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STATE OF PUNJAB

v.

JAGDEV SINGH TALWANDI

December 16, 1983

[Y.V. CHANDRACHUD, C.J., P.N. BHAGWATI, AMARENDRA NATH SEN, D.P. MADON AND M.P. THAKKAR, JJ.]

A. *Constitution of India, 1950, Article 22 (5)—Preventive Detention—Duty of detaining Authority—Compliance with strict terms of the Constitution is a must—National Security Act (Act LXV of 1980) section 3.*

B *Preventive Detention—National Security Act (Act LXV) of 1980—Section 3 read with Article 22(5) of the Constitution of India, 1950—Full details of the prejudicial activities (dated, time and place) mentioned in the grounds of detention, but not in the supporting particulars—Whether non-mention in the "supporting particulars vitiate the entire paoceedings" ?*

C. *Preventive Detention—Evidence gathered need not be furnished to the Detenu.*

D. *Preventive Detenton matters—Counter-affidavits by the detaining authority on receipt of notice of the writ, not being furnished—Effect of non-furnishing—Constitution of India, 1950 Article 22(5).*

E. *Practice & procedure—Pronouncing final order without reasoned judgment and reserving the same in Preventive Detention Cases—Practice deprecated Constitution of India Article 226, 136 read with Civil Procedure Code sections 33,107 and Criminal Procedure Code Section 354, Difference between High Court & Supreme Court Procedures, explained.*

The respondent challenged the order of his detention passed by the District Magistrate, Ludhiana on October 3,1983 under section 3 (3) read with section 3 (2) of the National Security Act, 1980, through Criminal Writ Petition No. 516 of 1983. According to the petitioner respondent, the grounds of detention served on him on Oct. 6, 1983 showing that he was detained on the basis of two speeches made by him on 8.7.1983 and 20.9.1983 as recorded by the Crime Investigation Department of the Punjab Police contained certain particulars, which were totally absent from the supporting material and therefore no reasonable person could have possible passed the detention order on the basis of such material. The High Court accepted the contention and made the rule absolute. Hence the appeal by the State after obtaining special leave.

Allowing the appeal and remanding the matter to the High Court of Punjab, the Court

HELD : 1:1. While passing orders of detaining great care must be brought to bear on their task by the detaining authorities. Preventive detention is a

necessary evil but essentially an evil. Therefore, deprivation of personal liberty, if at all, has to be on the strict terms of the Constitution. Nothing less. [61 B-C] A

1:2. In the instant case, the detaining authority should not have adopted a somewhat casual and unimaginative approach to his task. The original version contains almost every one of the material details pertaining to the meeting, which are mentioned in ground No.1. The detaining authority needlessly applied his scissors excising the data which mentioned the date, place, the time and the occasion of the meeting. It is this lack of thoughtfulness on the part of the detaining authority which furnished to the respondent the semblance of an argument. [61 A-B] B

2. The contention of the respondent that he could not make an effective representation in behalf of ground No.1 because of the inadequacy of data in the supporting particulars supplied to him is incorrect. The inadequacies from which the supplementary particulars furnished to the respondent along with ground No.1 suffer, cannot affect that position because, they do not introduce any obscurity in the facts stated in that ground or detract from the substance of the allegations mentioned in that ground. The first ground of detention mentions that the detenu was right only formally or technically. That is because, the C.I.D. Report was supplied to him along with the grounds of detention with the express stipulation that it formed "the base of the grounds of detention." The grounds mention every one of the details which need have been mentioned. The C.I.D. report was furnished to the detenu as forming the source of information leading to the conclusion that he had made a speech which necessitated his detention in the interests of public order. In the circumstances, the grounds and the material furnished to the detenu have to be read together as if the material in the form of the C.I.D. report was a continuation of the grounds of detention. [57 C-E, 60 F-H] C D

Dr. Ramakrishna Bhardwaj v: The State of Delhi, [1953] SCR 708, *Khudiram Das v. The State of West Bengal*, [1975] 2 S.C.R. 832, @ 838 & 840; *Mohammed Yusuf Rowther* v. *The State of J & K*, [1980] 1 SCR 258 @ 268, 269; *State of Bombay* v. *Atmaram*, [1951] S.C.R. 157; *Shibbanlal Saxena* v. *State of Uttar Pradesh*, [1954] SCR 418; *Dwarkadas Bhatta* v. *State of Jammu & Kashmir*, [1956] S.C.R. 948; referred to. E

