PETITIONER:
ICHHU DEVI CHORARIA

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT09/09/1980

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
VENKATARAMIAH, E.S. (J)

CITATION:
1980 AIR 1983 1981 SCR (1) 640
1980 SCC (4) 531
CITATOR INFO :

R	1981 SC 362	(2)
E	1981 SC 431	(2,3,8,9,10)
RF	1981 SC 510	(10,12)
RF	1981 SC 728	(17,18)
R	1981 SC 814	(2,3,4)
R	1981 SC 871	(1)
R	1981 SC1077	(1)
D	1981 SC1191	(9)
R	1981 SC1861	(1)
R	1981 SC1909	(1)
R	1981 SC2166	(13)
F	1982 SC 696	(2)
RF	1982 SC1500	(6,7)
D	1984 SC 444	(23)
F	1985 SC1082	(6,15)
D	1986 SC2173	(19)
APL	1989 SC 364	(8,9)
RF	1991 SC2261	(7,8)

ACT:
Constitution of India 1950, Article 22(5)-Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, Section 3(3)-Detenu-Detention ordered for smuggling and abetting smuggling of goods-Representation of detenu against detention-Request of detenu for supply of copies of statements and documents referred to in grounds of detention-Unreasonable delay in consideration of representation as well as request of detenu-No explanation for delay-Continued, detention of detenu whether illegal and void-Detenu whether entitled to be released.

HEADNOTE:
The detenu was taken under detention on 4th June, 1980 by an order of detention dated 27th May, 1980. The order of detention recited that with a view to preventing him from smuggling goods and abetting the smuggling of goods it was necessary to detain him. After detention he was also served on the same day, the grounds of detention. The grounds of detention referred to several documents and statements including two tape recorded conversations. The detenu addressed a letter dated 6th June, 1980 asking for all statements, documents and material to enable him to make an

effective representation against his detention. The detenu also sent a representation dated 9th June, 1980 to the Deputy Secretary once again requesting him to supply immediately the documents etc. relied upon in the grounds of detention and to furnish the transcripts of the tapes as also to produce the original tapes, so that he could prove that the voice recorded on the tapes was not his. The detenu addressed another representation dated 26th June, 1980 to the Chairman of the Advisory Board, the Central Government and the Deputy Secretary to the State Government praying for revocation of the order of detention, wherein he pointed out that by his letters dated 5th, 9th and 14th June, 1980, he had requested for the tapes to be supplied to enable him to prove that the voice recorded on the tapes was not his and that this request had not been complied with and in the circumstances the hearing of the case before the Advisory Board would be futile. Meanwhile the Investigating Officer of the Customs Department was deputed to the Central Prison alongwith the tapes, and the tapes were played in the presence of the detenu and the Deputy Superintendent of the Central Prison on 8th July, 1980. The representations of the detenu were examined by the government, who by their letter dated 15th July, 1980 rejected the representations and declined to revoke the order of detention.

In the writ petition under Article 32 of the Constitution filed by the mother of the detenu it was contended: (1) that the detaining authority did not serve on the detenu alongwith the grounds of detention, copies of the statements, documents and tapes referred to in the grounds of detention and it could not, therefore, be said that the grounds of detention were duly served

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on the detenu as required by sub-section (3) of section 3 of the COFEPOSA Act and clause (5) of Article 22 of the Constitution, and (2) that the detaining authority did not supply copies of such statements, documents and materials until 11th July, 1980 and on that day also, what were supplied were merely copies of the statements and documents and not copies of the tapes which were supplied only on 20th July, 1980 and that this delay was wholly unjustified and the detenu was thus denied the earliest opportunity of making an effective representation and consequently the continued detention of the detenu was illegal and void.

Allowing the writ petition.

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HELD: 1. There was unreasonable delay on the part of the detaining authority in supplying to the detenu copies of all the relevant documents, and therefore his continued detention was illegal and void. The detenu was entitled to be released forthwith from detention. [654 F]

2. The power of Preventive detention can be justified only in the interest, of public security and order and it is tolerated in a free society only as a necessary evil. The power to detain without trial is an extraordinary power constituting encroachment on personal liberty and it is the duty of the courts to ensure that his power is exercised strictly in accordance with the requirements of the Constitution and the law, the courts always leaning in favour of upholding personal liberty. [646 F]

