
(1996) 07 BOM CK 0022

In the Bombay High Court

Case No : Criminal Writ Petition No. 1238 of 1995

Deepesh Mahesh Zaveri

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 24-07-1996

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 11, 3(1), 8
Constitution of India, 1950 — Article 22, 22(4), 22(5), 226, 366

Citation : (1996) CriLJ 4112

Hon'ble Judges : D.K. Deshmukh, J; A.V. Savant, J

Bench : Division Bench

Advocate : M.G. Karmali and M.R. Kotwal, for the Appellant; R.M. Agrawal and Mrs. V.K. Tahilramani, for the Respondent

Judgement

A.V. Savant, J.—The main question which arises for consideration in this petition under Article 226 of the Constitution of India for a Writ of Habeas Corpus is how to calculate the period of three months contemplated by clause (4) of Article 22 of the Constitution which does not permit preventive detention of a person for a longer period than three months unless the Advisory Board has reported before expiration of the said period of three months that there is in its opinion sufficient cause for such detention. This is a petition by Deepesh Mahesh Zaveri, son of the detenu Mahesh Kantilal Zaveri, challenging the Order dated 5th October, 1995 issued by the second respondent viz. Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, in exercise of his powers u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short, COFEPOSA Act). Under the said order, Mahesh Kantilal Zaveri has been detained u/s 3(1) of the COFEPOSA Act with a view to preventing him in future from acting in any manner prejudicial to the augmentation of foreign exchange. The order of detention has been executed on 10th October, 1995. The confirmation order u/s 8(f) of the COFEPOSA Act was issued on 10th January, 1996, followed by a corrigendum issued on 9th February, 1996. The brief facts

necessary for deciding the petition are as under :-

2. On the 5th June, 1995, a letter dated 29th May, 1995 was received from one Jagat Shah by the Deputy Director of Enforcement, Bombay, which revealed that the detenu was concerned with M/s. A. M. Zaveri and Co., Italian Chain Manufacturing Co., and Shriji Exports, Bombay, and had been exporting gold jewellery to his own companies by name M/s. Full Gold Ltd., and Golden Jewel Enterprises Ltd., at Hongkong. Under the Export Promotion Replenishment Scheme, he was required to repatriate the sale proceeds of the exported jewellery through the official banking channels, but he was receiving the proceeds unofficially through illegal channels viz. adjustment by way of "havala" payments and was still claiming entitlement to replenish his gold stocks. On 21st June, 1995, the business and residential premises of the detenu were searched and some documents were seized. On the same day, the statement of the detenu was recorded. It transpired that between March, 1995 and June, 1995 he had exported gold jewellery worth Rs. 7 to Rs. 7.5 crores under the Export. Promotion Replenishment Scheme and his statement disclosed that the sale proceeds of the exported gold jewellery, instead of being repatriated through the official/banking channels, was received through illegal channels viz. adjustment by way of Havala payments.

3. During the course of investigation under the Foreign Exchange Regulation Act, 1973, the detenu was initially arrested on 22nd June, 1995, but was released on bail on 23rd June, 1995. He retracted his statement that was recorded on 21st June, 1995. On 22nd August, 1995 he filed an application before the Chief Metropolitan Magistrate, Bombay, for return of certain documents claiming that the said documents were necessary to enable him to comply with his obligations under the Export Promotion Replenishment Scheme. It is stated that the documents consisted of "Release Certificates". The Magistrate passed the Order on 25th August, 1995 in favour of the detenu. The Enforcement Directorate challenged the said order in Revision Application before the Sessions Court and the Sessions Court allowed the said Revision Application on 19th September, 1995. On 28th September, 1995 the detenu filed Writ Petition No. 1047 of 1995 in this Court, which is pending. As stated earlier, the detention order was issued from Delhi on 5th October, 1995 and has been served on the detenu on the 10th October, 1995.

4. We have heard all the learned Counsel at length viz. Mr. Karmali for the petitioner, Mr. Agrawal for Respondents Nos. 1 and 2 and Mrs. Tahilramani for Respondents Nos. 3 and 4.

