
(1999) 08 P&H CK 0130

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 467 of 1999

Arvind Shergill

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-08-1999

Acts Referred:

Citation : (2000) 67 ECC 42 : (1999) ECR 561 : (2000) 118 ELT 23 : (1999) 4 RCR(Criminal) 781

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. Vikram Chaudhary, for the Appellant; Mr. D.D. Sharma, for the Respondent

Judgement

Shri R.L. Anand, J.—Smt. Arvind Shergill wife of Harinder Pal Singh Shergill has filed the present petition under Article 226 of the Constitution of India praying for the issuance of a writ or any other order quashing the order of detention bearing No. F. No. 673/70/98-CUS. VIII, dated 17.11.1998 passed by respondent No. 2, i.e. Joint Secretary COFEPOSA u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act against her husband. The order so passed, according to the petitioner, is illegal, unconstitutional and based on extraneous, irrelevant and vague grounds.

2. According to the petitioner, her husband is a Senior Captain of Air India and has unblemished service record of 35 years, out of which 21 years he has spent in the active service of Indian Air Force and the rest of the service he has given to Air India. As per the terms of employment of her husband, he is paid some allowances regularly in foreign currency which is duly accounted for in his tax return and tax paid at source. On 3.8.1998, he was scheduled to operate Air India flight Mumbai-Trivandrum-Doha-Bahrain and due to an enquiry he was left with no time to deposit the said currency into his bank locker and the same was brought to the Airport to deposit in his Airport Locker before leaving for the flight. The customs officials took his currency from his private car parked outside

the Airport before he could shift it to the locker in the Airport premises. The customs officials cooked up a false case that he was smuggling it out of country. The husband of the petitioner was detained by the custom officials, taken into custody on 4.4.1998, beaten and some false statement was recorded implicating him in the smuggling of the alleged currency. The petitioner's husband was produced in the court of Chief Metropolitan Magistrate, Mumbai for remand, where he filed a complaint before the Chief Metropolitan Magistrate retracting from the alleged confessional statement. He was released on bail on 14.8.1998. After his release the Customs Authorities submitted an application before Additional Sessions Judge, Greater Mumbai seeking cancellation of bail of the husband of the petitioner and the said application was dismissed on 17.11.1998. On 10.9.1998, the husband of the petitioner made representation to the Revenue Secretary, Ministry of Finance, New Delhi in which he stoutly denied the contents of the Panchnama prepared by the Customs Authorities and further categorically denied the happenings of the events dated 3/4.8.1998. He also highlighted the highhandedness by stating that a false case has been planted against him. It was the stand of the husband of the petitioner that his statement u/s 108 of the Customs Act has been recorded under duress. He made another representation to respondent no. 3 on 2.9.1998 in which he submitted that he was in possession of vital evidence to justify that the foreign currency which was seized was neither found from his person nor from his baggage but the same was picked up from the motor vehicle parked outside the departure hall. The husband of the petitioner also highlighted that the major portion of the foreign currency alleged to have been recovered was acquired over a period of time from his employer i.e. Air India under the service rules with tax paid at source and the remaining foreign currency was left with him by his close relatives and his son for safe custody during their visit to India.

3. On 17.11.1998 when the bail application of the Customs Authorities for cancellation of bail was declined by the Court of Additional Sessions Judge, Greater Mumbai, respondent no. 2 issued an order bearing No. F. No. 673/70/98-CUS. VIII directing the detention of the husband of the petitioner in the custody of Central Prison, Nasik while exercising powers u/s 3(1) of the COFEPOSA. Immediately on coming to know of the detention order, the husband of the petitioner moved a comprehensive representation to the Union Finance Minister seeking the revocation of the order. The husband of the petitioner also received a show cause notice dated 22/27.1.1999 issued by the Addl. Commissioner of Customs, Sahar Airport, Mumbai u/s 124 of the Customs Act whereby he was called upon to show cause as to why the foreign currency i.e. 66217 dollars equivalent to Indian Rs. 27,54,627/- should not be confiscated under the Customs Act and Foreign Exchange Regulation Act. An interim reply was sent to respondent no. 3 through an Advocate and in the said reply it was categorically stated that the seized currency is the ownership of the husband of the petitioner. It is further stated that the adjudicating proceedings are at an advanced stage and it is yet to be determined as to whether the husband of the petitioner was or

was not in legal possession of the said currency.