3. The detenu is not entitled to be informed of the source of information received against him or the evidence which may have been collected against him as for example, the evidence corroborating that the report of the C.I.D. is true and correct. His right is to receive every material particular without which a full and effective representation cannot be made. If the order of the detention refers to or relies upon any document, statement or other material, copies thereof have, of course, to be supplied to the detenu. It is not the law that evidence gathered by the detaining authority against the detenu must also be furnished to him. [62 G-H; 63 A-B] F G

Beni Madhob Shaw v. The State of West Bengal, A.I.R. 1993 S.C. 2455 *Har Jas Dev Singh* v. *State of Punjab*, [1974] 1 SCR 281 @ 288; *Vakil Vakil Singh* v. *State of Jammu & Kashmir*, A.I.R. 1974 2337 @ 2341; *Icchu Devi Choraria v. Union of India*, [1981] 1 SCR 640 @ 650; referred to.

4. The failure to furnish the counter-affidavit of the District Magistrate who had passed the order of detention, was an impropriety though in most of the cases H

A it may not be of much consequence, especially if there was no allegation of mala fides against the detaining authority. There are no allegations of *mala fides* against the District Magistrate and so, his failure to file a counter-affidavit will not vitiate the order of detention. [65 A-B]

Shaik Hanif v. *State of West Bengal*, [1974] 3 SCR 258; *Naranjan Singh* v. *State of Madhya Pradesh*, A.I.R. 1972 S.C. 2215, referred to.

B [The Court emphasised the importance of the detaining authority filing his own affidavit in cases of the present nature and observed that-"There are degrees of impropriety and the line which divides grave impropriety from illegality is too thin to draw and even more so to judge. Conceivably, there can be cases in which such impropriety arising out of the failure of the detaining authority in filing his own affidavit may vitiate the order of detention.] [65 C-D]

C 5. It is desirable that the final order which the High Court intends to pass should not be announced until a reasoned judgment is ready for pronouncement. If the object of passing such orders is to ensure speedy compliance with them, that object is more often defeated by the aggrieved party filing a special leave petition in this Court against the order passed by the High Court. That places this Court in a predicament because, without the benefit of the reasoning of the High Court it is difficult for this Court to allow the bare order to be implemented. The result inevitably is that the operation of the order passed by the High Court has to be D stayed pending delivery of the reasoned judgment. [65 H; 66 A-C]

CRIMINAL APPEALATE JURISDICTION : Criminal Appeal No. 692 of 1983.

From the Judgment and Order dated 29th November, 1983 of the Punjab & Haryana High Court at Chandigarh in Criminal E Writ Petition No. 516 of 1983.

K. Parasaran, Attorney Genl. of India, *Bhagwant Singh*, Advocate General (Punjab), *Gurmukh Singh*, Addl Adv. Genl. of Punjab, *D.S. Brar*, Asstt Adv. General, *G.S. Mann*, Deputy Adv. General, *R.D. Aggarwal*, Govt. Advocate, *Miss A Subhashini* and F *S.K. Bagga* for the Appellants.

Hardev Singh, *G.S. Grewal*, *N.S. Das Behl*, *R.S. Sodhi* and *J.S. Sandhawalia*, for the Respondent.

The Judgment of the Court was delivered by

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CHANDRACHUD, C. J. This is an appeal by special leave against the judgment dated November, 29 1983 of a learned Single Judge of the High Court of Punjab and Haryana in Criminal Writ Petition No. 516 of 1983. That Writ Petition was filed by the res- H pondent, Shri Jagdev Singh Talwandi, to challenge an order of detention passed by the District Magistrate, Ludhiana, on October 3,

1983 whereby the respondent was detained under section 3 (3) read with section 3 (2) of the National Security Act, 1980.

