BEFORE NIRMAL YADAV, J.

PARAMJIT SINGH @ PAMMA,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

CRL.W.P. NO. 30 OF 2006

18th April, 2006

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—S.3(1)—Detention order on the ground that petitioner indulged in prejudicial activities for the last 30 years—Sponsoring Authourity failing to bring to the notice of Detaining Authority the material and vital facts with regard to acquittal of petitioner in 3 cases registered against him and some other cases in which cancellation/untraced reports had been submitted—Non-consideration of material and vital facts with regard to untraced/ cancellation reports, which if had been placed before the Detaining Authority, would have influenced the mind of the authority one way or the other—Delay of 45 days in consideration of the representation of petitioner—Respondents failing to submit any explanation—Delay also held to be unreasonable—Petition allowed while setting aside the detention order.

Held, that requisite subjective satisfaction formation of which is a condition precedent to passing of a detention order, would be certainly vitiated if material and vital facts, which would influence the mind of the detaining authority one way or the other on the question whether or not to make the detention order, are not placed before or are not considered by the detaining authority. It would certainly amount to non- application of mind. When the detaining authority passed the impugned order, the vital and material fact with regard to acquittal of the detenu in the cases and other cases, in which cancellation/untraced reports have been submitted, were not brought to the notice of the detaining authority. The orders passed in all the above cases were withheld by the sponsoring authority, which would have certainly made the detaining authority to understand that trial of those cases was still pending.

(Para 13)

Further held, that the impugned order of detention is liable to be set aside on the first ground alone, *viz.* withholding of material facts from the detaining authority. Besides this, there is also no explanation coming forth with regard to delay in deciding the representation, which is certainly, unreasonable.

(Para 14)

R.S. Ghai, Senior Advocate with Bipin Ghai, *Advocate for the petitioner*

A.G. Masih, Senior Deputy Advocate General Punjab.

JUDGEMENT

NIRMAL YADAV, J.

(1) Through this Criminal Writ Petition under Articles 226/227 of the Constitution of India, the detenu Paramjit Singh @ Pamma, who is presently detained in Central Jail, Bathinda, has challenged the order of detention dated 10th November, 2005 (Annexure P-1) passed by Secretary to Government of Punjab, Department of Home Affairs and Justice, Chandigarh, under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'the COFEPOSA') being illegal and abuse of process of law, with a further prayer to release him from illegal detention. The order of detention was passed on the ground that the Secretary to Government of Punjab, was satisfied that the detenu Paramjit Singh had been abetting the smuggling of goods, therefore, it was necessary that he be detained with a view to prevent him from indulging in aforementioned activities in future. The grounds of detention were also supplied to the detenu with the impugned order. The detenu submitted representation (Annexure P-9) against the impugned order on 1st December, 2005, to the Government of India as well as to the Punjab Government which were rejected,—*vide* order dated 7th February, 2006 (Annexure R-3) by the Punjab Government and,—*vide* order dated 6th February, 2006 (Annexure R-4) by the Central Government.

(2) Before adverting to the arguments raised by learned counsel for the petitioner, I would like to reproduce the relevant portion of grounds of detention, which read as under :—

> "You remained involved in smuggling/criminal activities in connivance of Pak smugglers during the last three decades. A large quantity of smuggled articles like gold, narcotics and arms/ammunition were recovered from your possession

during your criminal career as a result of which following cases were registered against you :—

(1) FIR No. 130 dated 11th March, 1973 under section 307 IPC, 25 Arms Act, 3/12/15 IP Act, 123 Custom Act, P.S. Lopoke, Police District Majitha.

(2) FIR No. 185 dated 23rd May, 1976 under section 3 Official Secret Act, 42/43 DIR P.S. Division No. C, Amritsar.

(3) FIR No. 99, dated 16th April, 1976 under section 302/364/365/148/149/120-B IPC P.S .Gharinda, district Amritsar.

(4) FIR No. 189, dated 15th July, 1976 under section 307/ IPC 25 Arms Act, P.S. Lopoke, P.S. Majitha.

(5) FIR No. 380, dated 20th June, 1978 under section 9/1/78 OP Act, P.S. Sadar, Amritsar.

(6) FIR No. 179, dated 20th May, 1979 under section 9/1/78 OP Act, P.S. Lopoke, P.D. Majitha.

