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GAUTAM JAIN

v.

UNION OF INDIA & ANR.

(Criminal Appeal No. 2281 of 2014)

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JANUARY 04, 2017

[A.K. SIKRI AND ABHAY MANOHAR SAPRE, JJ.]

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Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 – ss.3, 5A – Appellant-detained u/s. 3(1), served with the Grounds of Detention and copies of certain relied upon documents – Appellant challenged the detention order in High Court contending that the respondents did not supply certain documents qua one particular allegation in the detention order – High Court upheld the detention order invoking the principle of segregation of grounds enumerated in s.5A, holding that the

D *detention order was based on various grounds and thus even if documents pertaining to one particular ground were not supplied to the appellant, the detention order would still sustain on remaining grounds – On appeal, held: If detention order is based on more than one ground, independent of each other, then the detention order will survive even if one of the grounds found is non-existing or legally unsustainable – In the instant case, detention order is based on multiple grounds inasmuch as various different acts, forming separate grounds, are mentioned on the basis of which*

E *appellant was detained – Therefore, once it is found that detention order contains many grounds, even if one of them is rejected, principle of segregation contained in s.5A is attracted – Therefore,*

F *contention that detention order is based only on one ground and thus principle of severability of grounds is not applicable is rejected.*

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Words and phrases: Grounds – Meaning of, in the context of s.5A, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

Dismissing the criminal appeal and the tagged writ petition, the Court

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HELD: 1.1 If the detention order is based on more than one grounds, independent of each other, then the detention order will still survive even if one of the grounds found is non-existing

or legally unsustainable. On the other hand, if the detention order is founded on one composite ground, though containing various species or sub-heads, the detention order would be vitiated if such ground is found fault with. [Para 15] [379-B] A

1.2 In order to have proper analysis of the detention order, meaning attributed to the expression 'grounds' contained in Section 5A of the Act is to be understood. [Para 16] [379-B] B

1.3 Grounds are the 'basic facts' on which conclusions are founded and these are different from subsidiary facts or further particulars of these basic facts. Each 'basic fact' would constitute a ground and particulars in support thereof or the details would be subsidiary facts or further particulars of the said basic facts which will be integral part of the 'grounds'. Section 3 of the Act does not use the term 'grounds'. No other provision in the Act defines 'grounds'. Section 3(3) deals with communication of the detention order and states that 'grounds' on which the order has been made shall be communicated to the detenu as soon as the order of detention is passed and fixes the time limit within which such detention order is to be passed. It is here the expression 'grounds' is used and it is for this reason that detailed grounds on which the detention order is passed are supplied to the detenu. Various circumstances which are given under sub-section (1) of Section 3 of the Act, on the basis of which detention order can be passed, cannot be treated as 'grounds'. Different instances would be treated as different 'grounds' as they constitute basic facts making them essentially factual constituents of the 'grounds' and the further particulars which are given in respect of those instances are the subsidiary details. [Para 19] [383-B-H; 384-A-B] C
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1.4 The order of detention is based on multiple grounds inasmuch as various different acts, which form separate grounds, are mentioned on the basis of which the detaining authority formed the opinion that it was desirable to put the appellant under detention. The contention of the appellant that the detention order is based only on one ground is thus, rejected. Once it is found that the detention order contains many grounds, even if one of them is to be rejected, principle of segregation contained in Section 5A gets attracted. [Paras 20, 23] [384-D; 387-F] G
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- A *A. Sowkath Ali v. Union of India & Ors.* (2000) 7 SCC 148 : [2000] 2 Suppl. SCR 48; *Vashisht Narain Karwaria v. State of U.P. & Anr.* (1990) 2 SCC 629 : [1990] 2 SCR 212; *Vakil Singh v. State of J. & K. & Anr.* (1975) 3 SCC 545; *Hansmukh v. State of Gujarat & Ors.* (1981) 2 SCC 175 : [1981] 1 SCR 353; *State of Gujarat v. Chamantil Manjibhai Soni* (1981) 2 SCC 24 : [1981] 2 SCR 500; *Prakash Chandra Mehta v. Commissioner and Secretary, Government of Kerala & Ors.* (1985) Suppl. SCC 144 : [1985] SCR 697 – relied on.
- B
- C *Khudiram Das v. The State of West Bengal & Ors.* (1975) 2 SCC 81 : [1975] 2 SCR 832; *Madan Lal Anand v. Union of India & Ors.* (1990) 1 SCC 81 : [1989] 1 Suppl. SCR 733; *Attorney General for India & Ors. v. Amratlal Prajivandas & Ors.* (1994) 5 SCC 54: [1994] 1 Suppl. SCR 1 – referred to.
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Case Law Reference

	[1975] 2 SCR 832	referred to	Para 12
	[1990] 2 SCR 212	relied on	Para 15
E	[2000] 2 Suppl. SCR 48	relied on	Para 15
	(1975) 3 SCC 545	relied on	Para 16
	[1981] 1 SCR 353	relied on	Para 17
	[1981] 2 SCR 500	relied on	Para 18
F	[1985] SCR 697	relied on	Para 21
	[1989] 1 Suppl. SCR 733	referred to	Para 22
	[1994] 1 Suppl. SCR 1	referred to	Para 24

- G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2281 of 2014.