The respondent was arrested in pursuance of the order of detention on the night between October 3 and 4, 1983. He was first lodged in the Central Jail, Patiala and from there he was taken to Ambala, Baroda and Fathegarh (U.P.). He filed a Writ Petition (No. 463 of 1983) in the High Court to challenge his transfer and detention in a place far away from Ambala. He withdrew that petition on an assurance by the Government that he will be sent back to Ambala, which the Government did on October 28.

The grounds of detention were served on the respondent on October 6, 1983. Those grounds show that the petitioner was detained on the basis of two speeches allegedly made by him : one on July 8, 1983 at Nihang Chhowani, Baba Bakala, District Amritsar and the other on September 20, 1983 at Gurdwara Manji Sahib, Amritsar. The grounds furnished to the petitioner read thus :

"(1) That you in a Shaheedi Conference which was held from 11 a.m. to 4.45 p.m. on 8-7-1983 at a place known as 'Nihang Chhowani' at Baba Bakala, District Amritsar, delivered a provocative speech to a Sikh gathering comprising about 2000/2200 Persons wherein you made a pointed reference to the incident dated 2-7-1983 of encounters between Nihangs and police at Baba Bakala and Taran Taran and stressed that in order to take revenge Sikhs would kill their (Police) four persons in lieu of the two Nihangs who had been killed in the said encounters.

(2) That while addressing a conference convened by the AISSF (All India Sikh Students Federation) on 20-9-1983 at Gurdwara Manji Sahib at Amritsar and attended by about 7000/8000 Sikh students, you made a provocative speech wherein you said that all efforts made for the success of the Akali Morcha having failed, it was still time to establish in Punjab a Government parallel to the Central Government and that you are in a position to form such a Government. You further exhorted that the establishment of Khalsa Raaj was the only solution to the problems. You also made a suggestion that the Government

A will not accept any demand unless it was compelled by force to do so. This statement was also published in the various newspapers. A case F.I.R. No. 295 dated 27-9-1983 under section 124-A Indian Penal Code, and section 13 of the Unlawful Activities (Prevention) Act, 1967, was registered at B Police Station 'E' Division, Amritsar, which is under investigation."

The detaining authority stated in the last paragraph of the detention order that the respondent was being supplied the grounds of detention in Punjabi (Gurmukhi script) together with an English C translation thereof and the "supporting material forming the base of the grounds of detention". The "supporting material", by which is meant particulars of the grounds of detention, was supplied to the respondent along with the grounds. These particulars consist of what is alleged to be a report of the speeches made by the respondent, as recorded by the C.I.D. branch of the Punjab Police. The D particulars, of which an English translation was produced in the High Court at Ex. A1, read thus :

"While speaking he said that on July 2 by bringing B.S.F., Punjab Police and other police the unarmed Nihangs were fired at. There is no count as to how many of them E were killed, because no rollcall is taken of the Sikhs; how many came and how many went.

Further said that in Punjab hundreds of innocent Sikhs have been made the target of bullets. The Government has seen that the Sikhs go away after paying homage to the F martyrs. Now we will have to decide as to what steps should be taken. The beloved army of Guru (Nihangs) have protected our dress and scriptures. It is true that some of them do commit mistakes also. They should be punished. We should see that we should kill as many police man as they kill ours, otherwise othey will slowly finish us.

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The new Inspector-General of Police Mr. Bhinder, has stated that there are no extermists in Darbar Sahib. Further said that Congress wants to finish self respect among you.

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The Morcha, which is launched by Akali Dal, is to save the H Sikh appearance. The awards have been given to police, have they won any war? Such a big attack upon the Nihangs was

on a pre-planned programme. I say if they have killed our two men, then you should kill four. If they come to kill me like this, then I will die after killing them. I will never go back. Further said that if we get a judicial enquiry made, it becomes meaningless. Nothing comes out of them. Now the judicial power has been given to Executive Officers. They may kill any-body and they complete the enquiry and fill the file."

