Bakhtawar Singh Vs. the State

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Court : Himachal Pradesh

Decided On : Jul-04-1950

Reported in : 1951CriLJ17

Judge : Falshaw and; Soni, JJ.

Appellant : Bakhtawar Singh

Respondent : The State

Judgement :

Falshaw, J.

1. This judgment will deal with five petitions under Article 226 of the Constitution of India and Section 491, Criminal P.C., filed by relatives on behalf of Kirpal Singh son of Mota Singh of Rangarh, Kirpal Singh son of Jalmeja Singh of Burj, Ajit Singh of Khem Karan, Mangal Singh of Chhina Bidhi Chand and Kartar Singh of the same village. All these villages are in the district of Amritsar, and all the detenus except Kirpal Singh son of Mota Singh, who was arrested on 1st June, were arrested on 2-6-1950 under the orders of the District Magistrate of Amritsar, under the provisions of Section 3, Preventive Detention Act, 1950, the District Magistrate further ordering the detention of all of them for a period of two months, which in the case of Kirpal Singh son of Mota Singh was up to 31-8-1950 and in the case of the others up to 1-9-1950. In each case the order of detention specified that the detenu was to be committed to the custody of the Senior

Superintendent of Police, Amritsar, for 15 days i. e., upto 15th June in the case of Kirpal Singh, son of Mota Singh and upto 16th June in the other cases, and thereafter he was to be committed to the custody of the Inspector General of Prisons for the remainder of the period of detention. Although there are points for discussion arising in the case of each individual there are also a number of points which are common to all the petitions. In each case the copy of the grounds of detention required by the provisions of Section 7 (1) of the Act to be supplied as early as possible to the detenu was not supplied in these cases until 14th or 15th June and in each case the grounds communicated were identical. They read as follows:

That you were engaged in the smuggling of cloth and other supplies, the maintenance of which Is essential to the community, and in furtherence of that object indulged in activities prejudicial to the security of the State and the maintenance of public order, Your detention has therefore been ordered to ensure the maintenance of supplies and public order.

2. Although the allegations in the different petitions naturally differ somewhat in detail, there is a general denial that the detenus have in fact been connected with any smuggling activities and a general allegation that their detention has been ordered -mala-fide owing to various quarrels with the local police, and in all the cases the objection is taken that the grounds communicated to the detenus are vague and indefinite and that their detention is illegal on that ground. It is also alleged in each of the petitions that the detenu instead of being sent to any jail has been kept at some police station in the district of Amritsar and was so being kept when the petitions were filed which was from the 33rd to 26th June. Three of the petitions were admitted by my Lord the Chief Justice on 27th June and the other two on the 28th June, and in each case he ordered that the detenu should be produced in this Court on 3rd July. Actually the petitions could not be heard until 4th of July and it was then stated by the learned Counsel representing the various petitioners that the detenus had been brought to Simla from various police stations where they were still being kept upto the date on which the order for their production was communicated to the authorities. On this point, although affidavits of the learned District Magistrate have been filed in each of the petitions, these

affidavits are conspicuously silent regarding the alleged detention of the detenus in these police stations long after the date on which they were supposed to have been sent to regular jails, and it was conceded by the learned Assistant Advocate-General that the silence of the affidavits on this point amounted to an admission of the allegations. There is-one other point which is common to all the petitions which relates to the affidavits of the learned District Magistrate. Although these affidavits differ to some extent in details, as might be expected, since they are intended partly at least to be replies to the allegations made in the various petitions, there is one paragraph which is common to all of them which reads:

The smuggling activities are very dangerous at the border as many a time firing is resorted to by the police on both sides of the border which involves loss of lives and danger of misunderstanding and bad relations between the two countries.

By this paragraph the learned District Magistrate apparently intended to support the second of the grounds on which he had ordered the detention of the detenus, namely, the maintenance of public order. It is, however, contended, by the learned Counsel for the petitioners that; this paragraph in fact raises as altogether fresh ground of detention covered by the words of Section 3 (1)(a)(i) of the Act which reads:

the defence of India, the relations of India with foreign powers, or the security of India.

which is not one of the grounds on which a District Magistrate or other officers specified in Section 3 (2) could order the detention of any person, an order by the State or Central Government in this behalf being necessary.

3. The points which arise for consideration in all the petitions are:

(1) Whether the. grounds of detention communicated to the detenus are so vague and indefinite as not to justify the order for their detention and if so whether their immediate release should be ordered on this ground alone, or whether the authorities should be ordered to communicate to the detenus the further particulars contained in the affidavits of the District Magistrate, if it is found that

those particulars are sufficient to remove the vagueness and the indefiniteness of the grounds originally supplied, with a view to their submitting the representations contemplated by Section 7 (1) of the Act:

(2) Whether on the assumption of the general truth of the allegations that the detenus have been connected with the smuggling of cloth and other supplies the orders of detention can be justified on the ground that they were necessary either for the maintenance of public order (Section 3 (1)(a)(ii)) or for the maintenance of supplies and services essential to the community (Section 3 (1)(a)(iii)):

(3) What is the effect on the legality of the orders of detention of the inclusion of the paragraph cited above in the affidavits of the learned District Magistrate Sled in all the petitions:

(4) What is the effect on the legality of the detention of the detenus of the fact that they were still being detained in various police stations more than a fortnight after they ought to have been committed to the custody of the Inspector General of Prisons for detention in a jail, in accordance with the terms of the orders of the learned District Magistrate for their detention.

