representation was held not to constitute inordinate delay. That was a case in which the State of West Bengal at the relevant time of the detention of the detenu was pre-occupied with the colossal refugee problem and there was also a spurt of extremists activities engaging attention of the State Government and it was in these circumstances delay of one month in consideration and disposal of the representation of the detenu was treated not to be undue and unexplained delay. The Apex Court has observed that it seems to us 'that having regard to the averment of Sri Sukumar Sen, the representation was considered as soon as possible'. It is common knowledge that the State of West Bengal was at the relevant time preoccupied with the colossal refugee problem. There was also a spurt of extremists' activities which engaged the attention of the Government at that time. These two baffling problems preempted the attention of the Government. In *Amiya Kumar Karmakar v. State of West Bengal*, W.P. No. 190 of 1972 dated 31-7-72 (reported in AIR 1972 SC 2259) the petitioner was detained on December 1, 1971, pursuant to the order of detention dated November 22, 1971 by the District Magistrate, Nadia, West Bengal. The representation sent by the detenu was considered by the State Government after 21 days of its receipt. This Court held that the delay of 21 days could not be held to be inordinate. The Court said (para 11 of AIR):

It cannot be gainsaid that being the border State the State Government was faced during the period of war at least with an extraordinary situation when it had to focus all its attention to problems arising from that situation. Obviously some time had to elapse before normalcy in the working of its departments could return. But apart from this consideration, there was also an abrupt spurt in detention cases presumably on account of the declaration of emergency which required the Government to take a number of precautionary measures. In these circumstances, we find it difficult to persuade ourselves that the delay of twenty-one days could rightly be treated as inordinate.

31. In the case of Smt. Kamlabai, (1993) (3) JT (SC) 666 : (1993 AIR SCW 2305) on the facts of that case the Apex Court held that so far as the State Government was concerned there was no delay. As regards the Central Government there was of course some delay and the submission was that from 18-6-92 to 13-7-92 no explanation was given for such delay. The Apex Court observed that the delay by itself is not a ground which proves to be fatal. However, the short delay cannot be given undue importance having regard to the administrative actions and in these circumstances the Court held that the delay was not so inordinate as to warrant interference. Full facts of explanation given by the Central Government were not mentioned in the judgment.

32. In the 3rd case of State of H.P. v. Shakeel Ahmad (1996) 1 SCC 337 there was delay of 23 days in disposal of the representation which was ignored by the Apex Court. This case was considered by the Apex Court in subsequent decision in K.D. Shaikh's case (AIR 1996 SC 2998) (supra) and the Court has held that this decision is of no help to the respondents as the necessary facts on the basis of which the Court came to the conclusion that there was no delay in the disposal of representation, have not been set out. All that has been said is that 'in the facts and circumstances of this case, 23 days also is not fatal.' Moreover, the period of detention had already expired and, therefore, what was laid down therein would be of no assistance to the respondents.

33. What transpires from perusal of above judgments is that delay simpliciter is not to be viewed as fatal to the detention order. It is only inordinate and unexplained

delay which vitiates the continued detention of the detenu. If there is plausible and reasonable explanation then short] delays are to be ignored. Considering the case of the petitioners in view of the above settled legal position we find that so far as the Central Government is concerned no counter-affidavit has been filed and we do not have any material before us as to how the representations of the detenus-petitioners were dealt with by the Central Government and what fate they have met. As; regard the representations made to the State Government through Detaining authority there is no dispute, rather it is admitted fact that the representations made by both the detenus were received by the District Magistrate, Meerut on 17-5-97 itself as is evident from the averments made in the counter-affidavit filed on behalf off the Detaining authority. The submission of Sri Tripathi, learned counsel for the State that the representations were received in the office of the Addl. District Magistrate does not find support from the averments made in the counter-affidavit filed by Sri Deepak Singhal who was at the relevant time District Magistrate, Meerut. The representations remain unattended with the District Magistrate, Meerut for 7 days and it was only on 24-5-1997 the same were forwarded to the State Government which were received by the State Government on 25-5-97. No explanation whatsoever has at all been furnished by the Detaining authority as to why the representations were not sent to the State Government with promptitude. Again there is no material before us disclosing as to when the State Government asked for the Detaining authority to send his comments. In the counter-affidavit filed on behalf of the State only this much is stated that the representations were not accompanied by parawise comments of the District Magistrate.... The District Magistrate sent his parawise comments on the aforesaid representation on 2-6-97 which were received by the Section concerned of the State Government on 5-6-97. Even Sri Deepak Singhal in his counter-affidavit nowhere stated as to when intimation from the State Government was received for sending comments of the detaining authority. Only this much is stated that the representations given by the petitioners were received through Jail authorities and after receiving the police report parawise comments were prepared and the report along with the comments was sent to the State Government. There is absolutely no mention as to when the representations were forwarded to the State Government and when the comments of the Sponsoring authority were called for