5. The first contention raised by Mr. Karmali is that the detenu was taken in detention on 10th October, 1995 and the order of confirmation has been issued on 10th January, 1996. The confirmation order has been served on the detenu, when he was in prison, on 13th January, 1996. It is contended that since the detenu was taken in custody on 10th October, 1995, the confirmation order ought to have been issued before the 10th January, 1996 and the last day on

which such an order could have been issued would be 9th January, 1996. The contention is to be found in the added Ground No. (xvii) on page 32-A of the Petition. Reply to this contention is in the affidavit of the second respondent Shri K. L. Verma, the concerned Joint Secretary, who is the detaining authority. It is stated in the affidavit-in-reply that after the detention order was executed on 10th October, 1995, the Advisory Board constituted u/s 8 of the COFEPOSA reviewed the case of the detenu on 15th December, 1995 and opined that there was sufficient cause for detention of the detenu. On receipt of the said opinion, the relevant records along with the proposal for confirmation was put up before the detaining authority on 28th December, 1995. The detaining authority submitted his proposal to the Additional Secretary on 29th December, 1995. The Additional Secretary submitted it to the Secretary (Revenue) on 2nd January, 1996 and on the same day, the said Secretary submitted the proposal to the Finance Minister, who approved it immediately on the following day viz. 3rd January, 1996 as required u/s 8(f) of the COFEPOSA Act. Mr. Agrawal for Respondents No. 3 and 4 has made available to us the xerox copies of the notings in the file, which showed the movement of the file date-wise, including the approval of the then Finance Minister Shri Manmohan Singh on 3-1-1996. Thus, it is stated that the decision to confirm the detention was taken on 3rd January, 1996 and the order to that effect was issued on 10th January, 1996.

6. What Mr. Karmali contends is that the order of confirmation ought to have been issued within three months from the date of detention viz. within three months from 10th October, 1995. We may in this behalf refer to the provisions of Article 22(4) of the Constitution of India, which reads as under :-

"22(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or (b)"

As far as Section 8 of the COFEPOSA Act dealing with confirmation is concerned, all that clause (f) says is as under :-

"(f) in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith."

7. It is true that under clause (b) of Section 8 of the COFEPOSA Act, the

appropriate Government is obliged to make a reference to the Advisory Board within five weeks from the date of detention. It is also true that under clause (c) of Section 8, the Advisory Board is obliged to prepare its report specifying in separate paragraph thereof its opinion as to whether or not there is sufficient cause for detention of the person concerned and submit the same within eleven weeks from the date of detention. The question is whether the Government is required to pass the order of confirmation within three months as contended by Mr. Karmali or whether the mandate of Article 22(4) of the Constitution requires that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months, unless the Advisory Board had reported before the expiration of the said period of three months that there was, in its opinion, sufficient cause for such detention. The short point then is, when does the period of three months expire from the date of detention, which, in this case is 10th October, 1995. Does the period of three months from the date of detention expire on the 9th January, 1996 as contended on behalf of the defence or does it expire on the 10th January, 1996 as contended by the respondents. In this behalf, we may usefully refer to a passage from Halsbury's Laws of England, Fourth Edition, Vol. 45 page 532, para 1111, which reads as under :-

"1111. Calendar month running from arbitrary date. When the period prescribed is a calendar month running from any arbitrary date the period expires upon the day in the succeeding month corresponding to the date upon which the period start, save that, if the period starts at the end of a calendar month which contains more days than the next succeeding month, the period expires at the end of that, succeeding month."

Similar statement of law is to be found at page 172 of the Words And Phrases Legally Defined, Third Edition, by John B. Saunders, Volume 3, which reads as under :-

"When the period prescribed is a calendar month running from any arbitrary date the period expires with the day in the succeeding month corresponding to the date upon which the period starts, save that, if the period starts at the end of a calendar month which contains more days than the expires at the end of that succeeding month"

8. In *Dodds v. Walker* (1981) 2 All ER 609, the dispute was between a landlord and his tenant and the question arose regarding computation of time viz. four months from giving of notice by the landlord terminating tenancy. In calculating the period of a month or a specified number of months that had elapsed after occurrence of a specified event, such as giving of notice, the general rule was stated to be that the period ended on the corresponding date in the appropriate subsequent month, irrespective of whether some months were longer than others. Thus, where a landlord gave notice of termination under the 1954 Act on the last day of a 30-day month, the four calendar months prescribed by Section 29(3) of the 1954 Act for service of an application for a new tenancy expired on the 30th day of the fourth succeeding month even if it was a 31-day month.