3. The Constitution has while conceding the power of preventive detention, provided procedural safeguards with a view to protecting the citizen against arbitrary and unjustified invasion of personal liberty and the courts have always zealously tried to uphold and enforce these safeguards. [646 H]

4. If the detaining authority wants to preventively detain a smuggler it can certainly do so, but only in accordance with the provisions of the Constitution and the law and if there is a breach of any such provision, the rule of law requires that the detenu must be set at liberty, howsoever wicked or mischievous he may be. [647 B]

5. Whenever a petition for a writ of habeas corpus has come up before this Court, it has almost invariably issued a rule calling upon the detaining authority to justify the detention and when a rule is issued, it is incumbent on the detaining authority to satisfy the court that the detention of the petitioner is legal and in conformity with the mandatory provisions of the law authorising such detention. [647 G]

Naranjan Singh v. State of Madhya Pradesh AIR 1971 SC 2215, Sheikh Hanif Gudma Majhi & Kamal Saha v. State of West Bengal [1974] 2 SCR 258, Dulal Roy v. The District Magistrate, Burdwan & Ors. [1975] 3 SCR 186, Nazamuddin v. The State of West Bengal [1975] 2 SCR 593, Mohd. Alam v. State of West Bengal [1974] 3 SCR 379, Khudiram Das v. State of West Bengal & Ors. [1975] 2 SCR 832, referred to.

6. On a proper construction of clause (5) of Article 22 read with section 3, sub-section (3) of the COFEPOSA Act, it is necessary for the valid continuance of detention that subject to clause (6) of Article 22 copies of the documents, statements and other materials relied upon in the grounds of detention should be furnished to the detenu alongwith 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)
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is not satisfied, the continued detention of the detenu would be illegal and void. [650 H-651B]

7. The right to be supplied copies of the documents, statements and other materials relied upon in the grounds of detention without any undue delay flows directly as a necessary corollary from the right conferred on the detenu to be afforded the earliest opportunity of making a representation against the detention, because unless the former right is available, the latter cannot be meaningfully exercised. This would seem to be clear on a fair interpretation of clause (5) of Article 22. [652 E-F]

Ramachandra A. Kamat v. Union of India [1980] 2 SCC 270 referred to.

In the instant case the detenu asked for copies of the documents, statements and other materials relied upon in the grounds of detention by his letters dated 6th June, 1980 and 9th June, 1980 and he also complained about non-supply of such copies in his representation dated 26th June, 1980 but it was only on 11th July, 1980 that such copies were supplied to him and even then the copies of the tapes were not furnished until 20th July, 1980. There was thus a delay of more than one month in supply of these copies, and the burden of satisfactorily explaining this delay and showing that there was sufficient cause for it was on the detaining authority. The delay of 12 days i.e. from 12th June, 1980 until 24th June, 1980 has not been satisfactorily explained either in the affidavit of the Deputy Secretary to the State Government or in any affidavit filed by the Assistant Collector of Customs. There was, therefore, an unreasonable delay on the part of the detaining authority in supplying to the detenu copies of the documents, statements etc. relied upon in the grounds of detention. The continued detention of

the detenu was accordingly illegal and void and he was entitled to be released forthwith from detention. [652 H-653B, G; 654 F]

8. The representation of the detenu dated 9th June, 1980 was received by the Deputy Secretary on 14th June, 1980 while the representation dated 26th June, 1980 was received on 30th June, 1980 and no decision was taken on these representations of the detenu until 14th July, 1980. There is no explanation at all for this delay in any of the affidavits filed on behalf of the detaining authority. This is sufficient to invalidate the continued detention of the detenu. [654 -655 C, G]

9. The Customs Department has not filed a charge sheet against the detenu for prosecuting him in respect of the incidents referred to in the grounds of detention even though more than six months have passed. There should be no unreasonable delay on the part of the Customs authorities in completing the investigation of the cases against the detenu and prosecuting him in the criminal courts if the evidence gathered by them in the course of the investigation justifies such a course. [656 B-C]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 2030 of 1980.

Under Article 32 of the Constitution.

Ramjethmalani, M. M. Lodha and Harjinder Singh for the Petitioner.

V. S. Desai, Mrs. Shobha Dixit, R. N. Poddar and Miss A. Subhashini for the Respondent.

The Judgment of the Court was delivered by

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BHAGWATI, J.-This petition for a writ of habeas corpus challenges the continued detention of one Mahendra Chordia under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as COFEPOSA Act).

