

Amit Kumar Agarwalla and ors. Vs. Union of India (Uoi)

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Court : Kolkata

Decided On : Sep-04-1997

Reported in : 1998CriLJ974

Judge : S.B. Sinha and ;Bhaskar Bhattacharya, JJ.

Acts : [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#) - Section 3(3); ;Customs Act; ;[Constitution of India](#) - Articles 22, 22(5) and 226

Appeal No. : W.P. Nos. 16143, 16659, 16674(W) and 17178 of 1997

Appellant : Amit Kumar Agarwalla and ors.

Respondent : Union of India (Uoi)

Advocate for Def. : Biswanath Samaddar and ;Sudip Kumar, Advs.

Advocate for Pet/Ap. : S.S. Roy, ;S.K. Ghosh, ;S. Mehta, ;P.K. Jhunjhunwala, ;Harjinder Singh, ;Pradip Ghosh, ;Bhaskar Sen and ;B.K. Jain, Advs.

Disposition : Petition allowed

Judgement :

ORDER

1. All these four applications being inter-related were taken up for hearing together and are being disposed of by this common judgment.

2. The writ application being W. P. 16143(W) of 1997 was filed by Ajit Kumar Agarwala and Amit Kumar Agarwala praying, inter alia, for the following reliefs :

(a) A writ in the nature of Habeas Corpus be issued commanding the respondents for the production of the body of your petitioners in the Court and your petitioner be set at liberty;

(b) Injunction restraining the respondents from interfering with the personal liberty of the petitioners or from further arresting the petitioners without leave of the Court.

3. In the said writ application it appears that certain interim orders had been passed by this Court. On 18-8-97, two other writ applications being W.P. No. 16674(W) of 1997 and W.P. No. 16659 were filed by Ajit Kumar Agarwalla and Amit Kumar Agarwalla respectively and on that date rule nisi had been issued and directions for affidavit had also been given. Another writ application being W.P. No. 17178(W) of 1997 has been filed by one Rajendra Kanodia on 22-8-97 wherein also rule nisi had been issued and direction for affidavit had been given. Pursuant to the said directions, the respondents have filed affidavits-in-opposition in all the cases.

4. Mr. S. S. Roy, Senior Counsel, appearing on behalf of the petitioners at the very outset submitted that the writ application No. W.P. 16143(W) of 1997 was filed at a point of time when the petitioner was not served with the grounds of detention and as such they were not aware as to and under what law the petitioners have been detained, whereas the subsequent writ petitions were filed by his client upon service of grounds of detentions issued by the respondent No. 2 under the provision of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act (here in after referred to as COFEPOSA). In the said application, the order of detention is in question.

5. The main ground upon which the order of detention has been passed appears to be that (a) the petitioners had been indulging in a fraudulent export of insignificant articles of ladies and gents garments etc. (b) such articles were being exported from various Ports (c) such exports were being made in the names of

front companies on over invoice (d) the petitioners used to receive draw backs; and (e) forgery and manipulation have been committed in exporting and/or causing as such export to be made.

6. The orders of detention have been passed under Section 3 of the COFEPOSA, inter alia, on the ground that the petitioners are habitual smugglers and they have been exporting goods showing higher invoices and used to get draw backs.

7. Mr. S. S. Roy, learned Senior Counsel, appearing on behalf of the writ petitioner in writ application (W.P. No. 16674(W) of 1997) and Mr. H. Singh learned counsel appearing on behalf of the petitioner in W.P. 16659(W) of 1997, inter alia, raised three contentions in support of the applications. The learned counsel firstly submitted that keeping in view the terminology used in Sub-section (3) of Section 3 of the COFEPOSA also Clause (5) of Article 22 of the [Constitution of India](#) the grounds together with the documents must be communicated to the detenu at the earliest possible opportunity such communication, according to the learned counsel, must be actual communication of the grounds together with the documents or pari passu with the grounds so as to enable the detenus to file effective representations.

8. Our attention has been drawn to the fact that various documents supplied to the detenues were absolutely blank and several documents were missing for which the petitioners had filed representations. It was pointed out that from the affidavits-in-opposition filed by the detaining authority it would appear that such representation had allegedly been considered and rejected. Our attention was further drawn to the fact that paragraph 12 of the affidavit-in-opposition where the said averments were made, have been verified as true to the knowledge based on records, although the detaining authority himself had affirmed the affidavit in support of the said allegations. Relying on or on the basis of the decisions reported in : 1974 CriLJ690 (Bhut Nath Mate v. The State of West Bengal) : 1975 CriLJ1327 and an unreported decision of the Division Bench of this Court in the case of Mohd Ikhlauque Waris (Detenue) v. Union of India. (Criminal Misc. Case Nos. 4768-69 of 1994 disposed of on 3-10-94 it was contended that on that ground alone, the orders of detention are liable to be quashed. It was next contended that

some of the grounds are vague as it was asserted that the petitioners have allegedly been carrying on such export business through some front companies which expression was absolutely vague and despite the fact that the petitioners pointed out the same in this representations, no details thereof have been furnished and on that ground too the petitioners' right to make effective representations had been taken away. It was next contended that the orders of detention suffers from a total non-application of mind on the part of the detaining authority. In the order or detention itself it has been stated 'you have been detained.' It was further brought to our notice that the detaining authority in the ground of detention stated that the said order was being passed on the basis of certain incriminating documents but such incriminating documents had not been supplied to the petitioners.

