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(2015) 1 MadWN(Cri) 40

MADRAS HIGH COURT (MADURAI BENCH)

DIVISION BENCH

(Before : Mr. S. Manikumar and Mr. V.S. Ravi, JJ.)

MARIAPPAN — Appellant

Vs.

THE DISTRICT COLLECTOR AND DISTRICT MAGISTRATE — Respondent

H.C.P.(MD) No.244 of 2014

Decided on : 18-08-2014

Cases Referred

- A.Geetha Vs. State of T.N., (2006) 7 SCC 603
- A.K.Gopalan v.State of Madras, AIR 1950 SC 27 : (1950) SCR 88
- A.Shanthi Smt Vs. Government of Tamil Nadu, (2006) 9 SCC 711
- Additional Secretary to Government of India Vs. Alka Subash Gadia, (1992) Supp 1 SCC 496
- Ahamed Nassar Vs. State of T.N., (1999) 8 SCC 473
- Anand Prakash Vs. State of Uttar Pradesh, (1990) 1 SCC 291
- Associated Provincial Picture Houses Ltd. Vs. Wednesbury Corporation, (1948) 1 KB 223
- Debu Mahto Vs. State of West Bengal, (1974) 4 SCC 135
- Dharmendra Suganchand Chelawat Vs. Union of India, (1990) 1 SCC 746
- Dr.N.B.Khare Vs. State of Delhi, (1950) AIR SC 211
- Dr.Ramakrishna Rawat Vs. District Magistrate, Jabalpur, (1975) 4 SCC 164
- Emperor Vs. Sibnath Banerjee, AIR 1943 FC 75
- Fazal Ghosi Vs. State of U.P., (1987) 3 SCC 502
- Fswcoit Properties Ltd. Vs. Buckingham County Council, (1961) AC 546
- G.Reddeiah Vs. Government of A.P., (2012) 2 SCC 389
- Hare Ram Pandey Vs. State of Bihar, (2004) 3 SCC 289
- Hemlata Kantilal Shah Vs. State of Maharashtra, (1981) 4 SCC 647 : (1982) SCC Cri 16
- Huidrom Konungjao Singh Vs. State of Manipur, (2012) 3 MLJ Crl 794 SC : (2012) 7 SCC 181
- Ibrahim Nazeer Vs. State of T.N., (2006) 6 SCC 64
- In Re, Jayantilal Nathubhai, (1949) 51 Bom. L.R. 653
- K.Aruna Kumari Vs. Government of Andhra Pradesh, (1988) 1 SCC 296 : (1988) SCC Criminal 116
- Kamarunnissa Vs. Union of India, (1991) 1 SCC 128
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- M.Ahamedkutty Vs. Union of India, (1990) 2 SCC 1
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- Machindar Vs. King, AIR 1950 SC 129
- Malwa Shaw Vs. State of W.B., (1974) 4 SCC 127 : (1974) SCC Cri 265 : AIR 1974 SC 957
- Masood Alam Vs. Union of India, AIR 1973 SC 897
- Merugu Satyanarayana Vs. State of A.P., (1982) 3 SCC 301
- Mohd. Salim Khan Vs. C.C. Bose, (1972) 2 SCC 607
- N. Meera Rani Vs. Govt. of T.N., (1989) 4 SCC 418
- Phulwari Jagdambaprasad Pathak Vs. R.H.Mendonca, (2000) 6 SCC 751
- Pratap Singh Vs. State of Punjab, AIR 1964 SC 72
- Pushpa Devi M. Jatia Vs. M.L. Wadhawan, (1987) 3 SCC 367
- R.L.Asokan Vs. State of Tamil Nadu, (2011) 2 LW Crl. 738
- Raj Kumar Singh Vs. State of Bihar, (1986) 4 SCC 407
- Rajendra Prashad Vs. State of U.P, (1981) 4 SCC 558 : (1981) SCC Cri 870
- Rajesh Gulati Vs. Govt. of NCT of Delhi, (2002) 7 SCC 129 : (2002) SCC Crl 1627
- Rajinder Arora Vs. Union of India, (2006) 4 SCC 796
- Ram Bali Rajbhar Vs. State of West Bengal, (1975) 4 SCC 47
- Ramesh Yadav Vs. District Magistrate, Etah, (1985) 4 SCC 232
- Rameshwar Shaw Vs. District Magistrate, Burdwan, AIR 1964 SC 334
- Rekha Vs. State of Tamil Nadu, (2011) 3 CTC 222 : (2011) 5 SCC 244
- Rex Vs. Halliday, (1917) A.C. 260, 275 : 86 L.J.K.B. 1119
- Ross Vs. Papadopollos, (1958) 1 WLR 546
- Royer Vs. Brown, NE 93 A 2d 667, 668 : (1998) 1 SCC 605, 608 : AIR 1988 SC 631
- Sadhu Roy Vs. State of West Bengal, (1975) 1 SCC 660
- Sayed Abul Ala Vs. Union of India, (2007) 15 SCC 208
- Senthamilselvi Vs. State of T.N., (2006) 5 SCC 676
- Sharp Vs. Wakefield, (1891) AC 173, 179
- Shashi Aggarwal Vs. State of Uttar Pradesh, (1988) SCC 436
- Sheetal Manoj Gore Vs. State of Maharashtra, (2006) 7 SCC 560
- Shibban Lal Vs. State of U.P., AIR 1954 SC 179 : (1954) Cri LJ 456
- Smith Vs. East Eilor Rural District Council, (1956) AC 736
- State of Bombay Vs. Atma Ram Shridhar Vaidya, AIR 1951 SC 157
- State of Gujarat Vs. Kasam Bhaya, (1981) 4 SCC 216
- State of Maharashtra Vs. Bhaurao Punjabrao Gawande, (2008) 3 SCC 613
- State of Orissa Vs. Manilal Singhania, (1976) 2 SCC 808
- State of U.P. Vs. Ram Chandra Trivedi, (1976) 4 SCC 52
- Subramanian Vs. State of Tamil Nadu, (2012) 4 SCC 699
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- T.V.Saravanan Vs. State, (2006) 2 SCC 664
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- Union of India Vs. K.S. Subramanian, (1977) 1 LLJ 5 SC
- Union of India Vs. Arvind Shergill, (2000) 7 SCC 601
- Union of India Vs. Chaya Ghoshal, (2005) 10 SCC 97
- Union of India Vs. K.S.Subramanian, AIR 1976 SC 2433
- Union of India Vs. Paul Manickam, (2003) 8 SCC 342
- Usha Rani Vs. District Magistrate and Collector, (1994) CRI.L.J

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- Yogendra Murari Vs. State of U.P., (1988) 4 SCC 559 : (1988) SCC Criminal 992

Counsel for Appearing Parties

Mr. S. Malaikani and Mr. P.Rajkumar, Advocates, for the Petitioners; Mr.C.Ramesh, Addl. Public Prosecutor, for the Respondent

JUDGMENT

Mr. S.Manikumar, J.—Father of the detenu, Venkatesh @ Maangai, has sought for a Writ of Habeas Corpus, to call for the records pertaining to the proceedings of the 1st respondent in M.H.S.Confdl No.01/2014 dated 02.01.2014, quash the same, and set his son aged about 24 years, at liberty.

2. Assailing the correctness of the order of detention, Mr.Malaikani, learned counsel for the petitioner made the following submissions:-

The detenu has come to adverse notice of the police in three cases. The first adverse case has been registered in Cr.No.203/2013, under Sections 341, 294(b) and 506(ii) IPC on the file of Tirunelveli City Town Police Station. The second adverse case has been registered in Cr.No. 172/2013, under Sections 294(b) and 506 (ii) IPC on the file of Thevarkulam Police Station and the third adverse case has been registered in Cr.No. 440/2013, under Sections 294(b), 307 and 506 (ii) IPC on the file of Manur Police Station. The ground case has been registered in Cr.No.320/2013 under Sections 294(b), 387 and 506(ii) IPC on the file of Thalaiyuthu Police Station.

3. The Secretary to the Government, Home, Prohibition and Excise Department, Chennai, Second respondent herein, has failed to consider the representation, dated 22.01.2014 sent by the petitioner, in time. The District Collector and District Magistrate, Tirunelveli, Detaining Authority, 1st respondent, without any material, has mechanically arrived at the subjective satisfaction and passed the detention order. There is a delay in considering the representation. Facts of similar cases referred in the detention order, particularly Cr.M.P.No.4141 of 2011 and Cr.M.P.No.7150 of 2013, considered by the Detaining Authority, are totally different to the ground case of the detenu.

4. Though this ground has not been raised in the affidavit, learned counsel for the petitioner submitted that the detenu has been arrested on 23.11.2013, in connection with the ground case. He has been produced before the learned Judicial Magistrate, No.III, Tirunelveli and remanded. His remand period was due to expire on 03.01.2014. When the live link between the arrest on 23.11.2013 and commission of any prejudicial activity no longer existed, and when there was no need to detain him, after a long delay, i.e., on 02.01.2014, detention order has been passed. According to the learned counsel, no explanation has been offered by the detaining authority either in the grounds of detention nor in the affidavit and hence the order of detention is vitiated on the ground of delay in passing the said detention order. For the above said reasons, learned

counsel prayed to set aside the Detention Order.

5. On the other hand, based the counter affidavit filed by the Detaining Authority, Mr.C.Ramesh, learned Additional Public Prosecutor, appearing for the respondents, submitted that the impugned Detention Order has been passed after following the procedure and after arriving at the subjective satisfaction that there was compelling necessity, and in order to prevent the detenue, from acting in any manner prejudicial to the maintenance of Public Order.

6. Learned Additional Public Prosecutor further submitted that there is no delay in considering the representation sent on behalf of the detenu, as contended by the petitioner. Further, copies of 161(3) Cr.P.C. statement enclosed at pages 147 to 157 and FIR at page nos.135 and 137 of the booklet, would reveal that the detenu had acted in a manner prejudicial to the maintenance of the public order.

7. Learned Additional Public Prosecutor further submitted that the facts relating to the adverse cases and the ground case are sufficient to arrive at the conclusion that if the detenu is allowed to remain at large, he would indulge in further activities in future, which would be prejudicial to the maintenance of the public order. He further submitted that when the petitioner has not raised any ground of delay in passing the order, either in the representation or in the supporting affidavit, oral submissions on that aspect, need not be considered. However, he submitted that the delay has occasioned due to the time consumed by the sponsoring authority in collecting all the documents from different police stations, and placing it before the detaining authority. He also submitted that no sooner, the sponsoring authority placed all the materials, without any delay, the detaining authority has passed the order. On the aspect of bail, he relied on Reddiah's case. He prayed for dismissal of the present petition.

8. Mr.S.Malaikani, for Mr.P.Rajkumar and Mr.C.Ramesh, learned counsel for the parties made elaborate submissions, placing reliance on many decisions.

9. The object of detention and the detention laws, is not to punish, but, to prevent commission of certain offences. If the detaining authority is satisfied that with a view to prevent such person, from indulging in acts prejudicial to the maintenance of public order, in future, then an order of detention is passed. Satisfaction of the detaining authority is based on material documents. There must be likelihood of a person indulging in such activities and inference of such likelihood, has to be drawn from the materials placed for his consideration.

10. It is for the detaining authority to consider, on the basis of antecedents and arrive at a conclusion, whether the detenu, had come to adverse notice, whether he would continue to indulge in prejudicial activities, if he remains at large. It is also obligatory on the part of the detaining authority to arrive at the subjective satisfaction, on the materials placed before him, as to whether, recourse to normal criminal law did not have the desired effect of preventing him, from indulging in such activities, which are

prejudicial to the maintenance of public order in future, whether there is compelling necessity. Satisfaction of the detaining authority consists of two parts;

1) The detenu in judicial custody and if enlarged on bail, whether, there is likelihood of indulging in such activities in future; and

2) Whether the detaining authority can arrive at the subjective satisfaction, on the basis of the materials while in custody. Compelling necessity is one of the factors to be taken into consideration by the detaining authority, in order to prevent a person, from indulging acts, which are prejudicial.

11. When the detenu does not file a bail application, then there are decisions, where the courts have come to the conclusion that there is no possibility of the detenu, coming out on bail, and therefore, the subjective satisfaction arrived at by the detaining authority, has been found fault with. In cases, where the bail application is pending, which the detaining authority takes note of the same, while arriving at the subjective satisfaction, again, he is found fault, for prejudging the issue, as regards grant of bail. If the bail application is dismissed, then also, there are instances, where court also says that, since the bail application is dismissed, then there is no real possibility of the detenu coming out on bail. Thus at all stages of bail (i.e) (i) application not filed, (ii) application pending and (iii) application dismissed, courts have found fault with the subjective satisfaction of the detaining authority, on the aspect of coming out on bail, depending upon the facts and circumstances of each case.

12. Jail or bail, the detaining authority is still empowered to consider the past antecedents of a person and arrive at a conclusion, as to whether such person should be allowed to remain at large and that he would indulge in activities in future, which are prejudicial to the maintenance of public order. At the same time, considering the most cherishable right of freedom guaranteed under Article 21 of the Constitution of India, the detaining authority has to act with all due care and caution, and with the sense of responsibility, when the liberty of the citizen is deprived of without trial. While arriving at the subjective satisfaction, the detaining authority should satisfy himself as to whether the detenu is in judicial custody or on bail, in respect of the cases, considered by the detaining authority, where the acts alleged are prejudicial to the maintenance of public order and whether he is likely to be released on bail.

13. Although the Apex Court in various decisions, has restricted the scope of judicial review, on the subjective satisfaction of the detaining authority and held that the Court cannot sit in appeal over the subjective satisfaction, yet challenge, as to the adequacy or sufficiency of the material considered by the detaining authority, is frequently raised in many Habeas Corpus Petitions, particularly, on the aspect of subjective satisfaction of the detaining authority, regarding the possibility of the detenue, coming out on bail.

14. In the light of the decisions of the Apex Court in **Rekha v. State of Tamil Nadu, reported in 2011 (5) SCC 244**, **G.Reddeiah v. Government of A.P., reported in 2012 (2)**

SCC 389 and **Huidrom Konungjao Singh v. State of Manipur and others, reported in 2012 (3) MLJ Crl 794 (SC) = 2012 (7) SCC 181**, the question calls up for consideration is whether the powers of the detaining authority can be circumscribed only to the aspect of bail, to arrive at the subjective satisfaction. Let us consider some of the decisions, on the aspect of detention, scope of judicial review, on subjective satisfaction.