From the Judgment and Order dated 18.03.2014 of the High Court of Delhi at New Delhi in Writ Petition (Crl.) No. 2060 of 2013

WITH

- H W. P. (Crl.) No. 203 of 2015.

Vikram Chaudhri, Sr. Adv., Sangram S. Saron, Harshit Sethi, Manish Verma, Rishi Sehgal, Ms. Pragati Sharma, Nikhil Jain, Advs. for the Appellant. A

Ms. Madhavi Divan, Ms. Binu Tamta, Ms. Ranjana Narayan, S. Wasim A. Qadri, Ms. Nidhi Khanna, B. Krishna Prasad, Advs. for the Respondents. B

The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. Detention order dated 23.09.2009 was passed by respondent No.2 against the appellant under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the 'Act') whereby the appellant was directed to be detained. Initially, this order was challenged by the appellant at pre-execution stage by filing writ petition in this Court under Article 32 of the Constitution of India. Said petition was entertained and initially execution of the detention order was stayed. However, ultimately vide order dated 01.10.2013, the writ petition was dismissed as withdrawn with liberty to the appellant to avail his legal remedies. Thereafter, the appellant appeared before the officials of Enforcement Directorate on 18.11.2013 when he was served with the order of detention. He was also detained and lodged in the Central Jail, Tihar in execution of the said order of detention. C
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On 21.11.2013 and 22.11.2013, the appellant was served with the Grounds of Detention as well as copies of certain relied upon documents with translation thereof. According to the appellant, complete set of documents, which were relied upon by the respondents, were not supplied. He made a representation on 03.12.2013 to the detaining authority requesting revocation of the detention order or in the alternative supply complete documents/information, which was followed by another representation dated 06.12.2013. According to the appellant, these representations were not considered. He filed the writ petition in the High Court of Delhi *inter alia* for issuance of Writ of Habeas Corpus with a direction to the respondents to set the appellant to liberty forthwith and for quashing of the detention order dated 23.09.2009. This petition was contested by the respondents. F
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2. The High Court has dismissed the writ petition vide judgment dated 18.03.2014. It may be commented at this stage itself that though H

A the High Court has accepted the plea of the appellant that there was failure on the part of the respondents to furnish certain documents *qua* one particular allegation in the detention order, it has still upheld the detention order invoking the principle of segregation of grounds enumerated in Section 5A of the Act. In nutshell, the High Court has come to the conclusion that there were various grounds which formed the basis of the detention order and even if the documents pertaining to one particular ground were not furnished, that ground could be ignored applying the principle of segregation and on remaining grounds the detention order was still sustainable.

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C 3. In the instant appeal preferred against the aforesaid judgment of the High Court, the plea taken by the appellant is that the principle of severability of grounds, which is enshrined in Section 5A of the Act, is not applicable to the case at hand as the detention order was passed on one ground only, in support of which few instances were given in the Grounds for Detention annexed with the detention order which cannot be treated as different grounds. It is, thus, argued that those instances forming part of detention order were, in fact, only further particulars or subsidiary facts rather than basic facts which are integral part of, and constitute the grounds of the detention order. It is this aspect of the matter which needs examination in the present case.

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E 4. With the aforesaid introductory note, we may now take stock of the order of detention as well as Grounds of Detention in support of the said order.

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G 5. Detention order dated 23.09.2009 records that respondent No.2 is satisfied that the detention order needs to be passed with respect to the appellant with a view to preventing him from acting in any manner prejudicial to the conservation and augmentation of foreign exchange in future. Grounds of Detention, in support of the said order, run into 46 pages which enumerate various activities in which the appellant was indulging in making and receiving Hawala payments upon the instruments received from abroad by him; and the appellant was making such Hawala payments from his business premises at Chandni Chowk as well as residential premises at Ashok Vihar. On receiving an information to this effect, searches were conducted at the business place of the appellant. Indian currency in the sum of Rs.2,04,00,000/- as well as various incriminating documents were found and seized. Likewise, from the

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residential premises of the appellant, apart from similar incriminating documents, Indian currency of Rs.64,35,000/- was seized. During the searches, statements of various persons were recorded, particulars whereof are given along with utterances by those persons in nutshell. 'Grounds of Detention' also refer to the summons which were issued to the appellant pursuant to which his statement was recorded and gist of the said statement is incorporated in the grounds. Various admissions recording Hawala transactions given by the appellant in his statement are also mentioned. Retraction of the statement is also taken note of, stated to have been considered by the Department but found to be an afterthought.