On 4th June, 1980 an order of detention dated 27th May 1980 was served on Mahendra Chordia (hereinafter referred to as the detenu) and he was taken under detention. The order of detention recited that the Governor of Maharashtra was satisfied with respect to the detenu that, with a view to preventing him from smuggling goods and abetting the smuggling of goods, it was necessary to make an order directing him to be detained and by the order of detention, the Governor of Maharashtra in exercise of the powers conferred under sub-section (1) of section 3 of the COFEPOSA Act read with the Order of the President of India in the notification of the Government of India dated 17 February, 1980 directed that the detenu be detained under that Act. Simultaneously with the order of detention, another order dated 27th May was also issued by the Governor of Maharashtra directing that the detenu be detained in the Nasik Road Central Prison. When the petitioner was arrested and taken under detention, he was also served with a document dated 27 May 1980 containing the grounds of detention as required by sub-section (3) of the COFEPOSA Act read with clause (5) of Article 22 of the Constitution. The grounds of detention referred to several documents and statements including two tape recorded conversations, one between the detenu and one Ahluwalia and the other between the detenu, Ahluwalia and an advocate by the name of Kumar Mehta. The detenu therefore addressed a letter dated 6th June, 1980 to the Deputy Secretary to the Government of

Maharashtra requesting him at his earliest to send "all statements documents and material" to enable him to make an effective representation against his detention. The detenu also sent a representation dated 9th June, 1980 to the Deputy Secretary once again requesting him to supply immediately the documents, statements and materials relied upon in the grounds of detention so that the detenu could make an effective representation and also specifically calling upon the Deputy Secretary to furnish the transcripts of the tapes as also to produce the original tapes for his inspection so that he could prove that the voice recorded on the tapes was not his. This representation was admittedly received by the Deputy Secretary on 14th June 1980. The detenu thereafter addressed another communication to the Deputy Secretary requesting him to supply one accurate copy of the tapes, so that he could have the tapes played in the presence of those

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who would recognise his voice, to enable him to lead evidence through them that the voice recorded on the tapes was not his as also to let him know on whose final satisfaction the order of detention was made. This letter though originally dated 14th June, 1980 was not despatched to the Deputy Secretary until 1st July, 1980 because in the meanwhile the detenu had been taken to Bombay and it was only after his return to Nasik Road Central Prison that the letter could be despatched through the jailor and hence the date was altered to 1st July, 1980. It appears that this letter was received by the Deputy Secretary on 8th July, 1980. But, prior to his forwarding the letter dated 1st July, 1980 to the Deputy Secretary, the detenu addressed another representation dated 26th June, 1980 to the Chairman of the Advisory Board, the Central Government and the Deputy Secretary to the Government of Maharashtra praying for re-vocation of the order of detention. The detenu pointed out in this representation that, by his letters dated 5th, 6th and 14th June, 1980, he had requested for the tapes to be supplied to him to enable him to prove that the voice recorded on the tapes was not his and that this request had not been complied with and, in the circumstances, the hearing of the case before the Advisory Board would be futile. The detenu also complained in the representation that though he had asked for copies of the documents and statements relied upon in the grounds of detention, they had not been supplied to him. This representation containing the prayer for revocation of the order of detention was received by the Deputy Secretary on 30th June, 1980. Now it appears that copies of the statements and documents relied upon in the grounds of detention were forwarded by the Deputy Secretary to the Superintendent of Nasik Road Central Prison by registered letter dated 3rd July 1980 and these copies were handed over to the detenu on 11th July 1980. Mean while, one Vikraman Investigating officer of the Customs Department was deputed to the Nasik Road Central Prison alongwith the tapes and the tapes were played in the presence of the detenu and the Deputy Superintendent of Nasik Road Central Prison on 8th July 1980. The representations of the detenu dated 9th June, 1980 and 26th June, 1980 were then considered by the Under Secretary on 11th July, 1980 and since in the mean time the letter dated 1st July 1980 requesting for supply of one accurate copy of the tapes was received by the Government, the Under Secretary suggested, with reference to this request that "since the tapes were given to the detenu for inspection and played before him, the request for supply of copies of the