4. To come to the first of these questions, I do not think there is any doubt that the criticisms of the learned Counsel for the petitioners directed against the grounds of detention originally communicated to the detenus on the score of vagueness and indefiniteness are fully justified, since apart from the omission of any particulars regarding dates or whether the smuggling had been taking place recently or a long time ago, the grounds do not contain any particulars which would indicate whether the alleged smuggling had been into or out of India, or even between which countries the alleged smuggling was taking place. It may be obvious to the learned Assistant Advocate General that the other country involved in the matter besides India is Pakistan, but there is no obvious reason why this should not have been clearly stated in the grounds, since other countries such as Tibet also touch the borders of India, and for all that the grounds reveal the smuggling although organised in Amritsar District might have been between India and some other country. In any case, smuggling is a two-way traffic and there should certainly have been some indication in the grounds of what kind of smuggling the detenus

were alleged to have been engaged in. In the circumstances, I am of the opinion that the grounds communicated to the detenus were hastily and carelessly drawn up and that they must be held to be vague and indefinite.

5. The question which next arises is whether on this ground alone the orders of the detention should be held to be invalid and the release of the detenus ordered. There is no doubt that this course has been followed in a number of cases both by various High Courts and by the Supreme Court. In fact, the practice in this respect appears to have been uniform until 19-6-1950 when the Hon'ble Mahajan J. as Vacation Judge in the Supreme Court in two cases from the State of the Punjab adopted a course suggested by the learned Advocats General, and ordered that the particulars contained in affidavits filed on behalf of the authorities concerned should be communicated to the detenus for the purpose of enabling them to mate representations under Section 7 (1) of the Act. In each of these cases, Mahajan Singh Tarsikka v. The State of Punjab, original Petn. no. 54 of 1050 and Joga Singh v. The State of Punjab, Original Petin. No. 62 of 1980, the order was very brief, and was to the effect that the grounds originally furnished to the petitioner were 'rather sketchy' but that they had been fully explained in the affidavits now filed, and that a copy of the affidavit should be given to the petitioner who would then be entitled to mate a representation to the Government contesting the grounds. The first time that the suggestion that such a course should be adopted was made appears to have been in criminal Misc. no. 284 of 19S0 which I decided on 16-6-1350, In that case I declined to accept the suggestion of the learned Advooate General, and gave what I then considered, and still consider, to be good reason for doing so. Briefly these reasons were that the detenu in that case had been ordered to be detained for two months, and already over a month of this period had elapsed before the petition came up for hearing, and it seemed to me that by the time that the particulars contained in the affidavit had been communicated to the detenu and then he bad drawn up his representation, after that the representation could have been submitted to and considered by the Government, the full period of detention of the detenu would be likely to have expired. In general also it seemed to me that if such a course were to be adopted by the High Court in hearing these petitions, there existed a real danger that the local authorities might be encouraged deliberately to supply vague grounds of

detention in the first instance, and then, by grudgingly supplying further particulars after petitions had been filed in the High Court, cause a delay in the decision of the legality or otherwise of the order of detention, which was a question which ought to be decided at the earliest possible moment. The only other cases so far as I know in which a similar point has arisen are two connected petitions-criminal Misc. Nos. 237 and 238 of 1950, decided by me on 28-6 1960. In these cases the grounds originally supplied were vague but affidavits were furnished containing particulars which removed the vagueness, and in those cases I felt bound to follow the course adopted by the Hon'ble Mahajan J., although it was urged before me that I was not bound to do so. This point has again been raised and argued even more fully. In the first place Mr. Sethi for one of the petitioners has tried to draw a distinction between orders of the Supreme Court and the case which I decided by pointing out that the words used by his Lordship to describe the ground in the two cases in which he ordered the supply of further particulars were 'rather sketchy', and not 'vague' and he is certainly correct when he states that the word 'sketchy' does not mean the same thing as the word 'vague', 'sketchy' meaning incomplete and lacking detail, while 'vague' means not clear and involves an element of ambiguity. Although, however, there is this distinction between the meanings of the two words, I do no think the distinction is ft very real one, since although I had used the word 'vague' in those cases I really meant the same thing as the Hon'ble Mahajan J., meant when he used the word 'sketchy', and what I meant to say was that the grounds in those oases were vague in the sense that they were incomplete from lack of particulars. It is, however, contended that we are not bound to adopt the course followed by the Hon'ble Mahajan J., in those particular cases in the absence of any discussion of the legal points involved, and on the whole I agree with this contention. It is strongly argued that to allow further particulars of the grounds of detention to be supplied at this stage is certainly not compliance with the provisions of Section 7 (1) of the Act, the words of which are:

When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, communicate to him the grounds on which the order has been made....

and various High Courts have held that failure to comply strictly with the provisions of the similar sections in the various Provincial Public Safety Acts which have now been superseded by the Central Preventive Detention Act of 1950 renders the detention of the detenu illegal. Of the various decisions I need only cite that) in Durgadas v. Bex, by a Full Bench, reported as A.I.R. (56) 1949 ALL. 148 : 50 Cr. L.J. 214 P.B.. Although the point now under consideration did not arise in that case in the same form there is one passage in the judgment of Malik C, J., which is worthy of consideration, It reads:

On behalf of the Provincial Government it has been urged that if the detenu has not complained to the detaining authority that the information supplied to him is vague and insufficient, he should not be allowed to make a grievance of it in Court and secondly, that if in the opinion of the Court the grounds and particular.? supplied are vague, indefinite or insufficient we should give the detaining authority a chance to supply better grounds and particulars. We cannot accept any of these contentions. Section 5 (12. F. Maintenance of Public Order, Ordinance 1 of 1946} has oast a duty on the detaining authority and if it has not done its duty and has thereby incurred a liability, there is no reason why the detenu should make a complaint to it and not come to the Court and ask for his release on the ground that a mandatory provision of the statute not having been fulfilled his further detention has become illegal. In Emperor v. Burner Singh, A.IR. (35) 1948 All. 78 : 49 Cr. LJ, 11, I had given the detaining authority one week's time to comply with the requirements of Section 5 of the Act alter I had come to the conclusion that the provisions of Section 5 had not been complied with. After having considered the matter more fully and in view of the fact that 1 have already held that the grounds and particulars have to be supplied within a reasonable time, so that the detenu may have 'the earliest practicable opportunity' of making a representation, and an unreasonable delay would make the detention illegal. I agree with the opinion expressed by brother Raghubar Dayal in Emperor v. Inder Prakash A.I R. (36) 1949 All. 37 : (50 Cr. L.J. 34), that the legal consequences of the non-compliance with Section 5 cannot depend on the conduct of the District Magistrate subsequent to any such direction given by the Court. The legal consequences would depend on the nature of the initial conduct and its effect in law.

Apart from this and similar decisions reliance has also been placed by the learned Counsel for the petitioners on the provisions of Section 9, Preventive Detention Act, as an additional ground foe refusing at this late stage, more than a month after the orders of detention, to allow the authorities to supply farther particulars of the grounds of detention. Under the provisions of Section 8, the Central Government and the State Governments are bound to get up so-called Advisory Boards and Section 9 reads:

In every case where a detention order has been made under Sub-clause (iii) of Clause (a), or Clause (b) of Sub-section (1) of Section 3, the Government making the order, or if the order has been made by an officer specified in Sub-section (2) of Section 3 the State Government to which such officer is subordinate, shall, within six weeks from the date of detention under the order, place before an Advisory Board constituted by it under Section 3 the grounds on which the order has been made and the representation if any, made by the person affected by the order, and in case where the order has been made by an officer, also the report made by snob officer under Sub- article, (3) of Section 3.

It is to be noted that six weeks is the limit within which the case of a detenu has to be placed before the Advisory Board, and obviously it is hoped and intended that the case of the detenu will, if possible, be considered by the Advisory Board within an even shorter period. It is pointed out that it would obviously have the effect of frustrating the provisions of this section if a detenu were unable to submit an effective representation to the Government at the proper time owing to defeats in the grounds of detention communicated to him, and if he were only able to make an effective representation after the considerable delay involved in his case coming before the Court and the supply of further particulars to him under the orders of the Court. On the whole I am of the opinion that these considerations together with the reasons which influenced me in refusing to pass such an order in the previous case referred to above, are sufficient grounds for refusing to adopt the course in the present petitions, and therefore I consider that on this ground alone the present petitions ought to be accepted and the release of the detenus ordered.

6. Next comes the question whether, on the assumption that the grounds of detention originally supplied and the further particulars in the affidavits are true, the orders of detention were justified on the grounds given, namely that detention was necessary in order to ensure the maintenance of supplies and public order. I will deal with the latter ground first. Prima facie, it is difficult to see any connection whatever between smuggling, which is essentially a secret operation, and the maintenance of public order, in which the operative word is 'public'. Indeed, in order to defend this ground of detention the learned District Magistrate has included in each of his affidavits the paragraph which I have already cited, and which may for convenience again be cited here:

The smuggling activities are very dangerous at the border as many a time firing is resorted to by the police on bath sides of the border which involves loss of lives and danger of misunderstanding and bad relations between the two countries.' Although the learned District Magistrate may have thought that these considerations related to the maintenance of public order in my opinion any border skirmishes involving firing by the police on both sides of the border are far removed from what is ordinarily meant by public order, which obviously means public order within the State itself. In fact the learned District Magistrate has let the oat of the bag and revealed what was really in his mind by referring to the danger of misunderstanding and bad relations between India and Pakistan, To my mind, there is no doubt that in fact border skirmishes involving firing on both sides of the border are matters concerned with the defence of India and as such are covered by the first words of Section 3 (1)(a)(i), and the danger of misunderstanding and bad relations between the two countries are clearly covered by the words 'the relations of India with foreign powers' also occurring in the same sub-section. In the circumstances it must be held that on the allegations of smuggling by the 'detenus there was no justification for ordering their detention for the purpose of maintaining public order, The other ground, the maintenance of supplies and services essential to the community is covered by Section 3 (1)(a)(iii), the words of which are 'the maintenance of supplies and services essential to the community.

In order to decide whether the detention was warranted on this ground it is necessary, although the question is one which arises in all the petitions, to look at

the allegations against the individual detenus in the affidavits In the case of Kirpal Singh, son of Jalmeja Singh, the allegation is that he is a notorious smuggler of India mill-made cloth and art silk into Pakistan and Pakistan silver into India. In the case of Kirpal Singh, son of Mota Singh, it is alleged that he is a notorious smuggler of tilla, pepper and art silk from India into Pakistan and Pakistan silver and silver coins into India, Against Ajit Singh the allegation is that he smuggles fine mill-made cloth and art silk from India into Pakistan, and, with less precision that he has been engaged in smuggling Indian goods into Pakistan and Pakistan goods to India ever since the partition. In the case of Mangal Singh who is described in general terms as a notorious smuggler the allegation is very vague. The words used are:

He is repotted to be illegally smuggling essential supplies like cloth etc, from India to Pakistan.