6. As mentioned above, in the writ petition filed by the petitioner in the High Court, plea taken by the appellant to challenge the detention order was failure on the part of the respondents to supply certain relied upon documents contained in pages 1 to 25, mentioned in the statement of one Pooran Chand Sharma, recorded on 03.09.2009. In the Grounds of Detention, statement of Pooran Chand Sharma is referred to from paragraphs 37 to 41 wherein it is also mentioned that searches conducted against Pooran Chand Sharma on 03.09.2009 had revealed that the appellant had continued to remain involved in prejudicial Hawala dealings even in August, 2009. According to the appellant, non-supply of these documents, which were very material, deprived the appellant of his valuable right to make effective and purposeful representation before the Advisory Board and the Central Government and, thus, vitiated the detention order, more so, when these were not supplied in support of specific request made in this behalf.

7. The aforesaid factual position was not disputed by the respondents. However, the respondents argued that the documents in question were not material and, therefore, non-supply thereof did not act to the prejudice of the appellant. This plea of the respondents is negated by the High Court, as is clear from the following discussion:

"7. In view of the aforesaid categorical and affirmative stand in grounds of detention, it is not possible to accept the stand in the counter affidavit and the additional affidavit that the documents or material found during the search of Pooran Chand Sharma, except his statement dated 3rd September, 2009, retraction dated 4th September, 2009 and

A department's letter dated 9th September, 2009 were not
taken into consideration. The said assertion is contrary to
specific words and statement made in paragraphs 37, 38
and 41 of the detention order and should not and cannot be
accepted. On being questioned, learned counsel for the
B respondent submitted that he does not have a copy of the
documents or material found during the course of search in
the place of Pooran Chand Sharma on 3rd September, 2009.
We were, however, shown copy of statement of Pooran
Chand Sharma dated 3rd September, 2009. Pooran Chand
C Sharma was confronted with a specific document and in
response had stated that the entry related to transaction
between Pooran Chand Sharma and the petitioner. It is,
therefore, clear that the said document i.e. the document
seized during the search which was confronted to Pooran
D Chand Sharma and Pooran Chand Sharma had implicated
the petitioner. This was a relied upon document. Even
otherwise it would be a relevant document. The said
document cannot be treated as a mere narration of facts or
casual reference to the factual matrix in the grounds of
detention. The document with the entry formed the basis
of the assertions made in paragraphs 37, 38 and 41 of the
E grounds of detention."

8. Notwithstanding the same, the High Court has taken the view
that paragraphs relating to seizure details in case of Pooran Chand Sharma
implicating the appellant constitute a separate ground, which was
severable on the application of the principle of segregation, as the detention
F order was based on multiple grounds. Thereafter, the High Court order
points out various grounds mentioned in the detention order holding them
to be different grounds. The contention of the appellant that 'Grounds
of Detention' in the instant case are composite and not separate is rejected
with the aid of certain decisions rendered by this Court.

G 9. Mr. Chaudhri, learned senior counsel appearing for the appellant,
submitted that there was only one ground of detention on the basis of
which order in question was passed, namely, 'preventing him (i.e. the
appellant) from acting in any manner prejudicial to the conservation and
augmentation of foreign exchange in future' and the Grounds of Detention
H which were given in support thereof were, in fact, various instances to

support the said ground. In order to buttress this submission, he referred to the provisions of Section 3 of the Act and argued that it spells out many 'grounds' on which order of detention can be passed. Section 3 of the Act reads as under:

"3. Power to make orders detaining certain persons.

(1) The Central Government or the State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from –

(i) smuggling goods, or

(ii) abetting the smuggling of goods, or

(iii) engaging in transporting or concealing or keeping smuggled goods, or

(iv) dealing in, smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or

(v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods,

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

(2) When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order.

(3) For the purposes of clause (5) of Article 22 of the

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A Constitution, the communication to a person detained in
 B pursuance of a detention order of the grounds on which the
 C order has been made shall be made as soon as may be
 D after the detention, but ordinarily not later than five days,
 E and in exceptional circumstances and for reasons to be
 F recorded in writing not later than fifteen days, from the
 G date of detention.”

10. Submission is that the order was passed only on one ground,
 viz. activities of the appellant were prejudicial to the conservation and
 augmentation of foreign exchange. According to him, other grounds
 mentioned in Section 3 are those referred to in clauses (i) to (v) of sub-
 section (1) like smuggling of goods, abetting the smuggling of goods,
 etc., but none of these grounds is invoked while passing the detention
 order. He also submitted that in the ‘Grounds of Detention’ itself it was
 stated by the detaining authority that the so-called activities enumerated
 therein ‘cumulatively indicate’ the activities of the appellant and others
 with whom he was associated in Hawala dealings. This was the position
 taken even in the counter affidavit filed by the respondents in the High
 Court. Therefore, the ‘Grounds of Detention’ need to be read
 cumulatively even as per the respondents, which would clearly show
 that these grounds were composite and not separate. It was argued
 that in such circumstances, the principle of severability could not be
 applied. In support of his submission, he referred to the judgment of
 this Court in *A. Sowkath Ali v. Union of India & Ors.*¹ where the issue
 of applicability of the principle of severability based on Section 5-A of
 the Act, which was invoked by the State, was discussed, and earlier
 judgments of this Court relied upon by both the parties were taken note
 of, as is clear from the following discussion contained therein: (SCC
 Headnote)