Accordingly, the four-month period within which the tenant had to apply for a new tenancy expired at midnight on 30th January and his application made on 31st January was out of time. At page 610 in the Judgment delivered by LORD DIPLOCK the following observations occur :-

"It is equally well established, and is not disputed by counsel for the tenant, that when the relevant period is a month or a specified number of months after the giving of a notice the general rule is that the period ends on the corresponding date in the appropriate subsequent month, i.e. the day of that month that bears the same number as the day of the earlier month on which the notice was given".

9. It must be borne in mind that Article 22(4) of the Constitution prohibits preventive detention of a person for a longer period than three months unless the Advisory Board had opined to the contrary before the expiry of the period of three months. The word "month" has not been defined under Article 366 of the Constitution. However, Clause. (1) of Article 367 says that unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. Article 372 deals with continuance in force of existing laws and their adaptation. When we turn to the General Clauses Act, 1897, the word "month" has been defined in Section 3(35) as under :-

"3.(35) "month" shall mean a month reckoned according to the British calendar".

Section 9 of the General Clauses Act reads as under :-

"9(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to"."

10. Then in Haru Das Gupta Vs. The State of West Bengal, , the question arose regarding computation of three months from issuance of the Order of detention. In that case, the petitioner was detained on 5th February, 1971 and the order of confirmation was made on 5th May, 1971. The contention was that the order of confirmation was made one day after the expiration of period of three months from the date of detention and the detention ought to end on the midnight of 4th May, 1971. In para 5 of the judgment, at pages 1294/1295 of the Report, after considering some of the English decisions and the statement of law appearing in Halsbury's Laws of England (3rd Edn.), Vol. 37, pp. 92 and 95, the Apex Court observed as under :-

"5. These decisions show that Courts have drawn a distinction between a term created within which an act may be done and a time limited for the doing of an act. The rule is well established that where a particular time is given from a

certain date within which an act is to be done, the day on that date is to be excluded Thus, as a general rule the effect of defining a period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day There is no reason why the aforesaid rule of construction followed consistently and for so long should not also be applied here."

After having said this the Apex Court observed in para 6 as under :-

"6. In computing the period of three months from the date of detention, which was February 5, 1971, before the expiration of which the order or decision for confirming the detention order and continuation of the detention thereunder had to be made, the date of the commencement of detention, namely, February 5, 1971 has to be excluded. So done, the order of confirmation was made before the expiration of the period of three months from the date of detention".

11. Again in *Deb Sadhan Roy Vs. State of West Bengal*, , the Apex Court had occasion to deal with a similar question arising under the West Bengal (Prevention of Violent Activities) Act, 1970. The Apex Court examined the scheme of the relevant provisions of the West Bengal Act in the light of the mandate of Article 22(4) and observed that in the scheme of the said provision, the confirmation of the opinion of Advisory Board to continue the detention beyond three months must be within three months from the date of detention in conformity with the mandate of Article 22(4) of the Constitution. This conclusion is to be found at the end of para 11 at page 1929. However, in regard to the next submission that the confirmation must be communicated to the detenu within a period of three months from the date of detention, the Apex Court rejected the submission in para 12 of the decision at pages 1929-30 of the Report, observing that "Nonetheless the communication must be within a reasonable time. What is a reasonable time must necessarily depend upon the circumstances of each case."

12. In *Jitender Tyagi v. Delhi Administration* 1989 Scale 717 the Supreme Court had another occasion to consider the question of computation of a period of 12 days under the provisions of the National Security Act, 1980. In Tyagi's case, the order of detention was made in on 19th January, 1989 under the National Security Act. Under sub-section (3) of Section 4 of the Act, it was provided that no such order shall remain in force for more than 12 days after the making thereof unless in the meantime it has been approved by the State Government. The question arose as to whether in computing the period of 12 days, the day on which the order of detention was made shall be included or not ? The order of detention was approved on 26th January, 1989 and by the Order dated January 31, 1989 the order of approval was communicated to the authorities concerned. The Apex Court considered the views expressed by several High Courts, as also its earlier decision in *Haru Das Gupta v. State of West Bengal*, AIR 1992 SC 1293 (supra) and observed at the end of para 16 at page 722 as under :

"Be that as it may, we have no hesitation in holding that in computing the period of twelve days referred to in sub-section (4) of Section 3 of the Act, the day on which the order of detention was passed should be excluded and, upon such computation, it must be held that the approval of the order of detention was made within twelve days after the making of the order of detention".