(7) FIR No. 180, dated 20th May, 1979 under section 25 Arms Act, P.S. Lopoke, P.D. Majitha.

(8) FIR No. 66, dated 18th February, 1986 under section 61/1/14 Excise Act, P.S. Lopoke, P.D. Majitha.

(9) FIR No. 198, dated 11th July, 1986 under section 25 Arms Act, P.S. Lopoke, P.D. Majitha.

(10) FIR No. 45, dated 28th February, 1989 under section 411/414 IPC, 25 Arms Act, 18/61/85 NDPS Act, TDP Act, P.S. Civil Lines, Amritsar.

(11) FIR No. 7, dated 23rd January, 1991 IPC, IP Act, F Act 3 OS Act, 18/61/85 NDPS Act, Arms Act, P.S. Lopoke, P.D. Majitha.

(12) FIR No. 122, dated 10th December, 1994 IPC 25 Arms Act, 3 OS Act, 18/61/85 NDPS Act, P.S. Lopoke, P.D. Majitha.

(13) FIR No. 163 dated 9th August, 1995 under section 411/414 IPC, 25 Arms Act, 18/61/85 NDPS Act, 3 OS Act, P.S. Lopoke, P.D. Majitha.

(14) FIR No. 4 dated 7th January, 1997 under section 411/414 IPC, 25 Arms Act, 18/61/85 NDPS Act, 3 OS Act, P.S. Lopoke, P.D. Majitha.

(15) FIR No. 115 dated 14th February, 2003 under section489-B, 489-C IPC, P.S.Basti Jodhewal, Ludhiana.

(16) FIR No. 336 dated 18th August,1999 under section 354/506 IPC, P.S. Sadar, Jalandhar.

(17) FIR No. 73 dated 21st February, 2003 under section 489-B, 489-C IPC, 25 Arms Act, 22/61/85/ NDPS Act, P.S.Sahnewal, District Ludhiana.

(18) FIR No. 229 dated 19th August, 2004 under section 411/414 IPC 18/21/61/85 NDPS Act, 25 Arms Act, 14 F Act, 3 OS Act, P.S. Lopoke, P.D. Majitha.

From the above mentioned and narrated cases, it is clear from the above that you remained involved in pre-judicial activities of the last 35 years and may continue such activities in future also.

On account of above said activities, the Governor of Punjab is satisfied that you having been possessing transporting and concealing the smuggled items like gold, narcotics, drug and FICN. He has passed an order for your detention under COFEPOSA Act with a view to prevent you from indulging in such pre-judicial activities in future."

(3) Mr. R.S. Ghai, learned counsel for the petitioner took the Court through the grounds of detention and other relevant record particularly the various judgments and orders, wherein either the petitioners have been acquitted or untraced/cancellation reports have been submitted in those cases, on the basis of which the detaining authority is claiming to draw its subjective satisfaction for passing the impugned detention order. Learned counsel raised various contentions,

inter alia, that the sponsoring authority did not bring to the notice of the detaining authority the material and vital facts with regard to acquittal of the detenu in various cases, *viz.*, acquittal of the petitioner in three of the cases registered against him and untraced reports having been submitted in other cases. Since these facts, which could have affected the subjective satisfaction, were not placed, consequently, the same were not considered by the detaining authority. He made reference to the following cases :—

(i) FIR No. 179, dated 20th July, 1978 under section 9/1/78 OP Act, P.S. Lopoke, P.D. Majitha—[Accused acquitted,—*vide* judgment and order dated 2nd March, 1981];

(ii) FIR No. 180, dated 20th May, 1979, under section 25 Arms Act, P.S. Lopoke, P.D. Majitha—[Accused acquitted,—*vide* judgment and order dated 2nd March, 1981];

(iii) FIR No. 73, dated 21st February, 2003, under section 489-B, 489-C IPC, 25 Arms Act, 22/61/85 NDPS Act, P.S. Sahnewal, District Ludhiana—[Accused acquitted,—*vide* judgment and order dated 24th May, 2004];

(iv) FIR No. 130, dated 11th March, 1973 under section 307 IPC, 25 Arms Act, 3/12/15 IP Act, 123 Custom Act, PS Lopoke, Police district Majitha—[Untraced report submitted on 2nd October, 1973].