9. Reference in this connection has been made to 1992 (1) Crimes 752 which appears to have been affirmed by the Supreme Court of India in the case of State of Goa v. Joaquim Alemao & Rokizhinho Alemao disposed of on 17-2-92. It was further pointed out that non-application of mind on the part of the detaining authority would be evident from the fact that the detaining authority has quoted in verbatim in the ground of detention the requisition of the sponsoring authority. Our attention has also been drawn to the comparative charts which are at pages 404 and 406 of the writ application.

10. The learned counsel for the petitioner further submitted that despite the admitted fact that Ajit Kumar Agarwalla was never arrested and Amit Agarwalla was granted bail, the effect thereof had not been considered by the detaining authority. Our attention has also been drawn to the fact that the detaining authority had also taken into consideration while passing the orders of detention that one of the petitioners was agitated during interrogation which according to the learned counsel for the petitioner, was wholly irrelevant.

11. Mr. Pradip Ghosh, learned counsel, appearing on behalf of the writ petitioner (Rejendra Kanodia) adopted the submissions of Mr. S. S. Roy, learned Senior Counsel, and further submitted that as in the case of the said writ petitioner, documents had not been supplied together with the grounds on that ground alone,

the order of detention should be quashed.

12. Reference in this connection has been made to : 1981 CriLJ445 , : AIR 1981 SC1909 (Vivendra Singh v. State of Maharashtra), : [1981]1SCR640 , (Icchu Devi Choraria v. Union of India, : [1981]1SCR640 and : 1982 CriLJ193 Sunil Dutt v. Union of India.

13. Reliance has also been placed upon recent decisions of this Court in the case of Pratic Kumar Sen v. Union of India reported in 99 CWN 953 : 1995 (2) CLJ 376 (sic) and Puspa Soni v. Union of India reported in 1996 Cri LR (Cal) 162 : 1996 (2) CLJ 259 : 1996 Cri LJ 2801.

14. Mr. Samadder, learned counsel appearing on behalf of the Union of India on the other hand had taken us through various documents and submitted that from a perusal of the order of detention in its entirety it would appear that the order of detention was passed upon appropriate application of mind. The learned counsel submits that this Court in a given case may peruse the original documents and come to its own conclusion. According to the learned counsel, some of the documents are illegible as legible copies of the same could not be supplied at all in view of the fact that the same are on thermal fax paper as during the passage of time print outs thereupon faded up. The learned counsel submits, that although some of the documents are illegible, the same are not vital for the purpose of detention of the petitioners and in any event, the effect of such documents being available in other documents, the petitioners cannot be said to have been prejudiced. Strong reliance in this connection has been placed on 1993 Supp (1) SCC 405 Union of India v. Mohammed Ahmed Ibrahim, : 1991 CriLJ3291 (Abdulsathar Ibrahim Manik v. Union of India), : 1989 CriLJ983 , : 1991 CriLJ2058 and : 1995 CriLJ2644 . It was further submitted that it was not necessary for the detaining authority to supply the document together with the grounds and in support of the said contention reliance has been placed on : [1981]1SCR640 Icchu Devi Choraria v. Union of India and 1996 (6) SCC 393 (sic). The learned counsel also distinguished the decisions of the Supreme Court of India and the unreported decisions of the Bombay High Court relied upon by the learned counsel for the petitioners on the ground that in all the said cases, the documents were supplied

after a period of 5 days of the date of detention. It was further submitted that the word 'communicated' should not be held to mean that all the grounds and documents should reach the hands of the detenu simultaneously as they may be served separately. The learned counsel in this connection has relied upon a decision reported in 100 CWN 429 and 1996 (86) ELT 27.

15. Mr. Samaddar, the learned counsel, for the respondents further submitted that by reason of non-supply of the documents the petitioners' right to make an effective representation has not been impaired. The learned counsel has also placed reliance on the decision reported in : 1990(45)ELT204(SC) . It was further submitted that copies of the documents are required to be supplied if the same are relevant and not otherwise. The learned counsel submitted that in view of the fact that the petitioner, Ajit Kumar Agarwalla, and Amit Kumar Agarwalla, filed a writ petition earlier being W.P. No. 16143(W) of 1997 the subsequent writ applications were barred under the principles of res judicata. Reliance in this connection has been placed on 1975 Cri LJ 1312.