tapes may have to be rejected" and he also recommended that the request of the detenu for revocation of the order of detention may be rejected. The Deputy Secretary approved the noting of the Under Secretary that the request for revocation of the detention order may
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be rejected and the file was immediately put up before the Secretary on the same day and the secretary also approved the proposal for rejecting the request for revocation of the order of detention but recommended that the Customs Department must give to the detenu the transcripts of the tapes, as otherwise he would take a stand in the Court that his defence was prejudiced. It appears that the Chief Minister endorsed the noting of the Secretary on 14th July 1980. Pursuant to this decision of the Government, a letter dated 15th July 1980 was addressed to the detenu rejecting his representations and declining to revoke the order of detention. It is difficult to appreciate what purpose could possibly be intended to be served by giving copies of the tapes to the detenu after rejecting his representations, but all the same, copies of the tapes were handed over to the detenu on 20th July, 1980. The detenu's mother in the mean while preferred the present petition in this Court and on 10th July, 1980 rule nisi was issued on the petition by this Court.

There were several grounds on which the detention of the detenu was challenged in the petition. But it is not necessary to refer to all the grounds since there is one ground which is, in our opinion, fatal to the continued detention of the detenu and it will be sufficient if we confine our attention to that ground. The contention of the petitioner under the ground was that though several statements and documents were relied upon in the grounds of detention and considerable reliance was also placed on two tape recorded conversations in the grounds of detention, the detaining authority did not serve on the detenu along with the grounds of detention, copies of those statements, documents and tapes and it could not therefore be said that the grounds of detention were duly served on the detenu as required by sub-section (3) of section 3 of the COFEPOSA Act and clause (5) of Article 22 of the Constitution. The petitioner urged that sub-section (3) of section 3 of the COFEPOSA Act and clause (5) of Article 22 of the Constitution required that the detaining authority should as soon as may be, communicate to the detenu the grounds on which the order of detention has been made and such grounds would comprise not merely a bare recital of the grounds of detention but also all statements and documents relied upon in the grounds of detention, because these latter would also form part of such grounds. It was also contended by the petitioner in the alternative that, in any event, the detaining authority was bound to give copies of the statements, documents and tapes relied upon in the grounds of detention to the detenu without any avoidable delay in order that the detenu should have the earliest opportunity of making an effective representation against the order of detention. The argument of the petitioner was
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that, in the present case, though the detenu asked for the copies of statements, documents and material relied upon in the grounds of detention as early as 6th June, 1980, the detaining authority did not supply copies of such statements, documents and materials until 11th July, 1980 and on that day also, what were supplied were merely copies of the statements and documents and not the copies of the

tapes which were supplied only on 20th July 1980. This delay in supplying copies of the statements, documents and tapes was, in the submission of the petitioner wholly unjustified and the detenu was thus denied the earliest opportunity of making an effective representation and this infected the continued detention of the detenu with the vice of illegality. This ground of challenge urged on behalf of the petitioner appeared to us to be well founded and that is why, by an order dated 8th August 1980 made immediately on the conclusion of the arguments, we allowed the petition and directed that the detenue be set at liberty forthwith. We now proceed to give our reasons for making that Order. We may point out straightway that we are not at all happy at the thought that our order may have resulted in setting free a possible smuggler. We are not unmindful of the fact that the COFEPOSA Act has been enacted for the purpose of eradicating the evil of smuggling which is eating into the vitals of the nation like a cancerous growth and eroding the economic stability of the country and when an order is made by the Court releasing a person detained under this Act, it is quite possible that the effect of the order may be to let loose on the society, a smuggler who might in all probability, resume his nefarious activities causing incalculable mischief and harm to the economy of the nation. But at the same time we cannot forget that the power of preventive detention is a draconian power justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil. The power to detain without trial is an extraordinary power constituting encroachment on personal liberty and it is the solemn duty of the Courts to ensure that this power is exercised strictly in accordance with the requirements of the Constitution and the law. The courts should always lean in favour of upholding personal liberty, for it is one of the most cherished values of mankind. Without it life would not be worth living. It is one of the pillars of free democratic society. Men have rightly laid down their lives at its altar in order to secure it, protect it and preserve it. The Constitution has therefore, while conceding the power of preventive detention, provided procedural safeguards with a view to protecting the citizen against arbitrary and unjustified invasion of personal liberty and the courts have always zealously tried to uphold and enforce these safeguards. This Court has also through its judicial pronouncements created various legal bulwarks and breakwaters into the vast powers conferred on the.
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executive by the laws of preventive detention prevalent at different points of time. It is true that sometimes even a smuggler may be able to secure his release from detention if one of the safeguards or requirements laid down by the Constitution or the law has not been observed by the detaining authority but that can be no reason for whittling down or diluting the safeguards provided by the Constitution and the law. If the detaining authority wants to preventively detain a smuggler, it can certainly do so, but only in accordance with the provisions of the Constitution and the law and if there is a breach of any such provision, the rule of law requires that the detenu must be set at liberty, however wicked or mischievous he may be. The law cannot be subverted, particularly in the area of personal liberty, in order to prevent a smuggler from securing his release from detention, because whatever is the law laid down by the courts in the case of a smuggler would be equally applicable in the case of preventive detention under