(v) FIR No. 189, dated 15th July, 1976 under section 307 IPC, 25 Arms Act, PS Lopoke, PS Majitha—[Untraced report submitted on 5th August, 1997].

(vi) FIR No. 45, dated 28th February, 1989 under section 411/414 IPC, 25 Arms Act, 18/61/85 NDPS Act, TDP Act, PS Civil Lines, Amritsar—[Untraced report submitted on 2nd December, 1989].

(vii) FIR No. 7, dated 23rd January, 1991 IPC, Act, F Act 3 OS Act, 18/61/85 NDPS Act, Arms Act, P.S. Lopoke, PD Majitha—[Untraced report submitted on 22nd January, 1996].

(viii) FIR No. 122, dated 10th December, 1994, IPC 25 Arms Act, 3 OS Act, 18/61/85 NDPS Act, PS Lopoke, PD Majitha—[Untarced report submitted on 23rd November, 1995].

(ix) FIR No. 163, dated 9th August, 1995, under section 411/ 414 IPC, 25 Arms Act, 18/61/85 NDPS Act, 3 OS Act, PS Lopoke, PD Majitha - [Untraced report submitted on 21st March, 1997].

(x) FIR No. 4, dated 7th January, 1997, under section 41/414 IPC, 25 Arms Act, 18/61/85 NDPS Act, 3 OS Act, PS Lopoke, PD Majitha - [Untraced report submitted on 30th November, 1997].

(xi) FIR No. 115, dated 14th February, 2003, under section 489-B, 489-C IPC, PS Basti Jodhewal, Ludhiana - [Recommended for cancellation by the Human Rights Commission].

With regard to FIR No. 115, dated 14th February 2003, a reference whereof has been made in the detention order, learned counsel submitted that petitioner is agitating the matter before the Punjab State Human Rights Commission. Learned counsel further submitted that in the case registered,—*vide* FIR No. 229, dated 19th August, 2004, the petitioner has already been granted bail. A copy of the order has been placed on record as Annexure P-7. The grounds of detention, given to the petitioner, are vague, deficient and lacking details. It is argued that out of 18 cases mentioned in the grounds, at least in 12 cases, untraced/cancellation report was sent while in other the accused was acquitted. However, these facts were not brought to the notice of the detaining authority and, therefore, the detaining authority could not consider the same before issuing the detention order, which renders the detention order invalid. Learned counsel pointed out that in FIR No. 73, dated 21st February, 2003, allegations have been found to be false and the accused has been acquitted after due consideration of the merits of the case. None of the copies of the FIRs mentioned in the detention order has been supplied to the petitioner, which has caused grave prejudice to the accused as he could not make an effective representation. Next argument raised by learned counsel is that the service of grounds of detention is complete only when grounds accompany the documents forming basis thereof are supplied. In support, the learned counsel placed reliance on the decisions of the

Apex Court reported as **Dharamdas Shamlal Agarwal** *versus* **The Police Commissioner and another, (1) Ramesh** *versus* **State of Gujarat and others, (2) Ayya alias Ayub** *versus* **State of Uttar Pradesh and Another, (3) and Ashadevi** *versus* **K. Shivraj and another, (4).**

(4) Learned counsel for the petitioner further argued that so far as statements relied upon by the detaining authority of the petitioner as well as that of Makhan Singh, Jagdish Singh, Roshan Lal, Darshan Lal, Ravi Kumar, Baldev Singh Mehar Singh and Rajan Kumar, co-accused are concerned, the said statements were made before the police, therefore, the same cannot be taken into consideration as they are hit by the provisions of Section 25 of the Evidence Act. It is further argued that insofar as the ground that detention order has been passed under the COFEPOSA and that petitioner has been possessing, transporting and concealing narcotics drugs, passing of impugned detention order on the basis of these grounds clearly shows non application of mind by the detaining authority as there is a special Act, *viz.*, Narcotic Drugs and Psychotropic Substances Act, 1985 to take action against a person dealing in narcotics. It is, thus, argued that the detaining authority mechanically signed the draft submitted by the sponsoring authority and did not apply its mind.