15. **In Re: Jayantilal Nathubhai reported in (1949) 51 Bom.L.R. 653**, a Full Bench of the Bombay High Court, observed as follows:

".....whenever words like "satisfaction" or "it appears" have been used in an enactment or a regulation, the interpretation which has now been established is that the "satisfaction" is undoubtedly a condition precedent to the exercise of powers under the section. But all the same, what the Courts have got to see, when subsequently an application is made challenging the existence of that satisfaction, is whether there was the subjective satisfaction of the authority which made the order and not whether there were grounds upon which a reasonable person could be satisfied that it was necessary to make the order; such being at times called an objective test of the satisfaction. But even though that view may be taken to have been established, as it has been pointed out frequently, the satisfaction of the mind is just as much a state of fact as, for example, the state of digestion, of the person who makes the order, and consequently if any one challenges that the authority which made the order had not the state of mind which could be described as a state of "satisfaction", it is open to the Court to say that it must be satisfied as to the state of the mind of the person who made the order and to take evidence as to the existence of the state of mind. But all the same, even though it is open to the Court when the bona fides of the authority which made the order are challenged to take evidence with regard to the state of the mind, one must not approach the order, the validity of which is challenged, with prejudice which may possibly have been derived from past experience."

16. In the Constitutional Bench Judgment, **State of Bombay v. Atma Ram Shridhar Vaidya, reported in AIR 1951 SC 157**, comprising of six Hon'ble Judges, The Hon'ble Mr.Justice Kania, the Then Chief Justice of India, on behalf of Himself and Three other learned Judges, on the aspect of subjective satisfaction, at paragraph 5 of the judgment, held as follows:-

"5. It has to be borne in mind that the legislation in question is not an emergency legislation. The powers of preventive detention under this Act of 1950 are in addition to those contained in the Criminal Procedure Code, where preventive detention is followed by an inquiry or trial. By its very nature, preventive detention is aimed at preventing the commission of an offence or preventing the detained person from achieving a certain end. The authority making the order therefore cannot always be in possession of full detailed information when it passes the order and the information in its possession may fall far short of legal proof of any specific offence, although it may be indicative of strong probability of the impending commission of a

prejudicial act. Section 3 of the Preventive Detention Act therefore requires that the Central Government or the State Government must be satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to (1) the defence of India, the relations of India with foreign powers, or the security of India, or (2) the security of the State or the maintenance of public order, or (3) the maintenance of supplies and services essential to the community ... it is necessary so to do, make an order directing that such person be detained. According to the wording of Section 3 therefore before the Government can pass an order of preventive detention it must be satisfied with respect to the individual person that his activities are directed against one or other of the three objects mentioned in the section, and that the detaining authority was satisfied that it was necessary to prevent him from acting in such a manner. The wording of the section thus clearly shows that it is the satisfaction of the Central Government or the State Government on the point which alone is necessary to be established. It is significant that while the objects intended to be defeated are mentioned, the different methods, acts or omissions by which that can be done are not mentioned, as it is not humanly possible to give such an exhaustive list. The satisfaction of the Government however must be based on some grounds. There can be no satisfaction if there are no grounds for the same. There may be a divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction required by the section. One person may think one way, another the other way. If, therefore, the grounds on which it is stated that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of mala fides cannot be challenged in a court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government or the State Government, is ruled out by the wording of the section. It is not for the court to sit in the place of the Central Government or the State Government and try to determine if it would have come to the same conclusion as the Central or the State Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a Court of law. Such detention orders are passed on information and materials which may not be strictly admissible as evidence under the Evidence Act in a court, but which the law, taking into consideration the needs and exigencies of administration, has allowed to be considered sufficient for the subjective decision of the Government.

17. The Hon'ble Mr. Justice Patanjali Sastri, in his separate judgment, after considering another Constitution Bench judgment in **A.K.Gopalan v.State of Madras, AIR 1950 SC 27 : 1950 SCR 88**, comprising of six Hon'ble Judges reported in, at paragraphs 23 and 24, held as follows:-

"23. When the power to issue a detention order has thus been made to depend upon the existence of state of mind in the detaining authority, that is, its "satisfaction", which is a purely subjective

condition, so as to exclude a judicial enquiry into the sufficiency of the grounds to justify the detention, it seems to me to be wholly inconsistent with that scheme to hold that it is open to the court to examine the sufficiency of the same grounds to enable the person detained to make a representation, for, be it noted, the grounds to be communicated to the person detained are the "grounds on which the order has been made ". Indeed, the logical result of the argument advanced by the respondent's counsel would be to invalidate Section 3 of the Act insofar as it purports to make the satisfaction of the Government the sole condition of a lawful detention, for, if clause (5) of Article 22 were to be construed as impliedly authorising a judicial review of the grounds of detention to see if they contain sufficient particulars for making a representation, then, the subjective condition prescribed in Section 3 would be inconsistent with that clause and therefore void. When this was pointed out to counsel he submitted that the decision in Gopalan case(AIR 1950 SC 27 = 1950 SCR 88) as to the constitutionality of Section 3 required reconsideration in the light of his arguments based on Article 22, clause (5). Although the clause was not then considered from this point of view, it came in for a good deal of discussion in connection with Section 14 of the Act and the present argument must, in my opinion, be rejected because it runs counter to that decision.

24. Apart from this aspect of the matter, I am not much impressed with the merits of the argument. While granting, in view of the structure and wording of clause (5), that the grounds communicated to the person detained are to form the basis of his representation against the order, I am unable to agree with what appears to be the major premise of the argument, namely, that clause (5) contemplates an inquiry where the person detained is to be formally charged with specific acts or omissions of a culpable nature and called upon to answer them. As pointed out by Lord Atkinson in **Rex v. Halliday (1917 A.C. 260 at p.275 = 86 L.J.K.B 1119)** preventive detention being a precautionary measure, "it must necessarily proceed in all cases to some extent on suspicion or anticipation as distinct from proof", and it must be capable of being employed by the executive government in sudden emergencies on unverified information supplied to them by their police or intelligence officers. If the Government, acting honestly and in good faith make an order being "satisfied" on such information, however lacking in particulars, that a person should be detained in the public interest, as they have been empowered by Parliament to do, then all that Article 22(5) requires of them is to communicate as soon as may be the grounds which led to the making of the order, to the person concerned, and to give him the earliest opportunity of making any representation which he may wish to make on the basis of what is communicated to him. If such communication is made and such opportunity is given the detaining authority will have complied with the procedure prescribed by the Constitution, and the person under detention cannot complain that he has been deprived of his personal liberty otherwise than in accordance with the procedure established by law. I can find nothing in Article 22, clause (5), to warrant the view that the grounds on which the order of detention has been made must be such that, when communicated to the person detained they are found by a court of

law to be sufficient to enable him to make what the court considers to be an adequate representation. The right to be produced before a Magistrate and to consult and be defended by a legal practitioner is expressly denied by the Constitution itself to a person under preventive detention [vide Articles 22(1), (2) and (3) and this Court held in Gopalan case (AIR 1950 SC 27 = 1950 SCR 88) that there was nothing in the Constitution to entitle him to a hearing even before the detaining authority. All this underlines the executive character of the function exercised by the authority which does not in any way embark on a judicial or quasi-judicial inquiry. In such circumstances the representation which the person detained is allowed to make to the Government, which is constituted the Judge in its own cause, cannot be assumed to be similar in scope or purpose to a defence against a formulated charge in a court of law. The argument, therefore, that the right of making a representation should be made effective in the sense that such person should be enabled to defend himself successfully if possible, and, for that purpose, the detaining authority should communicate to him the necessary particulars on pain of having the order quashed if such particulars are not furnished, proceeds on a misconception of the true position."

At paragraph 45, it is further held as follows:-

"45. ..... Before the Constitution came into force there were laws for the maintenance of public security in almost all the provinces and in those laws there were provisions similar to the provisions of Section 3 of the Preventive Detention Act, 1950. It was held in many cases that in the absence of bad faith, and provided the grounds on which the authority founded its satisfaction had a reasonable relation or relevancy to the object which the legislation in question had in view, the satisfaction of the authority was purely subjective and could not be questioned in any court of law. The decision of the Federal Court in **Machindar Shivaji Mahar v. King** is one of such decisions. Vagueness of the grounds on which satisfaction of the authority is founded cannot be treated as on the same footing as the irrelevancy of the grounds, unless the vagueness be such as may by itself, be cogent evidence in proof of bad faith. If the grounds are relevant to the objects of the legislation and if there is no proof of bad faith, then mere vagueness of the grounds cannot vitiate the satisfaction founded on them. The satisfaction being subjective, the court cannot arrogate to itself the responsibility of judging the sufficiency or otherwise of the grounds. It is true that at the time those decisions were given the Constitution had not come into force and there were no fundamental rights, but these well established principles were recognised and adopted by all members of this Court in Gopalan case (AIR 1950 SC 27 = 1950 SCR 88) which came up for consideration after the Constitution had come into force. In that case it was held unanimously that under Section 3 of the Preventive Detention Act, 1950, the satisfaction of the authority was purely subjective and could not, in the absence of proof of bad faith, be questioned at all and that Section 3 was not unconstitutional. It is true that the arguments now advanced were not advanced in exactly the same form on that occasion but that fact makes no difference, for the arguments have no force as they are founded on the assumption

that the grounds on which an order may be made must be such as will, when communicated, be sufficiently full and precise so as to enable the detenu to make a representation. I find no warrant for such an assumption. Indeed, the fact that this Court has held that Section 3 of the Act which makes the satisfaction of the authority a purely subjective matter is not unconstitutional clearly destroys the cogency of the argument formulated as hereinbefore stated. The decision in Gopalan case (AIR 1950 SC 27 = 1950 SCR 88) as to the validity of Section 3 of the Act makes it impossible to accept this argument.

37. It is next urged that even if the initial order was not invalid when made because satisfaction was a purely subjective matter for the authority alone and the court cannot consider or pronounce upon the sufficiency of the grounds on which the satisfaction was based, nevertheless, the continuance of the detention becomes unlawful if the same grounds when communicated, be found to be vague and devoid of particulars so as to render the making of a representation by the detenu somewhat difficult.

18. In **Shibban Lal v. State of U.P., reported in AIR 1954 SC 179 = 1954 Cri LJ 456**, it was held that a detention order depends entirely upon the satisfaction of the appropriate authority and the sufficiency of the grounds upon which such satisfaction purports to be based, cannot be challenged in a Court of law except on the ground of mala fides, provided they have a rational probative value and are not extraneous to the scope or purpose of the Legislative provision. The Court said at para 8, "A Court of law is not even competent to enquire into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenu under Section 7 of the Act."

19. In **Mohd. Salim Khan v. C.C. Bose, (1972) 2 SCC 607**, in a two Judges Bench judgment, the Hon'ble Supreme Court, at paragraphs 11 held as follows :-

"11 .....The second difficulty is that under the Act the subjective satisfaction, which is the basis for an order under it, is that of the relevant District Magistrate and not of a Court of law, and for that reason the court is precluded from going into the question as to the adequacy or otherwise of the materials on which such satisfaction has been reached. Besides, the District Magistrate, who issued the order, is not the only and exclusive authority under the Act who has to be satisfied as to the necessity of the order of detention. The Act requires him to report the case to the Government, who in its turn has to be satisfied, on consideration of all relevant materials before it, that the order is both valid and proper. There is next the Advisory Board which has to consider once again all the relevant materials including the representation made by a detenu and has to give a personal hearing to him, if he so desires."

20. In **Masood Alam v. Union of India reported in AIR 1973 SC 897**, in a Three Judges Bench judgment, after considering the decision in **Rameshwar Shaw v. District Magistrate, Burdwan reported in AIR 1964 SC 334**, the Apex Court, at Paragraphs 4 and 6, held as follows:

"4. .....The jurisdiction of preventive detention sometimes described as jurisdiction of suspicion depends on subjective satisfaction of the detaining authority. If the detaining authority is of opinion on grounds which are germane and relevant, that it is necessary to detain a person from acting prejudicially as contemplated by Section 3 of the Act then it is not for the Supreme Court to consider objectively how imminent is the likelihood of the detenu indulging in these activities.

6. .....No doubt, this decision does suggest that the order of detention can be served on the person concerned if and after he is acquitted in the said criminal proceedings but in our view merely because the person concerned has been served while in custody when it is expected that he would soon be released that service cannot invalidate the order of detention. The real hurdle in making an order of detention against a person already in custody is based on the view that is futile to keep a person in dual custody under two different orders but this objection cannot hold good if the earlier custody is without doubt likely to cease very soon and the detention order is made merely with the object of rendering it operative when the previous custody is about to cease. It has also been pointed out that the grounds relate to a period more than a year prior to the order of detention. This according to the submission also renders the order mala fide. In our opinion, this contention is without merit. It has to be borne, in mind that it is always the past conduct, activities or the antecedent history of a person which the detaining authority takes into account in making a detention order. No doubt the past conduct, activities or antecedent history should ordinarily be proximate, in point of time and should have a rational connection with the conclusion that the detention of the person is necessary but it is for the detaining authority who has to arrive at a subjective satisfaction in considering the past activities and coming to his conclusion if on the basis of those activities he is satisfied that the activities of the person concerned are such that he is likely to indulge in prejudicial activities necessitating his detention. As observed in **Ujjagar Singh v. State of Punjab reported in [1952] S.C.R. 757**, it is largely from prior events or past conduct and antecedent history of a person showing tendencies or inclinations of a person concerned that an inference can be drawn whether he is likely even in the future to act in a manner prejudicial to the public order. If the authority is satisfied that in view of the past conduct of the person there is need for detention then it could not be said that the order of detention is not justified."

21. In **Khudiram Das v. The State of West Bengal and others, reported in 1975 (2) SCC 81**, in a Four Judges Bench judgment, at paragraphs 9 and 10, the Hon'ble Supreme Court held as follows:-

"9. But that does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. The Courts have by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subjected to judicial scrutiny. The basic postulate on

which the courts have proceeded is that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the executive, the court can always examine whether the requisite satisfaction is arrived at by the authority: if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad. There are several grounds evolved by judicial decisions for saying that no subjective satisfaction is arrived at by the authority as required under the statute. The simplest case is whether the authority has not applied its mind at all; in such a case the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied. **Emperor v. Shibnath Bannerji [AIR 1943 FC 75]**, is a case in point. Then there may be a case where the power is exercised dishonestly or for an improper purpose : such a case would also negative the existence of satisfaction on the part of the authority. The existence of 'improper purpose', that is, a purpose not contemplated by the statute, has been recognised as an independent ground of control in several decided cases..... The satisfaction said to have been arrived at by the authority would also be bad where it is based on the application of a wrong test or the misconstruction of a statute. Where this happens, the satisfaction of the authority would not be in respect of the thing in regard to which it is required to be satisfied. Then again the satisfaction must be grounded on materials which are of rationally probative value'. **Machindar v. King [AIR 1950 FC 129]**, The grounds on which the satisfaction is based must be, such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. **Pratap Singh v. State of Punjab [AIR 1964 SC 72]**. If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider.