any other law. This Court would be laying down a dangerous precedent if it allows a hard case to make bad law. We must, therefore, interpret the provisions of the Constitution and the law in regard to preventive detention without being in any manner tramelled by the fact that this is a case where a possible smuggler is seeking his release from detention.

It is also necessary to point out that in case of an application for a writ of habeas corpus, the practice evolved by this Court is not to follow strict rules of pleading nor place undue emphasis on the question as to on whom the burden of proof lies. Even a postcard written by a detenu from jail has been sufficient to activise this Court into examining the legality of detention. This Court has consistently shown great anxiety for personal liberty and refused to throw out a petition merely on the ground that it does not disclose a prima facie case invalidating the order of detention. Whenever a petition for a writ of habeas corpus has come up before this Court, it has almost invariably issued a rule calling upon the detaining authority to justify the detention. This Court has on many occasions pointed out that when a rule is issued, it is incumbent on the detaining authority to satisfy the court that the detention of the petitioner is legal and in conformity with the mandatory provisions of the law authorising such detention: Vide Naranjan Singh v. State of Madhya Pradesh; Sheikh Hanif, Gudma Majhi & Kamal Saha v. State of West Bengal, and Dulal Roy v. The District Magistrate, Burdwan & Ors. It has also
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been insisted by this Court that, in answer to this rule, the detaining authority must place all the relevant facts before the court which would show that the detention is in accordance with the provisions of the Act. It would be no argument on the part of the detaining authority to say that a particular ground is not taken in the petition. Vide Nazamuddin v. The State of West Bengal. Once the rule is issued it is the bounden duty of the Court to satisfy itself that all the safeguards provided by the law have been scrupulously observed and the citizen is not deprived of his personal liberty otherwise than in accordance with law. Vide Mohd. Alam v. State of West Bengal and Khudiram Das v. State of West Bengal & Ors.

This practice marks a departure from that obtaining in England where observance of the strict rules of pleading is insisted upon even in case of an application for a writ of habeas corpus, but it has been adopted by this Court in view of the peculiar socio-economic conditions prevailing in the country. Where large masses of people are poor, illiterate and ignorant and access to the courts is not easy on account of lack of financial resources, it would be most unreasonable to insist that the petitioner should set out clearly and specifically the grounds on which he challenges the order of detention and make out a prima facie case in support of those grounds before a rule is issued or to hold that the detaining authority should not be liable to do anything more than just meet the specific grounds of challenge put forward by the petitioner in the petition. The burden of showing that the detention is in accordance with the procedure established by law has always been placed by this Court on the detaining authority because Article 21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law. This constitutional right of life and personal liberty is placed on such a high pedestal by this Court that it has always

insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the court that it has acted in accordance with the law. This is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detenue even though the detention may have been valid till the breach occurred. The court has always regarded personal liberty as the most precious possession
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of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade.

We must therefore now proceed to examine whether there was any breach of the requirements of Article 22 clause (5) of the Constitution and Section 3, sub-section (3) of the COFEPOSA Act, for that is the breach which is claimed by the petitioner as invalidating the continued detention of the detenue. Clause (5) of Article 22 of the Constitution reads as follows:

> "Art. 22(5): When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

Section 3, sub-section of the COFEPOSA Act provides as under:

> "For the purposes of clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order, of the grounds on which the order has been made shall be made, as soon as may be, after the detention, but ordinarily 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."

The true meaning and import of clause (5) of Article 22 of the Constitution was explained by this Court in Khudiram Das v. State of West Bengal (supra):

> "The constitutional imperatives enacted in this article are two-fold: (1) the detaining authority must, as soon as may be, that is, as soon as practicable after the detention, communicate to the detenue the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenue the earliest opportunity of making a representation against the order of detention. These are the barest minimum safeguards which must be observed before an executive authority can be permitted to preventively detain a person and thereby drown his right of personal liberty in the name of public good and social security."