(5) Learned counsel for the petitioner further argued that there is a considerable delay in passing the impugned order of detention. He argued that petitioner submitted his representation against the detention order on 1st December, 2005 to the State Government which was received on 16th December, 2005, whereas, the comments were sent by the sponsoring authority on 7th February, 2006 and representation was rejected on the same day. As such, a delay of 45 days was caused despite the fact that the entire record was already with the sponsoring authority. Learned counsel argued that authorities have to explain each day's delay while considering the representation particularly when the liberty of the petitioner is involved. In support, learned counsel referred to a decision of the Apex Court in

(1) AIR 1989 S.C. 1282
(2) AIR 1989 S.C. 1881
(3) 1989 CAR 29 (S.C.)
(4) AIR 1979 S.C. 447

Harish Pahwa *versus* **State of Uttar Pradesh and others, (5) R. Paulsamy** *versus* **Union of India and another, (6)** and **Vanmathi Selvam (Mrs.)** *versus* **State of Tamil Nadu and another, (7)** wherein the Apex Court has clearly held that delay in deciding the representation being uncalled for, had to be regarded as unreasonable and fatal. Learned counsel further argued that even there is a delay in passing the impugned detention order. The last prejudicial activity is dated 19th August, 2004 as per FIR No. 229 dated 19th August, 2004 and there was no other prejudicial activity thereafter, whereas, the order of detention was passed on 10th December, 2005 i.e. after a delay of 1 year and 3 months. The reason given in the reply submitted by the Government, wherein it is stated that proposal was moved from various districts, which consumed some time, is not at all satisfactory. However, no details have been given as to what proposal was sent to the sponsoring authority and how it took so much time. The authorities have failed to prove any nexus between the last prejedicial activity and passing of detention order. The learned counsel, therefore, argued that delay in passing the impugned order certainly reflects adversely on the *bona fides* of subjective satisfation of the detaining authority. Accordingly, the learned counsel argued that the requisite subjective satisfaction, formation of which is a condition precedent to passing of a detention order, is certainly vitiated if material and vital facts, which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influenced his mind, have been withheld by the sponsoring authority and accordingly, not considered by the detaining authority before issuing the detention order. A plethora of decisions were also cited by the learned counsel in support of his arguments.

(6) On the other hand, the learned State counsel argued that the petitioner is a notorious smuggler who has been indulging in sumuggling and other anti- social activities for the last more than 30 years. According to him, the detention order was issued after thorough consideration and due application of mind. The petitioner himself

(5) 1982 C.L.R. 65
(6) 1999 (2) C.C. Cases (S.C.) 50
(7) 1998 (5) S.C.C. 510

confessed during interrogation with regard to his involvement in the above-mentioned activities. It is pointed out that there are large number of criminal cases including the cases of murder registered against the petitioner. The criminal cases registered against petitioner connect him with smuggling activities across the border through Pak based Muslim smugglers. Criminal cases have also been registered against him under various Sections of Indian Penal Code, Arms Act, Indian Passport Act, Excise Act, NDPS Act and Official Secrets Act, details of which have been given in the detention order as well as in para 1 of preliminary submissions of the reply filed by the Deputy Inspector General of Police, Counter Intelligence, Punjab. It is argued that most of the cases were registered on the basis of secret information in Police Station Lopoke, District Amritsar as his village falls in its jurisdiction. Though petitioner is involved in several cases, but he managed to come out of them because of his money power and influence. He has strong networking of supporters not only in Punjab but in other states also.

(7) Learned State counsel further argued that this is not the first time that preventive detention order has been passed against the petitioner. Even earlier he was detained by the State Government,—*vide* order dated 12th November, 1976 and Detention order No. 6092 dated 23rd June, 1988. He further pointed out that during his long smuggling career, he has been sent to Joint Interrogation Centre, Amritsar for about 10 times, where he himself admitted having involved in anti-social activities. Learned State counsel further contended that petitioner has always resorted to blame the senior officers of the police department by filing complaints against them whenever any criminal case is registered against him. It is argued that petitioner has himself submitted in his representation all the details about the cases registered against him, which clearly shows that he was well aware of all the cases and accordingly, he could make an effective representation before the authorities. Learned counsel further pointed out that the detaining authority considered all the material against the petitioner submitted by the sponsoring authority including his past activities and continued present activities and detention order was passed after thorough scrutiny and subjective satisfaction of the detaining authority. It is further pointed out that petitioner levelled baseless allegations

against the senior police officers which were subsequently, found to be false by the Punjab State Human Rights Commission. He has been supplied all the documents along with the grounds of detention. The learned counsel pointed out that it would be apparent form the contents of FIR No. 115, dated 14th February, 2003, under Section 489-B, 489-C IPC, P.S. Basti Jodhewal, Ludhiana that petitioner was found in possession of 500 counterfeit notes of Rs. 2,50,000/. The recovery memo as well as report of the Reserve Bank of India was also placed before the Detaining Authority. Learned counsel further argued that petitioner never demanded any documents before submitting the representation.