10. There is also one other ground on which the subjective satisfaction reached by an authority can successfully be challenged and it is of late becoming increasingly important. The genesis of this ground is to be found in the famous words of lord Halsbury in **Sharp v. Wakefield [1891 AC 173, 179]**:

"..... when it is said that something is to be done within the discretion of the authorities-that something is to be done according to the rules of reason and justice, not according to private, opinion-according to law and not humour. It is to be, not arbitrary, vague, fanciful, but legal and regular."

So far as this ground is concerned', the courts in the United States have gone much further than courts in England or in this country. The United States courts are prepared to review administrative

findings which are not supported by substantial evidence, that is by "such relevant findings as a reasonable man may accept adequate to support a conclusion". But in England and in India, the courts stop-short at merely inquiring whether the grounds on which the authority has reached its subjective satisfaction are such that any reasonable person could possibly arrive at such satisfaction. "If", to use the words of Lord Greene, M.R., in **Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [(1948) 1 KB 223]**, words which have found approval of the House of Lords in **Smith v. East Eilor Rural District Council [1956 AC 736]** and **Fswcoit Properties Ltd. v. Buckingham County Council [1961 AC 546]**—the authority has "come. to a conclusion on so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere". In such a case, a legitimate inference may fairly be drawn either that the authority "did not honestly form that view or that in forming it, he could not have applied his mind to the relevant facts". **Ross v. Papadopollos [(1958) 1 WLR 546]**. The power of the court to interfere in such a case is not as an appellate authority to override a decision taken by the statutory authority, but as a judicial authority which is concerned, and concerned only to see, whether the statutory authority has contravened the law by acting in excess of the power which the legislature has confided in it."

22. After referring to **Debu Mahto v. State of West Bengal reported in 1974 (4) SCC 135**, a case of solitary incident, the Apex Court in the same judgment, (i.e) Khudiram Das's case, further observed thus:

"This Court did not go into the adequacy of or sufficiency of the grounds on which the order of detention was based, but merely examined whether on the grounds given to the detenu, any reasonable authority could possibly come to the conclusion to which the District Magistrate did. It is true that this ground in a sense tends to blur the dividing line between subjective satisfaction and objective determination but the dividing line is very much there howsoever faint or delicate it may be, and courts have never failed to recognise it.

23. On the aspect of Judicial Review, the Apex Court, at Paragraph 11, held as follows:

"11. This discussion is sufficient to show that there is nothing like unfettered discretion immune from judicial review ability. The truth is that in a Government under law, there can be no such thing as unreviewable discretion. "Law has reached its finest moments", said Justice Douglas, "when it has freed man from the unlimited discretion of some ruler, some official, some bureaucrat-Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions". **United States v. Wunderlick**. And this is much more so in a case Where personal liberty is involved. That is why the Courts have devised various methods of judicial control so that power in the hands of an individual officer or authority is not misused or abused or exercised arbitrarily or without any justifiable grounds."

24. In **Ram Bali Rajbhar v. State of W.B., (1975) 4 SCC 47**, in a Three Judge Bench, the Hon'ble Supreme Court at paragraph 4 held as follows:-

"4.....We have to be careful to avoid substituting our own opinion about what is enough for the subjective satisfaction of the detaining authorities with which interference could be justified only if it is clear that no reasonable person could possibly be satisfied about the need to detain on the grounds given in which case the detention would be in excess of the power to detain. The required satisfaction must have reference to a need to prevent what is anticipated from the detenu. The past conduct or activity is only relevant in sofaras it furnishes reasonable grounds for an apprehension. Prevention and punishment have some common ultimate aims but their immediate objectives and modes of action are distinguishable."

25. In **Dr. Ramakrishna Rawat v. District Magistrate, Jabalpur reported in 1975 (4) SCC 164**, in a Two Judges Bench judgment, the petitioner therein was in judicial custody, in the proceedings under Section 151 Cr.P.C. Custody was for short duration. He was detained under Section 3 of the Maintenance of Internal Security Act, 1971. One of the contentions, challenging the order of detention was that the order of preventive detention cannot be validly made and served upon a person, who is in jail custody. Contentions were raised that he could be tried for the offences. Adverting to the grounds of detention and the test to be applied, at Paragraph 19, the Supreme Court, observed that:

"The truth or otherwise of what is mentioned in those paragraphs cannot be tested objectively by judicial standards. We have to accept the correctness of the incidents and the facts stated therein. The petitioner has been painted in all these incidents as the prime-mover of the gear which resulted in disturbances accompanied by violence, looting and mischief on a wide scale. These particulars are neither vague, nor are they irrelevant to the object of the detention. On the basis of these activities, the detaining authority could reasonably gauge the tendency of the petitioner to act in a manner prejudicial to the maintenance of public order in future."

26. In **State of Orissa v. Manilal Singhania, (1976) 2 SCC 808**, in a Three Judges Bench judgment, the Hon'ble Apex Court, at paragraph 2, held as follows:-

"2.....We must however, confess that as we read the judgment of the High Court, we cannot escape the feeling that the High Court travelled a little beyond its jurisdiction in entering upon a close and detailed scrutiny of the material before the District Magistrate as if it was sitting in appeal against the findings of the District Magistrate. The only limited jurisdiction possessed by the High Court was to examine whether the subjective satisfaction reached by the District Magistrate was based on no material at all or was such as no reasonable person would arrive at on the basis of the material which was before the District Magistrate. This restricted jurisdiction, it does seem prima facie, the High Court overstepped in its anxiety and concern for personal liberty."

27. In **Merugu Satyanarayana v. State of A.P., (1982) 3 SCC 301**, in a Two Judges Bench judgment, after extracting the observations in **Rameshwar Shaw v. D.M.Burdwan, AIR 1964 SC 334**, the Hon'ble Supreme Court, at paragraph 12, held as follows:-

"12. One can envisage a hypothetical case where a preventive order may have to be made against a person already confined to jail or detained. But in such a situation as held by this Court it must be present to the mind of the detaining authority that keeping in view the fact that the person is already detained a preventive detention order is still necessary. The subjective satisfaction of the detaining authority must comprehend the very fact that the person sought to be detained is already in jail or under detention and yet a preventive detention order is a compelling necessity. If the subjective satisfaction is reached without the awareness of this very relevant fact the detention order is likely to be vitiated. But as stated by this Court it will depend on the facts and circumstances of each case."

28. In **Raj Kumar Singh v. State of Bihar, (1986) 4 SCC 407**, in a Two Judges Bench judgment, the Hon'ble Supreme Court held as follows:-

"13. Preventive detention for the social protection of the community is, as noted and observed in Vijay Narain Singh case, 1984 (3) SCC 14 = 1984 SCC (Crl) 361 a hard law but, it is a necessary evil in the modern society and must be pragmatically construed, so that it works. That is how law serves the society but does not become an impotent agent. Anti-social elements creating havoc have to be taken care of by law. Lawless multitude bring democracy and constitution into disrepute. Bad facts bring hard laws - but these should be properly and legally applied. It should be so construed that it does not endanger social defence or the defence of the community, at the same time does not infringe the liberties of the citizens. A balance should always be struck.

14. The executive authority is not the sole judge of what is required for national security or public order. But the court cannot substitute its decision if the executive authority or the appropriate authority acts on proper materials and reasonably and rationally comes to that conclusion even though a conclusion with which the court might not be in agreement. It is not for the court to put itself in the position of the detaining authority and to satisfy itself that untested facts reveal a path of crime provided these facts are relevant. See in this connection the observations of O. Chinnappa Reddy, J. in Vijay Narain Singh case."

29. In **Fazal Ghosi v. State of U.P, reported in 1987 (3) SCC 502**, in a Two Judges Bench judgment, while considering the material available on record, at paragraph 3, the Apex Court observed that the Court was unable to discover any material to show that the detenu would act in future to the prejudice of the maintenance of public order. On the sufficiency of the material and the subjective satisfaction in the same paragraph, the Apex Court held as follows:-

"3..... We are aware that the satisfaction of the District Magistrate is subjective in nature, but even subjective satisfaction must be based upon some pertinent material. We are concerned here not with the sufficiency of that material but with the existence of any relevant material at all."

30. In **Pushpa Devi M. Jatia v. M.L. Wadhawan, reported in (1987) 3 SCC 367**, in a two Judges Bench judgment, at paragraph 14, the Supreme Court held as follows:-

"14. It has long been established that the subjective satisfaction of the detaining authority as regards the factual existence of the condition on which the order of detention can be made i.e. the grounds of detention constitutes the foundation for the exercise of the power of detention and the court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. Nor can the court, on a review of the grounds, substitute its own opinion for that of the authority. But this does not imply that the subjective satisfaction of the detaining authority is wholly immune from the power of judicial review. It inferentially follows that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the executive, the court can always examine whether the requisite satisfaction was arrived at by the authority; if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad. The simplest case is where the authority has not applied its mind at all; in such a case, the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied. See: **Khudiram Das v. State of West Bengal, 1975 (2) SCC 81**, following the case of **Emperor v. Sibnath Banerjee, AIR 1943 FC 75**.

31. Explaining the intention behind the detention laws, the Apex Court, at Paragraph 31, held as follows:

"31. In addition to the reasons given therein we may add the following by way of supplementary material. Though the element of detention is a common factor in cases of preventive detention as well as punitive detention, there is a vast difference in their objective. Punitive detention follows a sentence awarded to an offender for proven charges in a trial by way of punishment and has in it the elements of retribution, deterrence, correctional factor and institutional treatment in varying degrees. On the contrary preventive detention is an extraordinary measure resorted to by the State on account of compulsive factors pertaining to maintenance of public order, safety of public life and the welfare of the economy of the country. The need for this extraordinary measure i.e. detention without trial was realised by the founding fathers of the Constitution as an inevitable necessity for safeguarding the interests of the public and the country and hence a specific provision has been made in clause (3) of Article 22 providing for preventive detention being imposed in appropriate cases notwithstanding the fundamental right of freedom and liberty guaranteed to the citizens by the Constitution. The entire scheme of preventive detention is based on the bounden duty of the State to safeguard the interests of the country and the

welfare of the people from the canker of anti-national activities by anti-social elements affecting the maintenance of public order or the economic welfare of the country. Placing the interests of the nation above the individual liberty of the anti-social and dangerous elements who constitute a grave menace to society by their unlawful acts, the preventive detention laws have been made for effectively keeping out of circulation the detenus during a prescribed period by means of preventive detention."

32. In **K. Aruna Kumari v. Government of Andhra Pradesh and others, reported in 1988 (1) SCC 296 = 1988 SCC (Criminal) 116**, on the aspect of subjective satisfaction, at paragraphs 8 and 11, the Hon'ble Supreme Court held as follows:-

"The sufficiency of the materials available to the detaining authority is not to be examined by the court. While considering the writ petition of or on behalf of the detenu, the Supreme Court or the High Court does not sit in appeal over the detention order, and it is not for the court to go into and assess the probative value of the evidence available to the detaining authority. Of course, a detention order not supported by any evidence may have to be quashed, but that is not the position here. There was clearly sufficient material before the District Magistrate to justify the forming of his opinion. It was not therefore possible to accept the contention that the ground mentioned for the detention was non-existent.

The subjective satisfaction of the detaining authority as regards the factual existence of the condition on which the order of detention can be made, namely, the grounds of detention constitute the foundation for the exercise of the power of detention and the court cannot be incited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. Nor can the court, on a review of the grounds, substitute its own opinion for that of the authority."

33. In **Kamarunnissa v. Union of India reported in 1991 (1) SCC 128**, in a Two Judges Bench judgment, a contention has been made that there was no compelling reason for the detaining authority to pass the impugned orders of detention, as the detenus were already in custody, on the date of the passing of the detention order. Reliance was placed on many decisions to the effect that, if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. Relying on contra decisions, Union of India has contended that detention can still be exercised, if before passing a detention order, in respect of the person, who is in jail, the concerned authority satisfied himself, and that the satisfaction had been reached, on the basis of cogent materials that there was a real possibility of the detenu being released on bail, and further if released on bail, the material on record, justify that he would indulge in prejudicial activity if not detained. After considering a catena of decisions, the Apex Court held, as follows:

"The mere fact that the detenu was in custody was not sufficient to invalidate a detention order and the decision must depend on the facts of each case. Since the law of preventive detention was intended

to prevent a detenu from acting in any manner considered prejudicial under the law ordinarily it need not be resorted to if the detenu is in custody unless the detaining authority has reason to believe that the subsisting custody of the detenu may soon terminate by his being released on bail and having regard to his recent antecedents he is likely to indulge in similar prejudicial activity unless he is prevented from doing so by an appropriate order of preventive detention."

34. In Kamarunnissa's case (cited supra), reliance was also placed in **Shashi Aggarwal v. State of Uttar Pradesh, [1988] SCC 436**, wherein, the Supreme Court held that the possibility of the court granting bail is not sufficient, nor is a bald statement that the detenu would repeat his criminal activities enough to pass an order of detention, unless there is credible information and cogent reason apparent on the record that the detenu, if enlarged on bail, would act prejudicially. In Kamarunnissa's case, the Supreme Court also considered the views expressed in **Anand Prakash v. State of Uttar Pradesh reported in [1990] 1 SCC 291** and **Dharmendra Sunganchand Chelawat v. Union of India reported in [1990] 1 SCC 746**. After considering the decisions, as to when an order of detention, could be passed, the Supreme Court in Kamarunnissa's case, at Paragraph 13, held as follows:

"From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court. What this court stated in the case of **Ramesh Yadav v. District Magistrate, Etah reported in 1985 (4) SCC 232**, was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the, detenus were in custody."

35. In **Usha Rani v. District Magistrate and Collector, reported in 1994 CRI.L.J 2209 (FB)**, at paragraph, a Full Bench of this Court has held as follows:-

"20. We are unable to agree with the view taken by the Division Bench in that case. Our reasoning is as follows :- Tamil Nadu Act 14 of 1982 is a preventive detention statute and is based upon principles entirely different from the Tamil Nadu Prohibition Act, 1937, which is an enactment governed by the Criminal Jurisprudence. While a preventive detention Act is for the purpose of preventing the commission of crime, in the best interest of the society, a punitive enactment is for the purpose of punishing the persons who have committed the crime. While one deals with the stage anterior to the commission of the offence, the other deals with the stage posterior to it. The basis for the one is totally different from the other. While the rule of Criminal Jurisprudence is that the guilt of an accused must be proved beyond all reasonable doubt, for the purpose of preventive detention, there is no question of deciding whether the detenu is guilty of an offence. The dichotomy between the two branches of law has always been recognised and maintained as evident from the various rulings of the Supreme Court. An order of preventive detention is to be made on the subjective satisfaction of the concerned authority in accordance with the provisions contained in the relevant enactment. If the procedure prescribed in the enactment is complied with, the order of detention cannot be interfered with by a Court. The only grounds on which the Court can set aside an order of detention are : (1) if it is vitiated by mala fides, (2) such an order could not have been passed by any reasonable person and (3) there is a violation of Article 22(5) of the Constitution of India. The provisions of any enactment belonging to the Criminal Jurisprudence cannot be telescoped unto the preventive detention Acts and the failure of the concerned authorities to adhere strictly to the procedure prescribed in such enactment will not vitiate the orders of detention, if the requirements of the detention Acts have been satisfied. In fact in the passage quoted above, the Division Bench has recognised the distinction between Criminal cases and preventive detention cases. In order to distinguish the cases cited by the Additional Public Prosecutor, the Bench said, "But the citations referred to above by the learned Additional Public Prosecutor are in relation to criminal proceedings and it cannot be applied to a case of preventive detention." However, the Bench did not apply the principle while deciding the question before it.