It will be seen that one of the basic requirements of clause (5) of Article 22 is that the authority making the order of detention must, as soon as may be, communicate to the detenu the grounds on which the order of detention has been made and under sub-section (3) of section 3 of the COFEPOSA Act, the words "as soon as may be"
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have been translated to mean "ordinarily 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." The grounds of detention must therefore be furnished to the detenu ordinarily within five days from the date of detention, but in exceptional circumstances and for reasons to be recorded in writing, the time for furnishing the grounds of detention may stand extended but in any event it cannot be later than fifteen days from the date of detention. These are the two outside time limits provided by section 3, sub-section (3) of the COFEPOSA Act because unless the grounds of detention are furnished to the detenu, it would not be possible for him to make a representation against the order of detention and it is a basic requirement of clause (5) of Article 22 that the detenu must be afforded the earliest opportunity of making a representation against his detention. If the grounds of detention are not furnished to the detenu within five or fifteen days, as the case may be, the continued detention of the detenu would be rendered illegal both on the ground of violation of clause (5) of Article 22 as also on the ground of breach of requirement of section 3, sub-section (3) of the COFEPOSA Act. 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 detention, 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 constitute 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 read with section 3, sub-section (3) of the COFEPOSA Act, it is necessary for the valid continuance of detention that subject to clause (6) of
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Article 22 copies of the documents, statements and other materials relied upon in the grounds of detention should be furnished to the detenu alongwith 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.

Now, in the present case, the grounds of detention were detention were served upon the detenu on 4th June, 1980 at the time when he was taken under detention, but these grounds which were served upon the detenu did not include

the documents, statements and other materials relied upon in the grounds and forming part of them. The detenu, therefore by his letter dated 6th June, 1980, requested the Deputy Secretary to send at his earliest "all statements, documents, materials" relied upon in the grounds of detention in order to enable him to make an effective representation against his detention. But copies of these documents, statements and other materials were not supplied to the detenu until 11th July, 1980 and so far as the tapes were concerned, their copies were furnished to the detenu even later on 20th July, 1980. It is clear from the discussion in the preceding paragraph that under clause (5) of Article 22 read with section 3, sub-section (3) of the COFEPOSA Act, the detaining authority was bound to supply copies of the documents, statements and other materials relied upon in the grounds of detention to the detenu within five days from the date of detention, that is, on or before 9th June, 1980 and in any event, even if we assume that there were exceptional circumstances and reasons for not supplying such copies within five days were recorded in writing, such copies should have been supplied to the detenu not later than fifteen days from the date of detention, that is, on or before 19th June, 1980. It was, of course, not the case of the detaining authority before us that reasons for not supplying copies of the documents, statements and other materials to the detenu within five days were recorded in writing nor were any such reasons produced before us, but even if there were any such reasons recorded in writing, coupled with the existence of exceptional circumstances, the detaining authority, could not delay the supply of copies of the documents, statements and other materials to the detenu beyond 19th June, 1980. Even if there were any circumstances justifying the delay in supply of copies of documents, statements and other materials beyond 19th June, 1980 it would afford no defence to the detaining authority, for clause (5) of Article 22 read with section 3, sub-section (3) of the COFEPOSA Act lays down an inexorable rule of law that the grounds of detention shall be communicated to the detenu not later than fifteen days from the
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date of detention. There are no exceptions or qualifications provided to this rule which operates in all its rigour and strictness and if there is any breach of this rule, it must have the effect of invalidating the continued detention of the detenu. There can therefore be no doubt that, in the present case, the continuance of the detention of the detenu after 19th June, 1980 was unconstitutional and it was not open to the detaining authority to seek to justify the continued detention on the ground that there were sufficiently compelling reasons which prevented it from supplying copies of the documents, statements and other materials to the detenu until 11th July, 1980 and copies of the tapes until 20th July, 1980.

It may be pointed out that even if our interpretation of the words "the grounds on which the order has been made" in clause (5) of Article 22 and section 3 sub-section (3) of the COFEPOSA Act be wrong and these words do not include the documents, statements and other materials relied upon in the grounds of detention, it is unquestionable that copies of such documents, statements and other materials must be supplied to the detenu without any unreasonable delay, because otherwise the detenu would not be able to make an effective representation and the fundamental right conferred on him to be afforded the earliest opportunity of making a representation against his detention would be denied to him.