4. With above background, the petitioner has sought the quashment of the detention order of her husband by stating that the said order is absurd. There is no rational connection between the occurrence stated by the Govt. for the detention and the objects sought to be achieved/prevented under the Statute; that the grounds of detention are absolutely vague and no detention order could be validly passed under the Cofeposa Act; that the adjudication proceedings are yet pending in which it is yet to be decided as to whether the currency is liable to confiscation or not. The husband of the petitioner is also at liberty to prove in the adjudication proceedings that the foreign currency totalling 66,217 US \$ was legally acquired by him. According to the petitioner, the said currency was partly earned by him by way of flights with Air India where payments were received in US dollars along with the tax paid at source and the remaining foreign currency was kept in safe custody by him which was left by close relatives and his son during their visits in India in the period intervening 26.12.1995 till June, 1998. Her husband is in possession of valid documents in the form of payment vouchers, etc., and those vouchers are even attested by the Senior Manager (Finance), Mumbai Airport. As per the guide-lines of the R.B.I., the accumulated foreign currency has to be deposited in the bank within the time limit. However, by not depositing the foreign currency within the aforesaid time limit, the husband of the petitioner has, at the most, committed only a technical violation. A request for condonation of delay for not depositing the foreign currency within the stipulated time with the bank/authorised dealer has already been made by the husband of the petitioner. Her husband also has already retracted the alleged confessional statement allegedly recorded by the Customs authorities. One Capt. D. D. S. Kumar, who was working in Air India, has also supported the case of the husband of the petitioner by, inter alia, stating that two persons had opened the lock of the car and taken out some items. Capt. Kumar had also seen one of them entering the departure hall Gate along with some items taken from the car. The criminal complaint has also been filed against her husband under the Customs Act, which is pending before the Chief Metropolitan Magistrate, Mumbai. Besides that adjudication proceedings are also pending. The detention order has been passed even before the adjudication proceedings could reach to their logical conclusion. This order of detention has been passed on non-existent grounds. Her husband is neither a habitual offender nor a member of an organised gang engaged in smuggling nor is likely to indulge in smuggling. Nothing incriminating has been recovered from the possession of the petitioner. There is an unexplained delay of 3-1/2 months in the passing of the detention order, which clearly shows that there is no live and proximate link between the prejudicial activity and the order of detention. It has also been stated by the petitioner that a very casual approach has been adopted by the detaining authority in passing the order and the order of detention has been passed in a mechanical manner without application of mind. The Customs Authorities had no jurisdiction even to search and seize the car, which was lying parked outside the Airport. The

impugned order has been passed with utmost haste because the learned Addl. Sessions Judge had rejected the application of the Customs Authorities for the cancellation of bail on 17.11.1998 and on the same very day, the detention order was passed. It has also been pleaded by the petitioner that the Panchnama on which reliance is being placed is only a document showing that the goods have been seized which cannot be used to prove the facts stated therein. Invoking the territorial jurisdiction, the case set up by the petitioner is that she and her husband are permanent residents of District Jalandhar where the detention order is likely to be executed, thus, giving a right to a specific part of cause of action. The searches have been conducted at the house of the petitioner as well as her husband, which is situated at Jalandhar.

5. With the above main allegations, the petitioner is seeking the quashment of the impugned order of detention F. No. 673/70/98-Cus. VIII dated 17.11.1998, Annexure P-7.