“24. Reliance is placed on *Prakash Chandra Mehta v. Commr. and Secy., Govt. of Kerala* [1985 Supp SCC 144]. This was a case where retraction of confession made by the detenu was not referred to in the grounds of detention. This Court in view of Section 5-A held that the detention order should not vitiate on the ground of non-application of mind if subjective satisfaction was arrived at on the basis of other independent objective factors enumerated in the

¹ (2000) 7 SCC 148

grounds. The Court held:

“If even ignoring the facts stated in the confession by the detenu the inference can still be drawn from other independent and objective facts mentioned in the grounds, then the order of detention cannot be challenged merely by the rejection of the inference drawn from confession. In the present case the authorities came to the conclusion that the detenus were engaged in smuggling relying on several factors, viz., the search and seizure in detenu’s room and recovery of gold biscuits, the detenu’s failure to explain the importation of those gold biscuits, the secretive manner in which the gold biscuits were kept, the connection with various dealers and the statements of the employees of the dealers that the detenus used to come with gold bars etc. These materials were in addition to the statements and confessions made by the detenus under Section 108 of the Customs Act. So even if those statements which were retracted as such could not be taken into consideration, there are other facts independent of the confessional statement as mentioned hereinbefore which can reasonably lead to the satisfaction that the authorities have come to. In view of Section 5-A of the COFEPOSA Act there was sufficient material to sustain other grounds of detention even if the retraction of confession was not considered by the authorities.”

25. Next reliance is on *Madan Lal Anand v. Union of India* [(1990) 1 SCC 81]. This case also is with reference to non-placement of retraction and with reference to Section 5-A and relying on *Prakash Chandra case* [1985 Supp SCC 144] it was held: (SCC p. 91, para 29)

“29. In the instant case, even assuming that the ground relating to the confessional statement made by the detenu under Section 108 of the Customs Act was an inadmissible ground as the subsequent retraction of the confessional statement was not considered by the detaining authority, still then that would not make the detention order bad, for in the view of this Court, such

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A order of detention shall be deemed to have been made separately on each of such grounds. Therefore, even excluding the inadmissible ground, the order of detention can be justified. The High Court has also overruled the contention of the detenu in this regard and, in our opinion, rightly.”

B 26. Learned counsel for the petitioner on the other hand places reliance on *Vashisht Narain Karwaria v. State of U.P.* [(1990) 2 SCC 629] This Court held: (SCC pp. 633-34, para 11)

C “11. Mr Dalveer Bhandari relying on Section 5-A of the Act urged that the order of detention should not be deemed to be invalid or inoperative merely on the ground that some extraneous materials were placed before the detaining authority since those alleged extraneous materials have no bearing on the validity of this impugned order which can be sustained on the material set out in the grounds of detention itself. Placing reliance on decision of this Court in *Prakash Chandra Mehta v. Commr. and Secy., Govt. of Kerala* wherein it has been observed that the ‘grounds’ under Article 22(5) of the Constitution do not mean mere factual inferences but mean factual inferences plus factual material submitted that in the present case the factual material set out in the grounds of detention alone led to the passing of the order with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order. We are unable to see any force in the above submission. What Section 5-A provides is that where there are two or more grounds covering various activities of the detenu, each activity is a separate ground by itself and if one of the grounds is vague, non-existent, not relevant, not connected or not proximately connected with such person or invalid for any other reason whatsoever, then that will not vitiate the order of detention.”

H This case considered the aforesaid decisions relied on behalf of the State.”

Mr. Chaudhri submitted that the instant case falls in the category mentioned in *Vashisht Narain Karwaria v. State of U.P. & Anr.*² A

11. After taking note of the aforesaid judgments, the Court, in *A. Sowkath Ali*, recorded its conclusion in para 27 as under:

“27. Firstly, we find that the question of severability under Section 5-A has not been raised by the State in any of the counter-affidavits, but even otherwise it is not applicable on the facts of the present case. Section 5-A applies where the detention is based on more than one ground, not where it is based on a single ground. Same is also the decision of this Court in the unreported decision of *Prem Prakash v. Union of India* [Crl. A. No. 170 of 1996 dated 7-10-1996 (see below at p. 163)] decided on 7-10-1996 relying on *K. Satyanarayan Subudhi v. Union of India* [1991 Supp (2) SCC 153]. Coming back to the present case we find really it is a case of one composite ground. The different numbers of the ground of detention are only paragraphs narrating the facts with the details of the document which is being relied on but factually, the detention order is based on one ground, which is revealed by Ground (1)(xvi) of the grounds of detention which we have already quoted hereinbefore. Thus on the facts of this case Section 5-A has no application in the present case.” B
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12. Learned counsel also relied upon the judgment of this Court in *Khudiram Das v. The State of West Bengal & Ors.*³, wherein meaning to the term ‘grounds’ is assigned and explained. Para 15 thereof, which was heavily relied upon by the learned counsel, reads as under: F