and when the same were received and when the comments were sent to the State Government. There is thus, prime facie delay of 7 days in sending the representations by the detaining authority to the State Government and of another 7-8 days in sending the comments for which no explanation whatsoever has been furnished by the authorities concerned. There is absolutely nothing on record to disclose that the detaining authority was preoccupied in other problems which required immediate attention and it was for this reason that the detaining authority was prevented from forwarding the representations or sending the comments on the representations to the State Government with utmost possible promptitude. In these circumstances, we have no other option but to hold that the representations of both the detenus were dealt with by the detaining authority in most careless and cursory manner and there has been inordinate and unexplained delay in disposal of the representations of the petitioners. The petitioners were thus deprived of their constitutional as well as their statutory rights to have, their representations disposed of expeditiously and without any inordinate delay. On this ground in our opinion, the continued detention of the petitioners has become impermissible and violative of the fundamental rights enshrined in Article 22(5) of the [Constitution of India](#).

34. The next submission on behalf of the petitioners made by Sri Amar Saran learned counsel for the petitioners is that there was no material before the detaining authority to take a view that the detenus if released on bail would indulge in similar activities and, therefore, the detention of the detenus on the basis of a single incident was impermissible. Sri Amar Saran has placed reliance mainly upon two cases viz. AIR 1990 SC 516-Anand Prakash v. State of U.P. and 1988 Cri LJ 839: (AIR 1988 SC 596) Smt. Shashi Agarwal v. State of U.P.

35. In Anand Prakash's case the detenu was detained in jail in connection with a case under Sections 379/411, IPC. According to the ground of detention the ground was that the electric wires to a length of about 2900 mtrs had been cut and stolen away causing loss to the tune of Rs. 21,500/- to the Electricity Board and it was shown that three persons namely, Jagdish, Santosh and Mani Sharma were accused. On 3rd March, 1989 the house of Jagdish was raided and two bags filled with stolen electric wire recovered. Jagdish gave an information that a person at

Vishnugarh Road claiming himself to be a resident of Delhi used to purchase stolen electric wire from the person cutting the electric wire stealthily. On the information of Jagdish the factory of the detenu was raided and a servant was found in possession of about 20 kg. of melted electric wire. The detenu was arrested on the 2nd May, 1989. After setting out the details of this incident the grounds of detention stated that this act on part of the detenu disrupted the electric system resulting in non-operation of tube-wells, dearth of water for crops, non-supply of drinking water for general public and cattle and thus the essential services and supplies were disrupted and their acts have caused injury to the national economy and created terror in the general public and poses a serious threat to the public life. The Apex Court after considering a number of cases held that thus the Detaining authority though can take into account the possibility of the detenu being released on bail in the criminal proceedings, have to be satisfied, having regard to this past activities or by reason of the credible information or cogent reasons, that if he is enlarged on bail, he would indulge in such criminal activities. In the present case except the bald statement that the detenu would repeat his criminal activities after coming out of the jail, there are no credible information or material or cogent reasons apparent on the record to warrant an inference that the detenu if enlarged on bail would indulge in such criminal activities which are prejudicial to the maintenance of essential services. There must be something more than what is found in the record here to come to the conclusion that this is not a case of solitary incident but a case of the detenu indulging in business of receiving stolen electric wires. It was in these circumstances that the Apex Court held that the detention order was not justified.