36. In **Ahamed Nassar v. State of T.N., (1999) 8 SCC 473**, in a Two Judges Bench judgment, the Hon'ble Supreme Court at paragraphs 37 and 38, held as follows:-

"37. In this backdrop of the constitutional scheme, the Preamble as also the Objects and Reasons of COFEPOSA we have to scrutinize and test the justiciability of the acts of every statutory functionary performing statutory obligations under the Act. It is well settled that whenever there are two possible interpretations of a statute, the one that subserves the objective of an enactment is to be accepted. The same principle shall with equal force apply in testing the credibility of the acts of a statutory functionary performing its statutory obligations. Such authorities, while performing their obligations under the preventive detention law must perform it on one hand with promptness, as not to further lengthen the detenu's detention

through their casual conduct, neglect, lethargy, etc., on the other hand all what is required to be done by it if it has been done then in construing its conduct, conclusions etc. If there be two possible interpretations then the one that subserve the objective of the statute should be accepted.

38. Next, returning to the issue under consideration, as to what should be the measure to test the legality of the subjective satisfaction of the detaining authority when he records, "there is likelihood of detenu being released on bail". Even for judging this we have to keep in mind the aforesaid conspectus of the Constitution, the preamble, Objects and Reasons of the Act. When one's liberty is to be curtailed on the subjective satisfaction of the detaining authority with the area of interference by the court being limited, then within this limitation, the court must see, in this authority's privileged area that the detaining authority does not stretch itself illegitimately in the exercise of its jurisdiction."

37. In **Phulwari Jagdambaprasad Pathak v. R.H.Mendonca reported in 2000 (6) SCC 751**, in a Two Judges Bench judgment, at Paragraph 16, the Supreme Court observed as follows:

"Preventive detention measure is a harsh, but it becomes necessary in larger interest of society. It is in the nature of a precautionary measure taken for preservation of public order. The power is to be used with caution and circumspection. For the purpose of exercise of the power it is not necessary to prove to the hilt that the person concerned had committed any of the offences as stated in the Act. It is sufficient if from the material available on record the detaining authority could reasonably feel satisfied about the necessity for detention of the person concerned in order to prevent him from indulging in activities prejudicial to the maintenance of public order. In the absence of any provision specifying the type of material which may or may not be taken into consideration by the detaining authority and keeping in view the purpose the statute is intended to achieve the power vested in the detaining authority should not be unduly restricted. It is neither possible nor advisable to catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. Presumably, that is why the Parliament did not make any provision in the Act in that regard and left the matter to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed."

38. In **Union of India v. Arvind Shergill, reported in 2000 (7) SCC 601**, in a Two Judges Bench judgment, on the aspect of subjective satisfaction, the Hon'ble Supreme Court, at paragraph 4 held as follows:-

4. The High Court has virtually decided the matter as if it was sitting in appeal on the order passed by the detaining authority. The action by way of preventive detention is largely based on suspicion and the court is not an appropriate forum to investigate the question whether the circumstances of suspicion exist warranting the restraint on a person. The language of Section 3 clearly indicates that the

responsibility for making a detention order rests upon the detaining authority which alone is entrusted with the duty in that regard and it will be a serious derogation from that responsibility if the court substitutes its judgment for the satisfaction of that authority on an investigation undertaken regarding sufficiency of the materials on which such satisfaction was grounded. The 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 in view, that is, to prevent the detenu from engaging in smuggling activity. The said satisfaction is subjective in nature and such a satisfaction, if based on relevant grounds, cannot be stated to be invalid. The authorities concerned have to take note of the various facts including the fact that this was a solitary incident in the case of the detenu and that he had been granted bail earlier in respect of which the application for cancellation of the same was made but was rejected by the Court. In this case, there has been due application of mind by the authority concerned to that aspect of the matter as we have indicated in the course of narration of facts. Therefore, the view taken by the High Court in the circumstances of the case cannot be sustained.

39. In **Union of India v. Paul Manickam, reported in (2003) 8 SCC 342**, in a two judges Bench judgment, the Supreme Court, at paragraph 14 held as follows:-

"14. So far as this question relating to the procedure to be adopted in case the detenu is already in custody is concerned, the matter has been dealt with in several cases. Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and the decision in this regard must depend on the facts of the particular case. Preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability etc. ordinarily, it is not needed when the detenu is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. If the detaining authority is reasonably satisfied with cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated. (See **N. Meera Rani v. Govt. of T.N. 1989 (4) SCC 418** and **Dharmendra Suganchand Chelawat v. Union of India 1990 (1) SCC 746**) The point was gone into detail in **Kamarunnissa v. Union of India, 1991 (1) SCC 128**. The principles were set out as follows: even in the case of a person in

custody, a detention order can be validly passed: (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility of release on bail."

40. In **Hare Ram Pandey v. State of Bihar and others, reported in 2004 (3) SCC 289**, in a two judges Bench judgment, the Hon'ble Supreme Court at paragraph 6, explained the purpose and intention of preventive detention:-

"6. Before dealing with rival submissions, it would be appropriate to deal with the purpose and intent of preventive detention. Preventive detention is an anticipatory measure and does not relate to an offence, while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the executive is convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the law concerned. The action of the executive in detaining a person being only precautionary, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to detention. The satisfaction of the detaining authority, therefore, is a purely subjective affair. The detaining authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty would lose all their meanings are the true justification for the laws of preventive detention. The pressures of the day in regard to the imperatives of the security of the State and of public order might require the sacrifice of the personal liberty of individuals. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State or corroding financial base provides grounds for satisfaction for a reasonable prognostication of possible future manifestations of similar propensities on the part of the offender. This jurisdiction has been called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment of individual liberty. "To lose our country by a scrupulous adherence to the written law" said Thomas Jefferson "would be to lose the law itself, with life, liberty and all those who are enjoying with us, thus absurdly sacrificing the end to the needs."

This, no doubt, is the theoretical jurisdiction for the law enabling preventive detention. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by the genius of its administration so as to strike the right balance between individual liberty on the one hand and the needs of an orderly society on the other."

41. in **Union of India v. Chaya Ghoshal reported in 2005 (10) SCC 97**, two Judges Bench Judgment, the Supreme Court, at Paragraph 8, held as follows:

"The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance, with great latitude in the exercise of its discretion. The Detaining Authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty of citizens would loose all their meanings provide the justification for the laws of prevention detention. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State or corroding financial base provides grounds for satisfaction for a reasonable prognostication of possible future manifestations of similar propensities on the part of the offender. This jurisdiction has at times been even called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment for individual liberty. "To, lose our country by a scrupulous adherence to the written law" said Thomas Jefferson "would be to lose the law itself, with life, liberty and all those who are enjoying with us, thus absurdly sacrificing the end to the needs". This, no doubt, is the theoretical jurisdictional justification for the law enabling prevention detention. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other."

42. In **Senthamilselvi v. State of T.N., reported in (2006) 5 SCC 676**, in a two Judges Bench judgment, the Hon'ble Supreme Court at paragraph 10, held as follows:-

"10. It was also submitted that since the detenu had not filed any bail application, the detaining authority could not have inferred that there was possibility of his being released on bail. Strong reliance is placed on several decisions of this Court. It has to be noted that whether prayer for bail would be accepted depends on circumstances of each case and no hard-and-fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipse dixit of the detaining authority. On the basis of materials before him,

the detaining authority came to the conclusion that there is likelihood of the detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of detenu being released on bail. It has been clearly stated that in similar cases orders granting bail are passed by various courts. The appellant has not disputed correctness of this statement. Strong reliance was placed by learned counsel for the appellant on **Rajesh Gulati v. Govt. of NCT of Delhi**. The factual scenario in that case was entirely different. In fact, five bail applications filed had been already rejected. In that background this Court observed that it was not a "normal" case. The High Court was justified in rejecting the stand of the appellant.

43. In **Sheetal Manoj Gore v. State of Maharashtra reported in (2006) 7 SCC 560**, the Supreme Court held as follows:-

"The norms and standards laid down by this Court in the matter of consideration of the representation of a detenu, cannot be strictly applied to the case of processing of a proposal for detention of a person under the Cofeposa Act."

44. In **A.Geetha v. State of Tamil Nadu and another, reported in 2006 (7) SCC 603**, in a two Judges Bench judgment, bail application was rejected on 17.09.2005 and detention order was passed on 21.09.2005. It was contended that there was no scope for observing that there was likelihood of release. Contention of the State was that it is the impact of an act and not the number of acts which determine whether the act can be relatable to public order or not. The Apex Court on the facts and circumstances of the case, observed that in the instant case, the scenario as described in the grounds of detention clearly shows that the acts committed by the detenu were of such intensity that the moral fibre of the community was disturbed. Prostitution with the likelihood of spread of sexual diseases on a huge scale was imminent. Therefore, according to the Apex Court, the detenu has rightly been detained. At paragraph 10, the Hon'ble Apex Court has held as follows:-

"10. It has to be noted that whether prayer for bail would be accepted depends on circumstances of each case and no hard-and-fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipse dixit of the detaining authority. On the basis of materials before him, the detaining authority came to the conclusion that there is likelihood of the detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of the detenu being released on bail. It has been clearly stated that in similar cases orders granting bail are passed by various courts. The appellant has not disputed the correctness of this statement. Strong reliance was placed by learned

counsel for the appellant on **Rajesh Gulati v. Govt. of NCT of Delhi, 2002 (7) SCC 129 = 2002 SCC (Crl) 1627**. The factual scenario in that case was entirely different. In fact, five bail applications filed had been already rejected. In that background this Court observed that it was not a "normal" case. The High Court was justified in rejecting the stand of the appellant."

45. In A.Geetha's case, judgments in **Ibrahim Nazeer v. State of T.N reported in 2006 (6) SCC 64** and **Senthamilselvi v. State of T.N., reported in 2006 (5) SCC 676** were relied on.

46. In **A.Shanthi (Smt) v. Government of Tamil Nadu, reported in 2006 (9) SCC 711**, in a two Judges Bench judgment, bail applications filed, were rejected. In fact, no bail application was pending, on the date on which, detention was ordered. However, the detaining authority in the order, observed that the petitioner has moved a bail application before the III Metropolitan Magistrate Court, George Town, Chennai, in Crl.M.P.No. 140/2005 and that the same was dismissed. He also observed that he was aware that there is imminent possibility of his coming out on bail, by filing another bail application in the above said case, before the Principal Sessions Court or the High Court, since in similar cases, bail orders were granted by the Sessions Court or the High Court, after the lapse of time. Following **T.V.Saravanan v. State reported in 2006 (2) SCC 664**, the Supreme Court observed that there was no cogent material before the detaining authority on the basis of which, the detaining authority could be satisfied that the detenu was likely to be released on bail. In the absence of any such material record, the Supreme Court observed that mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. Though bail application was dismissed, without any cogent material, the detaining authority merely observed that there was imminent possibility of coming out on bail by filing another application in the Principal Sessions Court or the High Court and there was a possibility of coming out on bail, since in similar cases, bail orders granted by the Sessions Court or the High Court, after a considerable lapse of time. In the above said circumstances, the Apex Court following T.V.Saravanan's case (cited supra) observed that there was no material for the detaining authority to arrive at the conclusion.

47. In **Sayed Abul Ala v. Union of India and others reported in 2007 (15) SCC 208**, in a two Judges Bench judgment, while arriving at the subjective satisfaction, the detaining authority has clearly mentioned the date of bail application. But no orders were passed in similar cases and thus arrived at a conclusion about the possibility of the detenu coming out on bail. While testing the correctness of the order of detention, the Apex Court held as follows:

"Detention can be passed validly despite the detenu being in custody (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he had a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities;

and (3) it is felt essential to detain him to preven him from so doing.

Proper application of mind on the part of the detaining authority must, therefore, be borne out from the order of detention. In cases where the detenu is in custody, the detaining authority not only should be aware of the said fact but there should be some material on record to justify that he may be released on bail having regard to the restriction imposed on the power of the court as it may not arrive at the conclusion that there existed reasonable grounds for believing that he is likely to be released."

48. In **State of Maharashtra and others v. Bhaurao Punjabrao Gawande, reported in 2008 (3) SCC 613**, in a two Judges Bench judgment, at paragraph 32, the Hon'ble Supreme Court has explained what preventive detention means:-

"32.There is no authoritative definition of "preventive detention" either in the Constitution or in any other statute. The expression, however, is used in contradistinction to the word "punitive". It is not a punitive or penal provision but is in the nature of preventive action or precautionary measure. The primary object of preventive detention is not to punish a person for having done something but to intercept him before he does it. To put it differently, it is not a penalty for past activities of an individual but is intended to pre-empt the person from indulging in future activities sought to be prohibited by a relevant law and with a view to preventing him from doing harm in future."

49. On the aspect of subjective satisfaction and scope of judicial review at paragraphs 38 and 39, the Hon'ble Apex Court has held as follows:-

"Subjective satisfaction: scope of judicial review:-

38. Subjective satisfaction being a condition precedent for the exercise of the power of preventive detention conferred on the executive, the court can always examine whether the requisite satisfaction is arrived at by the authority; if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad.

39. A court cannot go into correctness or otherwise of the facts stated or allegations levelled in the grounds in support of detention. A court of law is "the last appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based". That, however, does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. By judicial decisions, courts have carved out areas, though limited, within which the validity of subjective satisfaction can be tested judicially."

50. On the grounds of challenge at paragraph 40, the Court held as follows:-

"40. An order of detention can be challenged on certain grounds, such as, the order is not passed by the competent authority;

condition precedent for the exercise of power does not exist; subjective satisfaction arrived at by the detaining authority is irrational; the order is mala fide; there is non-application of mind on the part of the detaining authority in passing the order; the grounds are, or one of the grounds is, vague, indefinite, irrelevant, extraneous, non-existent or stale; the order is belated; the person against whom an order is passed is already in jail; the order is punitive in nature; the order is not approved by the State/Central Government as required by law; failure to refer the case of the detenu to the Board constituted under the statute; the order was quashed/revoked and again a fresh order of detention was made without new facts, etc.