Finally, the allegation against Kartar Singh is simply that he is a notorious smuggler, no particulars being given, even at this stage about what articles he is alleged to have been smuggling and in which direction. Only in the case of Mangal Singh has the learned District Magistrate taken the trouble to allege rather perfunctorily that his activities have adversely affected the supply of the articles smuggled in this country, although obviously, in order to justify orders of detention on the ground of smuggling alone, it was necessary not only to allege that through the smuggling the economy of this country has been adversely affected, but also to point to some facts from which such an inference could be drawn. It is obviously not necessary to devote any further attention to the allegations made in one or two of the oases that the detenu ha3 smuggled Pakistan silver into India, since this could not possibly have any adverse effect on the supply of any essential commodity in India. Apart from mill-made cotton cloth, which requires to be considered separately, the only other specific commodities alleged to have been smuggled out of India into Pakistan by any of the detenus are tilla, art silk and pepper. So far as I am aware none of these commodities has ever been rationed or subjected to any form of control as regards manufacture or distribution in this country, and two of them, are Bilk and tilla or gold thread, would apparently fall in the category of luxuries rather than necessities. Ho indication is given in the

grounds or further particulars of the scale on which these articles are alleged to have been smuggler, and I do not consider that any smuggling of them which may have gone on can by any stretch of imagination be said to have endangered the supply of any commodity essential to this country. Even in the case of pepper, which is a condiment used in the preparation of food, and therefore might possibly come under the heading of 'food stuffs' in the list of essential commodities given in Section 2, Essential Supplies {Temporary Powers) Act, 1946, no statement has been made by the learned District Magistrate that pepper is in short supply in this country or that his own district has suffered a shortage of pepper through the activities of any smugglers, though some such allegation was obviously necessary to justify an order of detention regarding the smuggling of pepper. Finally even regarding mill-made cotton cloth, no facts have been stated from which it can be inferred that the supply of this commodity in Amritsar or in India as a whole has been endangered by the activities of smugglers on the Amritsar border. Bach cloth is no longer rationed in this country, and although some controls remain on its manufacture and distribution, and export is only permitted under a license, we cannot presume that the smuggling of cloth from India to Pakistan by a few residents of Amritsar District has endangered or is likely to endanger this commodity in India. There is clearly a big difference between illegally exporting goods from one country to another by evading licensing regulations and possibly the payment of customs duty, and endangering the supply of an essential commodity in the country from which they are exported and it by no insane necessarily follows that the first will result is the second. Beyond a vague allegation by the learned District Magistrate in one of the affidavits there is no statement at all on this point forthcoming from him, whereas obviously on a point of this kind some authoritative statement ought to have boon forthcoming to the effect that supply of mill-made cotton cloth is this country or the State of the Punjab was being endangered, e. g. in the form of an affidavit from the local Director of Civil Supplies. The matter would be different if the export of mill.made cloth were totally prohibited, but if, as would appear to be the case, very considerable quantities of such cloth have been exported under license, it is not possible to conclude without some definite evidence on the point that the activities of a few smugglers on the Amritsar border are endangering the supply, and there

is not an iota of such evidence before he. In the circumstances, I do not consider that the allegations of the learned District Magistrate justify his orders for the detention of the present detenus on the ground that these orders were necessary for the maintenance of the essential supplies.

7. The next point is the reason for the orders of detention given in all the affidavits by the learned District Magistrate to which reference has been made in the discussion of the previous question. This paragraph in the affidavits clearly introduces a new and fresh ground for the orders of detention. The allegation that smuggling activities involve tiring by the polios on both sides of the border and thereby create a danger of misunderstanding and bad relations between India and Pakistan is clearly not merely a further particular amplifying a ground of detention already supplied to the detenus but amounts to a fresh ground covered by Section 3 (1)(a)(i). This fresh ground of detention, however, obviously could not be introduced by the learned District Magistrate. In the first place, only the State or the Central Government and not the District Magistrate could pass an order for detention on these grounds, and, in the second place, even if the District Magistrate were empowered to pass an order of detention on these grounds it would in my opinion be quite wrong to allow him to add a fresh and altogether distinct ground of detention at this stage even if I had been inclined to permit the furnishing of fresh particulars clarifying and amplifying the original grounds of detention to the detenus for the purpose of enabling them to make a representation.

8. The fourth question relates to the detention of the five detenus in various police stations in the district of Amritsar up to the date on which they were brought to this Court, in spite of the orders of the learned District Magistrate that after remaining for 14 days in the custody of the Senior Superintendent of Police the detenus were to be committed to the custody of the Inspector-General of Prisons to spend the rest of their periods of detention in some jail. It is not easy to decide what is the exact legal effect of this failure to carry out the orders of the learned District Magistrate. The power to regulate the place and conditions of detention is contained in Section 4 of the Act which reads:

So long as a detention order is in forces in respect of any person, he shall be liable to be removed to, and detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline as the Central Government or, as the case may be, the State Government, may from time to time by general or special order specify.

From this one would expect that the State Government while it might pass special orders regarding any person detained under its own orders, would have framed rules regarding the place and conditions of detention of persons detained by the subordinate authorities mentioned in Section 3 (2), but as far as I am aware no such rules have yet been drawn up. The only rule which I have been able to trace was one framed under the provisions of the East Punjab Public Safety Act of 1919 before this Act was superseded by the Preventive Detention Act. This was published in the East Punjab Gazette of 22-4-1919 and consists of a single paragraph which reads:

In exercise of the powers conferred by Sub-section (2) o-f Section 3, East Punjab Public Safety Act, 1949, the Governor of East Punjab is pleased to specify that any per son arrested under Sub-section (1) of the said section, by or on the direction of any authority other than the Provincial Government, shall be detained in a police lockup or committed to the custody of the Inspector General of Prisons, East Punjab, for being kept in any jail in the East Punjab Province.