6. Notice of the petition was given to the respondents but instead of filing a detailed reply, a short reply by way of affidavit was submitted and certain preliminary objections were taken; such as, that the present petition is liable to be dismissed being not maintainable at pre-execution stage. According to the respondents, the husband of the petitioner is absconding and is evading the service of the detention order. Also, an objection was taken that this High Court has no territorial jurisdiction to entertain this petition. So far as the stand on merits is concerned, the case set up by the respondents is that the husband of the petitioner was arrested at Mumbai on 4.8.1998. There was specific information and acting upon that information officers of the Customs Deptt. intercepted Mr. Shergill, a Senior Captain in Air India on 3.8.1998 while proceeding to board Air India Flight No. AI-670 scheduled for Trivandrum-Doha-Bahrain. On being asked to declare his baggage or anything on person, he did not declare the currency which was later recovered on his personal search. The officers of Customs recovered 61,000/- US \$ cleverly concealed in black coloured cloth belt tied around his waist and 5,217 US \$ from his wallet, totalling 66,217/- US \$ equivalent to Rs. 27,54,627/-. Statement of the husband of the petitioner was recorded on 3.8.1998, wherein he, inter alia, admitted that he was himself involved in smuggling of foreign currency out of India. He also admitted that he was carrying the foreign currency for delivery to one Shri Kemp Kuttie, a resident of Bahrain on Shri Kuttie's request. He further stated that initially he was hesitant to accept the offer, thinking about the consequences, but finally agreed to do so for consideration of his close friendship and the fact that as a Commander of Aircraft, there would be minimum risk of his being detected by the Customs. He further stated that the foreign currency under seizure was handed over to him by one Yakub Mohamed at his residence and he carried the same to Airport tied around his waist. The husband of the petitioner also admitted the possession, carriage and recovery of foreign currency under seizure. He was also arrested on 4.8.1998 and produced before the Additional Chief Metropolitan Magistrate, who remanded him to judicial custody.

7. In support of his pleadings, the petitioner has placed certain documents on record and it will be useful for me to make a brief mention of the nature of the documents produced by the petitioner. Annexure P-1 is the medical report of HPS Shergill. Annexure P-2 is the statement dated 4.8.1998 made by HPS Shergill in which he has denied the allegations of the Customs authorities and instead he has given a different version. Annexure P-3 is the copy of the order dated 14.8.1998 passed by the Addl. Chief Metropolitan Magistrate, 3rd Court, Mumbai, who had granted bail to Capt. HPS Shergill and Kamlesh Yashwantraai Vyas. Annexure P-4 is the order dated 17.11.1998 passed by the court of Addl. Sessions Judge, Greater Mumbai, who dismissed the application of the Govt. seeking the cancellation of the bail of HPS Shergill. Annexure P-5 is the representation which was made by HPS Shergill in which he has justified the source of the currency by stating that he had legally acquired this currency. Annexure P-6 is another representation which was made by the husband of the petitioner to the Commissioner of Customs in which he has given a different story. Annexure P-7 is the order of detention which is also dated 17.11.1998, which coincides with the date on which the application of the Customs authorities for cancellation of bail was dismissed. Annexure P-8 is the grounds of detention. In ground No. 7, it has been stated as follows :-

"Searches were also conducted at your residential premises at House No. 292, New Jawahar Nagar, Jalandhar and House No. 234, Sector 9-C, at Chandigarh on 4.4.1998. During the course of the searches, nothing incriminating was either recovered or taken into possession."

I have quoted these lines to discuss the argument raised by the counsel for the respondents with regard to the territorial jurisdictional of the High Court.

8. To continue with the documents, Annexure P-9 is yet another representation which was made by HPS Shergill to the Finance Minister, Govt. of India, in which he has tried to defend himself by showing his innocence. Annexure P-10, is the show cause notice, issued u/s 124 of the Customs Act upon Mr. Shergill, seeking adjudication proceedings. Annexure P-11 is the interim reply. Annexure P-12 is the certificate given by HPS Shergill in which he has stated that he has legally acquired the foreign currency totalling 66,399 US \$ between 1.12.1994 to 31.7.1998. The said foreign currency was partly earned by way of flights with the Air India where the payments were received in US dollars with tax paid at source. Remaining foreign currency was kept under his safe custody as left behind by his close relatives and his son during their visits to India from August, 1995 to June, 1998. He has further given the details of this amount. Further, he has stated that the Manager, State Bank of India, Sector 17, Chandigarh, R.B.I., New Delhi and R.B.I., Mumbai, were also intimated regarding the accumulation of the foreign currency. Annexures P-13 to P-20 are yet other documents, which for our purposes, are not important to be mentioned.