51. In **R.L. Asokan v. State of Tamil Nadu reported in 2011 (2) LW (Crl.) 738**, this Court, at Paragraph 7, held as follows:

"7.The second submission of the learned Senior Counsel appearing for the petitioner, is that the subjective satisfaction expressed by the detaining authority, with regard to the real possibility of the detenu coming out on bail in the ground case, in which he was in remand, is not based on cogent material and the said satisfaction was expressed on the basis of bail orders passed in similar cases by the concerned Court or High Court, and the particulars of the bail orders passed in similar cases, are not mentioned anywhere in the grounds of detention and the copies of those orders were also not furnished to the detenu and the subjective satisfaction expressed, can only be termed as ipse dixit of the detaining authority and it is vitiated. Reliance was placed by the learned Senior Counsel on the latest decision of the Supreme Court in **Rekha v. State of Tamil Nadu reported in (2011 (3) CTC 222 = (2011) 5 SCC 244)**, in this regard. Learned Public Prosecutor submits that the subjective satisfaction of the detaining authority with regard to the real possibility of the detenu coming out on bail, is expressed on the basis of bail orders granted in similar cases and the fact being that the bail petition filed by the detenu, was pending disposal, the detaining authority has expressed satisfaction about the possibility of his coming out on bail in the ground case."

52. In **Rekha v. State of Tamil Nadu reported in 2011 (5) SCC 244**, in a Three Judges Bench judgment, the detenue was already in jail. The Detaining Authority, in the grounds of detention, has stated as follows:

"4. I am aware that Thiru. Ramakrishnan, is in remand in P.6, Kodungaiyur Police Station Crime No. 132/2010 and he has not moved any bail application so far. The sponsoring authority has stated that the relatives of Thiru.Ramakrishnan are taking action to take him on bail in the above case by filing bail applications before the Higher courts since in similar cases bails were granted by the Courts after a lapse of time. Hence, there is real possibility of his coming out on bail in the above case by filing a bail application before the higher courts. If he comes out on bail he will indulge in further activities, which will be prejudicial to the maintenance of public health and order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from

indulging in such activities, which are prejudicial to the maintenance of public health and order."

53. Challenge to the order of detention failed in High Court. On appeal, one of the grounds raised before the Apex Court was that when the Detaining Authority came to the conclusion that in similar cases, bails were granted, after a lapse of time and therefore, there was a real possibility of coming out on bail, it was a ipsi dixit statement of the Detaining Authority, for the reason that, no details were given about the alleged similar cases, in which, bail was allegedly granted by the concerned court. Neither the date of the alleged bail orders have been mentioned therein, nor the bail application numbers, whether the bail orders were passed in respect of the co-accused, in the same case, whether the bail orders were passed in respect of other co-accused in cases, on the same footing, as the case of the accused, were furnished. On the above grounds, at Paragraph 7, the Supreme Court opined that in the absence of details, the statement made by the detaining authority was mere ipse dixit, and cannot be relied upon. It was further opined that the above reason by itself, is sufficient to vitiate the detention order.

54. In Rekha's case (cited supra), at Paragraph 9, the Supreme Court, also took note of the decisions made in **A.Geetha v. State of T.N. And Anr. [(2006) 7 SCC 603]** and **Ibrahim Nazeer v. State of T.N. and Anr., [(2006) 6 SCC 64]**, wherein, the Apex Court held that even if no bail application of the petitioner was pending, but if in similar cases, bail has been granted, then, this is a good ground for the subjective satisfaction of the detaining authority to pass the detention order. Therefore, it is discernible from the above said two decisions of the year 2006, emanated from this Court, the Hon'ble Apex Court was of the view that, even if no bail application of the detenue, was pending, but in similar cases, if bail had been granted, then, there was a ground for the Detaining Authority to arrive at the subjective satisfaction of the Detaining Authority, to pass an order of detention.

55. The difference that could be deduced from the reading of the judgments of the Supreme Court, rendered in 2006 and in 2011 in Rekha's case, is that even if the Detaining Authority has made a statement that in similar cases, bails are granted that mere statement alone is not sufficient, while arriving at the subjective satisfaction, to pass an order of detention, but that statement of the Detaining Authority, should be supported with details, such as, date of the bail order, bail application number, in similar cases. The Supreme Court in Rekha's case, at Paragraph 10, held as follows:

"10. In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practise of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the

petitioner is ordinarily granted bail. However, the respondent authority should have given details about the alleged bail order in similar cases, which has not been done in the present case. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored."

56. At Paragraph 12, the Supreme Court further observed that, "more over, even if a bail application, relating to the cases, was pending in criminal cases, the detention order can still be challenged on various grounds e.g. that the act in question related to law and order and not public order, that there was no relevant material on which the detention order was passed, that there was mala fides, that the order was not passed by a competent authority, that the condition precedent for exercise of the power did not exist, that the subjective satisfaction was irrational, that there was non-application of mind, that the grounds are vague, indefinite, irrelevant, extraneous, non-existent or stale, that there was delay in passing the detention order or delay in executing it or delay in deciding the representation of the detenu, that the order was not approved by the government, that there was failure to refer the case to the Advisory Board or that the reference was belated, etc."

57. At Paragraph 27, while arriving at the conclusion, the Supreme Court opined as follows:

"In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed."

58. At Paragraph 26, the Supreme Court has taken note of a decision in **Union of India v. Paul Manickam and Another [2003 (8) SCC 342]**, wherein, the Apex Court held that if the detaining authority is aware of the fact that the detenu is in custody and the detaining authority is reasonably satisfied with cogent material that, there is likelihood of his release and in view of his antecedent activities, he must be detained to prevent him from indulging in such prejudicial activities, the detention order can validly be made.

59. Paragraph 27 of Rekha's case, the Supreme Court makes it clear that firstly, if any bail application is pending, then there is real possibility of release on bail. Secondly, if no bail application is pending, then the Supreme Court observed that it follows logically, there is no likelihood of the person in custody being released on bail and then, the detention order is illegal. As per the decision of the Hon'ble Supreme Court, in a case, where, no bail application was

filed and pending, then there can be an exception to the rule, that is, where a co-accused whose case stands on the same footing, had been granted bail, in such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail, even though no bail application was pending, since most courts normally grant bail on this ground. In respect of similar cases, details of such alleged similar cases must be given, otherwise, the bald statement of the authority, cannot be accepted.

60. Thus, a combined reading of Paragraphs 7, 10 and 27 of the judgment made in Rekha's case, makes it clear that:

(i) there is real possibility of release of a person on bail, who is already in custody, provided he has moved a bail application, which is pending and in such cases, the detaining authority may arrive at a conclusion, that there is likelihood of release.

(ii) If no bail application is pending filed, still the detaining authority can arrive at a subjective satisfaction for detaining him, if on the basis of the materials on record, the authority arrives at the conclusion that a co-accused, who stands on the same footing, had already been released and thus, there is every likelihood of the detenue being released, taking note of the fact that most Courts, would normally grant bail, on the above grounds.

61. Likelihood of real possibility of release of a person on bail, when the bail application was pending, is the view of the Supreme Court in Rekha's case.

62. From the close scrutiny of the above said paragraphs, it is discernible that the Hon'ble Supreme Court has considered two distinct cases (1) similar cases and (2) same case. In sofar as "same case" is concerned, the Supreme Court has observed that the detaining authority may arrive at the subjective satisfaction, on the aspect of bail, if a co-accused, on the same footing, in the same case, has been enlarged on bail. However, the detaining authority has to furnish cogent materials, such as, bail application number, bail application and orders passed thereon.

63. In respect of "similar cases", the Supreme Court has observed that in the absence of details, such as, bail application number, bail order, there cannot be any ipse dixit statement that a person is likely to be released. Therefore, in a given case, where an application for bail is filed and pending, and if the detaining authority has arrived at the subjective satisfaction, considering the possibility of release, after taking note of the materials, like the bail application number, orders passed on bail application, in similar cases, then, as per the judgment of the Apex Court, the subjective satisfaction of the detaining authority cannot be found fault with, as the materials considered by the authority, cannot be said to be wholly irrelevant nor the subjective satisfaction arrived at by the authority is illogical and irrational. Therefore, we are of the view that what is required to be considered by the court is whether the materials taken into consideration are relevant, to arrive at a reasonable conclusion.

64. From the judgment in Rekha's case, it is discernible that it

cannot be said that consideration of the detaining authority to the bail orders, granted in similar cases, with the details, such as, the date of bail, nature of offences, similar to which, the detenue is accused of, are wholly irrelevant, or materials not pertinent with no probative value, to arrive at the reasonable conclusion, as to whether, there is likelihood of release of a person, against whom, detention order is passed. At this juncture, it should be noted that while passing an order of detention, the detaining authority has to be aware of the fact, that the bail application filed by the detenue, is pending. Then, there is a clear nexus and rationality, in arriving at the subjective satisfaction, as to the likelihood of release.

65. When justification of the detaining authority is primarily decided on his subjective satisfaction of the potentiality of the person, sought to be detained and to prevent him from engaging in future prejudicial activities, primarily, the detaining authority, has to consider the past antecedents, recurrence of crime, and when the said authority comes to the conclusion that recourse to normal law, does not have the desired result of preventing him from indulging in such activities and therefore, he was compelled to take recourse to the law of prevention, such action should not normally be interfered with.

66. However, in such cases, if the detenue was already in judicial custody, the detaining authority is also obligated to consider that if the prisoner comes out on bail, whether, he would indulge in such future activities, which is also another important factor, for invoking preventive detention. Subjective satisfaction arrived at by the Detaining Authority, in relation to past antecedents is the foundation, and if the detaining authority has taken into consideration materials, which are pertinent, with probative value and also takes into consideration, bail orders, passed in similar cases, with details, such as, date of orders, passed in similar offences, then, in the humble opinion of this Court, the subjective satisfaction arrived at by the Detaining Authority should not be found fault with, in the light of the views expressed by the Supreme Court, at Paragraphs 7 and 27 of Rekha's case (cited supra).

67. At this juncture, this Court is also conscious of the fact that if no bail application is pending, the Supreme Court in Rekha's case, has observed that there is no likelihood of coming out on bail. But the Apex Court has carved out of an exception of the above said situation, that if a co-accused, on the same footing, is enlarged on bail, in the same case, then, there is likelihood of another co-accused against whom, detention order is passed, is also likely to come out on bail.

68. In a given case, there may be only one accused, who may be repeatedly committing offences, prejudicial to the maintenance of public health and public order, and in such cases, if he had not filed any bail application, it cannot be said that he would never come out on bail, by filing a bail application and rather prefer to be in jail, till trial. There is every likelihood of filing a bail application by him, after some time. In such circumstances, the detaining authority may be posed with a situation, to consider, as to whether, there is any

likelihood of coming out on bail, as done in similar cases, and take into consideration, the antecedents of the sole accused and whether there is any possibility of the detenu indulging in acts in future, prejudicial to the maintenance of public health and public order, if he is allowed to remain at large. Therefore, when the detaining authority takes into consideration of the overall materials, including bail orders granted in similar cases, and arrives at a conclusion of clamping a person, under the preventive laws, he cannot be wholly found fault with, but such a detention order is subject to judicial review, that is open to the detenue, as explained at Paragraph 12 of Rekha's case. At the risk of repetition, Paragraph 12 is reproduced hereunder:

"Moreover, even if a bail application of the petitioner relating to the same case was pending in a criminal case the detention order can still be challenged on various grounds e.g. that the act in question related to law and order and not public order, that there was no relevant material on which the detention order was passed, that there was mala fides, that the order was not passed by a competent authority, that the condition precedent for exercise of the power did not exist, that the subjective satisfaction was irrational, that there was non-application of mind, that the grounds are vague, indefinite, irrelevant, extraneous, non-existent or stale, that there was delay in passing the detention order or delay in executing it or delay in deciding the representation of the detenu, that the order was not approved by the government, that there was failure to refer the case to the Advisory Board or that the reference was belated, etc."

69. Yet another situation also may come up for consideration, by the detaining authority, where the co-accused does not file any bail application, then, it cannot be said that the detaining authority cannot exercise his powers at all, in respect of another co-accused, in the same case, whose antecedent is bad. The former may not have bad antecedents and therefore, there may not be any need to detain him. But the case of the latter may be different, warranting detention.

70. In Rekha's case, the Apex Court observed that there can be an exception to the rule, where no bail application was pending, and in such cases where a co-accused, whose case stands on same footing, had been granted bail, then the detaining authority can arrive at a satisfaction on the aspect of possibility of bail. But in the reported case, no details about the similar cases, in which bail was granted by the court concerned, were available in the grounds of detention and that paved the mind of the Apex Court to hold that the statement of the detaining authority was a mere ipse dixit. But in a given case, if the detaining authority furnishes the details of bail granted in similar offences, with the copies of the bail applications, orders granted in similar offences, then, can it be said that those materials are irrelevant for the purpose of arriving at the subjective satisfaction, about the possibility of getting bail in similar cases? The answer is found in the judgment itself.

71. While considering reasonableness of the detaining authority to arrive at the subjective satisfaction on the aspect of bail, we are of the

view that the detaining authority can apply only rule of logic and reasonableness.

72. Though the detaining authority has used the expression, "similar cases", the court is conscious of the fact that there cannot be similarity or same set of facts. Similar cases, therefore in the humble opinion of this court, should be meant, "similar offences", and it cannot be expected to have the same set of facts, with same overtacts against the accused involved.

73. Similar, in the meaning given in Oxford English Dictionary, Vol.9, reads as "Having a marked resemblance of likeness, of a nature or kind. In Words and Phrases, Vol.39, this word has been defined as, "Similar", means nearly corresponding, resembling in many respects; somewhat like; having a general likeliness. **[Royer v. Brown, NE 93 A 2d 667, Pg.668] [1998 (1) SCC 605 at Page 608 = AIR 1988 SC 631]**.