This rule clearly cannot apply to detentions ordered under the Central Act of 1950, but even if it, or some similar rule, did govern detent ons under the Act of 1950, it would obviously be flouted by the continued detention of persons in police lock-ups long after the date on which their transfer to the custody of the Inspector. General of Prisons had been ordered, and on the whole I am of the opinion that such detention in itself would be illegal. Apart from the question of legality, it seems to ma that this continued detention in police station lends a good deal of support to the allegations made in the petitions that the detentions were mala ftde, though they were perhaps not mala, fide in the sense in which this allegation has bean male in the petition, namely, that the orders of detention were due to the spite of individual police officers whose enmity the detenus had somehow

incurred. One feature of the reasons given for the detentions which immidiately strikes the eye is that all the detenus have been accused of persistently committing the offence of smuggling, which is one that could be and could ordinarily be expected to be dealt with by the ordinary Criminal 0ourt3 in the district of Amritsar. In one case the allegation is made that the detenu has been persistently smuggling ever since the partition, and one can only express astonishment that within the period of nearly three years which has elapsed since the partition the authorities, although well aware of the smuggling activities of this detenu, have apparently failed to procure any evidence against him on which they could bring him to trill. The same applies in the lesser degree to the rest of them, all being alleged to be habitual smugglers. As was pointed out by the learned Counsel for the petitioner, even if evidence which would bring about a conviction of a specific offence is difficult to obtain, there are security provisions in the Criminal Procedure Code which are intended to deal with such cases, and there is no reason why these should not have been invoked instead of short cut offered by preventive detention. In general it is alleged that while detained in the police stations the detenus have been ill-treated, and in two of the petitions it it specifically alleged that they have been tortured with a view to obtaining confession from them. I am not prepared to lay down as a general proposition that where it is alleged against a person detained that he has committed some act in the past for which ha might have been prosecuted in an ordinary Criminal Court it is illegal to detain him under the Preventive Detention Act, since obviously there ate some types of cases in which the Government or local authorities should be left free to decide which. course it should adopt. Such cases are those of person3 actively carry. ing on agitations of a subversive nature, or agitations which have produced public disorder and are likely to continue doing so if allowed to be carried on. In cases where offences like smuggling are involved, however, with which the maintenance of public order and the safety of the State are very remotely connected indeed, I can only regard the recourse to preventive detention as a complete confession of inefficiency on the part of the local authorities. Smuggling may be a nuisance, even a serious nuisance, to the authorities, but this is not the proper way to deal with it. In the present case the orders of the learned District Magistrate for the detention of the detenus in police custody for 14 days

before they were to be sent to a regular jail are in themselves curious and lend support to the allegation that really their detention was only ordered with a view to letting the local police get some evidence out of them regarding their alleged smuggling activities and this suspicion is so strongly reinforced as almost to become a certainty by the fact that they were still kept in police custody, long after they bad bean ordered to be sent to jails, until they were produced in this Court, and presumably they would still be there if their production here had not been ordered Thus, although I do not accept the allegation that their detention has been ordered through malice and spite on the part of individual police officers whoso enmity they have incurred, it does seem to me that their detention is mala fide in the sense that they have merely bean ordered to be detained for the purpose of enabling the police to obtain some evidence from them about their allayed smuggling activities in the past, and I find one of the most unsatisfactory features of these cases that the learned District Magistrate, although attempting to some extent in his affidavits to answer the allegations in the petitions, chose to be altogether silent on this vital point. The obvious conclusion from this, though I am loth to draw it, is that the continued detention of these persons in local police stations after 16th of June was with his knowledge and consent.

9. My views on this matter may be summed up as being that in these cases the orders of detention are mala, fide and an abuse of the powers conferred on the learned District Magistrate by Section 3, Preventive Detention Act. In view of the reasons given above for holding that the 'detention of these five detenus is illegal it hardly seems necessary to discuss any points arising in the case of individuals. It must, however, be pointed out that in the case of one of them, KarTar Singh, the allegation of the learned District Magistrate simply that be is a notorious smuggler is just as vague as the original grounds of detention supplied to him, and even if bis release on other grounds had not been ordered it would have to be ordered on this ground alone, and on this point the affidavit regarding Mangal Singh is little better.

10. For the reasons I hold that the detention of the five detenus on whose behalf these petitions have been filed is illegal and would accordingly order their immediate release.

Soni, J.

11. I agree with my learned brother.

12. In these cases the Act that has to be considered is the Preventive Detention Act, 1950, passed by Parliament on 25-2 1950. This is a Special Act limited in duration till 1-4-1951 and confers wide powers on Government, both Central and State, to detain persons. There is no appeal provided to any Court from the orders passed, by Government, but a reference has to be made by Government to Advisory Boards. Being a Special Act passed for special purposes and giving wide discretion to Government it has to be strictly construed; the wider the powers the greater is the caution needed for their exercise. It has been held by the majority of Judges of the Supreme Court to be intra vires of Parliament except as regards Section 14 (see A. K. Gopalan v. State of Madras, petn. No. 13 of 1950 of the Supreme Court decided on 19.5-1950) : 1950 CriLJ1383 . Parliament; has legislated under the authority given to it by the Constitution under Clause 9 of List I of Sch. VII and Clause 3 of List III of that Schedule. List I is the Union and List III is the Concurrent List. Under Clause 9 of List I, Preventive Detention for reasons connected with defence, foreign affairs, or the security of India is one of the subjects on which Parliament may make laws and under Clause 3 of List III preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community is one of the subjects on which both the Union Parliament and the State Legislatures can pass laws. These lists also include persons subjected to such detention as the persons regarding which laws could be passed. These matters are dealt with in Section 3 of the Act. In Sub-section (1) of Section 3 it is stated that the Central Government or the State Government may-

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial, to

(i) the defence of India, the relations of India with foreign powers, or the security of India, or

(ii) the security of the State or the maintenance of public order, or

(iii) the maintenance of supplies and services essential to the community, or(b) * * * *

it is necessary so to do, make an order directing that such person be detained.