9. No document has been produced by the respondents along with the short affidavit.

10. I have heard Mr. V. K. Chaudhary, Advocate, on behalf of the petitioner and Mr. D. D. Sharma, Advocate, for the respondents and with their assistance have gone through the record of this case.

11. Before I deal with the merits of the case, two preliminary objections were raised by the counsel for the respondents; (i) that this High Court has no territorial jurisdiction to entertain this writ petition and, (ii) that this writ petition is not legally maintainable at pre-execution stage.

12. Supplementing his first objection, the counsel for the respondents submitted that no cause of action or part of it has arisen in Punjab or Haryana and, therefore, this writ petition is not maintainable. According to Mr. Sharma, the writ is maintainable either at Mumbai or at Delhi where the currency was taken into possession or at a place where the order of detention was passed. In support of his contention, Mr. Sharma has relied upon several judgments reported as follows :-

1. Manjit Singh Dhingra v. Union of India and Ors. ILR 1987 P&H 61;
2. Gurdeep Kaur v. The Union of India and Ors. 1990 (2) RCR 20;
3. Board of Trustees for the Port of Calcutta and another Vs. Bombay Flour Mills Pvt. Ltd. and another, ;
4. Avinash Kumar Sharma v. Union of India 1997 (4) RCR (Cri) 359; and
5. Rajinder Nanda v. Union of India 1998 (1) RCR (Cri) 155.

13. On the contrary, the counsel for the petitioner while meeting the submissions of the counsel for the respondents has placed reliance upon D. N. Anand v. Union of India, Ministry of Finance and ors. 1993 (2) All Ind Cri L.R. 220, Trilok Nath Mittal v. Union of India and ors. 1994 (1) All Ind Cri L.R. 546 and B. Sharifa Ummer v. Joint Secretary, 1997 (4) RCR (Cri.) 349, and submitted that it is the case of the Govt. of India itself in the grounds of detention that in order to apprehend HPS Shergill, they had conducted search on his houses either at Jalandhar or at Chandigarh, and the order of detention is likely to be served upon the husband of the petitioner within the jurisdiction of this High Court and, therefore, part of cause of action has arisen within the jurisdiction of this court as the challenge has been given to the orders itself and the process of execution.

14. I have considered the rival contentions of the parties and am of the opinion that this High Court has the jurisdiction to entertain this petition. Mere residence of a person at a particular place perhaps may not furnish a cause of action but if the alleged detenu or his close relations has the apprehension that the order of detention is likely to be served upon him for the purposes of execution, certainly, the court in whose jurisdiction this order is to be executed will have the jurisdiction. It is the case of the U.O.I. itself that they raided the house of the husband of the petitioner at Jalandhar and Chandigarh, therefore, this court will have the jurisdiction to entertain this petition. The case law relied upon by the

counsel for the respondents is not applicable to the facts in hand. In Manjit Singh Dhingra's case (supra), the detention order was passed by the State Government. The said order was going to be served within the jurisdiction of another State. In that light, the Hon''ble Supreme Court gave the following findings :-

"The High Court be slow to assume jurisdiction over the matter on which a sister court can with more efficacy promptitude and exactitude hold an enquiry and grant relief. It would, therefore, be the High Court in the state which passed detention order which could grant adequate relief to the proposed detenu as that Court has the necessary equipment and all the means to expand and inquire into the subject. In this view of the matter the order of detention is not liable to be quashed by the High Court."

15. Here is a case where the detention order has been passed by the Central Govt., which has the jurisdiction over the entire country, the Central Govt. itself wanted to execute the order in the State of Punjab when its officers searched the premises of the husband of the petitioner at Jalandhar and Chandigarh.

16. In Gurdeep Kaur's case (supra), there was a recovery of gold biscuits near Ahmedabad. The detenu was residing at Mohali, Punjab and some inquiry was made at Mohali. With this background, it was held that the Punjab court has no jurisdiction to entertain the petition. Here is a case where the U.O.I. was not holding a mere inquiry but was executing the detention order.