“15. Now, the proposition can hardly be disputed that if there is before the District Magistrate material against the detenu which is of a highly damaging character and having nexus and relevancy with the object of detention, and proximity with the time when the subjective satisfaction forming the basis of the detention order was arrived at, it would be legitimate for the Court to infer that such material must have influenced the District Magistrate in arriving at G

² (1990) 2 SCC 629

³ (1975) 2 SCC 81

A his subjective satisfaction and in such a case the Court would
refuse to accept the bald statement of the District Magistrate
that he did not take such material into account and excluded
it from consideration. It is elementary that the human mind
does not function in compartments. When it receives
B impressions from different sources, it is the totality of the
impressions which goes into the making of the decision and
it is not possible to analyse and dissect the impressions and
predicate which impressions went into the making of the
decision and which did not. Nor is it an easy exercise to
erase the impression created by particular circumstances
C so as to exclude the influence of such impression in the
decision making process. Therefore, in a case where the
material before the District Magistrate is of a character
which would in all reasonable probability be likely to influence
the decision of any reasonable human being, the Court would
be most reluctant to accept the ipse dixit of the District
D Magistrate that he was not so influenced and a fortiori, if
such material is not disclosed to the detenu, the order of
detention would be vitiated, both on the ground that all the
basic facts and materials which influenced the subjective
satisfaction of the District Magistrate were not
E communicated to the detenu as also on the ground that the
detenu was denied an opportunity of making an effective
representation against the order of detention.

13. Mr. Chaudhri also made another passionate plea, with the aid
of Article 22(5) of the Constitution of India. He argued that when there
F is an infringement of Constitutional mandate contained in Article 22(5)
of the Constitution, the provisions of Section 5A of the Act cannot be
resorted to. According to him, in such circumstances, the detention
order would be *void ab initio* and, therefore, question of sustaining
such an order taking umbrage of Section 5A of the Act would not arise.

G 14. Learned counsel for the respondents, on the other hand,
extensively read out the discussion contained in the impugned judgment
and submitted that the High Court rightly applied, on the facts of this
case, the principle of severability which is statutorily recognised under
Section 5A of the Act.

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15. A glimpse of the nature of issue involved, and the arguments which are advanced by both the parties thereupon, makes it crystal clear that insofar as the legal position is concerned, there is no dispute, nor can there be any dispute in this behalf. Both the parties are at ad-idem that if the detention order is based on more than one grounds, independent of each other, then the detention order will still survive even if one of the grounds found is non-existing or legally unsustainable (See *Vushisht Narain Karwaria*). On the other hand, if the detention order is founded on one composite ground, though containing various species or sub-heads, the detention order would be vitiated if such ground is found fault with (See *A. Sowkath Ali*). Thus, in the instant case, outcome of the appeal depends upon the question as to whether detention order is based on one ground alone or it is a case of multiple grounds on which the impugned detention order was passed.

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16. In order to have proper analysis of the detention order, we will have to first understand the meaning that is to be attributed to the expression 'grounds' contained in Section 5A of the Act. In *Vakil Singh v. State of J. & K. & Anr.*⁴, following meaning was assigned to the expression 'grounds':

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"29. We have reproduced the particulars of the grounds of detention, in full, earlier in this judgment. Read as a whole they appear to be reasonably clear and self-sufficient to bring home to the detenu the knowledge of the grounds of his detention. The abbreviation F.I.U. occurs four times in these grounds, but each time in conjunction with PAK, and twice in association with the words "Pak Officers". The collocation of words and the context in which F.I.U occurs makes its purport sufficiently intelligible. "Grounds" within the contemplation of Section 8(1) of the Act means 'materials' on which the order of detention is primarily based. Apart from conclusions of facts, "grounds" have a factual constituent, also. They must contain the pith and substance of primary facts but not subsidiary facts or evidential details. This requirement as to the communication of all essential constituents of the grounds was complied with in the present case. The basic facts, as distinguished from factual details, were incorporated in the material communicated to the

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⁴ (1975) 3 SCC 545

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A detenué. He was told the name of the notorious PAK agent
and courier (Mian Reham resident of Jumbian) through
whom he was supplying the information about the Indian
Army. He was informed about the places in Pakistan which
he was visiting. He was further told that in lieu of the supply
B of this information he had been receiving money from
Pakistan. Nothing more was required to be intimated to
enable him to make an effective representation. The facts
which were not disclosed were not basic facts, and their
non-disclosure did not affect the petitioner's right of making
C a representation. As recited in the communication under
cover of which the grounds of detention were served on
the detenué, those factual details were withheld by the
detaining authority because in its opinion, their disclosure
would have been against public interest."