16. Having regard to the scope and effect of a writ of Habeas Corpus in the matter of preventive detention, we are of the opinion that this Court cannot go into the question of sufficiency of materials as was urged by Mr. Samaddar, learned counsel. On the other hand adequacy or inadequacy of material cannot form a subject-matter of judicial review in a preventive detention matter. The High Court in exercise of its jurisdiction under Article 226 of the [Constitution of India](#) can interfere with an order of preventive detention only if it is satisfied that all procedural safeguards as have been provided for in the Act as also in Clause (5) of Article 22 of the [Constitution of India](#) have not been complied with. This Court can refuse to interfere with the matter only in the event it is satisfied that such procedural safeguards have been complied with. In fact history of liberty is history of procedural safeguards. The Apex Court in the case reported in : 1980 CriLJ548 clearly observed that no freedom is higher than the personal freedom.

17. In the aforementioned background the submission of the learned counsel is required to be considered by this Court. There cannot be any doubt whatsoever that in terms of Section 3(3) of the COFEPOSA the grounds of detention are

required to be communicated. The word 'communicated' must be interpreted in the context of the statute as also the procedural safeguards guaranteed to the detenu in terms of Article 22 of the [Constitution of India](#). The decisions relied on by Mr. Samaddar, learned counsel, reported in 100 CWN 429 and 1986 ELT 28 (sic) were rendered in a different situation. In those cases, this Court was considering the manner of service of notice of an adjudication proceeding under the Customs Act. In those cases it was found that the manner of service of such notice has been laid down in the Rule itself and thus keeping in view the context of the statute the purpose of such service, namely, to communicate to the proceedee (sic) that an adjudication proceeding would be initiated, would be subserved by sending a notice in the manner laid down under the Rule. In fact the word 'communication' has been interpreted in different ways depending upon this fact situation. It may be relevant to note that while considering the word 'control' Dixon, J. in the case of *Bank of New South Wales v. Commonwealth* reported in 76 CLR 1, observed that the word 'control' is 'an unfortunate word of such wide and ambiguous import that it has been taken to mean something weaker than 'restraint', something equivalent to 'regulation'.'

18. In : 1990 CriLJ796 the Apex Court in the context of Preventive Detention has held that 'communication' is a strong word.

19. By reason of Sub-section (3) of Section 3 of COFEPOSA as also Article 22 of the [Constitution of India](#) a detenu has a right to make a representation. Such right has to be construed in the light of the constitutional mandate that ordinarily no person can be detained without trial. The Supreme Court of India in several decisions categorically held that the detenus can make representations before the detaining authority and the Central Govt. besides the Advisory Board and the said authorities would be entitled to pass an effective order on such representation. The documents on the basis whereof the detaining authority arrived at his subjective satisfaction must be supplied to the detenu as on the basis thereof opinion has been formed that the order of preventive detention is required to be passed against the detenu. The detaining authority is, thus, required to supply all documents as a part of the ground or *pari passu* with the ground. The detenu, there cannot be any doubt whatsoever, has a right to demand copies of the

documents which have not been supplied to him. Such documents can be subdivided into two parts, namely (a) the documents which had been relied upon by the detaining authority as forming the basis of detention; and (b) additional documents which may be required by the detenu to show that such order of preventive detention was unwarranted.

20. In the instant case it appears that some of the documents supplied to the petitioner are absolutely blank.

21. The petitioner by reason of a representation dated 6th August, 1997, inter alia, asserted as follows :- 'On 27th July, 1997, I was served with grounds of detention and the documents relied upon in the grounds of detention. A huge bundle of documents stated to be relied upon documents were made over to me. I was made to sign the list of documents appended to the grounds of detention. From the list of documents it appears that the documents are running into 3725 pages. Huge chunk of the papers which were neither properly stiched/bound nor put in order were given to me. The page marks on the relied upon documents have several crossings. With great difficulty I could arrange the pages together. I found that the following pages are missing :

(i) 1601

(ii) 1953

(iii) 2622

(iv) 2758

(v) 2760

(vi) 2932/116

(vii) 2932/117

(viii) 2932/118

(ix) 2932/119

The aforesaid pages were required to be supplied to me along With the grounds of detention. Thus you have not supplied to me complete grounds together with documents as you are required to do under the constitution. However, you are requested to supply me the aforesaid pages to enable me to make an effective and purposeful representation. Several of the purported documents relied upon documents in the grounds of detention supplied to me are not complete. Vital and relevant portion of the documents has been withheld from me. The instance of such incomplete supply of documents are mentioned here in below :-

(I) Shipping Bill being No. 030775 at page 69 is not a copy of the full document. Reverse of the page which is part of the statutory form and contains relevant materials such as name of the Bank, amount claimed by way of drawback, examination order and report, order of export etc. are not there.

(II) In respect of Shipping Bill No. 030773 which is annexed at page 72 of the documents relied upon by you does not contain the important part of the documents. Drawback claimed, order of clearance, name of bank, ledger number etc. have been withheld. (HI) Similarly in respect of shipping bills at pages 2016 and 2017 of the relied upon copy of full documents is not given.