One of the grounds on which the order of detention was challenged in the High Court was that the State Government had failed to discharge its obligation under Article 22 (5) of the Constitution by denying to the respondent an effective opportunity to make a representation to the Advisory Board against the order of detention. On being asked by the learned Judge "to be more specific", counsel for the respondent stated in the High Court that the State Government had not supplied to the respondent the supporting material on which Ground No. 1 of the grounds of detention was based. Shri Hardev Singh, who appears on behalf of the respondent, adopted that contention by clarifying that the case of the respondent is that the relevant facts stated in the 1st ground of detention are totally absent from the supporting material supplied to him and, therefore, no reasonable person could have possibly passed the detention order on the basis of that material. The learned counsel urged that the order of detention was bad either because the detaining authority did not apply its mind to the material before it or, in the alternative, because there was some other material on the basis of which the detention order was passed and that material was not supplied to the respondent.

For the purpose of focussing attention on the true nature of the respondent's contention and the prejudice said to have been caused to him, the learned Judge of the High Court resorted to an ingenious device. He coined a conversation between the detaining authority and the detenu on the subject of their rival contentions in this case. That imaginary conversation may be reproduced, at least for the merit of its novelty :

"(The detaining authority and the detenu come face to face.)

Detaining authority: (After reading out Ground No. 1 to the detenu) : You had made that objectionable speech.

A *Detenu* : Sir, you seem to have been wrongly informed. I did not deliver any speech, provocative or otherwise, in a Shaheedi Conference at any such time, date or place known as 'Nihang Chhowni' at Baba Bakal, District Amritsar, before a Sikh gathering of 2000/2200, as read out by you from ground No. 1.

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Detaining authority : (Being cock-sure of its facts, takes out the C.I.D. report and puts it in the hands of the detenu.) : Go through this C.I.D. report carefully, as ground No. 1 is based on that report.

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Detenu : Sir, this report does not refer to any speech being made by me in a Shaheedi Conference at a given time, on a given date, at a given place, at Baba Bakala and before a Sikh gathering numbering 2000/2200.

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Detaining authority : (Taking back the report from the detenu's hand and subjecting it to a close scrutiny, says somewhat wryly) : Yes, you are right. The vital data which finds a mention in ground No. 1 is missing from the supporting materail. (Regaining quickly his repose, the detaining authority continues): Never mind if the given vital facts are missing from the supporting material. The supporting material at least reveals that you did utter the objectionable words somewhere, sometime, on some date and before some persons.

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Detenu : Sir, but that was not the speech on which you were going to act. You were going to take action against me on the basis of the speech mentioned in Ground No. 1.

Detaining authority : Very well. (So saying, the detaining authority orders the detention of the detenu on two grounds by adding one more ground on the basis of another speech. The detaining authority serves the order of detention upon the detenu, containing two grounds of detention. Simultaneously, the detaining authority supplies the supporting material to the detenu.")

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We must mention in order to put the record straight and in fairness to the learned Judge, that he has narrated this conversation in a manner which is slightly different in so far as the form, but not the substance; is concerned. He has narrated the conversation in a running form. We have reproduced it like a dialogue in a play, without adding anything of our own. Indeed, we have taken care not to make any changes at all in the fictional conversation imagined by the learned Judge because, the questions and answers which suggested themselves to him are, in a sense, the heart of the matter and, in any case, constitute the essence of his judgment.

With respect to the learned Judge, the basic error of his judgment lies in an easy, unexamined assumption which he has made on a significant aspect of the matter. The detenu reminded the detaining athority that the C.I.D. report did not refer to any speech made by him "in a Shaheedi Conference at a given time, on a given date, at a given place at Baba Bakala and before a Sikh gathering numbering 2000/2200". The detaining authority could have not possibly replied to that question by saying merely that the detenu was right. The detenu was right only formally or technically. That is because, the C.I.D. report was supplied to him alnog with the grounds of detention with the express stipulation that it formed "the base of the grounds of detention". The grounds mention every one of the details which need have been mentioned. The C.I.D. report was furnished to the detenue as forming the source of information leading to the conclusion that he had made a speech which necessitated his detention in the interests of public order. In the circumstances, the grounds and the material furnished to the detenu have to be read together as is the material in the form of the C.I.D. report was a continuation of the grounds of detention.