17. Once again, this very aspect found duly explained in
D *Hansmukh v. State of Gujarat & Ors.*⁵ in the following words:

E "18. ... From these decisions it is clear that while the
expression "grounds" in Article 22(5), and for that matter,
in Section 3(3) of the COFEPOSA, includes not only
conclusions of fact but also all the 'basic facts' on which
those conclusions are founded, they are different from
subsidiary facts or further particulars of these basic facts.
The distinction between 'basic facts' which are essential
factual constituents of the 'grounds' and their further
particulars or subsidiary details is important. While the
F 'basic facts' being integral part of the 'grounds' must,
according to Section 3(3) of COFEPOSA "be
communicated to the detenu, as soon as may be, after the
detention, ordinarily not later than five days, and in
exceptional circumstances and for reasons to be recorded
in writing, not later than 15 days from the date of detention",
G further particulars of those grounds in compliance with the
second constitutional imperative spelled out from Article
22(5) in Khudi Ram's case, (AIR 1975 SC 550), are required
to be communicated to the detenu, as soon as may be
practicable, with reasonable expedition. It follows, that if in

H ⁵ (1981) 2 SCC 175

a case the so-called "grounds of detention" communicated to the detenu lack the basic or primary facts on which the conclusions of fact stated therein are founded, and this deficiency is not made good and communicated to the detenu within the period specified in Sec. 3(3) the omission will be fatal to the validity of the detention. If, however, the grounds communicated are elaborate and contain all the "basic facts" but are not comprehensive enough to cover all the details or particulars of the "basic facts", such particulars, also, must be supplied to the detenu, if asked for by him, with reasonable expedition, within a reasonable time. What is "reasonable time conforming with reasonable expedition", required for the supply of such details or further particulars, is a question of fact depending upon the facts and circumstances of the particular case. In the circumstances of a given case, if the time taken for supply of such additional particulars, exceeds marginally, the maximum fixed by the statute for communication of the grounds it may still be regarded "reasonable", while in the facts of another case, even a delay which does not exceed 15 days, may be unjustified, and amount to an infraction of the second constitutional imperative pointed out in Khudi Ram's case (supra)."

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18. Another judgment, elucidating law on the subject, is *State of Gujarat v. Chamantal Manjibhai Soni*⁶. Following discussion therefrom on this aspect is quoted below:

"2. The High Court seems to think that Section 5-A contemplates that there should be only one ground which relates to the violation of Section 3 of the Act and if that ground is irrelevant and the other grounds which relate to some other subject-matter are clear and specific, the detention will not stand vitiated. In our opinion, the argument of the High Court with due respect amounts to begging the question because the detention under Section 3 of the Act is only for the purpose of preventing smuggling and all the grounds whether there are one or more, would be relatable only to various activities of smuggling and we cannot

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⁶ (1981) 2 SCC 24

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A conceive of any other separate ground which could deal
with matters other than smuggling because the act of
smuggling covers several activities each forming a separate
ground of detention and the Act deals with no other act
except smuggling. Indeed, if the interpretation of the High
Court in respect of Section 5-A is accepted, then Section
B 5-A will become otiose. While construing Section 5-A the
High Court observed thus:

“But in the present case the subjective satisfaction is
based on one ground, that is, for preventing the present
petitioner from smuggling goods and in support of that
C ground various statements have been relied upon and
the totality of consideration of all these statements has
resulted in the subjective satisfaction of the detaining
authority when it passed the impugned order of
detention. Now for these totality of circumstances
D considered by the detaining authority, if one irrelevant
or unsustainable element has entered in the process of
subjective satisfaction, the process of arriving at
subjective satisfaction being comprehensive, the said
element would disturb the entire process of subjective
E satisfaction and consequently, even if one statement
which could not have been relied upon appeared before
the mind’s eye of the detaining authority, it could easily
be seen that its subjective satisfaction would be vitiated
and its final decision would rest upon a part of the material
which is irrelevant.”

F The process of reasoning adopted by the High Court is
absolutely unintelligible to us. It is manifest that whenever
the allegations of smuggling are made against a person who
is sought to be detained by way of preventing further
smuggling, there is bound to be one act or several acts with
G the common object of smuggling goods which is sought to
be prevented by the Act. It would, therefore, not be correct
to say that the object of the Act constitutes the ground of
detention. If this is so, in no case there could be any other
ground for detention, except the one which relates to

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smuggling. In our opinion, this is neither the object of the Act nor can such an object be spelt out from the language in which Section 5-A is couched. What the Act provides is that where there are a number of grounds of detention covering various activities of the detenu spreading over a period or periods, each activity is a separate ground by itself and if one of the grounds is irrelevant, vague or unspecific, then that will not vitiate the order of detention. The reason for enacting Section 5-A was the fact that several High Courts took the view that where several grounds are mentioned in an order of detention and one of them is found to be either vague or irrelevant then the entire order is vitiated because it cannot be predicated to what extent the subjective satisfaction of the authority could have been influenced by the vague or irrelevant ground. It was to displace the basis of these decisions that the Parliament enacted Section 5-A in order to make it clear that even if one of the grounds is irrelevant but the other grounds are clear and specific that by itself would not vitiate the order of detention..."