13. In Sub-section (2) it is stated that any District Magistrate or Sub-Divisional Magistrate, or.... may, if satisfied, as provided in sub.cls. (ii) and (iii) of Clause (a) of Sub-section (1), exercise the power conferred by the said sub-section.

14. Section 4 gives the Central Government or, as the case may be, the State Government, power amongst other things to remove a detenu from one place to another. Section 7 states in Sub-section (1} that when a person is detained in. pursuance of a detention order the authority making the order shall, as soon as may be, communicate to him the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order, in a ease where such order has been made by the Central Government to that Government and in a case where it has been made by a State Government or an officer subordinate thereto, to the State Government. In Sub-section (2) of that section it is stated that nothing in Sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose. Section 8 deals with the constitution of Advisory Boards. In Section 9 it is stated that in every case where a detention order has been made under Sub-clause (iii) of Clause (a), Cr Clause (b) of Sub-section (1) of Section 3, the Government making the order, or if the order has been made by an officer specified in Sub-section (2) of Section 3. the State Government to which such officer is subordinate, shall, within six weeks from the date of detention under the order, place before an Advisory Board constituted by it under Section 3 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer, also the report made by such officer under Sub-section (3) of Section 3. In Sub-section (3) of Section 3 it is stated that when any order is made under this section by a District Magistrate, Sub-Divisional Magistrate or Commissioner of Police, he shall forthwith report the fact to the States Government to which he is subordinate together with the grounds on which the order has been made and

such other particulars as in his opinion have a bearing on the necessity for the order, It is, therefore, clear that a District Magistrate cannot make an order regarding the matters mentioned in Sub-clause (i) of Clause (a) of Sub-section (1) of Section 3,i. e., he cannot make an order with respect to any person with a view to prevent him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India. It is alao clear that the District Magistrate, when he is making the order, must forthwith report the fact of his having made an order under Section 3 to the State Government, and with that report he must send the grounds on which the order is made and must also send such other particulars as in his opinion have a bearing on the necessity for the order. So far as the detenu is concerned, the authority making the order has to communicate to him, as soon as may be, the grounds on which the order has bean made, and it has to afford him the earliest opportunity of making a representation against the order. It is not necessary for the authorities to disclose facts to him which would be against the public interest to disclose. The maximum period of time under Section 9, within which reference has to be made to the Advisory Board, is six weeks, and before the Advisory Board must be placed the grounds on which the order had been made and the representation of the detenu and the report of the authority making the order if the order is made by, as it is in the present cases, a District Magistrate. It is, therefore, clear that the detenu has a right to be informed with rea-Bonable promptitude the grounds on which he is being detained. The grounds must be so stated as to enable him to state his casa before the Advisory Board, for it is his right to make are presentation to the Board. If the grounds are such that they do not enable them to make a representation to the Advisory Board they would be useless so far as he is concerned because they do not serve the object which the Legislature bad in view when giving him the right to make a representation. The grounds, therefore, must have some details mentioned in them in a clear manner giving him exact information as to what he is supposed to have done which justified hi3 detention. It is not necessary to disclose to him facts which it would be against the public interest to disclose, but barring such facts the substance of other facts should be given to him. If those facts are not supplied he cannot make a representation A. I.have said before, these grounds must be given to him, in the language of the statute 'as soon as may be' i

e., with reasonable promptitude so far as the circumstances of the particular case admit. This is necessary to be borne in mind because within six weeks the Advisory Board will have the papers before it and if considerable time elapses before the grounds are supplied to the detenu he may not be able to make a proper representation to the Advisory Board. It is not necessary that papers should be put before the Advisory Board on the last day of the six weeks of the date of detention. That period is the maximum which the law has allowed to the Government to put the papers before the Advisory Board. It is to be hoped that the papers would be put before the Advisory Board as soon as possible. Therefore it is incumbent for the detaining authority to supply the detenu with the grounds of his detention ''as soon as may be'. Two pro-positions emerge from this ; that if the grounds are not supplied within a reasonable time and no explanation is forthcoming why they were supplied late and that if the grounds when supplied are vague in the sense that they are too general, where for instance, they merely quote the words of the statute, or where they may be made to fit to any detenu, the detention order may be held to be bad. Further, the object of the Act is to prevent the detenu from committing a future prejudicial acts. The reason that he is likely to commit those acts in future has to be based, generally speaking, on acts approximately immediately preceding his detention. Ordinarily, we would not have acts extending over a very long period of time which have passed unnoticed or which have been regarded innocuous as affording grounds for detention. It may, however, be that in a particular case those acts may not have been regarded as of any importance, but couple3 with futher acts which the detenu may have done or the manner in which he may be conducting himself in the immediately preceding past, those acts or conduct may require significance ; or the ciroum-stances, at the time when the order is being made, may have changed and acts which were regarded as harmless or of no particular significance may have significance attached to them.

15. Bearing in mind these general observations I have to see what baa bean done in the cases of the five detenus whose petitions are before us. The first thing to notice is that in each case the grounds were supplied to tha detenu about a iortnight after the detention. In the affidavit which has been sent by the District Magistrate no reason has been given why the detenu could not have been

supplied the grounds on the same day as the report was made to the State Government. The report in each of these cases was made to the State Government within three or four days of the making of the order. Why every one of the detenu3 was not supplied at the same time as the Government with the grounds is not explained.