(IV) Several other shipping bills and G.R. Forms have been relied upon by you but full copies thereof are not supplied to me. Relevant portion of the document i.e. reverse side has been withheld from me.

(V) Similarly several bills of lading are relied upon by you but reverse of bills of lading where relevant materials are contained are not given to me. For instance two bills of lading may be looked into at pages 87 and 88 of the relied upon documents.

Non supply of full documents prevents me from making an effective and purposeful representation. You are requested to supply me the full page of the aforesaid documents i.e. all the shipping bills and all the bills of ladings.

The petitioner by reason of the said representation, therefore, requested the detaining authority inter alia to supply to him all the documents referred to therein

including copies-original, duplicate, triplicate and qua-duplicate of the shipping bills to enable him to make effective and purposeful representation. He further submitted that non-consideration of full set of documents would result in non-application of mind which would render the detention illegal and bad. He requested the detaining authority to supply to him the said documents. He has further stated as follows :-

The detention order has been passed on vague grounds. Various materials considered by you for reaching to your purported satisfaction is communicated to me in vague manner. It has been alleged in the grounds at page 88 as follows :-

In fact, I notice from the materials placed before me that such illegal activities were being continued by way of making fraudulent exports through various ports in the name of some front companies. The case of export through M/s. Chanakya Exports/Sri Prith Pal Singh on behalf of M/s. Terai Overseas Ltd. was one such instance. The plan appears to be to allow such front companies to get the undue benefit of drawback while the remittances received against such fraudulent exports go to M/s. Terai Overseas Limited. It appears that you have considered several exports made through various ports made by purported front companies. But no such material relied upon by you is supplied to me. You are requested to specify what you meant by various ports and what exports you considered 'fraudulent exports' other than we made by M/s. Chanakya Exports/Prith Pal Singh. I have been made confused. You are requested to inform me what exports you have fallen into consideration and the port of loading and nature of fraudulent export and all the materials relied upon by you to enable me to take an effective and purposeful representation.

He pointed out that the entire case hinges on exports made by M/s. Chanakya Exports. Though in the list of documents appended to the grounds of detention it has been mentioned that copies of all search lists along with authorisation has been given but purposely the said search list and search authorisation had been withheld from him. He in his representation categorically stated that in the grounds of detention itself it was mentioned that the said documents are incriminating in nature. He stated :-

The documents dealt with in the statements of persons when relied upon were to be given to me for making an effective and purposeful representation. Non-supply of such documents has prevented me from controverting the case built up against me. I too was confronted with several documents and statements were taken from me vis-a-vis documents. The following documents were shown to me and statements were taken - (i) Page 16 of seized documents in File T3, (ii) Documents in File No. T1 numbering 42 pages, (iii) Page 21 of File marked T1; (iv) The letters dated 3-10-94 and 5-10-94. Similarly, Amit Agarwala was confronted with the following documents and he was forced to make statements - (i) documents shown from file T1; (ii) Newspapers' cuttings.

The aforesaid documents on the basis of which statements were made and were relied upon by you for passing the detention order should have been given to me along with the grounds of detention. In absence of the aforesaid documents I am unable to controvert the allegations made against me. Non-supply of the aforesaid, documents has prevented me from making an effective and purposeful representation which makes my detention bad.

Deliberately numerous illegible documents have been given to me to prevent me from making an effective and purposeful representation. Particulars of such illegible documents are set out in a schedule enclosed herewith and marked 'A'. The supply of illegible copies is no communication of the grounds of detention which makes the detention bad and illegal. I am unable to decipher anything from the aforesaid xerox copies. I have been prevented from making an effective and purposeful representation. However, you are requested to supply me legible xerox copies to enable me to make an effective and purposeful representation.

It is not necessary to set out the assertion of the petitioner in its entirety but suffice it to say that the detaining authority in paragraph 12 of his affidavit-in-opposition merely stated that the aforementioned representation of the petitioner was considered by him and was rejected. Curiously enough the said statements had been verified as based on records although consideration of the said representation and rejection thereof cannot be a matter based on record but was a matter which was based on personal knowledge of the deponent. The deponent

furthermore has not disclosed before this Court as to on what ground he considered the said request of the petitioner to be not worthy of consideration. This is being highlighted only for the purpose of considering the submission made by Mr. Sarnaddar to the effect that no legible copy of some of the documents could be supplied and some of the documents were not relevant.