36. In the other case of Smt. Shashi Agarwal (AIR 1988 SC 596) the grounds of detention stated about 3 incidents One of which related to a murder of a person in the night hours and the incident is confined to individual person. The second incident related to murder and attempt to commit murder in the day light and the third incident related to attempt to commit murder of an accused while he was in judicial custody and was being taken by the police constables for production in the Court of C.J.M. Lucknow. The question raised before the Apex Court was that all the three incidents were individual act and did not relate to public order. The question that there was no material before the detaining authority for reaching the

conclusion that if the detenu was released on bail he would again indulge in prejudicial activities was not at all raised. We may also point out here that the question whether on the material of a particular case the opinion of the detaining authority that after being released on bail the detenu will again indulge in similar activities, is a question relating to the subjective satisfaction of detaining authority. The satisfaction of the detaining authority would depend on facts and circumstances of each case and unless it is shown that there was no material before the detaining authority on which a reasonable or prudent man could satisfy about such apprehension only then the Court can interfere with the order of the detention on such a ground.

37. We may refer to the decision of Alijan Mian (supra) AIR 1983 SC 1130, in which the Apex Court specifically held in paragraph 14 that:

Now the question arises whether the two incidents were sufficient for the detaining authority to initiate proceedings for preventive detention. It is for the detaining authority to have the subjective satisfaction about the apprehension of the breach of the public order from the incidents mentioned above. Even one incident may be sufficient to satisfy the detaining authority. It all depends upon the nature of the incident. In the case in hand the detaining authority was fully satisfied that there was apprehension of breach of public order from the petitioners in case they were bailed out, of which there was every likelihood. This contention in our opinion has no force.

38. We may also refer to the case of Smt. Shashi Agarwal v. State of U.P. (supra) AIR 1988 SC 596, wherein the Apex Court in paragraph 9 of its judgment observed as follows:

The validity of the order of detention has to be judged in every individual case on its own facts. There must be material apparently disclosed to the detaining authority in each case that the person against whom an order of preventive detention is being made is already under custody and yet for compelling reasons, his preventive detention is necessary.

39. In paragraphs 10 and 11 of the judgment in Smt. Shashi Agarwal's case (AIR 1988 SC 596) the Apex Court considered the cases of Ramesh Yadav v. District Magistrate, Etah (1985) 4 SCC 232 at p. 234 : AIR 1986 SC 315 at p. 316 and Binod Singh v. District Magistrate, Dhanbad AIR 1986 SC 2090. While referring to the case of Binod Singh the Apex Court in paragraph 11 of its judgment held that:

Every citizen in this country has the right to have recourse to law. He has the right to move the Court for bail when he is arrested under the ordinary law of the land. If the State thinks that he does not deserve bail the State could oppose the grant of bail. He cannot, however, be interdicted from moving the Court for bail by clamping an order of detention. The possibility of the Court granting bail may not be sufficient. Nor a bald statement that the person would repeat his criminal activities would be enough. There must be also credible information or cogent reasons apparent on the record that the detenu, if enlarged on bail, would act prejudicially to the interest of public order. That has been made clear in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 at p. 421 : AIR 1986 SC 2090 at p. 2094 wherein it was observed :

A bald statement is merely an ipse dixit of the officer. If there were cogent materials for thinking that the detenu might be released then these should have been made apparent. Eternal Vigilance on the part of the authority charged with both law and order and public order is the price which the democracy in this country extracts from the public officials in order to protect the fundamental freedoms of our citizens.

The Apex Court in paragraph 12 further held that there is, to our mind, nothing in these two decisions which runs counter to the decision in Aligan Mian's case AIR 1983 SC 1130 (supra). Although on the facts in Smt. Shashi Agarwal's case the Hon'ble Supreme Court held that there was no material made apparent on record that the detenu, if released on bail, is likely to commit activities prejudicial to the maintenance of public order.