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19. From the above noted judgments, some guidance as to what constitutes 'grounds', forming the basis of detention order, can be easily discerned. In the first instance, it is to be mentioned that these grounds are the 'basic facts' on which conclusions are founded and these are different from subsidiary facts or further particulars of these basic facts. From the aforesaid, it is clear that each 'basic fact' would constitute a ground and particulars in support thereof or the details would be subsidiary facts or further particulars of the said basic facts which will be integral part of the 'grounds'. Section 3 of the Act does not use the term 'grounds'. No other provision in the Act defines 'grounds'. Section 3(3) deals with communication of the detention order and states that 'grounds' on which the order has been made shall be communicated to the detenu as soon as the order of detention is passed and fixes the time limit within which such detention order is to be passed. It is here the expression 'grounds' is used and it is for this reason that detailed grounds on which the detention order is passed are supplied to the detenu. Various circumstances which are given under sub-section (1) of Section 3 of the Act, on the basis of which detention order can be

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A passed, cannot be treated as 'grounds'. On the contrary, *Chamanlal Manjibhai Soni's* case clarifies that there is only one purpose of the Act, namely, preventing smuggling and all other grounds, whether there are one or more would be relatable to the various activities of smuggling. This shows that different instances would be treated as different 'grounds' as they constitute basic facts making them essentially factual constituents of the 'grounds' and the further particulars which are given in respect of those instances are the subsidiary details. This view of ours gets strengthened from the discussion in *Vakil Singh's* case where 'grounds' are referred to as 'materials on which the order of detention is primarily based'. The Court also pointed out that these 'grounds' must contain the pith and substance of primary facts but not subsidiary facts or evidential details.

20. When we apply the aforesaid test to the facts of this case, we are inclined to agree with the conclusion of the High Court that the order of detention is based on multiple grounds inasmuch as various different acts, which form separate grounds, are mentioned on the basis of which the detaining authority formed the opinion that it was desirable to put the appellant under detention. The High Court has dissected the order of detention, which we find is the correct exercise done by the High Court, in paras 11 and 12 of the impugned judgment and, therefore, we reproduce the same:

E "11. We would, therefore, at this stage like to refer to the grounds mentioned in the detention order. Detention order in paragraph 1 states that the petitioner has been indulging in making and receiving hawala payments upon instructions received from abroad from his business premises in Chandni Chowk and residence at SFS Flat, Ashok Vihar. In paragraph 2, it is stated that both the premises were searched on 15th October, 2008 and Indian Currency of Rs.2,04,00,000/- along with three mobile phones were seized from business premises and Indian currency of Rs.64,35,000/- and documents were seized from his residential premises. Statement of Shankar @ Mitha Lal, employee of the petitioner was recorded under Section 37 of the Foreign Exchange Management Act, 1999 (FEMA, for short) wherein, he stated that the main work of the petitioner was

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receiving and making payments in India on instructions from Sultan Bhai, Maama @ Manu, Mithu Bhai, Hirani and Jabbar Bhai, based in Dubai. Shankar decodified the figures mentioned in the bunch of documents as seized. He had further stated that the petitioner was making and receiving hawala payment to tune of Rs.2 crores per day on instructions from Dubai and received and made payments to the tune of Rs.180 crores in the last three months. Detention order also mentions and draws inferences from the statements of Ram Chand Gupta, Amit Jain, Ajay Misra, Pawan Kumar Pandey and Vikesh Kumar recorded under Section 37 of FEMA.

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12. The detention order mentions gist of the statement of daughter of the petitioner i.e., Ms. Krishma Jain again recorded under Section 37 of FEMA regarding Rs.64.35 lakhs seized from the residence of the petitioner. Statements made by the petitioner on 16th December, 2008 and 22nd December, 2008 under Section 37 of FEMA which gives details of foreign exchange arranged from abroad for different persons in India and de-codifying of various details, have been alluded with significance. Detention order also mentions statements of Rajiv Kumar, Jitender Kumar Verma and Raj Kumar Bindal under Section 37 of FEMA and retractions made by different persons whose statements were recorded under Section 37 of FEMA, etc. Searches in different premises on 17th December, 2009 and the seizure including seizure of cash made in the said searches and the statements of Kapil Jindal, Kanhaiya Lal, Raj Kumar Aggarwal, Kanti Lal Prajapati, Anil Aggarwal etc find elucidation and reliance. Detail of various mobile phones stand recorded. The order refers to searches made by the Department on 24th April, 2009 at the places of Muralidhar resulting in seizure of documents and cash. Statement of Bharat Kumar recorded on different dates. It states that summons were issued to the petitioner for appearance but he did not appear.”