22. In order to verify the assertions made by the petitioner in the writ application as also in his representation, we ourselves perused the original documents which were produced before us by the learned counsel for the respondent as also the original grounds and the documents supplied to the petitioner by the detaining authority. We further gave an opportunity to the learned counsel for the parties to verify the contents of the documents so as to ensure as to whether the documents appended to the writ application and which are said to be either illegible or are blank are really so or not. We have satisfied ourselves and the learned counsel appearing on behalf of the respondent has also conceded that the assertions of the petitioner are correct. After comparison of the said documents it has also been conceded before us that out of 23 shipping bills back portion of only one of them had been supplied and the rest of them had been withheld. In view of the assertions made by Mr. Samaddar it also stands admitted that the documents asked for by the petitioner had not been supplied. It is difficult for us to agree with the submission of Mr. Samaddar that while considering the question of prejudice of the detenu, we can ourselves consider the relevance or otherwise of the documents sought for by the petitioner. It is one thing to say that the detaining authority had formed his opinion on the basis of certain documents and it is another thing to say that the detenu asked the detaining authority to supply additional documents which were not integral part of those documents referred to by him for forming opinion for passing the order of detention. There cannot be any doubt whatsoever that in the former case it was imperative on the part of the detaining authority to supply legible copies of all such documents which formed part of the ground for detention.

23. In *Ichhu Devi Choraria v. Union of India* reported in : [1981]1SCR640 the Supreme Court held (at page 1989 of AIR) :-

Now it is obvious that when Clause (5) of Article 22 and Sub-section (3) of Section 3 of the COFEPOSA Act provide that the grounds of detention should be communicated to the detenu within five or fifteen days, as the case may be what is meant is that the grounds of detention in their entirety must be furnished to the detenu. If there are any documents, statements or other materials relied upon in the grounds of detentions, they must also be communicated to the detenu, because being incorporated in the grounds of detention, they form part of the grounds and the grounds furnished to the detenu cannot be said to be complete without them. It would not, therefore, be sufficient to communicate to the detenu a bare recital of the grounds of detention, but copies of the documents, statements and other materials relied upon in the grounds of detention must also be furnished to the detenu within the prescribed time subject of course to Clause (6) of Article 22 in order to constatae compliance with Clause (5) of Article 22 and Section 3, Sub-section (3) of the COFEPOSA Act. One of the primary objects of communicating the grounds of detention to the detenu is to enable the detenu, at the earliest opportunity, to make a representation against his detention and it is difficult to see how the detenu can possibly make an effective representation unless he is also furnished copies of the documents, statements and other materials relied upon in the grounds of detention. There can, therefore, be no doubt that on a proper construction of Clause (5) of Article 22 copies of the documents, statements and other materials relied upon in the grounds of detention should be furnished to the detenu along with the grounds of detention or in any event not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days from the date of detention. If this requirement of Clause (5) of Article 22 read with Section 3, Sub-section (3) is not satisfied, the continued detention of the detenu would be illegal and void.

It further relied upon its earlier decision in *Ramchandra A. Kamat v. Union of India* reported in : [1980]2SCR1072 , wherein the Apex Court has clearly held as follows (at page 768 of AIR):-

It may not be necessary for the detaining authority to supply copies of all the documents relied upon in the grounds of detention at the time when the grounds are furnished to the detenu but once the detenu states that for effective

representation, it is necessary that he should have copies of the statements and documents referred to in the grounds of detention, it is the duty of the detaining authority to furnish them with reasonable expedition. The detaining authority cannot decline to furnish copies of the documents on the ground that the grounds were sufficiently detailed to enable the petitioner to make an effective representation.

In *Smt. Ana Carelina D'souza v. Union of India* reported in 1981 (Supp) SCC 53 : 1981 Cri LJ 1277 the Apex Court set aside an order of detention only on the ground that the documents were not supplied along with grounds of detention. In *Kirit Kumar Chaman Lal Kundaliya v. State of Gujarat* reported in : [1981]2SCR718 the Apex Court clearly held as follows (at page 1271 of Cri LJ):--

Once the documents are referred to in the grounds of detention it becomes the bounden duty of the detaining authority to supply the same to the detenu as part of the grounds or *pari passu* the grounds of detention. There is no particular charm in the expressions 'relied on', 'referred to' or 'based on' because ultimately all these expressions signify one thing, namely, that the subjective satisfaction of the detaining authority has been arrived at on the documents mentioned in the grounds of detention. The question whether the grounds have been referred to, relied on or based on is merely a matter of describing the nature of the grounds. Even so in the case of *Ramchandra A. Kamat v. Union of India* a three-Judge Bench decision of this Court to which one of us (Fazal Ali, J.) was a party, clearly held that even the documents referred to in the grounds of detention have to be furnished to the detenu. In this connection the Court observed as follows (SCC P. 272 : SCC (Cri) p. 417, para 8) :-

If there is undue delay in furnishing the statements and documents referred to in the grounds of detention the right to make effective representation is denied. The detention cannot be said to be according to the procedure prescribed by law.