40. In the instant case before us there are allegations which were specifically stated in Annexure 2 that the petitioners entered the house of Smt. Nishi and Smt. Charan Kaur in village Jhitkari and gave them severe beating causing fatal injuries

to Smt. Charan Kaur. The grounds accompanying with the detention order further stated that the statement of Smt. Nishi was recorded under Section 161, Cr.P.C. and in her statement she stated that she was subjected to gang rape by the petitioners and their companions. The ground further mentioned that some villagers had taken Smt. Nishi and her mother-in-law to the police station and Smt. Charan Kaur died on account of the injuries sustained by her. It was further stated that on account of the ghastly act of murder and rape by the accused persons including the two petitioners an atmosphere of insecurity and terror was prevailing on the villagers and in the nearby areas. On 27-4-1997 while constables Suresh Babu and Sharaft Ali were on patrolling duty in village Jhitkari they informed that on account of gang rape incident public order was adversely affected in the village. No lady was ready to come out of her house to attend the call of nature and the nominated accused and members of their family were pressurising and threatening the witnesses to withdraw the case failing which they will face the consequences and there was likelihood of happening some untoward incident. The ground further stated that the information sent by the two constables was got enquired into through SSI K.K. Kannaujiya and was found to be correct. Due to fear and terror on account of the said incident the villagers had stopped to go to their fields and had started running away from the village and this conduct of the petitioners was against the public order and an application for bail was moved on behalf of the petitioners and there was likelihood of their being released on bail and it was apprehended that the petitioners after being released on bail they may commit some ghastly crime which may further affect the public order. These facts, in our opinion, were sufficient to justify the subjective satisfaction of the detaining authority that in case the two detenu were released on bail they were likely to indulge in similar activities. In our opinion, therefore, the impugned order of detention cannot be held to be vitiated on the ground that there was no sufficient material before the detaining authority to come to the conclusion that if the detenus were released on bail they may again indulge in similar activities.

41. As to the contention that this is a case of single incident which was not sufficient to have recourse relating to preventive detention of law. Such question has been considered in a catena of decisions by the Apex Court as well as by various High Courts. It has been held in a number of cases that the 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 action in a manner prejudicial to public order or the like in future and where the public order is effected or is to be jeopardized then even in a case of single incident the provisions of the preventive detention law can be taken to recourse. Often such question has arisen before the Court as to why difference between the law and order and the public order and the difference has been well explained in several cases. We may refer to the case of Arun Ghosh v. State of West Bengal AIR 1970 SC 1228, which was approved in Ram Ranjan Chatterjee v. State of West Bengal AIR 1975 SC 609 and Alijan Mian v. District Magistrate, Dhanbad (supra) AIR 1983 SC 1130. In Ram Ranjan's case the Apex Court has observed as follows (para 8 of AIR):

It may be remembered that qualitatively, the acts which affect 'law and order' are not different from the acts which affect 'public order'. Indeed, a state of peace of orderly tranquillity which prevails as a result of observance of enforcement of internal laws and regulations by the Government, is a feature common to the concept of 'law order' and 'public order'. Every kind of disorder or contravention of law affects that orderly tranquillity. The distinction between the areas of 'law and order' and 'public order' as pointed out by this Court in Arun Ghosh v. State of West Bengal AIR 1970 SC 1228 : 1970 Cri LJ 1136), 'is of degree and extent of the reach of the act in question on society'. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order. If the contravention in its effect is confined only to a few individuals directly involved as distinguished from a wide spectrum of the public, it would raise a problem of law and order only. These concentric concepts of 'law and order' and 'public order' may have a common 'epicentre' but it is the length, magnitude and intensity of the terror-wave unleashed by a particular eruption of disorder that helps distinguish it as an act affecting 'public order' form

that concerning' law and order

In a large number of cases on the facts and circumstances of those cases even single incident was found to have potentiality to disturb even tempo of life of the community on account of which such an act was prejudicial to the maintenance of the public order and was therefore, held to be sufficient for having recourse to the provisions of the preventive detention of law.

42. The last contention of the learned counsel for the petitioners is that the petitioners were not provided with real opportunity to bring their friends (non-Advocate) before the Advisory Board. Learned counsel fairly conceded that though a request for bringing their friends (non-Advocate) before the Advisory Board was made but such request was not pressed. In our opinion, therefore, the detention order cannot be challenged on this ground.

43. However, having come to the conclusion that there was inordinate and unexplained delay in disposal of the representations made by the petitioners, in our view, the impugned detention order is quashed as being violative of the fundamental right of the petitioners enshrined in Article 22(5) of the [Constitution of India](#). Therefore, we allow the writ petitions and quash the impugned detention orders.