(8) It is argued that language of Section 3 of the COFEPOSA indicates that responsibility for making a detention order rests upon the detaining authority who alone is entrusted with the duty in that regard. He further pointed out that Court can only examine the grounds disclosed by the Government in order to see whether they are relevant to the object which the legislation has sought to achieve i.e. to prevent the detenu from engaging in smuggling activity. The learned counsel pointed out that satisfaction of the Detaining Authority is subjective in nature and is based on relevant grounds, therefore, cannot be said to be invalid in any manner. In support, the learned counsel refer to a couple of decisions of the Apex Court in **Union of India and others** *versus* **Arvind Shergill and another (8)** and **Smt. Hemlata Kantilal Shah** *versus* **State of Maharashtra (9).** It has been held by the Apex court that action by way of preventive detention is largely based on suspicion and the Court is not an appropriate forum to investigate the question.

(9) Learned State Counsel further argued that power of preventive detention is qualitatively different from punitive detention. The preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution.

(8) AIR 2000 S.C. 2924
(9) AIR 1982 S.C. 8

An order of preventive detention may be made even in anticipation or after discharge or acquittal of the accused. As regards the delay, the learned counsel argued that petitioner has not been able to bring anything on record as to what prejudice has been caused to him. After the representation was made, the comments were called and upon due consideration of the entire material, the representation was rejected. As such, there is no delay in passing the detention order. There were secret information received by the sponsoring authority with regard to petitioner's involvement in smuggling and other prejudicial activities. The learned State counsel also cited a number of judgments in support of his submissions.

(10) I have considered the rival submission made by learned counsel for the parties and judgments cited by both of them.

(11) In the grounds of detention, 18 cases registered against the detenu have been taken into consideration by the Detaining Authority to draw its subjective satisfaction to the effect that detenu was involved in possessing, transporting and concealing the smuggled items like gold, narcotics drug and foreign currency. It is pleaded that the detenu has been indulging in such prejudicial activities for the last 30 years. Out of 18 cases, as pointed out by learned counsel for the petitioner, which is not controverted by the learned State counsel, petitioner has been acquitted in 3 cases and 8-9 cases have been submitted before the Court as untraced or for cancellation of FIR. There are only two cases wherein proceedings are stated to be pending against the petitioner, viz. (i) FIR No. 115, dated 14th February, 2003, under Sections 489-B, 489-C IPC P.S. Basti Jodhewal, Ludhiana and (ii) FIR No. 73, dated 21st February, 2003 under Section 489-B, 489-C IPC, 25 Arms Act, 22/61/65/NDPS Act, Sahnewal, District Ludhiana. As regards, FIR No. 115, dated 14th February, 2003, it was argued on behalf of the respondent—State that when petitioner was going to deliver consigment of Rs. 2.50 lacs counterfeit notes, which were kept concealed by him in Indica Car bearing registration No. PB-07-J-9979, he was intercepted by the police Naka party. It was further argued that in the said case, though the petitioner was released on bail, but he again started indulging in prejudicial activities. However, the authorities have failed to point out as to what are the prejudicial activities, the