74. In **G.Reddeiah v. Government of A.P., reported in 2012 (2) SCC 389** [Decided on 09.09.2011], in a two Judges Bench judgment, the detenue therein was involved in offences, under the Andra Pradesh Act, 1967, A.P. Sandal Wood and Red Sanders Transit Rules, 1969 and Indian Penal Code. Recourse to normal penal laws, did not have the desired effect. On 10.11.2010, he was released on bail. Immediately, thereafter, he was arrested and detention order was served on 12.11.2009, by the District Collector and District Magistrate, Kadapa, Y.S.R. District under Sections 3(1) and 2 (a) and (b) of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (in short "the 1986 Act") stating that the activities of the detenue were dangerous to forest wealth and forest eco-system and thus, are prejudicial to the maintenance of public order. The order of detention was approved and later on, confirmed. Writ Petition for issuance of Habeas Corpus was dismissed. One of the contentions raised by the learned counsel for the detenue, before the Supreme Court was that on even though the detenue was arrested on 09.10.2010 and released on bail on 10.11.2010, the aspect that the detenue was in custody till 10.11.2010 was neither specifically adverted and considered in the detention order, nor the Sponsoring Authority, placed any material, regarding the same. Adverting to the above said contention, the Apex Court considered the decision in **Union of India v. Paul Manickam and Another [2003 (8) SCC 342]**, wherein, at Paragraph 14, the Apex Court, held as follows:

"14.....Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenue by itself does not invalidate an order of his preventive detention, and the decision in this regard must depend on the facts of the particular case. Preventive detention being necessary to prevent the detenue from acting in any manner

prejudicial to the security of the State or to the maintenance of public order or economic stability etc. ordinarily, it is not needed when the detenue is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenue and take that factor into account while making the order. If the detaining authority is reasonably satisfied with cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detenue was likely to be released on bail, the order would be vitiated. The point was gone into detail in **Kamarunnissa v. Union of India [1991 (1) SCC 128**]. The Principles were set out as follows: even in the case of a person in custody, a detention order can be validly passed: (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility of release on bail."

75. At Paragraph 17, in G.Reddeiah's case, on the facts and circumstances, the Supreme Court, further held that it is clear that if the Detaining Authority was aware of the relevant fact that the detenue was under the custody from 09.10.2010 and he would be released or likelihood of release or as in this case, released on 10.11.2010 and if an order is passed, after due satisfaction in this regard, undoubtedly, the order would be valid. However, upon consideration of the material on record, the Apex Court observed that the said contention was not raised anywhere.

76. In **Subramanian v. State of Tamil Nadu and others, reported in 2012 (4) SCC 699**, in a two Judges Bench judgment, the Hon'ble Supreme Court explained as to whether the Court can substitute its opinion for that of the detaining authority. The High Court observed that the bail application in respect of ground case was pending before the Sessions Judge, Tiruchirappalli. The detaining authority came to the conclusion that the detenu was likely to be released on bail and if he comes out on bail, he would indulge in future activities prejudicial to the maintenance of public order. The order of detention was upheld. While the detenu preferred an appeal, after considering the facts of the case, and the pendency of the bail application, at paragraphs 14 and 20 held as follows:-

"14. It is well settled that the court does not interfere with the subjective satisfaction reached by the Detaining Authority except in exceptional and extremely limited grounds. The court cannot substitute its own opinion for that of the Detaining Authority when the grounds of detention are precise, pertinent, proximate and relevant, that sufficiency of grounds is not for the Court but for the

Detaining Authority for the formation of subjective satisfaction that the detention of a person with a view to preventing him from acting in any manner prejudicial to public order is required and that such satisfaction is subjective and not objective. The object of the law of preventive detention is not punitive but only preventive and further that the action of the executive in detaining a person being only precautionary, normally, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance with certain latitude in the exercise of its discretion.

20..... The High Court has rightly observed that the bail petition in respect of the ground case was pending before the Sessions Judge, Tiruchirappalli and he was very likely to be released on bail and if he comes out on bail, he would indulge in future activities which will be prejudicial to the maintenance of public order."

77. In **Huidrom Konungjao Singh v. State of Manipur and others, reported in 2012 (3) MLJ Crl 794 (SC) = 2012 (7) SCC 181**, in a two Judges Bench judgment, the detenue therein was arrested on 19.06.2011 under Section 302 IPC, read with Section 25 (1-C) of the Arms Act, 1959. He was detained on 02.07.2011. The detaining authority relied on a copy of the FIR No.254(12) 2010 under Section 17/20 of the Unlawful Activities (Prevention) Act, 1967, and a copy of the FIR in 210 (5) 2011, under Sections 20 of the same Act and the bail orders in those cases dated 13.12.2010 and 01.06.2011 respectively. In such circumstances, the Apex Court at Paragraph 10, observed as follows:

"10. The present case requires to be examined in the light of aforesaid settled legal proposition. Learned counsel for the appellant Shri L. Roshmani has submitted that the detenu had never moved the bail application after his arrest and he had not been involved in any criminal case earlier. Reliance had been placed upon two bail orders. They are related to different FIRs and not to the same case. The bail had been granted to the accused in those cases and none of them had been co-accused with the detenu in this case. Therefore, it was not permissible for the detaining authority to rely upon those bail orders and there was no material before the detaining authority on the basis of which the subjective satisfaction could be arrived that the detenu in the instant case was likely to be released on bail and after being released on bail he would indulge in the activities detrimental to the society at large and would cause the problem of public order."

78. In the reported case, FIR has been registered against unknown persons and the detenue was arrested. In the said case, first of all, no details were mentioned by the detaining authority, as to whether others have been arrested, in the same case. Secondly, the FIRs and bail orders, relate to some other offences. In the reported case, the detenue has been arrested under Section 302 IPC read with Section 25(1-A) of the Arms Act, whereas, the FIR and bail orders relied on by the detaining authority, for arriving at the subjective satisfaction

related to offences under Sections 17/20 of the Unlawful Activities (Prevention) Act and Section 20 of same Act. Thus it is evident from the judgment of the Apex Court, the offences for which, FIRs were registered against some other persons, though observed by the Apex Court that may appear to be similar. At this juncture, we wish to add that they are not the same offences. Huidrom Konungjao Sing's case proceeded on the basis that had the co-accused in the same case been released on bail, then, there would be a likelihood of the detenue being released.

79. In the reported case, it was a solitary act. Excepting the above, there were no other materials, and when the materials relied on by the detaining authority related to some other case, not concerned with the reported case, the Hon'ble Apex Court, set aside the detention. At paragraph 14, the Apex Court has observed that, "merely because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case, had the detenu applied for bail, he would have been released on bail."

80. With great respect to Their Lordships, the said view, in our humble opinion, appears to be different than the earlier view of the Larger Bench, comprising of Three Judges, in Rekha's case, wherein, Their Lordship's held that if the person in judicial custody has filed a bail application, and it is pending there is a real possibility of his coming out on bail, provided the detaining authority furnishes the details of bails granted in similar cases.

81. The view expressed in Huidrom's case also poses a question, that if the bail application of the person in judicial custody, against whom, detention is proposed is earlier in point of time, than that of the co-accused, whether the detaining authority is precluded from passing an order of detention, taking into consideration the likelihood of coming out on bail, by considering orders passed in similar cases, or the detaining authority has to wait, till the co-accused files a bail application and gets an order in his favour or not, and only in such circumstances, the detaining authority can come to a conclusion on the aspect of bail, and pass an order of detention, if the acts committed by one of the co-accused in the same case, is not prejudicial to the maintenance of public order.

82. The role of the detenu and that of the co-accused in the commission of acts prejudicial to the maintenance of public order, may depend upon the facts and circumstances of each case. They may not be identical, warranting detention of all the accused, involved in the same case. The detaining authority has to consider the propensity and the potentiality of the acts, committed by each of the accused, in the same case and arrive at the subjective satisfaction, as to whether all the accused in the same case, have to be detained or suffice to clamp, any one or other accused or all, under the detention laws. No uniform decision can be taken against all the accused.

83. One of the important factors to be considered by the detaining authority, under the detention laws, is that, recourse to normal law, did not have the desired result of preventing a person from committing acts prejudicial to the maintenance of public order, and such satisfaction should be arrived at, on the basis of antecedents

and in such circumstances, the detaining authority should be aware, as to whether, the detenue is on bail or in jail. If he is in custody, then there is a necessity to consider, as to whether there is any likelihood of bail, and the subjective satisfaction should be, as to whether, he would continue to act in a prejudicial manner, in future, if he is allowed to remain at large.

84. Merely because there was pending prosecution and the detenu is already in jail, there is no impediment for his being detained, if the detaining authority is satisfied that, if he is allowed to remain at large, he would indulge in prejudicial to the maintenance of public order. While testing the aspect of subjective satisfaction, arrived at, by the Detaining Authority, Court has to examine, as to whether, the grounds, on which, the Detaining Authority, has reached the subjective satisfaction, are reasonable.

85. Thus while examining, as to whether, the subjective satisfaction, arrived at, by the Detaining Authority, is proper, what is required to be considered, by the Court is, whether, the subjective satisfaction, is based on any pertinent material, existence of which are relevant, for any reasonable person, to arrive at the conclusion, on the aspect of bail also.

86. On the aspect of bail, when the Detaining Authority considers orders of bail, granted in similar cases, then, the order of detention satisfies the test, that the subjective satisfaction arrived at, by the detaining authority is what a reasonable person, could possibly arrive at, on the basis of the materials. Courts cannot substitute its opinion for that of the Detaining Authority. Court can only consider, as to whether the requisite satisfaction arrived at by the detaining authority, is reasonable.

87. Reasonableness is the course, which reason dictates. It may be construed as converse of unreasonableness, the mind of what an ordinary prudent and reasonable man would reach, with regard to the materials. What the Court feels reasonable, while considering an application for bail, either to release a person or not, may not be the same, as what the executive thinks. In the case of detention, the Detaining Authority, being an executive authority, is not expected to test every material placed before him, with a high degree of evidence, with judicial standards, not only on the aspect of bail, but with respect to all materials placed before him, to arrive at a subjective satisfaction. Purpose of relying on a material, is to arrive at a conclusion, as to whether, the detenu would indulge in acts, prejudicial to the maintenance of public order, and if allowed to remain at large, he would continue to do so. In that context, awareness of the detaining authority, as to whether, the detenu is on bail or in custody, is relevant. Conclusion of likelihood of release, on the basis of relevant material, is a state of mind, as to what a reasonable man, would reach. His satisfaction on the above aspect, should be reasonable, rational and just.

88. If the detaining authority arrives at a satisfaction, on the aspect of possibility of release, on such bona fide satisfaction, the court has to examine as to whether there was any material to arrive at a legitimate and reasonable conclusion. As regards satisfaction, it is

only, if the material considered by the detaining authority is that, no reasonable person could be satisfied that the detenue is likely to be released, then, there can be an inference that, irrelevant material has been considered. It is well settled that the test applied to the word, "reasonable", in the context of detention laws, should be reasonable satisfaction, with reference to all the materials considered. Reasonable conclusion is arrived at on a definite fact, which is sufficient in the mind of the detaining authority, and it should not be the ipse dixit.

89. Court has to consider, as to whether, the detaining authority has relied on any, inchoate material, while arriving at the subjective satisfaction. While examining as to whether subjective satisfaction has been arrived at, on the basis of rationality, materials that existed, relevancy of the same, can be tested only on the anvil of reasonableness. Propensity and potentiality of the person to indulge in activities prejudicial to the maintenance of public order in future, is the primary consideration, for detaining a person under the detention laws.

90. The conclusion of the Detaining Authority that if the detenu is allowed to remain at large would continue to indulge in acts, prejudicial to the maintenance of public order and recourse to normal law, did not have the desired effect of preventing him from doing such acts, is the foundation of basic facts and therefore, the Detaining Authority is obligated to consider the possibility of the detenue, coming out on bail and continue to indulge in such acts. Such a satisfaction is based on the materials considered.

91. Proximity of the antecedent activities, effect on the detenue, when recourse to normal law was taken and ultimately, the decision to prevent him from doing acts prejudicial to the maintenance of the public order, is the foundation.

92. Courts can only examine the grounds disclosed by the detaining authority, as to whether they are relevant to the object, for which, the detention is made (i.e) to prevent him, in future from indulging prejudicial activities. Satisfaction is subjective in nature, and such satisfaction, if based on relevant grounds or facts, cannot be said to be irrational. When detention is passed to prevent a person from indulging in prejudicial activities, jail or bail, is certainly a factor, for arriving at the subjective satisfaction. The subjective satisfaction mainly rests on the antecedents and as to how recourse to penal law, did not have the desired effect, for preventing him, in future from indulging prejudicial activities.

93. At paragraph 40 in **State of Maharashtra and others v. Bhaurao Punjabrao Gawande, reported in 2008 (3) SCC 613**, the Supreme Court held that an order of detention can be challenged on certain grounds, which is reproduced hereunder:-

"40. An order of detention can be challenged on certain grounds, such as, the order is not passed by the competent authority; condition precedent for the exercise of power does not exist; subjective satisfaction arrived at by the detaining authority is irrational; the order is mala fide; there is non-application of mind on

the part of the detaining authority in passing the order; the grounds are, or one of the grounds is, vague, indefinite, irrelevant, extraneous, non-existent or stale; the order is belated; the person against whom an order is passed is already in jail; the order is punitive in nature; the order is not approved by the State/Central Government as required by law; failure to refer the case of the detenu to the Board constituted under the statute; the order was quashed/revoked and again a fresh order of detention was made without new facts, etc."

94. It is to be accepted that while arriving at the subjective satisfaction of possibility of bail, there should be cogent material before the detaining authority. Inference should be drawn from the available material on record and it should not be the ipse dixit of the detaining authority. Mere making a statement of likelihood of moving an application for bail and thus, arriving at a satisfaction that there is a possibility of bail, is certainly, different from considering some materials, when a bail application is not filed, filed and pending or dismissed. In this regard, it is the duty of the detaining authority, to apply his mind to the materials considered, as to whether they are relevant, to arrive at the subjective satisfaction.

95. For arriving at the subjective satisfaction, antecedents and nature of the activities carried out by the person, are required to be taken into consideration and it is also well settled that an order of preventive detention is founded on reasonable prognosis of the future behaviour of the person, based on his past conduct, judged in the light of the surrounding circumstances. At the same time, the court is bound to protect the citizen's personal liberty, which is guaranteed under the Constitution.

96. Court is not to consider objectively, as to how imminent is the likelihood of the detenu, in indulging in activities prejudicial to the maintenance of the public order. It is the subjective satisfaction of the Detaining Authority, to arrive at the conclusion. When the overall materials are considered by the detaining authority, then, the Court has to consider, as to whether, detention has been validly made. Whether the materials taken into consideration by the detaining authority, are sufficient or not, to arrive at the conclusion, is not for the court, to decide, by applying an objective test, as it is a matter for subjective satisfaction of the detaining authority. If an investigation is undertaken by the court to examine the sufficiency of the material, for arriving at the subjective satisfaction, then, in our humble view, it would be amounting to substitution of satisfaction, arrived at by the detaining authority. What is required to be considered by the courts is whether the subjective satisfaction, is duly supported by any material. Relevancy can be tested.