13. It is true that Mr. Karmali for the petitioner sought to rely upon the observations of the Apex Court in *Nirmal Kumar Khandelwal Vs. Union of India (UOI) and Others*, . It appears that in Khandelwal's case, the petitioner was detained from October 24, 1977 by the order passed u/s 3(1) of the COFEPOSA Act. Reference was made to the Advisory Board on 24th November, 1977 and the confirmation was admittedly beyond the period of three months. It was in this admitted premise that the Supreme Court observed at the end of para 7, at page 1157 as under :-

"Confirmation is necessary only to continue the detention after the expiry of 3 months. If that be so, it stands to reason to hold that the order of detention must be confirmed before the expiry of 3 months".

Then, at the end of Para 8 it has been observed as under :-

"The crucial words in the section are : "which has been confirmed under Clause(f) of Section 8." They underscore the same policy which underlies the constitutional mandate in Article 22(4). These words put it beyond doubt that if the initial order of detention is not confirmed by the appropriate Government within three months of the date of the detention, the detention after the expiry of that period ipso facto becomes unauthorised and illegal".

Mr. Karmali fairly stated before us that the question as to how one calculates the period of three months from the date of issuance of the Order of detention for the purpose of Clause (4) of Article 22 was not directly raised before the Apex Court in Khandelwal's case, because perhaps, in that case the admitted fact was that the order of confirmation was issued beyond the period of three months. There was no dispute as to whether the order of confirmation was issued on the last day or one day later, as is the case before us. Hence, in our view, the ratio of the decision in Khandelwal's case is of no assistance to Mr. Karmali.

14. Mr. Karmali then invited our attention to Division Bench decision of this Court in *Adolf Sabastiao Pereira v. The Union of India*, Criminal Writ Petition No. 527 of 1992, decided on 4th August, 1992. That was a case where the order of detention was issued on the 5th March, 1992 and the order of confirmation was issued on 29th June, 1992, much later after the expiry of three months though the order of detention dated 5th March, 1992, was executed on 24th March, 1992 and hence, it was held that the detention was violative of Article 22(4) of the Constitution.

15. In the light of the above decisions, we are of the view that since the order of detention dated 5th October, 1995 was executed on the 10th October, 1995, the

order of confirmation issued on 10th January, 1996 does not violate the petitioner's right under Article 22(4) of the Constitution. The words used in Article 22(4) are no law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless the Advisory Board opines to the contrary. The question, therefore, is as to when does the period of three months expire. In the light of the statement of Law in Halsbury's Laws of England quoted in Para 7 above and the two decisions subsequent of the Apex Court which we have referred to above in Paras 10 and 11, we are of the view that the order of confirmation issued on 10th January, 1996 does not result in detention of a person for a period longer than three months in view of the admitted fact that the Advisory Board had by that time already opined that there was sufficient cause for detention. This is independently of the fact that the decision to confirm the order of detention was really taken by the Central Government as early as on the 3rd January, 1996, as is evident from the pleadings before us and the copy of the original notings made on the file including the approval of the Finance Minister recorded on 3rd January, 1996. In our view, therefore, the first contention raised by Mr. Karmali has no merit and we reject the same.

16. The second contention raised by Mr. Karmali is about the alleged shortage of time in considering some of the documents that were placed before the detaining authority before issuing the order of detention dated 5th October, 1995. The contention is taken in ground (i) of the petition. However, what was argued before us was that as many as 26 documents mentioned in the list of documents were sent by the sponsoring authority to the detaining authority.

Needless to say that these documents were sent in three installments. Grievance is made of the last document, which is a copy of Writ Petition No. 1047 of 1995 which was filed against the order passed by the Sessions Court on 19th September, 1995 allowing the revision filed by the Directorate of Enforcement against the order of the Chief Metropolitan Magistrate passed on 25th August, 1995 directing the return of some documents to enable the detenu to take advantage of the Export Promotion Replenishment Scheme. We have already referred to this fact in Para 3 above. The compilation of Writ Petition No. 1047 of 1995, which is annexed at pages 638 to 665 of the compilation of documents, shows that the writ petition consists of the Memorandum, Release Order, Application made before the C.M.M., the Order passed by the C.M.M. on 25th August, 1995 and the Order passed by the Sessions Court on 19th September, 1995. In fact, some of the accompaniments to the writ petition were already before the detaining authority inasmuch the first bunch of papers was sent on 18th July, 1995, alongwith the proposal of the sponsoring authority. The second bunch of papers was sent on 8th August, 1995. On the 22nd August, 1995 the Screening Committee has cleared the proposal and on 4th September, 1995 the third installment of papers was sent, which included the order passed by the C.M.M. on 25th August, 1995. The only fresh annexure to the Writ Petition No. 1047 of 1995, which was not before the detaining authority earlier was the Order