petitioner indulged in thereafter. With regard to the second case i.e. FIR No. 73, dated 21st February, 2003, one kilogram heroine was allegedly recovered from the petitioner's possession. The petitioner was acquitted in the said case and appeal is pending adjudication in the High Court. In his representation, the petitioner has categorically denied his involvement in any prejudicial activity after the lodging of the FIR dated 19th August, 2004. It is rather argued that petitioner has been time and again roped in one case or the other at the behest of senior police officers of the Punjab Police. It is pointed out that as soon as he is acquitted in one case, he is implicated in another case by the police authorities. It has further been stated that petitioner has not been found guilty in any of the cases registered against him. In most of the cases untraced reports have been submitted and in other cases, he has been found innocent by the trial court. The Detaining Authority without considering the above facts, has mentioned in the grounds of detention that petitioner is a habitual offender and has indulged in various prejudicial activities inspite of the fact that he has not been found guilty in any of those cases. It has further been submitted that the orders,— *vide* which the petitioner has been acquitted or cancellation/untraced reports have been submitted, have not been placed before the detaining authority. There is nothing on record to show that the detaining authority was aware of acquittal of the detenu or of untraced/ cancellation reports submitted in the cases mentioned in the representation as well as in the grounds. Even in the reply submitted by the State, it is not the specific case of the sponsoring authority that the factum of acquittal or untraced/cancellation report was ever placed before the detaining authority for consideration at the time of passing of impugned order. The only explanation submitted by the respondents is that petitioner had himself confessed during the interrogation and confessional statements of other accused that the petitioner along with them was involved in smuggling and other activities, were also relied.

(12) I am unable to comprehend the explanation submitted by the respondents. From the facts, it is clear that the sponsoring authority was not made aware of acquittal of the petitioner in 3 of the cases mentioned in the grounds of detention or the cancellation/untraced reports. Therefore, at the time of issuing

detention order, the Detaining Authority appears to have been ignorant of the above facts. It is true that the purpose of preventive detention being different from conviction and punishment and subjective satisfaction being necessary in the former while proof beyond reasonable doubt being necessary in the latter, the order of detention would not be bad merely because the criminal prosecution has failed. Although acquittal may not be the primary consideration, yet the main consideration is—whether non-consideration of material and vital facts with regard to untraced/ cancellation reports, which if had been placed before the Detaining Authority, would have influenced the mind of the authority one way or the other ? A similar question arose before the Apex Court in **Sk. Nizamuddin** *versus* **State of West Bengal (10)** wherein the detention order was passed under the provisions of the Maintenance of Internal Security Act. The ground of detention in that case was founded on a solitary incident of theft of aluminium wire alleged to have been committed by the detenu. In that case, the criminal case relating to the incident was filed, which was ultimately dropped. However, in the documents placed before the detaining authority, no reference with regard to dropping of criminal case was made and accordingly, the Apex court set aside the detention order, observing that :—

> "We should have thought that the fact that a criminal case is pending against the person who is sought to be proceeded against by way of preventive detention is a very material circumstance which ought to be placed before the District Magistrate. That circumstance might quite possibly have an impact on his decision whether or not to make an order of detention. It is not altogether unlikely that the District Magistrate may in a given case take the view that since a criminal case is pending against the person sought to be detained, no order of detention should be made for the present, but the criminal case should be allowed to run its full course and only if it fails to result in conviction, then preventive detention should be resorted to. It would be most unfair to the person sought to be detained not to disclose the pendency of a criminal case against him to the District Magistrate."

(10) AIR 1974 S.C. 2353

The above observations of the Apex Court have further been approved in the case of Dharamdas Shamlal Agarwal *(supra)*. This view has further been upheld by the Apex Court in a number of cases, which may be referred as **Sursh Mahato** *versus* **The District Magistrate, Burdwan (11) Asha Devi** *versus* **K. Shivraj, Addl. Chief Secretary to the Government of Gujarat *(supra).***

(13) After going through the above decisions, I am of the view that requisite subjective satisfaction formation of which is a condition precedent to passing of a detention order, would be certainly vitiated if material and vital facts, which would influence the mind of the detaining authority one way or the other on the question whether or not to make the detention order, are not placed before or are not considered by the detaining authority. It would certainly amount to non application of mind. In the instant case, when the detaining authority passed the impugned order, the vital and material facts with regard to acquittal of the detenu in the cases mentioned at Sr. No. 6, 7 and 17 and other cases in which cancellation/untraced reports have been submitted, were not brought to the notice of the detaining authority. The orders passed in all the above cases were withheld by the sponsoring authority, which would have certainly made the detaining authority to understand that trial of those cases was still pending.

(14) In view of the above discussion, I am of the opinion that the impugned order of detention is liable to be set aside on the first ground alone, viz. withholding of material facts from the detaining authority. Besides this, there is also no explanation coming forth with regard to delay in deciding the representation, which is certainly unreasonable.

(15) Accordingly, the petition is allowed and impugned detention order is set aside. The detenu is directed to be set at liberty forthwith.

R.N.R.

(11) AIR 1995 S.C. 728