17. In Board of Trustees' case (supra), the Hon''ble Supreme Court was pleased to hold that no cause of action had arisen at Bharatpur when Port Trust Office is at Calcutta and goods were also imported in Calcutta. The facts of this case are totally distinguishable from the facts in hand.

18. The findings in Rajinder Nanda's case (supra) also cannot come to the rescue of U.O.I. The cited case was a one where there was seizure of goods at Delhi and Bombay, the detenu was resident of Haryana. This alone could not confer jurisdiction to Punjab and Haryana High Court. I have already stated the facts. It is the admitted case of U.O.I. itself that they wanted to arrest HPS Shergill in pursuance of the detention order and it conducted raids at Chandigarh and Jalandhar. This very citation in my opinion, slightly goes against the U.O.I. on the different aspect which I will deal in the subsequent portion of this order.

19. For the reasons given above, I am not in a position to follow the dictum of the Hon''ble High Court in B. Sharifa Ummer's case (supra).

20. The counsel for the petitioner relied upon D. N. Anand's case (supra). It was a case under the Cofeposa Act. Two addresses were given in the order of detention, which was passed by the U.O.I., one of Delhi and the other of Ambala. The writ was filed in this High Court taking jurisdiction from the place of Ambala and this court was pleased to hold that the High Court has the jurisdiction and the writ is maintainable.

21. Trilok Nath Mittal's case (supra), is another authority from which support can be taken on this objection. According to this judgment, the order u/s 3 of the Cofeposa Act was passed, the summons were sent at Ludhiana address and the writ was filed u/s 226 of the Constitution of India in this High Court challenging the order and it was held that the writ is maintainable.

22. In B. Shareefa Ummer v. Joint Secretary 1997 (4) RCR (Cri.) 349, a Division Bench of the Kerala High Court has while dealing with the point of territorial jurisdiction held that if the recovery of foreign exchange is held at Bombay and the order of preventive detention has been passed at Delhi and order of detention has been served in Kerala, the Kerala High Court has the jurisdiction to entertain the petition. It was held by the D.B. that detention is a part of cause of action.

23. At the cost of repetition, I am stating that it is the case of the U.O.I. itself that searches were conducted at Jalandhar and Chandigarh, therefore, I am of the opinion that part of cause of action has arisen within the jurisdiction of this court. Otherwise also, what prejudice is going to be caused to U.O.I. if the High Court entertains this petition. Certainly, U.O.I. can raise the point of territorial jurisdiction, if it feels handicapped in putting its case at Chandigarh instead of Mumbai or Delhi. If the U.O.I. can be properly defended and represented at Chandigarh, on this technical objection, the writ cannot be thrown out.

24. Now, I meet the second objection of the respondents that the writ is not legally maintainable at pre-detention stage.

25. It is the common case of the parties that the detention order has not been served upon HPS Shergill who has not surrendered. The counsel for the respondents relied upon a judgment of the Hon'ble Supreme Court in Union of India v. Parasmal Rampuria 1988 (2) RCR (Cri.) 146, and submitted that if the detenu has not surrendered and if he had filed a writ before the High Court, the grant of interim stay is not valid.

26. Of course, when the writ was filed by the petitioner, the operation of detention order was stayed by the High Court, being satisfied, prima facie, that the detention order requires scrutiny. Now, I am disposing of the writ petition on merits. The judgment of the Hon'ble Supreme Court does not say that in no eventuality the writ cannot be entertained by the High Court on pre-detention stage. Rather, this court is of the opinion that the Hon'ble Supreme Court has laid down the guide-lines under what circumstances a writ is maintainable at a pre-detention stage. The Hon'ble Supreme Court in Additional Secretary to Government of India and others v. Smt. Alka Subhash Gadia and another 1991 (1) RCR (Cri.) 677: 1992 SCC 301], and the gist of the ratio is as follows :-

i) that the impugned order is not passed under the Act under which it is purported to have been passed;

ii) that it is sought to be executed against a wrong person;

- iii) that it is passed for a wrong purpose;
- iv) that it is passed on vague, extraneous and irrelevant grounds; or
- v) that the authority which passed it had no authority to do so.