16. The next point to notice is that the ground of detention is worded in exactly the same language in case of cach of these five detenus. It runs thus:

That you were engaged in the smuggling of cloth and other supplies, the maintenance of which is essential to the community, and in furtherance of that object indulged in activities prejudicial to the secarity at the State and the maintenance of public order, Your detention has, therefore, been ordered to ensure the maintenance of supplies and public order.

17. Now, this ground cannot be called in any other manner except that it is vague, Smuggling of cloth is mentioned, but what the other supplies are is not mentioned. It is not mentioned how the activities of the detenus are prejudicial to the security of the State or to the maintenance of public order. No acts are mentioned and no details are at all given regarding which the detanu may make a representation. This ground is to fit in case of each of the detenus. I, therefore, bold that the grounds were not supplied to each of the detenus within a reasonable time and the grounds when supplied are such that it is not possible for anyone to make a representation. The affidavits which have been sent by the District Magistrate in each of these cases do not advance the matter much further. There is one thing common in all the affidavits and that is that in the opinion of the District Magistrate the acts which each of the detenus has done are such as to endanger the relations between India and Pakistan. It appears to me that this was the predominant reason, or if not the predominant reason, then one of the strongest reasons which moved the District Magistrate to make the order. This being so, the District Magistrate was not competent to make the order because the defence of India, the relations of India with foreign powers or the security of India is a matter regarding which the District Magistrate under Sub-section (2) of Section 3 could not make an ordrs. As this matter falls in Sub-section (i) of Clause (a) of Sub-clause (1) of

Section 3 and not in Sub-clauses (ii) and (iii) on this ground also tho order would be bad.

18. If there are number of grounds for detention by the District Magistrate, soms ragarding which he could take action himself, others regarding which he could not do so, in other words some intra vires and some extra vires the District Magistrate; and it cannot be said that the grounds extra vires did not prevail on him when he made the order, the order would not be regarded as intra vires of the District Magistrate and the order would be bad.

19. Moreover while the District Magistrate may in certain oases be allowed, as I shall en. deavour to show later, to supply better particulars of the grounds originally supplied to a detenu, this Court would not allow him to make out a new case by introducing a totally new ground when defending his action in this Court.

20. Again, the affidavits of the District Magistrate in a number of these oases now mention that the detenu is engaged in smuggling articles of various kinds from Pakistan into India. This cannot be covered by the words 'maintenance of supplies essential to the community' in this country. The export from this country to Pakis tan may, but the import at the present moment of the articles mentioned into India from Pakistan can hardly be said to affect the maintenance of supplies essential to the community in India.

21 Again, some of articles mentioned which are said are to be smuggled out of India are not articles which could be regarded as essential whose supply has to be maintained. For instance in the case of Kirpal Singh, Petn. No- 275 the articles regarding which smuggling is said to be going on from India into Pakistan are tilla, pepper and art silk. It cannot be said that any one of these articles is essential to the community. They are not covered by the meaning given to the phrase 'essential commodity' by the Essential Supplies (Temporary Powers) Act, 1946 (Act xxiv 24. of 1946). The comtnu-nity can well live without gold thread or art Bilk, and it is always possible to consume less or no pepper.

22. In case of Ajit Singh, Petn. No. 276, some further particulars are now given. The question that has to be decided in this as well as in alt other oases is whether

the particulars that have now been supplied should not have been supplied in the first instance and if they were not supplied in the first instance whether their supply now validates the order.if the order was invalid when made, This is not a question which can be decided in an abstract manner. It depends upon the grounds contained in the order when originally male If the order when origi. nally made contained some details sufficient to enable a detenu to make a representation the order would be good when made, and more details make the order better; but if the order when made was vague in that it informed the detenu but little about his activities, that order would be bad as it would not enable him to make any representation. If the order was sketchy in the sense that some details ware supplied, but not complete details, complete details may fill in the gaps, but total absence of details would, in my opinion, result in the order being bad and a belated supply of further grounds would not make the order good or better. In none of these five cases further grounds were supplied to any of the detenus. The details, whatever tittle they are in one or two cases-they are none in cases of Mangal Singh and Kartar Singh (Petitions NOS.. 284 and 285)-have now come before this Court in the affidavits of the District Magistrate. As I have said before, the ground originally supplied in the case of each of the five detenus was the same, and, therefore, none of the detenus could have on the facts supplied made an effective representation. Clause (5) of Act. 22 of the Constitution guarantees to a detenu the supply to him ' as soon as may be ' of the grounds of his detention by the detaining authority. That authority has to afford him the earliest opportunity of making a representation against that order. Late supply of grounds may result in the period of detention being over before a representation could be made. I wholly agree with my learned brother that a real danger exists that original supply of vague grounds and a grudgingly made supply of farther grounds, if encouraged, was likely to cause delay in decid-ing tha legality of detention by this Court or the Supreme Court in matters which requires prompt attention. It was, however, urged that the detenu could have asked for further parti, culars being supplied to them and that a petition to this Court would not lie. I am unable to accede to this argument. It is the duty of the authority making the order to make a good order. If the order made is not good why should not the detenu approach this Court or the Supreme Court and say that the order of detention is not an order having legal

validity, and, therefore his detention is bad ?

23. During the course of arguments, the learned Assistant to the Advocate-General referred to unpublished rulinga given by the Hon'ble Mahajan J. of the Supreme Court during the present vacation in which his Lordship had allowed further particulars to be given and had not held the detention orders bad. The uncertified copies of his Lordship's orders that were shown to us are extremeiy brief and no facts are stated and hardly any facts are given in his Lordship's orders We do not know what was the language of the detention orders and what facts had been mentioned therein which were allowed to be supplemented by the Hon'ble Mahajan J.