The unqualified reply given by the detaining authority to the detenu, as imagined by the learned Judge, betrays considerable unfamilarity with the true legal position of the part on the detaining authority. Not only that, but it shows that the detaining authority forgot that the particulars and the grounds were expressed to be interlinked, the former being the base of the latter. The detaining authority should have explained to the detenu that though the particulars supplied to him did not mention those various details, the particulars were supplied to him *along with the grounds*, that it was expressly clarified contemporaneously that they related to the facts stated in the grounds, that the two had to be read together and that the grounds contained the necessary facts with full details. The dialogue should

A have ended there and the curtain rung down. Indeed, the dialgue, though carefully improvised by the learned Judge, assumes what is to be decided, namely, whether the particulars furnished to the detenu suffer from the infirmity alleged.

Nevertheless, we will examine independently the argument of
B the respondent that he could not make an effective representation against the order of detention because the material supplied to him, that is to say, the C.I.D. report of the speech alleged to have been made by him at the Shaheedi Conference, did not contain the material particulars which formed an important consitituent of the grounds served upon him. His grievance is that the C.I.D. report of his speech
C does not mention that : (1) the Conference was held on July 8, 1983; (2) it was held at Nihang Chhowani; (3) it was held between the hours of 11 A.M. and 4.45 P.M. (4) it was a "Shaheedi Conference"; (5) there was a gathering of 2000 to 2200 persons at the Conference; and that, (6) the speech made by him referred to an encounter at Baba Bakala and Tarn Taran.

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Article 22 (5) of the Constitution, around which the argument of the respondent revolves, reads thus :

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

This Article has come up for consideration before this Court
F in a large number of cases. One of the earliest judgments of this Court on the interpretation of this Article is reported in *Dr. Ramkrishna Bhardwaj* v. *The State of Delhi*,[1] in which Patanjali Sastri, C.J. observed that under Article 22 (5) of the Constitution, the detenu has the right to be furnished with particulars of the grounds of his detention, "sufficient to enable him to make a representation which,
G on being considered, may give relief to him".

Khudiram Das v. *The State of West Bengal*,[2] is a judgment of a four Judge-Bench of this Court in a case which arose under the Main-

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(1) [1953] S.C.R. 708
(2) [1975] 2 S.C.R. 832, 838, 840.

tenance of Internal Security Act, 1971. One of us, Bhagwati, J., who spoke for the Court, surveyed the decisions bearing on the question of the obligation of the detaining authoirty and explained the nature of that obligation thus :

> "The basic facts and material particulars, therefore, which are the foundation of the order of detention, will also be covered by 'grounds' within the contemplation of article 22 (5) and section 8 and are required to be communicated to the detenu unless their disclosure is considered by the authority to be against the public interest. This has always been the view consistently taken by this Court in a series of decisions."

In *Mohammad Yousuf Rather* v. *The State of Jammu & Kashmir*,[1] Chinnappa Raddy, J., in a concurring judgment, dealt with the implications of Article 22 (5) of the Constitution thus :

> "The extent and the content of Article 22 (5) have been the subject matter of repeated pronouncements by this Court (*Vide State of Bombay* v. *Atmaram* [2], *Dr. Ramkrishna Bhardwaj* v. *State of Delhi* [1], *Shibbanlal Saxena* v. *State of Uttar Pradesh* [3] *Dwarkadas Bhatia* v. *State of Jammu & Kashmir* [4]. The interpretation of Article 22, consistently adopted by this Court, is, parhaps, one of the outstanding contributions of the Court in the cause of Human Rights. The law is now well settled that a detenu has two rights under Article 22 (5) of the Constitution : (1) To be informed, as soon as may be, of the grounds on which the order of detention is based, that is, the grounds which led to the subjective satisfaction of the detaining authority and (2) to be afforded the earliest opportunity of making a representation against the order of detention, that is, to be furnished with sufficient particulars to enable him to make a representation which on being considered may obtain relief to him."

In *Khudiram Das* v. *The State of West Bengal*,[2] it was observed that these two safeguards "are the barest minimum which must be

(1) [1980] 1 S.C.R. 258, 268, 269.
(2) [1951] S.C.R. 167.
(3) [1954] S.C.R. 418.
(4) [1956] S.C.R. 948.

observed before an executive authority can be permitted to preventively detain a person and thereby drown his right of personal liberty in the name of public good and social security".