97. It is suffice that the detaining authority is satisfied about the genuineness of the documents, relevant for the purpose of arriving at the satisfaction. He should not consider extraneous matters, and that his decision, should not be unlawful, mala fide, excess of jurisdiction and contrary to the procedure established by law. Subjective satisfaction, should be on the basis of materials, by which a person with a clear mind, would arrive at a reasonable conclusion, as to

whether a person should be detained.

98. Subjective satisfaction to prevent a person from indulging in future prejudicial activities inferred from antecedents, is of higher degree, in the matter of enforcement of preventive laws, and which is the basic foundation and foremost requirement, to pass an order of detention. In that context, bail or jail, is another factor to be considered, in relation to the above. Aspect of bail, only supplements the paramount basic conclusion.

99. When prevention laws are based on jurisdiction of suspicion, with reference to the reasonability that is arrived at, on the basis of antecedents, the detaining authority should be given a latitude to consider the possibility of coming out on bail, on the basis of materials, which are relevant.

100. Purpose of considering bail orders, passed in similar cases, is only to arrive at the conclusion, as to whether there is any possibility of the person in custody, be released on bail. At this juncture, we are conscious of the fact that there cannot be any absolute immunity, to the order passed by the detaining authority, but we only to wish reiterate that the limitations imposed, should be, to find out, as to whether, materials considered by the Detaining Authority, are relevant or not. If the detaining authority is precluded from considering the possibility of the person coming out on bail, by taking note of the bail orders passed in similar cases (i.e) in respect of similar offences, then we wish to state that, his wings would be clipped. The question is not sufficiency or adequacy, of the material, but relevancy. If relevancy has to be considered as, "sufficiency or adequacy", by closer scrutiny, with judicial approach and by applying judicial standards, when an application for bail is normally considered by Courts, vis-a-vis, the detaining authority, who exercises executive functions, and in exercise of judicial review, if the grounds of subjective satisfaction is tested with judicial standards, then, in our humble view, it may lead to substitution, which the Courts have consistently avoided.

101. Subjective satisfaction should be based on the existing material, relevant, to arrive at a satisfaction. If the Detaining Authority, with a clear application of mind to the documents, without any mala fide intention, without reference to any extraneous matters, takes into consideration materials, which have a bearing and passes an order of detention, then the materials considered by the detaining authority, cannot be wholly excluded.

102. When preventive laws are based on "jurisdiction of suspicion" and when subjective satisfaction is arrived at, with reference to reasonability, on the basis of antecedents and when the Detaining Authority has bonafidely intended to prevent a person, from indulging in acts, prejudicial to the maintenance of public order, then the detaining authority should be given a latitude to consider the materials, which are relevant, to assess the possibility of the detenue, coming out on bail. But such materials should germane, relevant, not vague, extraneous, indefinite, and non-existent. The jurisdiction to interfere with the subjective satisfaction of the Detaining Authority, should be limited and it should not, in effect convert, "relevancy of

the material considered by him", into "sufficiency or adequacy".

103. It is one thing to state that the detaining authority has considered a material, which is totally irrelevant, and another, to observe that the material considered by him, is not sufficient to arrive at the conclusion. Material considered, may not be adequate or sufficient, but still, it could be relevant. Court cannot predict, as to what material, the detaining authority is expected to consider, as relevant. But that can be tested.

104. When the detaining authority has considered the issue, as to whether there is a possibility of the detenue of release, by considering the previous orders passed in similar cases, then, the same cannot be discarded, by holding that the detaining authority has prejudged or predetermined the issue, on bail. Detention order is the final outcome of considering all the materials placed before the detaining authority and when the order is questioned, then the limitation on the Court, should be with reference to the reasonableness, real and genuine satisfaction.

105. In a given case, if bail application is pending, there can also be a contention that the said bail application can be opposed and therefore, there is no need to pass an order of detention.

106. In yet another case, even if bail is granted still, it could be still argued that the Investigating Officer, may seek for cancellation of bail, instead of invoking the preventive law. But the point to be considered before detaining a person, is whether the detaining authority was aware, as to whether, the person against whom detention order is passed, is in judicial custody or not, whether the acts committed by him, are prejudicial to the maintenance of public order and whether such a person, if allowed to be remain at large would continue to commit such acts, in future, whether there was any compelling necessity and therefore, he must be prevented.

107. Therefore, the first and foremost consideration in the two parts of the subjective satisfaction is, (1) prevention of crime, and (2) the detaining authority should be aware, as to whether, the person against whom, detention is passed, is in judicial custody or not. Power to pass an order, stem from the satisfaction of the detaining authority, with respect to a person, with a view to prevent him, from indulging in activities, prejudicial to the maintenance of public order. Therefore, it is not for the Court to sit in judgment over the subjective satisfaction of the detaining authority and to consider whether the materials are sufficient or adequate, for making an order of detention.

108. Scrutiny should be restricted, as to whether, material exists and whether they are relevant, for a reasonable man, to take into consideration and arrive at a reasonable conclusion. While examining the correctness of the detention, the paramount consideration should be to test whether the decision taken by the detaining authority is to achieve the object and that the same should not be ignored, limiting the scrutiny only to the aspect of bail. Likelihood for bail, without there being any material would certainly be a sweeping bald statement, or in other words, a ipsi dixit

statement. When relevant materials are considered, then, in the humble opinion of this Court, it cannot be said that, interference drawn by the detaining authority is extraneous. When the object of the Act, being to prevent a person from indulging in activities, prejudicial to the maintenance of public order, and the authority, is only an executive, then, the standards applied to test relevancy, should be limited only to subjective standards, to which a reasonable man, could arrive at, on the basis of materials.

109. A document can be said to be relevant and material in a given case, when it is likely to bear an opinion on the detaining authority, in one way or another. What is relevant is decided by logical and experience. Standard and degree of test is different, if sufficiency has to be considered. Relevant in detention laws, should be construed to mean, logically connected and having a tendency in the mind of the detaining authority to take into consideration, for invoking detention. That which persuades a reasonable man to think about the probability or possibility or both, as to whether the detenu would indulge in prejudicial activities, if he is allowed to remain at large. Adequacy or sufficiency of reasons, are distinct from relevancy. Relevancy must relate to the standards of belief of a reasonable man.

110. Determination on the aspect of bail, in our humble opinion, should not, outweigh the subjective satisfaction on the possibility of recurrence of crime, if the person is allowed to remain at large. Judicial review should be restricted to consider, as to whether, there are relevant materials, to support a decision. When preventive law is invoked, the test should be reasonableness, and Courts have to address, as to whether, there is a reasonable nexus, to the grounds, and the material considered, by the detaining authority. An order of detention can be set aside, if there are no materials, but if materials are considered, then the sufficiency or adequacy, should not be gone into by the Court. If the subjective satisfaction arrived at, by the detaining authority, satisfy rationality, logic, reasonableness, nexus, to the ground and documents, then, in the light of the object, sought to be achieved under the Preventive Laws, interference with the subjective satisfaction, should be limited.

111. The Larger Bench of the Supreme Court in **Masood Alam v. Union of India, reported in AIR 1973 SC 897** (Three Judges Bench), held that, if the detaining authority is of the opinion on grounds, which are germane and relevant that it is necessary to detain a person from acting prejudicially, then, it is not for the Supreme Court to consider objectively, how imminent is the likelihood of the detenu indulging in prejudicial activities. When contentions were raised regarding detaining a person in custody, the Apex Court held that it is without merit. The Larger Bench of the Apex Court further observed that it has to be borne in mind, that it is always the past conduct, activities or the antecedent history of a person, which the detaining authority takes into account in making detention order.

112. In **Khudiram Das v. The State of West Bengal and others, reported in 1975 (2) SCC 81**, (Four Judges Bench), the decision in **Machindar v. King, reported in AIR 1950 SC 129**,

was considered and the Apex Court observed that the grounds, on which, the satisfaction is based must be, such a rational human being can consider with the fact, in respect of which, the satisfaction is reached. They must be relevant to the subject matter of enquiry and must not be extraneous to the scope and purpose of the statute. After considering the comparative scope of judicial review, on the grounds of satisfaction, in America, England and India, the Apex Court observed that in England and India, Courts Stop - Short, at merely inquiring, whether the grounds, on which, the detaining authority has reached the subjective satisfaction, are such that any reasonable person could arrive at such satisfaction. In yet another Three Judges Bench judgment, in **Ram Bali Rajbhar v. State of West Bengal, reported in 1975 (4) SCC 47**, the Apex Court, reiterated that the courts have to carefully avoid, substituting our own view about what is enough for the subjective satisfaction of the detaining authorities, with which, inference could be justified, only, if it is clear that no reasonable person could possibly be, satisfied about the need to detain, on the grounds given, in which case, the detention would be in excess of the power to detain.

113. In **State of Orissa v. Manilal Singhania, reported in 1976 (2) SCC 808**, a Three Judges Bench Judgement, the Apex Court held that the limited jurisdiction possessed by the High Court was to examine whether the subjective satisfaction reached by the District Magistrate was based on no material at all, or was such no reasonable person would arrive at, on the basis of the material placed before him.

114. In **State of Gujarat v. Kasam Bhaya, reported in 1981 (4) SCC 216**, the Apex Court held that, "the High Court in its writ jurisdiction under Article 226 of the Constitution is to see whether the order of detention has been passed on any materials before it. If it is found that the order has been based by the detaining authority on materials on record, then the Court cannot go further and examine whether the material was adequate or not, which is the function of an appellate authority or Court. It can examine the material on record only for the purpose of seeing whether the order of detention has been based on no material. The satisfaction mentioned in Section 3 of the Act is the satisfaction of the detaining authority and not of the Court."

115. In **Additional Secretary to Government of India v. Alka Subash Gadia, reported in 1992 Supp (1) SCC 496**, at paragraphs 12 and 13, a Three Judge Bench of the Apex Court, held as follows:-

"12. This is not to say that the jurisdiction of the High Court and the Supreme Court under Articles 226 and 32 respectively has no role to play once the detention - punitive or preventive - is shown to have been made under the law so made for the purpose. This is to point out the limitations which the High Court and the Supreme Court have to observe while exercising their respective jurisdiction in such cases. These limitations are normal and well known, and are self-imposed as a matter of prudence, propriety, policy and practise and are observed while dealing with cases under all laws. Though the

Constitution does not place any restriction on these powers, the judicial decisions have evolved them over a period of years taking into consideration the nature of the right infringed or threatened to be infringed, the scope and object of the legislation or of the order or decision complained of, the need to balance the rights and interests of the individual as against those of the society, the circumstances under which and the persons by whom the jurisdiction is invoked, the nature of relief sought etc. To illustrate these limitations:

(i) In the exercise of their discretionary jurisdiction the High Court and the Supreme Court do not, as courts of appeal or revision, correct mere errors of law or of facts;

(ii) The resort to the said jurisdiction is not permitted as an alternative remedy for relief which may be obtained by suit or other mode prescribed by statute. Where it is open to the aggrieved person to move another tribunal or even itself in another jurisdiction for obtaining redress in the manner provided in the statute, the Court does not, by exercising the writ jurisdiction, permit the machinery created by the statute to be by-passed;

(iii) It does not generally enter upon the determination of questions which demand an elaborate examination of evidence to establish the right to enforce which, the writ is claimed;

(iv) It does not interfere on the merits with the determination of the issues made by the authority invested with statutory power, particularly when they relate to matters calling for expertise, unless there are exceptional circumstances calling for judicial intervention, such as, where the determination is mala fide or is prompted by extraneous considerations or is made in contravention of the principles of natural justice or any constitutional provision;

(v) The Court may also intervene where

(a) The authority acting under the concerned law does not have the requisite authority or the order which is purported to have been passed under the law is not warranted or is in breach of the provisions of the concerned law or the person against whom the action is taken is not the person against whom the order is directed; or

(b) Where the authority has exceeded its powers or jurisdiction or has failed or refused to exercise jurisdiction vested in it; or

(c) Where the authority has not applied its mind at all or has exercised its power dishonestly or for an improper purpose;

(vi) where the Court cannot grant a final relief, the Court does not entertain petition only for giving interim relief. If the Court is of opinion that there is no other convenient or efficacious remedy open to the petitioner, it will proceed to investigate the case on its merits and if the Court finds that there is an infringement of the petitioner's legal rights, it will grant final relief but will not dispose of the petition only by granting interim relief;

(vii) Where the satisfaction of the authority is subjective, the Court intervenes when the authority has acted under the dictates of

another body or when the conclusion is arrived at by the application of a wrong test or misconstruction of a statute or it is not based on material which is of a rationally probative value and relevant to the subject matter in respect of which the authority is to satisfy itself. If again the satisfaction is arrived at by taking into consideration material which the authority properly could not, or by omitting to consider matters which it ought to have, the Court interferes with the resultant order;

(viii) In proper cases the Court also intervenes when some legal or fundamental right of the individual is seriously threatened, though not actually invaded.

13. These limitations are not only equally observed by the High Court and the Supreme Court while exercising their writ jurisdiction in preventive detention matters, but in view of the object for which the detention law is enacted and is permitted by the Constitution to be enacted, the courts are more circumspect in observing them while exercising their said extraordinary equitable and discretionary power in these cases. While explaining the nature of the detention law and of the orders passed under it and the scope of the powers of the Court in these matters, this Court has often emphasised the distinction between the existence of its wide powers and the propriety and desirability of using them."

116. On the aspect of satisfaction, The Hon'ble Mr.Justice Krishna Iyer, in **Sadhu Roy v. State of West Bengal, reported in 1975 (1) SCC 660**, states that the satisfaction though attenuated by "subjectivity", it must be real and rational, not random, must flow from an advertence to relevant factors, not be a mock recital or mechanical chant of statutorily sanctioned phrases. His Lordship has further said that one test to check upon the colourable nature or mindless mood of the alleged satisfaction of the authority is to see, if the articulated grounds are too groundless to induce credence in any reasonable man or too frivolous to be brushed aside as fictitious by a responsible instrumentality.

117. As regards judicial precedents, in **Union of India v. K.S.Subramanian, reported in AIR 1976 SC 2433**, the Supreme Court, held as follows:

"The proper course for a High Court is to try to find out and follow the opinions expressed by larger benches of the Supreme Court in reference to those expressed by smaller benches of the Court. That is the practise followed by the Supreme Court itself. The practise has now crystallized into a rule of law declared by the Supreme Court."

118. In The **State of U.P. v. Ram Chandra Trivedi reported in 1976 (4) SCC 52**, the Supreme Court, at Paragraph 22, held as follows:

"It is also to be borne in mind that even in cases where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case, as observed by this Court in **Union of India and**

Anr. v. K.S. Subramanian [(1977) 1 LLJ 5 (SC)] to which one of us was a party, is to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court which practise, hardened as it has into a rule of law is followed by this Court itself."