The same view was taken in a later decision of this Court in *Tushar Thakker v. Union of India* where this Court observed as follows (SCC p. 502: SCC (Cri) p. 16, para 14): This Court has repeatedly held that the detenu has a constitutional right under Article 22(5) to be furnished with copies of all the materials relied upon or

referred to in the grounds of detention with reasonable expedition. Thus it is absolutely clear to us that whether the documents concerned are referred to, relied upon or taken into consideration by the detaining authority, they have to be supplied to the detenu as part of the grounds so as to enable the detenu to make an effective representation immediately on receiving the grounds of detention. This not having been done in the present case, the continued detention of the petitioner must be held to be void. The aforementioned conspectus of decisions does not leave any manner of doubt whatsoever that it is obligatory on the part of the detaining authority to supply legible copies of all the relevant documents to the petitioner. The plea raised by Mr. Samaddar that some of the documents were on thermal fax papers and, thus, legible copies thereof cannot be supplied is stated to be rejected. Apart from the fact that such an averment has not been made in the affidavit-in-opposition, even if it is accepted that the said statements are correct, it was obligatory on the part of the respondent to keep typed copies thereof for future reference and use. It is no ground that because of the quality of paper, impressions there upon deteriorates. If this be so, the same in our considered opinion, required additional precaution to be taken by the detaining authority for preservation of the documents or keep typed copies thereof.

24. So far as some of the documents are concerned, we are of the opinion that although legible xerox copies thereof could not have been supplied, it was possible for the detaining authority to supply a typed one.

25. Section 3(3) of COFEPOSA Act and Article 22(5) of the [Constitution of India](#) does not envisage that only xerox copies of the documents have to be supplied. If xerox copy of the documents supplied to the petitioner were illegible or were blank, the detaining authority could have at least supplied typed copies to the petitioner. We, may however, observed that all the documents detailed in the representation are not wholly illegible.

26. In Madanlal Anand v. Union of India reported in : 1990 CriLJ659 , the fact of the matter was completely different. In that case the detaining authority relied upon certain miscellaneous applications, copies whereof were supplied to the detenu but the detenu wanted copies of the civil revision applications. The Apex Court

observed as follows :- 'So far as C.R. 306 of 1986 is concerned it has been already noticed in what context the same was referred to in paragraph 28 of the ground of detention of C. R. 3694 of 1985.'

27. Three miscellaneous applications were filed and the detaining authority forwarded to the detenu copies of the said civil miscellaneous applications; but he did not forward to the detenu a copy of the civil revision application. In that case it was held that civil revision application was not relied upon at all by the detaining authority for the purpose of forming an opinion that an order of prevention of detention was to be passed. We also cannot accept the submission of Mr. Samaddar to the effect that only copies of vital and material documents are required to be supplied inasmuch as it is not for the Court to consider as to which documents are vital or material. The Court has no business to probe into the mind of the detaining authority in order to enable it to ascertain as to which documents, the detaining authority had in mind at the time of forming of the opinion. The detaining authority, as noticed hereinbefore, was bound to supply all the documents which form part of the grounds. *Union of India v. Mohammed Ahmed Ibrahim* reported in 1993 Suppl (1) SCC 405, upon which strong reliance has been placed by Mr. Samaddar, in our opinion, has no relevance to the fact of the present case. In that case, High Court did not allow the respondent to file an affidavit although the detaining authority sought extension of time to file its reply to contest the averment as regards non-supply of certain documents and/or supply of certain illegible documents. Union of India contended before the Apex Court that documents served by them on the detenu were not illegible. According to Union of India the original documents supplied to the detenu were not illegible once and they wanted an opportunity therefore but despite the same High Court held that there was no justification for any such opportunity to be given as according to it as no useful purpose would be served and, therefore, it did not call for any reply. It is in that context the Apex Court observed 'but the High Court did not examine the extent and nature of the illegibility and value the effect on the right of representation in the context of their importance in formation of the satisfaction for the detention.'

28. It is now a well known proposition of law that a decision is an authority for what it decides and not what logically follows there from. It is also a trite law that a little difference in fact or additional fact may lead to a different inference. Reference in this connection may be made to the decision in *Paban Kumar Dubey v. Regional Manager* reported in : (1976) ILLJ266SC . In *Krishna Kumar v. Union of India* reported in : (1991) ILLJ191SC the Apex Court has explained the meaning and implication of the doctrine of precedent laying down the principle therein when a Court will be bound by the previous decision. The Apex Court held (at page 1793 of AIR) :- 'The doctrine of precedent, that is being bound by a previous decision is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain 'propositions wider than the case itself required'. This was what Lord Selborne said in *Caledonian Railway Co. v. Walker's Trustees* and Lord Halbury in *Quinn v. Leathern*. Sir Frederick Pollock has also said : 'Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision.' 'In other words, the enunciation of the reason or principle upon which a question before a Court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premises consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the Court to spell it out with difficulty in order to be bound by it. In the words of Halsbury (4th Edn., Vol. 26, Para 573). 'The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which when it is clear it is not part of a Tribunal's duty to spell out with difficulty a ratio decidendi in order to bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the