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21. In fact, in this very manner, the matter was approached and

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A dealt with by this Court, thereby upholding the detention order, in *Prakash Chandra Mehta v. Commissioner and Secretary, Government of Kerala & Ors.*⁷, as is clear from the following discussion therein:

B “71. Section 5-A stipulates that when the detention order has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly that if one irrelevant or one inadmissible ground had been taken into consideration that would not make the detention order bad.

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C 75. In the instant case, the ground of detention is the satisfaction of the detaining authority that with a view to preventing the detenu from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing the detenu from, inter alia, dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping the smuggled goods, or engaging in transporting or concealing or keeping smuggled goods the detention of the detenu is necessary. This satisfaction was arrived at as inferences from several factors. These have been separately mentioned. One of them is the contention but this ground was taken into consideration without taking note of the retraction made thereafter. But the inference of the satisfaction was drawn from several factors which have been enumerated before. We have to examine whether even if the facts stated in the confession are completely ignored, then too the inferences can still be drawn from other independent and objective facts mentioned in this case, namely, the fact of seizure after search of 60 gold biscuits from the suitcase of the daughter in the presence of the father which indubitably belonged to the father and admitted by him to belong to him for which no explanation has been given and secondly the seizure of the papers connected with other groups and organisations. Pratap Sait and others to whom gold has been sold by the father are relevant grounds from which an inference can reasonably be drawn for the satisfaction of

H ⁷ 1985 (Supp.) SCC 144

the detaining authority for detaining the detenus for the purpose of Section 3(1)(iii) and 3(1)(iv). We are of the opinion that the impugned order cannot be challenged merely by the rejection of the inference drawn from confession. The same argument was presented in a little different shade, namely, the fact of retraction should have been considered by the detaining authority and the Court does not know that had that been taken into consideration, what conclusion the detaining authority would have arrived at. This contention cannot be accepted. We are not concerned with the sufficiency of the grounds. We are concerned whether there are relevant materials on which a reasonable belief or conviction could have been entertained by the detaining authority on the grounds mentioned in Section 3(1) of the said Act. Whether other grounds should have been taken into consideration or not is not relevant at the stage of the passing of the detention order. This contention, therefore, cannot be accepted. If that is the position then in view of Section 5-A of the Act there was sufficient material to sustain this ground of detention.”

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22. The Court thereafter discussed its earlier judgment in *Chamanlal Manjibhai Soni* (already noted above) in identical manner in the case of *Madan Lal Anand v. Union of India & Ors.*⁸

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23. We, thus, reject the contention of the appellant that, in the instant case, the detention order is based only on one ground. Once it is found that the detention order contains many grounds, even if one of them is to be rejected, principle of segregation contained in Section 5A gets attracted.

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24. Other argument of the learned senior counsel for the appellant was that once there is an infringement of Article 22(5) of the Constitution, provisions of Section 5A of the Act would be inapplicable. Article 22(5) of the Constitution of India reads as under:

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“Article 22(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made

⁸ (1990) 1 SCC 81

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A and shall afford him the earliest opportunity of making a representation against the order.”

This provision commands communication of the grounds on which the order of detention has been passed and to afford him the earliest opportunity of making a representation against the order. In the instant case, the documents containing the statement of Pooran Chand Sharma were not given and for this very reason, the High Court rightly held that such a ground cannot be relied upon by the respondents in support of the order. However, that would not mean that if there are other grounds on which the detention order can be sustained, principle of severability would become inapplicable. If this is accepted, it would mean that provisions of Section 5A of the Act cannot be applied at all. While rejecting such a contention, it would be sufficient to point out that constitutional validity of Section 5A of the Act was challenged in this Court and repelled in the case of *Attorney General for India & Ors. v. Amratlal Prajivandas & Ors.*⁹ after discussing the provisions of Section 5A in the light of Article 22(5) of the Constitution. Therefore, this contention is not available to the appellant.

25. As a result, the appeal stands dismissed.

WRIT PETITION (CRIMINAL) NO. 203 OF 2015

E 26. This writ petition filed under Article 32 of the Constitution of India challenges detention order bearing F. No. 673/13/2015-Cus.VIII 34 dated 27.04.2015 passed by respondent No. 2 on the same ground which has been dealt with elaborately in Criminal Appeal No. 2281 of 2014. It is for this reason that the petition was tagged along with the said appeal. Learned counsel for the petitioner, apart from arguing on the maintainability of the writ petition, adopted the arguments advanced by Mr. Chaudhri, senior counsel in the aforesaid appeal. For the reasons given above, this writ petition also stands dismissed.

Divya Pandey

Appeal and Writ Petition dismissed.

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H ⁹ (1994) 5 SCC 54