This view was even followed by this court in Rajinder Nanda's case (supra) and it was held that the order of detention which has not been executed can still be quashed at a pre-execution stage on the five grounds enumerated above.

27. The counsel for the petitioner has invited my attention on the question of maintainability to the observations made by the Hon''ble Judges of Bombay High Court in Special Civil Application No. 2752 of 1975 (Manoharlal Narang v. The Union of India & Ors.), where it was held as under :-

"7. Before we deal with the contentions on merits, we may usefully dispose of, at the outset, two preliminary contentions raised by Shri Kotwal on behalf of the State Government. The first such contention is that the present petition is not maintainable since it is premature, inasmuch as the detention order has not yet been served on the petitioner he has not been arrested under the same. A slightly different aspect of the very same contention was also canvassed by Shri Kotwal when he submitted that the Court will not grant relief to the petitioner in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution since the petitioner has not come to the Court with clean hands. The second contention is that the petitioner is not entitled to the reliefs prayed for by him since he has not made detaining authority a party to the petition.

8. As regards the first contention, it is not disputed, as indeed it could not be, that the order of detention was executable the moment it was passed. If this is so, then it is really strange to argue that a person who is likely to be affected by such order has no right to approach the Court to challenge the same the moment he learns that such order has been made against him. Under a detention order a person is sought to be deprived of his liberty. As laid down under Article 21 of the Constitution, such order can be made only under a law enacted for the purpose and after complying with the provisions of such law. It may happen that an order is passed without there being a statute to support it or it may be passed without complying with the provisions of the statute if any. The order may also come to be passed against a wrong person or for a wrong purpose. To insist in such cases that the person against whom the order is passed must first submit to the same and lose his valuable liberty, before approaching the Court, is to insist upon an unreasonable, unwarranted and illegal condition. We find no support for such proposition in our legal system. On the other hand, the fundamental rights guaranteed by the Constitution particularly by Articles 14, 19 and 21 confer on any person likely to be affected by such order an implicit right to approach the Court and knock at its door at any time, and the Court will not and cannot refuse relief to such person by insisting that he first surrender his liberty. We therefore find no substance in this submission. Although it is not strictly material, it will not be inappropriate in the present case to point out that though the detention order

was not served upon the petitioner, proceedings u/s 7(1) of the Act read with sections 82 and 83 of the Code were initiated against him and his properties were attached in the said proceedings before this petition was filed. The said proceedings could never, have been initiated unless there was a detention order made under the Act. We are therefore unable to understand the said contention advanced on behalf of the State."

28. I have gone through this dictum. If the detenu is called upon to always surrender and, then, to challenge the order of detention, he may face drastic consequences. Besides that, he may suffer humiliation, one can even lose his job. The object of the law is not always to ensure that the detenu must go inside in pursuance of the detention order. If the aggrieved person is in a position to show to the High Court or to the Supreme Court that on the face of it, the detention order has been passed on vague, non-existent and against the spirit of section 3(1) of the Cofeposa Act, such an order should be scrutinised irrespective of the fact that the detenu has not surrendered.

29. In *Crl. Writ Petition 286 of 1997 (Vidya Bagria v. U.O.I.)*, this court has also followed the judgment of the Supreme Court in *Smt. Alka Subhash Gadia's* case (*supra*) and also held that the High Court has the territorial jurisdiction to entertain the petition if the part of cause of action has arisen within the territorial jurisdiction of this court.

30. In this view of the matter, I also reject the second preliminary objection of U.O.I.

31. Reverting to the merits of the case, I am of the considered opinion that the impugned detention order cannot sustain in the eyes of law. Section 3 of the COFEPOSA Act reads as follows :-

"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 the 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 :

Provided that no order of detention shall be made on any of the grounds specified in this sub-section on which an order of detention may be made u/s 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 or u/s 3 of the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (J & K Ordinance, 1 of 1988).

(2) When any order of detention is made by the 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 Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention."