24. I would, therefore, hold that the detention in case of Ajit Singh, petition No 276, is bad.

25. In all these cases smuggling of cloth has been alleged and detention has been ordered to ensure the maintenance of supplies. In the affidavits of the District Magistrate, the cloth is specified as ' mill-made cloth' but it is not specified as to what was the quantity of smuggling that was going on. There are no details given from which it could be found whether the quantity smuggled was So great as to affect the maintenance of the supply of an essential commodity. The learned Assistant to the Advocate-General stated that movement of cloth is prohibited by an order made under the Essential Supplies (Temporary Powers) Act, 1946 (Act XXIV 24. of 1946), which is still in force The fact that movement of cloth is being controlled does not by itself prove that smuggling is affecting the supply of an essential commodity. If movement of cloth is allowed under a permit that would rather go to show that the movement of cloth per se does not affect the supply. There is no affidavit by the Diatrict Magistrate or by a Civil Supplies Officer or the Textitle Commissioner, or by any other officer to show that tha supply of cloth in the city of Amritoar, or the District of Amritsar, or any special part of the District of Amritsar or any part of the State has been affected or is likely to be affected in any considerable degree by the smuggling activities said to be undertaken by any of the detenus, or all of them put together.

26 In all these cases the ground supplied to tha detenus also stated that his detention was ordered to ensure public order. The affidavits of the District Magistrate, however, do not tell us whether the disorder had occurred or was apprehended. The only thing that is mentioned in the affiavits is that there was firing resorted to near the border. The firing is either between the Pakistan police and Indian police or the firing is by the Indian police on the smugglers. In the case of the firing between the Pakistan police and the Indian police the Districb Magis. trate was not competent to make the order as that falls within the purview of Sub-clause (i) of Clause (a) of Sub-section (1) of Section 3, If the firing is by the Indian police on the smugglers that is what the police may have to do in the usual course of its duty in preventing smuggling The maintenance of police order, which has to be safeguarded, is the avoidance of any disorders amongst the population itself due to certain activities. In the present case, for instance, if the allegation in the affidavits had been that because of essential supplies falling short there was an outcry amongst certain section of the population at certain places, and disorders had ocourred or were likely to occur, that allegation would be good one to show that it was essential to pass an order of detention for the maintenance of public order. The breaking out of civil commotion or of riots or apprehension that riots would break out or public would be agitated to such an extent that maintenance of peace would be threatened, this is the kind of thing that has to be safeguarded, and this is what is meant when the Legislature used the words ' maintenance of publio order '. There is no allegation in the affidavits sent by the District Magistrate that any such thing has happened or is apprehended because of the smuggling activities being carried out on such a vast scale that supplies of essential commodities have been considerably affected or are likely to be affected.

27. Another common feature of all these petitions is that though the orders of detention mentioned that the detenus could be detained by the Superintendent of Police till a date in the middle of June whereafter they would be detained by the Inspector-General of Prisons each one of these detenus has been detained in the police stations in Amritsar diatriot after the date in the middle of June mentioned in the detention orders. This by itself may not make the detention orders invalid, but it would make the detentions improper, and if other reasons did not exist making the detention orders bad it may have been necessary to direct that the detenus be

detained in a proper place under the Inspeator-General of Prisons as mentioned in the detention Orders. Power is given under Section 4 to change the place of detention, but that power is to be exercised by Government and not by a subordinate official. In none of these cases though allegation had been made by each detenu in his petition to this Court that he wa3 being detained beyond that time prescribed in a police station in the Amritsar District this allegation has not been challenged and no order has been produced by the State Government changing the place of detention. Though this may affect only the impropriety of the detention, it has a bearing on the question that the order of detention is mala fides.

28. The mala fide nature of the orders of detention is also urged on the ground that though the detenus are said to be habitual smugglers and smuggling is said to be going on since a number of months-may be since the last two years or more-and though investigation has shown that agents and associates of some of the detenus and not the detenus themselves (as in the cases of the two Kirpal Singhs in petitions NOS. 274 and 375) are guilty of smuggling no prosecution has been launched against any of the agents or associates. It is true as observed by the Hon'ble the Chief Justice in the Supreme Court in tha csas of A.K. Gopalan : 1950 CriLJ1383 (mentioned in the beginning of my judgment) that preventive detention is taken on good suspicion and is a subjective test based on the cumulative effect of different actions, perhaps spread over a considerable period, or as observed by Lord Atkinson in the House of Lords in the oa3e of Bex v. Halliday, 1917 A. 0. 260 at P. 275 : 86 L.J. K.B. 1119, that preventive detention must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof, or as observed by Lord Finlay in the same case at p. 269 that preventive detention is not a punitive but a precautionary measure, yet mala fides from non-prosecution may be clear. According to the Hon'ble Mukber-jea J. in Gopalan's case in the Supreme Court already cited where he follows Lord Macmillan in Livarsidge v. Anderson, 1942 A.C. 206 at p. 251 : 1941-8 ALL E. R. 838 though the object in punitive detention is not to punish a man for having done something but to intercept him before he does it and to prevent him from do. ing so, the justification of the detention being suspicion or reasonable probability and not oriminal conviction which only legal evidence could warrant, yet if the police allows habitual smuggling to go on, it must be conniving at it or it must be inefficient if no criminal

can be brought to book even after more than two years of his activity.

29. It is not necessary to dwell on the question of mala fides any longer. Beside mala fides, sufficient reasons have already been given for holding that the order of detention in every one of these five cases was bad, and the detention illegal. Every one of the petitioners is entitled to be set at liberty and I concur in the orders of release.