The question which we have to consider in the light of these decisions is whether sufficient particulars of the first ground of detention were furnished to the respondent so as to enable him to exercise effectively his constitutional right of making a representation against the order of detention. The obligation which rests on the detaining authority in this behalf admits no exception and its rigour cannot be relaxed under any circumstances.

Having given our anxious consideration to this question, it seems to us impossible to accept the view of the High Court that sufficient particulars of the first ground of detention were not furnished to the detenu so as to enable him to make an effective representation to the detaining authority, that is to say, a representation which on being accepted may give relief to him. This is not a case in which the ground of detention contains a bare or bald statement of the conclusion to which the detaining authority had come, namely, that it was necessary to pass the order of detention in order to prevent the detenu from acting in a manner prejudicial to the interests of public order. The first ground of detention with which we are concerned in this appeal, mentions each and every one of the material particulars which the respondent was entitled to know in order to be able to make a full and effective representation against the order of detention. That ground mentions the place, date and time of the alleged meeting, describes the occasion on which the meeting was held, that is, the 'Shaheedi Conference'. It mentions the approximate number of persons who were present at the meeting. Finally, it mentions with particularity the various statements made by the respondent in his speech. These particulars mentioned in the grounds of detention comprise the entire gamut of facts which it was necessary for the respondent to know in order to make a well-informed representation. The inadequacies from which the supplementary particulars furnished to the respondent along with ground No. 1 suffer, cannot affect that position because, they do not introduce any obscurity in the facts stated in that ground or detract from the substance of the allegations mentioned in that ground. The argument of the respondent that he could not make an effective representation in behalf of ground No. 1 because of the inadequacy of data in the particulars supplied to him, has therefore to be rejected.

However, we are somewhat surprised that in a matter of this nature,

the detaining authority should have adopted a somewhat casual and unimaginative approach to his task. We asked the learned Attorney General to produce before us the original version of the C.I.D. report of which an extract was supplied to the respondent by way of particulars. The original version contains almost every one of the material details pertaining to the meeting which are mentioned in ground No. 1 The detaining authority needlessly applied his scissors excising the data which mentioned the date, the place, the time and the occasion of the meeting. It is this lack of thoughtfulness on the part of the detaining authority which furnished to the respondent the semblance of an argument. This Court has observed in numerous cases that, while passing orders of detention, great care must be brought to bear on their task by the detaining authorities. Preventive detention is a necessary evil but essentially an evil. Therefore, deprivation of personal liberty, if at all, has to be on the strict terms of the Constitution. Nothing less. We will utter the oft-given warning yet once more in the hope that the voice of reason will be heard.

Shri Hardev Singh contended, in the alternative, that the order of detention suffers from a total non-application of mind because, that order could not have been passed on the basis of the C.I.D. report which does not refer to any of the facts which are mentioned in the order of detention. It is undoubtedly true that the case of the appellants is that the order of detention is founded upon the report of the C.I.D., relating to the speech made by the respondent at the Shaheedi Conference. But the argument of the learned counsel overlooks that what was furnished to the respondent was an extract from the C.I.D. report and not the whole of it. However, that has not caused any prejudice to the respondent since the grounds and the particulars were served upon him simultaneously and ground No. 1 mentions every conceivable detail which it was necessary to mention in order to enable the respondent to make a proper representation against the order of detention. Evidently, the detaining authority had before it the whole of the C.I.D. report on the basis of which it passed the order of detention. What was omitted from the extract furnished to the respondent was incorporated in ground No. 1. It is therefore not possible to accept the argument that the order of detention is bad because the detaining authority did not apply its mind to the question as to whether there was material on the basis of which the respondent could be detained.

It was further argued by the learned counsel that the detaining authority should have disclosed the evidence on the basis of which

A the order of detention was passed because, in the absence of knowledge of such evidence, the respondent could not have made an effective representation against the order of detention. There is no substance in this contention. It is not the law that the evidence gathered by the detaining authority against the detenu must also be furnished to him.

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In *Beni Madhob Shaw* v. *The State of West Bengal*,[1] it was argued on behalf of the detenu that the details of the activities attributed to him were not disclosed to him, as a result of which his right to make a representation to the Government was seriously prejudiced. It was held by this Court that since the activities forming the grounds of C detenion were disclosed to the detenu in clear terms and since such disclosure furnished adequate information to the detenu to enable him to make an effective representation against his detention, the non-disclosure of sources of information or the exact words of the information which formed the foundation of the order of detention could not be complained of.