32. A reading of Section 3 would show that the provisions of this section can be invoked with a view to prevent a person from acting in any manner prejudicial to the conservation of augmentation of foreign exchange. We all know that these are very drastic provisions. A man can be detained without trial. His custody can go on for two years in certain sets of circumstances. The entire exercise on the part of the U.O.I. should be with a view to prevent a person so that he may not act in any manner prejudicial to the conservation or augmentation of foreign exchange. In the present case, according to the Union of India, the husband of the petitioner was detained on 3.8.1988 with the allegations that he wanted to take out 66,000/- and odd US \$ from the country and he wanted to hand over that currency at Bahrain to a particular person. The stand of the husband of the petitioner right from the very beginning was that his statement recorded u/s 108 of the Customs Act is under duress. It has not correctly incorporated the facts. The recovery is from the vehicle. Above all, the stand of the husband of the petitioner is that his possession is valid, who is a Pilot of Air India. It is the common case of the parties that Pilots get 50% of their salary in US dollars. Further, the stand of the husband of the petitioner is that part of the currency was entrusted to him by his son or relatives in India. As per the Regulations, before a person has to go out from the country, either he can deposit the foreign currency with an authorised dealer or with the R.B.I.

33. I am not going into the merits of the case at this juncture because this court has been informed and is clear from the record that the adjudication proceedings are also pending. Apart from that, the authorities have also filed a criminal complaint under the Customs Act which is also pending before the Court of Chief Metropolitan Magistrate, at Mumbai. The glaring fact is that on 17.11.1998, the

Customs authorities submitted an application before the Chief Metropolitan Magistrate, Mumbai, seeking the cancellation of the bail granted to the husband of the petitioner and that prayer was declined on that very day. The present impugned order has been passed by the Govt. coinciding with the date of the order when the prayer for cancellation of bail was not granted by the court of Addl. Sessions Judge, Great Mumbai. It is not the case of U.O.I. that the husband of the petitioner earlier had been taking out the currency to the foreign lands. Whether for a solitary act, even if it is assumed for the sake of arguments as correct, would it be proper on the part of the U.O.I. to invoke the provisions of Section 3(1) of the Cofeposa Act. In this view of this court, it may not be worthwhile as it defeats the very object of the Act which is preventive in nature. If the husband of the petitioner has committed a substantive offence, that offence should be tried by a competent court of jurisdiction but if in the adjudication proceedings, the husband of the petitioner is in position to explain the possession of the currency, it will have a direct bearing on the complaint which has been filed by the authorities before the Chief Metropolitan Magistrate, Mumbai. In the view of this court, the impugned order has been passed in haste without application of mind as to whether the impugned act attributed to the husband of the petitioner was, in fact, with the object of conservation and augmentation of foreign exchange.

34. Therefore, this court is of the opinion that the impugned detention order, Annexure P-7 with the grounds of detention, cannot be sustained in the eyes of law and has to be quashed and I order accordingly.

35. Here, I would also like to deal with the submission raised by the counsel for U.O.I. that the U.O.I. may be permitted to place on record a detailed written statement. Opportunity was given to the U.O.I. to file the written statement. It opted to file a short written statement in which they have taken preliminary objections. On merits also, the stand of the U.O.I. was categorical. The documents on which the U.O.I. could rely for the benefit of this court, have been placed by the petitioner on record and I have already made a mention of those documents in the earlier portion of this judgment. In these circumstances, it will be a futile exercise on the part of this court to further call upon the U.O.I. to place on record the additional written statement. I have noted the contentions raised by the counsel for respondents for the purpose of adjudicating the controversy in hand. I have considered the nature of the order, the background in which it was passed and the date which became the basis for the passing of the detention order.

36. The net result is that the present petition succeeds. The impugned order, Annexure P-7 dated 17.11.1998 along with the grounds of detention order, is hereby set aside and quashed with a clear observation that the quashment of the said order shall have no bearing on the complaint filed by the Customs authorities and the adjudication proceedings which are pending before the competent authorities.

37. Nothing stated above shall affect the decision of the competent authority who is seized of the criminal complaint as well as the adjudication proceedings.