case. If more reasons than one are given by a Tribunal for its judgment, all are taken as forming the ratio decidendi.' It has also been held by the Supreme Court in the case of Commissioner of Income-tax v. Sun Engineering Co. Ltd., reported in : [1992]198ITR297(SC) following an earlier constitutional Bench of the Supreme Court in the case of Madhav Rao Scindia v. Union of India reported in : [1971]3SCR9 , a decision takes its colour from the question involved in the case and the context it was rendered. It is also relevant to note that in Bhut Nath Mate v. The State of West Bengal reported in : 1974 CriLJ690 the Supreme Court held that the fundamental constitutional mandates are that the authority: (a) shall communicate to the detenu all the material grounds on which the order has been made and which create that satisfaction in the authority which spells suspension of the citizen's liberty, and (b) shall afford him the earliest opportunity of making a representation against the order. In Jose Sebastian Kenedy Applinario Alomao v. Union of India reported in 1992 (1) Crimes 752, the Division Bench of Bombay High Court has held that the detaining authority must furnish all documents which according to him are incriminating in nature. As noticed hereinbefore the aforementioned decision has been upheld by the Supreme Court of India in SLP Criminal No. 2 of 1992 and SLP Criminal Nos. 3, 7 and 8 of 1992. The documents which thus form part of the seizure must be supplied to the petitioner.

29. It is further admitted that out of 28 shipping bills reverse part of only one shipping bill has been supplied. It is not been disputed that the shipping bills had been referred to for different purposes, i.e., either for the fraudulent export or for export to various front companies or to various ports or for the purpose of showing over invoices and/or for the purpose of forgery or manipulation.. The detaining authority, therefore, there cannot be any doubt whatsoever, has supplied only truncated documents. From what has been found hereinbefore, we are of the opinion that the respondents had supplied illegible copies and/or blank copies to the petitioner and had also failed to supply reverse part of 27 shipping bills. It also stands admitted that despite demand such documents had not been supplied to the petitioners. This aspect of the matter has recently been considered by three Division Benches of this Court in 99 CWN 953, 1995 (2) CLJ 376, (sic) 1996 (2) CLJ 259 : (1996 Cri LJ 2801), Anand Damani v. Union of India reported in 1997 (2) CHN 119. It is now beyond any cavil of doubt that right to file representation must

be real and not illusory. It is not necessary to refer to a large number of decisions inasmuch as the law is well settled as would appear from the decisions reported in : 1981 CriLJ353 ; : 1974 CriLJ690 and : 1996(53)ECC123 . Apart from the aforementioned fact, we are also of the opinion that some of the grounds taken in the grounds of detention are absolutely vague inasmuch as the same inferences have been drawn with reference to the alleged acts of omission and commission on the part of the petitioners by merely stating that exports have been made to various ports or through ' front companies' and receipt of 'drawbacks etc'; but no details thereof had been supplied to the petitioner despite demand. The names of the ports or the alleged front companies through which and in whose names alleged exports had been made had not been divulged nor the details of such transaction had been mentioned.

30. In our opinion the order of detention is also bad on that ground.

31. Another question of importance which has been raised by Mr. Ghosh is as to whether documents were required to be supplied along with the grounds. Although there appears to be some divergence of views, we are of the opinion that keeping in view the decision in *Ichhu Devi Choraria* (supra) : [1981]1SCR640 , the Supreme Court developed the law to the effect that the documents formed part of the grounds and/or *pari passu* thereof meaning thereby such documents should be supplied along with grounds. *Ichhu Devi's* case (supra) was doubted in *Mangal Bhai Motiram Patel v. State of Maharashtra* reported in : 1981 CriLJ331 . It appears that latter on a three-Judges Division Bench in *Shalini Soni v. Union of India* reported in : 1980 CriLJ1487 observed (at page 1491 of Cri LJ):-- '___An opportunity to make a representation against the order of detention necessarily implies that the detenu is informed of all that has been taken into account against him in arriving at the decision to detain him. It means that the detenu is to be informed not merely, as we said, of the inferences of fact but of all the factual material which have led to the inferences of fact. If the detenu is not to be so informed the opportunity so solemnly guaranteed by the Constitution becomes reduced to an exercise in futility. Whatever angle from which the question is looked at, it is clear that grounds in Article 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such

factual inferences. The grounds must be self-sufficient and self-explanatory. In our view copies of documents to which reference is made in the grounds must be supplied to the detenu as part of the grounds.' This aspect of the matter has also been considered in 1981 SCC 53 (1): (1981 Cri LJ 1277).

32. Mr. Samaddar, the learned counsel appearing on behalf of the respondents, however, submitted that this aspect of the matter has been considered in two unreported judgments/ decisions of the Bombay High Court. However, as the decisions of the Bombay High Court are based on the Supreme Court, submission of Mr. Samaddar with reference to the Supreme Court decision may be noticed. Mr. Samaddar submitted by referring to Icchu Devi's case (supra), Vivendra Singh v. State of Maharashtra AIR 1981 SC 1901 : 1981 Cri LJ 1283 (2), Sunil Dutt v. Union of India reported in : 1982 CriLJ193 and Md. Zakir v. Delhi Administration reported in : 1982 CriLJ611 that in all those cases documents had been supplied after expiry of the period of five days from the date of detention. However, Mr. Ghosh in reply has rightly drawn our attention to the fact that in Vivendra Singh's case(supra)although documents were supplied within four days of the detention but they were not supplied on the day of which the ground of detention was furnished.