The right to be supplied copies of the documents, statements and other materials relied upon in the grounds of detention without any undue delay flows directly as a necessary corollary from the right conferred on the detenu to be afforded the earliest opportunity of making a representation against the detention, because unless the former right is available, the later cannot be meaning fully exercised. This would seem to be clear on a fair interpretation of clause (5) of Article 22 but apart from this view which we are inclined to take on principle as a matter of interpretation, the law is now well settled as a result of several decisions of this court commencing from Ramachandra A. Kamat v. Union of INDIA (1) that: "When the grounds of detention are served on the detenu, he is entitled to ask for copies of statements and documents referred to in the grounds of detention to enable him to make an effective representation. When the detenu makes a request for such documents, they should be supplied to him expeditiously. when copies of such documents are asked for by the detenu, the detaining authority should be in a position to supply them with reasonable expedition. What is reasonable expedition will depend on the facts of each case."

The facts as we find them here are that the detenu asked for copies of the documents, statements and other materials relied upon

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in the grounds of detention by his letters dated 6th June, 1980 and 9th June, 1980 and he also complained about non-supply of such copies in his representation dated 26th June, 1980 but it was only on 11th July, 1980 that such copies were supplied to him and even then the copies of the tapes were not furnished until 20th July, 1980. There was thus a delay of more than one month in supply of copies of the documents, statements and other materials to the detenu. The burden of satisfactorily explaining this delay and showing that there was sufficient cause for it was on the detaining authority and an attempt was made by the detaining authority to discharge this burden by filing an affidavit made by C.R. Mulherkar, Deputy Secretary to the Government of Maharashtra. It was stated in this affidavit that the letter of the detenu dated 6th June, 1980 requesting for copies of the documents, statements and other materials relied upon in the grounds of detention was received in the Home Department on 10th June, 1980 and on receipt, this letter was forwarded to the Asstt. Collector of Customs for his remarks on 12th June, 1980. The Assistant Collector of Customs forwarded his remarks to the Deputy Secretary on 24th June, 1980 alongwith one set of copies of documents and statements relied upon in the grounds of detention and these were received by the Deputy Secretary in the Home Department on 27th June 1980. The next two days, namely 28th and 29th June, 1980 were holidays and on 2nd July 1980 the State Government took a decision to supply these copies to the detenu and they were forwarded to the detenu through the Superintendent of Nasik Road Central Prison alongwith a registered letter dated 3rd July 1980 which, for some inexplicable reason was not received by the Superintendent until 10th July 1980, and hence it was said these copies could not be delivered to the detenu until 11th July 1980. This was the explanation offered by the detaining authority for the delay in supplying copies of the documents, statements and other materials to the detenu but we do not think this explanation can be accepted by us as satisfactory. It is clear from the facts narrated above that though the Assistant Collector of Customs received the letter of the detenu forwarded by the

Deputy Secretary on 12th June 1980, he did not respond to it until 24th June 1980 and this delay of 12 days has not been satisfactorily explained either in the affidavit of C.R. Mulherkar or in any affidavit filed by the Assistant Collector of Customs. It was urged before us that the documents and statements of which copies were requested by the detenu ran into 89 pages and it was therefore reasonable to assume that a few days must have been taken in the Customs Department to make copies of these documents and statements and hence the time of 12 days taken up by the Assistant Collector of Customs in sending copies of the documents and statements to the
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Deputy Secretary could not be said to be unreasonable. This argument is patently unsound, because the Assistant Collector of Customs ought to have kept ready with him copies of the documents, statements and other materials relied upon in the grounds of detention since it should have been anticipated that these copies would have to be supplied to the detenu in order to enable him to make an effective representation against his detention and it does not lie in the mouth of the Assistant Collector of Customs to say that his department started making copies for the first time when a request for copies was made by the detenu. In fact, copies of the documents. statements and other materials relied upon in the grounds of detention should have been available with the detaining authority itself so that they could be supplied to the detenu immediately as soon as a request was made in that behalf. Of course, our view is and that is what we have said in the earlier part of the judgment, that copies of the documents, statements and other materials relied upon in the grounds of detention from part of such grounds and they have to be supplied to the detenu within the time limited under clause (5) of Article 22 and section 3 sub-section (3) of COFEPOSA Act, but even if that be not the correct view, there is little doubt that copies of these documents. statements and other materials should be available with the detaining authority and they should be supplied without unreasonable delay as soon as the detenu makes a request for the same. The time of 12 days taken up by the Assistant Collector of Customs was therefore unreasonably long for which no explanation at all was forthcoming from the detaining authority. We must in the circumstances hold that there was unreasonable delay on the part of the detaining authority in supplying to the detenu copies of the documents, statements and other materials relied upon in the grounds of detention and the continued detention of the detenu was accordingly illegal and void and the detenu was entitled to be released forthwith from detention.