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In *Har Jas Dev Singh* v. *State of Punjab*,[2] it was held that the conclusions drawn from the available facts constitute 'the grounds' and that the ground must be supplied to the detenu. The Court observed that the detenu is not entitled to know the evidence nor the source of the information : What must be furnished to him are E the grounds of detention and the particulars which would enable him to make out a case, if he can, for the consideration of the detaining authority.

In *Vakil Singh* v. *State of Jammu and Kashmir*,[3] it was held that since the basic facts, as distinguished from factual details were F incorporated in the material which was supplied to the detenu, nothing more was required to be intimated to him in order to enable him to make an effective representation.

These cases show that the detenu is not entitled to be informed of the source of information received against him or the evidence G which may have been collected against him as, for example, the evidence corroborating that the report of the C.I.D. is true and correct. His right is to receive every material particular without which a full and

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(1) AIR 1973 SC 2455.
(2) [1974] 1 S.C.R. 281, 288.
(3) AIR 1974 2337, 2341.

effective representation cannot be made. If the order of detention refers to or relies upon any document, statement or other material, copies thereof have, of course, to be supplied to the detenu as held by this Court in *Ichhu Devi Choraria* v. *Union of India*.[1] That question does not arise here since no such thing is referred to or relied upon in the first ground of detention. Indeed the furnishing of the C.I.D. report, of which a truncated extract was furnished to the respondent, was a superfluous exercise in the light of the facts of the instant case.

Shri Hardev Singh relied upon the following passage in the judgment in *Khudiram* in support of his contention that the entire material which was before the detaining authority, including the evidence gathered by him, must be furnished to the detenu :

> "But if the grounds of detention are not communicated to him how can he make an effective representation ? The opportunity of making a representation would be rendered illusory. The communication of the grounds of detention is, therefore, also intended to subserve the purpose of enabling the detenu to make an effective representation. If this be the true reason for providing that the grounds on which the order of detention is made should be communicated to the detenu, it is obvious that the 'grounds' mean all the basic facts and materials which have been taken into account by the detaining authority in making the order of detention and on which, therefore, the order of detention is based."

These observations cannot be construed as meaning that the evidence which was collected by the detaining authority must also be furnished to the detenu. As the very same paragraph of the judgment at page 839 of the report shows, what was meant was that the basic facts and the material particulars which form the foundation of the order of detention must be furnished to the detenu since, in the true sense, they form part of the grounds of detention and without being apprised of the same, the detenu cannot possibly make an effective representation.

Shri Hardev Singh found serious fault with the fact that in answer to the writ petition filed by the respondent in the High Court, the counter-affidavit was sworn by Shri K.C. Mahajan, Deputy Secretary in the Home Department of the Government of Punjab, and

(1) [1981] 1 S.C.R. 640, 650.

A not by the District Magistrate, Ludhiana, who had passed the order of detention. We are not prepared to dismiss this submission as of no relevance or importance. In matters of a routine nature, if indeed there are any matters of a routine nature in the field of detention, a counter-affidavit may be sworn by a person who derives his knowledge from the record of the case. However, in sensitive matters of the B present nature, the detaining authority ought to file his own affidavit in answer to the writ petition and place the relevant fats before the Court which the Court is legitimately entitled to know.

In *Shaik Hanif* v. *State of West Bengal*,[1] the counter-affidavit on behalf of the State of West Bengal was filed by the Deputy Secretary C (Home), who verified the correctness of the averments in his affidavit on the basis of the facts contained in the official records. The District Magistrate, who passed the order of detention, did not file his affidavit and the explanation which he gave for not doing so was found to be unsatisfactory. Following an earlier judgment in *Naranjan Singh* v. *State of Madhya Pradesh*,[2] it was held by this Court that, in answer D to a Rule issued in a habeas corpus petition, it is incumbent upon the State to satisfy the Court that the detention of the petitioner is legal and is in conformity not only with the mandatory provisions of the Act under which the order of detention is passed but is also in accord with the requirements implicit in Article 22(5) of the Constitution. Sarkaria, Jobserved on behalf of the Court :