119. It is also to be noted that when the validity of detention orders were tested in **A.K.Gopalan v. State of Madras, (Six Judges Bench Judgment) reported in 1950 AIR (SC) 27**, and **Dr.N.B.Khare v. State of Delhi, (Five Judges Bench Judgment) reported in 1950 AIR (SC) 211**, the Constitutional Benches of the Apex Court tested the validity of the legislation and detention orders, on the principles of reasonable restrictions and reasonableness. In our humble opinion, the principle equally applies, when a detention order is tested on the aspect of subjective satisfaction.

120. In the light of the discussion and decisions considered, we are of the humble opinion that the detaining authority cannot be found fault with, if he had considered bail orders passed in similar cases, to arrive at the subjective satisfaction. But the relevancy of the said orders can be examined, on facts and circumstances of each case.

121. Reverting back to the case on hand, admittedly, the detenu has come to adverse notice of the police in three cases. The detenu has been arrested on 23.11.2013 and Detention Order has been passed on 02.01.2014. Thus, there is a delay of 40 days, in between the date of arrest and passing of the said detention order. As regards delay in passing the order of detention, this Court deems it fit to consider the following judgments

122. In **K.Aruna Kumari v. Government of Andhra Pradesh and others, reported in 1988 (1) SCC 296 = 1988 SCC (Criminal) 116**, delay in passing the detention order, was one of the grounds. While addressing the said issue, at paragraph 11, the Hon'ble Supreme Court held that the delay, cannot by itself, be a vitiating factor, to quash the order of detention. The Hon'ble Supreme Court, relied on the decision, in **Rajendra Prashad v. State of U.P., reported in 1981 (4) SCC 558 = 1981 SCC (Cri) 870**, wherein, the order of detention, was passed, after 7 months. Judgments in **Hemlata Kantilal Shah v. State of Maharashtra, reported in 1981 (4) SCC 647 = 1982 SCC (Cri) 16** and **Malwa Shaw v. State of W.B. reported in 1974 (4) SCC 127 = 1974 SCC (Cri) 265 = AIR 1974 SC 957**, were also relied on. In K.Aruna Kumari's case, the detenu was absconding. He was arrested on 18th March 1987. Materials were collected and placed, before the detaining authority, on 14.05.1987, and that the detention order was passed, on 15.05.1987. Having regard to the above facts, the Hon'ble Apex Court, observed that the respondent has satisfactorily explained the delay in passing the order.

123. In **Yogendra Murari v. State of U.P and others, reported in 1988 (4) SCC 559 = 1988 SCC (Criminal) 992**, one of the grounds raised, was that, there was a delay in passing an order of detention. The matter arose under the National Security Act, 1980. On the aspect of delay, after considering the decisions, in

K.Aruna Kumari v. Government of Andhra Pradesh and others, reported in 1988 (1) SCC 296 = 1988 SCC Criminal 116, and **Rajendra Prashad v. State of U.P., reported in 1981 (4) SCC 558 = 1981 SCC (Cri) 870**, and on the facts and circumstances of that case, the Hon'ble Supreme Court, at paragraph 6, held as follows:-

"6. We also do not find any merit in the plea that the impugned order is bad on account of delay. It is true that the ground which led the District Magistrate to pass the detention order became available in July and the order was passed only in December but it is not right to assume that an order of detention has to be mechanically struck down if passed after some delay. (See **K. Aruna Kumari v. Government of Andhra Pradesh** and the cases mentioned there.) It is necessary to consider the circumstances in each individual case to find out whether the delay has been satisfactorily explained or not. In the present case the petitioner was in custody and there could not be any apprehension of his indulging in illegal activities requiring his detention until the grant of bail by the criminal court became imminent. Besides, enquiry was also proceeding. This aspect has been explained in the detention order itself as also by the District Magistrate in his affidavit and it is clear that there has been no undue delay on his part in taking action. Besides, the distinction between such delay and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution as pointed out in **Rajendrakumar Natvarlal Shah v. State of Gujarat** is also relevant here especially because of the background of the petitioner's antecedents taken into account by the detaining authority showing his propensity for acts which were likely to disturb public order. We do not see any objection to the District Magistrate referring the first two incidents in this context, specially when the first incident related to disturbance of public order."

124. From the above judgment, it could be deduced that though the Hon'ble Apex Court has made a distinction, between the delay in passing the order of detention and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution of India. In the above reported case, an affidavit has been filed explaining the delay in passing the order of detention.

125. In **M.Ahamedkutty v. Union of India and another, reported in 1990 (2) SCC 01**, there was a delay in passing the order of execution. In the said case, the detenu himself was absconding. The authorities were collecting materials, to place it, before the detaining authority, for his consideration. It was a case under the Cofeposa Act. Considering the explanation offered, by the State, the Supreme Court, at paragraphs 13 and 17, held as follows:-

"Where after passing of the detention order the passage of time is caused by the detenu himself by absconding, the satisfaction of the detaining authority cannot be doubted and the detention cannot be held to be bad on ground of delay in execution of the order. In the facts and circumstances of the present case there was no inordinate and unexplained delay of 38 days between the detention order and its execution so as to snap the nexus between the two or to render the

grounds stale or to indicate that the detaining authority was not satisfied as to the genuine need for detention of the detenu. However, the circumstances in the present case seem to indicate a certain degree of lack of coordination between the detaining authorities and those entrusted with the execution of the detention order. The State should ensure that such delays do not occur as apart from giving the detenu a ground for attacking the detention order, such delay really tends to frustrate and defeat the very purpose of preventive detention."

126. In **K.Mayilammal v. State of Tamil Nadu, (HCP.No.996/2011, Dated 12.01.2012)**, one of the points, raised by the detenu was that though he was arrested, on 22.07.2011 and the remand expired, on 13.08.2011, detention order came to be passed only, on 24.08.2011, and that there was a delay of 33 days, in passing the order of detention, from the date of arrest. While challenging the correctness of the detention order, reliance has been made to a decision in **M.Kakkammal v. The Commissioner of Police, Madurai, reported in 2009 (2) TNLR 121 (Mad)**, wherein, at paragraph 6 of the judgment, in M.Kakkammal's case, the Hon'ble Division Bench, held that the chain between the ground of criminal activity, alleged by the detaining authority, for the purpose of detention is snapped, if there is a long and unexplained delay, between offending criminal act and order of detention. In the said case, the delay in passing the order of detention was between 01.06.2007 to 19.08.2008. Finding that there was a long delay, without there being any proper explanation, the Hon'ble Division Bench in M.Kakkammal's case, quashed the order of detention. On the facts and circumstances in K.Mayilammal's case, the Hon'ble Division Bench found that there was no explanation, in the counter affidavit, for the delay of 33 days, in passing the order of detention, from the date of arrest, and accordingly, quashed the order of detention.

127. Reverting back to the case on hand before us, the learned counsel for the petitioner, has raised a new point that there was a delay in passing the order of detention, during the course of arguments, which is opposed by the learned Additional Public Prosecutor.

128. **Licil Antony v. State of Kerala, (Criminal Appeal No.872/2014 and Special Leave Petition (Criminal)No.988 of 2014, decided on 15.04.2014.** It was a case of Cofeposa Act, involving in smuggling of red sanders, in India and abroad. Detenu therein, was arrested and later on, released on bail, on November 2012. Detention order came to be passed, on 06.05.2013 and served on the detenu on 11.06.2013. One of the main grounds of challenge, was the delay in passing the order of detention. The materials ran over 1000 pages. While addressing the challenge, as to whether, mere delay itself would be sufficient, to hold the order of detention, as illegal, the Hon'ble Apex Court, at paragraph 8 held as follows:-

"We have given our thoughtful consideration to the rival submissions and we have no doubt in our mind that there has to be live link between the prejudicial activity and the order of detention.

Cofeposa intends to deal with persons engaged in smuggling activities who pose a serious threat to the economy and thereby security of the nation. Such persons by virtue of their large resources and influence cause delay in making of an order of detention. While dealing with the question of delay in making an order of detention, the court is required to be circumspect and has to take a pragmatic view. No hard and fast formula is possible to be laid or has been laid in this regard. However, one thing is clear that in case of delay, that has to be satisfactorily explained. After all, the purpose of preventive detention is to take immediate steps for preventing the detenu from indulging in prejudicial activity. If there is undue and long delay between the prejudicial activity and making of the order of detention and the delay has not been explained, the order of detention becomes vulnerable. Delay in issuing the order of detention, if not satisfactorily explained, itself is a ground to quash the order of detention. No rule with precision has been formulated in this regard. The test of proximity is not a rigid or a mechanical test. In case of undue and long delay the court has to investigate whether the link has been broken in the circumstances of each case."

129. It is also worthwhile to consider the decisions relied on by the Hon'ble Apex Court in Licil Antony's case:

"In **Rajinder Arora v. Union of India, (2006) 4 SCC 796**, it has been held as follows:

21. The question as regards delay in issuing the order of detention has been held to be a valid ground for quashing an order of detention by this Court in **T.A. Abdul Rahman v. State of Kerala (1989) 4 SCC 741** stating: (SCC pp. 748-49, paras 10-11)

"10. The conspectus of the above decisions can be summarised thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard-and-fast rule can be precisely formulated that would be-applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.

11. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the

necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner."

22. The delay caused in this case in issuing the order of detention has not been explained. In fact, no reason in that behalf whatsoever has been assigned at all."

130. As observed by the Supreme Court, there cannot be any hard and fast formula, on the aspect of delay in passing the order of detention. What is required to be considered is, (1)whether there is a livelink between the prejudicial activity and the order of detention, (2)whether the delay in passing the order of detention, has been reasonably explained. Though the Apex Court held that the test of proximity, is neither rigid nor mechanical, yet the Apex Court observed that the court has to investigate, whether the livelink has been broken, depending upon the circumstances of each case.

131. In the case on hand, it could be seen from the materials on record that in connection with the ground case, the detenu has been arrested, on 23.11.2013 and remanded. The remand period was extended, upto 03.01.2014. Just one day, prior to the expiry of the remand, an order of detention has been passed on 02.01.2014. The detenu has been in custody for nearly 40 days, between the date of arrest in the ground case, and the order of detention.

132. Though the learned Additional Public Prosecutor submitted that the sponsoring authority, has to collect, all the particulars, regarding the adverse and ground cases, registered against the detenu, bail orders, if any, from the concerned Courts and thus the delay had occasioned, we are not inclined to accept the said explanation, for the reason that all the materials required, could have been collected, within a reasonable time, if the sponsoring authority, was of the view that immediate steps have to be taken, to prevent the detenu, from indulging in acts, prejudicial to the maintenance of public order. Of course, it is not for the courts, to examine, how imminent, the detenu would indulge, in acts prejudicial to the maintenance of public order, but certainly, it is the duty of the Court, to investigate as to whether the livelink, between the prejudicial activity and order of detention, is snapped or likely to continue. Moreover, as observed by the Hon'ble Apex Court, had the explanation been offered, by way of an affidavit, setting out the details, it could be a good ground, to argue that there was due diligence on the part of the authorities. In the case on hand, though the detenu was in custody from 23.11.2013 until 03.01.2014, the delay of 40 days in passing the order of detention, has not been explained. Explanation offered by the learned Additional Public Prosecutor is not convincing. Moreover, the detention order has been passed just one day, prior to the expiry of remand.

133. In the light of the discussion and decisions, on the facts and circumstances of the case, though, on principle, we are in agreement with the contentions of the learned Additional Public Prosecutor that there is a difference, in considering the delay in passing the order, execution of the order, and the delay in considering the representation, as expeditiously as possible, and on other aspects like, placing the materials, before the Advisory Board, within the

time stipulated, under the Tamil Nadu Act 14 of 1982, yet, for the reasons stated supra, we are of the view that there is a delay in passing the order of detention, and that the explanation offered is not acceptable.

134. On the issue as to whether during the course of arguments, the detenue could be allowed to raise a new plea that there is a delay in passing the order of detention, courts have to make a distinction between the violation of any civil right claimed, and sought to be established, on the basis of pleadings and evidence, with that of violation of the most cherished right in the Constitution of India, personal liberty, for which, there are constitutional safeguards.

135. Considering the effect of the legislation, preventive nature of right infringed, need to balance the rights and interest of the individual, as against those of the society, circumstances under which, restrictions are placed, on the constitutional right of personal liberty, we are of the humble view that the detenu should not be restricted from raising any new point, during the course of arguments. If any new plea is raised, on the basis of the materials, already in existence, the order should fall or succeed, for the reasons contained in it. Therefore, in appropriate cases, though the detenu, has not made any representation to the competent authorities, on any point, relevant for testing the correctness of a detention order or any proceedings in relation to the detention order, or raised any grounds, in the supporting affidavit to the writ of Habeas Corpus Petition, still, he should be allowed to raise any point, which are favourable to him, on the materials available on record.

136. While testing the validity of the detention orders, and keeping in mind, the nature and effect of infringement to the constitutional right, personal liberty, we are of the humble view that restriction on the exercise of the constitutional powers, should not be limited only to the pleadings. If an order is per se void, that is without jurisdiction, then, there is no need for the respondents, even to file a counter affidavit, unless the same is disputed. Facts disputed require counter affidavit, otherwise, an order of detention, can be tested, on the grounds contained in it, or on the materials furnished, in support of the same. Mala fides, if alleged requires a counter affidavit. Courts can examine the merits of each case, on the basis of the material on record, and if it finds that there is an infringement of the constitutional right, it can grant the relief, even without a pleading. Therefore, we are not inclined to subscribe to the objections, raised by the learned Additional Public Prosecutor, on the aspect of raising a new plea (i.e) delay in passing the order of detention.

137. Right to liberty is a fundamental right and if it is restricted with an order of detention, then the detenu should be allowed to raise all the points that are available to him, even if not pleaded. He cannot be made to suffer, for lack of sufficient or no pleadings. While exercising powers of judicial review, under Article 226 of the Constitution of India, challenging an order passed by the authority amenable to writ jurisdiction, High Court is concerned with illegality, irrationality and procedural impropriety of an order passed by such authority. Therefore, while testing the validity of an order on the

available materials, courts can extend its arm, and reach justice, and moreso, when a person approaches the Constitutional Court with a grievance that he has been illegally detained.

138. Decisions relied on by the learned Additional Public Prosecutor relate to either Cofeposa Act or NSA Act. Even the facts in Aruna Kumari's case (cited supra), are inapposite to the present case.

139. For the reasons, stated supra, this Court is of the view that the impugned Detention Order has to be set aside. Accordingly, the impugned Detention Order in No.M.H.S. Confdl.No.01/2014, dated 02.01.2014, by the first respondent detaining the detenu namely Venkatesh alias Maangai, S/o.Mariappan, is quashed and the Habeas Corpus Petition is allowed. The detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Final Result : Allowed