It is also necessary to point out that there was unreasonable delay in considering the representations of the detenu dated 9th June 1980 and 26th June 1980. It is now settled law that on a proper interpretation of clause (5) of Article 22, the detaining authority is under a constitutional obligation to consider the representation of the detenu as early as possible, and if there is unreasonable delay in considering such representation, it would have the effect of invalidating the detention of the detenu. Vide; V. J. Jain v. Pradhan (1) here in the present case the representation of the detenu dated 9th June 1980 was received by the Deputy Secretary on 14th June 1980 while the representation dated 26th June 1980 was received on 30th June 1980 and yet no decision was taken on these representation of the detenu until 14th

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July 1980. The question is whether this delay could be said to have been reasonably explained by the detaining authority. The representation of the detenu dated 9th June 1980 was received in the Mantralaya on 14th June 1980 but that day and the next day being holidays, it came to the hands of the concerned officer only on 16th June 1980, and a copy of it was forwarded to the Assistant Collector of Customs for his remarks on 23rd June 1980. It is difficult to see to see why the concerned officer in the Mantralaya should have taken seven days for just forwarding a copy of the representation of the detenu to the Assistant Collector of Customs. There is no explanation at all for this delay in any of the affidavits filed on behalf of the detaining authority. The Collector of Customs thereafter forwarded his remarks on 30th June 1980 and here again there was a delay of seven days for which no explanation is forthcoming. The remarks of the Assistant Collector of Customs were received by the concerned officer on 2nd July 1980 and there after the representation started on its upward journey from the Undersecretary to the Chief Minister. It appears that by this time the second representation of the detenu dated 26th June 1980 was also received by the State Government and hence this representation was also subjected to the same process as the representation dated 9th June, 1980. It was only on 11th July 1980 that these two representations dated 9th June 1980 and 26th June 1980 came to be considered by the Under Secretary and he made a noting on the file recommending that the request of the detenu for revocation of the order of detention may be rejected, and this noting was approved by the Deputy Secretary as well as the Secretary on the same day and the Chief Minister endorsed it on 14th July 1980. It is indeed difficult to see how these two representations of the detenu could be rejected by the detaining authority when the request of the detenu for copies of the tapes was pending and the Secretary to the State Government in fact made a noting on 11th July 1980 that the copies of the tapes must be given to the detenu by the Customs Department. But even if we take the view that it was not necessary for the detaining authority to wait until after the copies of the tapes were supplied to the detenu, it is difficult to resist the conclusion that the detaining authority was guilty of unreasonable delay in considering the two representations of the detenu, and particularly the representation dated 9th June 1980. This ground is also in our opinion sufficient to invalidate the continued detention of the detenu.

These were the reasons for which we allowed the writ petition and directed immediate release of the detenu from detention. We may point out that we have not pronounced upon the validity of the order of detention but merely held the continued detention of the detenu

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to be illegal on the ground of non-compliance with the requirements of clause (5) of Article 22 and sub-section (3) of section 3 of the COFEPOSA Act, and therefore nothing that is said by us in this judgment should be considered as an expression of opinion on the validity or correctness of the order of detention as made. We are unable to appreciate as to why the Customs Department has not yet filed a charge sheet against the detenu for prosecuting him in respect of the incidents referred to in the grounds of detention even though more than six months have passed since then. If the investigation reveals that the detenu was responsible for smuggling or abetting the smuggling of goods in

contravention of law, the Customs officers should adopt criminal proceedings against the detenu as quickly as possible and try to bring him to book in the criminal courts. We hope and trust that there will be no unreasonable delay on the part of the Customs officers in completing the investigation of the cases against the detenu and prosecuting him in the criminal courts if the evidence gathered by them in the course of the investigation justifies such a course.

N.V.K. Petition allowed.

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