33. Although some arguments had been advanced before us to the effect that it was obligatory on the part of the detaining authority to show from the order of detention as to whether he has applied his mind to the effect that the detenu was on bail or not, in our opinion, it is not necessary to decide the same in facts and circumstances of this case.

34. We are, however, satisfied that in the instant case no delay has been caused in passing the order of detention.

35. The decision in State of Rajasthan v. Kalikhan reported in 1996 (II) SCC 393 (sic) cannot be said to have any relevance at all in the instant case. In that case, the Apex Court held that what is material or mandatory in connection with preventive detention is supply of ground of detention together with documents specified by the detaining authority. However, it was observed, in a case where grounds and the documents had been supplied after the expiry of five days but

within a period of fifteen days, no reason is required to be communicated to the petitioner. The said question does not arise for our consideration in the instant case. Furthermore, even if the detaining authority is under no statutory obligation to communicate the reason to the detenu for the delay in supply of such documents within a period of fifteen days which could be done only in an exceptional case, when such an action is questioned before the Court, it is obligatory on the part of the detaining authority to satisfy the Court that there existed such exceptional circumstances and in that view of the matter, it would be obligatory on the part of the detaining authority to show to this Court the reasons for such delay.

36. The question which now arises for consideration is as to whether these applications of Ajit Kumar Agarwala and Amit Kumar Agarwala are barred by res judicata. We have earlier quoted to reliefs claimed for by Ajit Kumar Agarwala and Amit Agarwala in Writ Petition No. 16143 (W) of 1997. The prayers made in the aforementioned applications are absolutely different and distinct from W. P. 16143 (W) of 1997 and W. P. 16659 (W) of 1997. The aforementioned writ applications have not yet been disposed of by us. As indicated hereinbefore, in fact Mr. Ray, learned Senior Counsel appearing on behalf of the petitioner at the very outset submitted that the said writ application in view of the furnishing of the ground of detention upon the petitioner has become infructuous. The decision of Special Bench of this Court in the decision reported in 1975 Cri LJ 1312 is of no assistance to Mr. Samaddar. In that case successive applications had been filed and in that context it was held that when facts or materials were in existence at the time of first application but were not available to the petitioner or the detenu, and (2) when contentions have arisen subsequent to making of application, second application for writ of habeas corpus was maintainable. In that case Rule Nisi in the earlier writ application was discharged. Such is not the position here. The terminology 'res judicata' connotes 'adjudication'. No adjudication has yet been made in the writ application filed earlier by the petitioners. In fact apart from the Special Bench decision of this Court the Supreme Court has laid down the law in the decisions reported in : 1981 CriLJ288 and : 1982 CriLJ193 that second application for issuance of writ of habeas corpus would be maintainable on the grounds which were not urged earlier or on the basis of the materials which were

not available to the detenu earlier. In that sense even doctrine of constructive res judicata is not applicable in the matter of issuance of writ of or in the nature of habeas corpus. Mr. Samaddar has also taken us through various proceedings of this Court as also Supreme Court and submitted that the petitioners had taken recourse to various speculative litigations in order to obtain interim orders from this Court and, thus, stalling the investigation in the matter. Although it was pointed out before us by Mr. Ray that from the affidavit- in-opposition itself it would appear that the investigation was complete one year back but still then no complaint had been filed against the petitioner, we are of the opinion that it is not necessary for us to go into the aforementioned question inasmuch as keeping the statutory and constitutional safeguards provided to a detenu an application for issuance of writ of habeas corpus cannot be dismissed only on the ground that the petitioners have not approached this Court with clean hands. If the respondents are aggrieved by and dissatisfied with various proceedings initiated by the petitioners, by successive application, which of course cannot be encouraged by any Court of law, the respondent should take suitable action including action for initiation of proceeding for 'criminal contempt against the petitioner; but for that reason alone, we cannot refuse to grant any relief in the instant case in view of our findings that procedural safeguard guaranteed to the petitioners in terms of Section 3(3) of the Act and Article 22(5) of the [Constitution of India](#) have been infringed.

37. For the reasons aforementioned, these applications are allowed. The orders of detention passed against the petitioners which are subject, matter of challenge in Writ Petition No. 16674 (W) of 1997, W. P. No. 16659 (W) of 1997 and W. P. No. 17178 (W) of 1997 are set aside. Ajit Kumar Agarwala, Amit Kumar Agarwala and Rajendra Kanodia are directed to be set at liberty at once.

38. Let appropriate writ of habeas corpus issue. Writ Petition No. 16143 (W) of 1997 as prayed for is permitted to be withdrawn. All interim orders passed therein stands vacated. The respondents are directed to set the detenus at liberty forthwith unless wanted in connection with any other case.

39. There will be no order as to costs.

40. Mr. Samaddar prays for stay of operation of this order, which is considered and refused.

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