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> "Since the Court is precluded from testing the subjective satisfaction of the detaining authority by objective standards, it is all the more desirable that in response to the Rule Nisi, the counter-affidavit on behalf of the State should be sworn to by the District Magistrate or the authority on whose F subjective satisfaction the detention order under s.3 was passed. If for sufficient reason shown to the satisfaction of the Court, the affidavit of the person who passed the order of detention under section 3 cannot be furnished, the counter-affidavit should be sworn by some responsible officer who personally dealt with or processed the case in the Government G Secretariat or submitted it to the Minister or other Officer duly authorised under the rules of business framed by the Governor under Article 166 of the Constitution to pass orders on behalf of the Government in such matters."

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(1) [1974] 3 S.C.R. 258, 262.
(2) AIR 1972 SC 2215.

After reviewing certain other decisions, the Court held that the failure to furnish the counter-affidavit of the District Magistrate who had passed the order of detention, was an impropriety though in most of the cases it may not be of much consequence, especially if there was no allegation of *mala fides* against the detaining authority. In the result, the absence of the affidavit of the District Magistrate was held not to vitiate the order of detention.

In this case too, there are no allegations of *mala fides* against the District Magistrate and so, his failure to file a counter-affidavit will not vitiate the order of detention. We cannot, however, leave this subject without emphasising once again the importance of the detaining authority filing his own affidavit in cases of the present nature. There are degrees of impropriety and the line which divides grave impropriety from illegality is too thin to draw and even more so to judge. Conceivably, there can be cases in which such impropriety arising out of the failure of the detaining authority in filing his own affidavit may vitiate the order of detention.

Finally, Shri Hardev Singh has contended that the respondent was unable to give proper instructions to his counsel when the matter was heard by the Advisory Board. Counsel says that the respondent was transferred from place to place and ultimately, he was produced before the Advisory Board an hour or so before the commencement of proceedings before the Board. That left no time for him to instruct his counsel. We do not see any substance in this grievance. The respondent was represented by an advocate before the Advisory Board. The learned advocate argued the case of the respondent along with the cases of two other detenus. It does not appear that any grievance was made by him that he was not able to obtain instructions from the respondent so as to be able to represent his case effectively before the Advisory Board.

For these reasons, we allow the appeal and set aside the judgment of the High Court. As desired by counsel for the respondent, we remand the matter to the High Court for disposal of the remaining contentions raised by the respondent in his Writ Petition.

We would like to take this opportunity to point out that serious difficulties arise on account of the practice increasingly adopted by the High Courts, of pronouncing the final order without a reasoned judgment. It is desirable that the final order which the High Court intends to pass should not be announced until a reasoned judgment

A is ready for pronouncement. Suppose, for exammle, that a final order without a reasoned judgment is announced by the High Court that a house shall be demolished, or that the custody of a child shall be handed over to one parent as against the order, or that a person accused of a serious charge is acquitted, or that a statute is unconstitutional or, as in the instant case, that a detenu be released from B detention. If the object of passing such orders is to ensure speedy compliance with them, that object is more often defeated by the aggrieved party filing a special leave petition in this Court against the order passed by the High Court. That places this Court in a predicament because, without the benefit of the reasoning of the High Court, it is difficult for this Court to allow the bare order to be C implemented. The result inevitably is that the operation of the order passed by the High Court has to be stayed pending delivery of the reasoned judgment.

It may be thought that such orders are passed by this Court and therefore there is no reason why the High Courts should not D do the same. We would like to point out respectfully that the orders passed by this Court are final and no appeal lies against them. The Supreme Court is the final Court in the hierarchy of our courts. Besides, orders without a reasoned judgment are passed by this Court very rarely, under exceptional circumstances. Orders passed by the High Court are, subject to the appellate jurisdiction of this Court under E Article 136 of the Constitution and other provisions of the concerned statutes. We thought it necessary to make these observations in order that a practice which is not very desirable and which achieves no useful purpose may not grow out of its present infancy.

S.R. *Appeal allowed and Case remanded to the High Court*