of the Sessions Judge dated 19th September, 1995. This was furnished on the 29th September, 1995. The affidavit filed before us by Shri Verma shows that though there were some holidays intervening, whenever there is a contingency of an urgency arising, all the available sources are pooled and the job is completed within the shortest possible time. The detaining authority has categorically stated that all the documents on which reliance was placed were considered contemporaneously and the detention order and the grounds of detention were formulated expeditiously. There is nothing to doubt the correctness of this version and we find no merit in the second contention raised by Mr. Karmali. The ground that the compilation of documents consists of 665 pages need not deter one because the documents were only 26 in number; some of them are detailed extracts of accounts. They had already reached the detaining authority earlier, either when they were sent on 18th July, 1995, 8th August, 1995 or 4th September, 1995. Only a copy of the Writ Petition No. 1047 of 1995 was sent on 29th September, 1995. We have already indicated above that the detaining authority has considered the relevant material and there is, thus, no merit in the grievance that there was shortage of time and that the detaining authority could not have considered the relevant documents before issuing the order of detention on the 5th October, 1995. The second contention is accordingly rejected.

17. The third contention raised by Mr. Karmali is that the pre-detention representation made by the detenu on the 5th October, 1995, which was addressed to the detaining authority has not been considered by the detaining authority. The contention is raised in ground (vii). A copy of the said representation is annexed to the petition at Exhibit "D". In reply to this ground, it is stated by the second respondent in his affidavit that the said representation is a pre-detention detention representation mainly containing his retraction and disowning in connection with Shrijee Exports, Bombay. It is contended in the said representation that the earlier activities of the detenu were not illegal activities. The other contentions of the detenu mentioned therein have been considered by the detaining authority though the representation dated 5th October, 1995 itself has not been considered. Mr. Karmali tried to suggest that this representation must also be considered on the same footing as the representation made by the detenu under Clause (5) of Article 22 of the Constitution which reads as under :-

"(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 and shall afford him the earliest opportunity of making a representation against the order".

A bare reading of the above provision would show that the right to make a representation enshrined in Clause (5) of Article 22 is against the order of detention which has been communicated to the person along with the grounds. Admittedly, the order of detention has been served on the detenu on the 10th

October, 1995, though it is dated 5th October, 1995. There was no controversy before us that this is not a representation against the order of detention, but was in anticipation of the issuance of the order of detention. Mr. Karmali tried to take support from the Division Bench decision of this Court in the case of Manoharlal Narang v. The Union of India, Special Civil Application No. 2752 of 1975 with Criminal Revision Application No. 23 of 1980, decided on 8th July, 1980. In para 19 of the said decision, the learned Judges have discussed the said question in the light of the facts of the case where there was an application for revocation u/s 11 of the COFEPOSA Act. The Division Bench concluded that a person has a statutory right to make an application for revocation even before he surrenders to the detention order, and that there is a corresponding duty cast upon the appropriate Government to consider such application within a reasonable time. In case where a person is not taken in detention, a mere non-consideration of the application or delay in considering the same, will not vitiate the order of detention. It was held in the facts of the case that neither the order of detention nor its enforceability had become honest in law, but it was held that in the circumstances of the case it would not be legal to enforce the order unless the petitioner's application for revocation was first considered. We do not think that the ratio of the said decision can assist Mr. Karmali.

18. The Apex Court had occasion to consider the question of the right of a detenu to challenge the order of detention before the order is executed. In the case of the Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, , the Apex Court considered the question whether the State is required to disclose the grounds of detention before detaining a person and answered the same in the negative. The Court also considered the alleged right of the detenu to challenge the order at the pre-execution stage and observed that the refusal to entertain such a petition to challenge the detention order at the pre-execution stage does not amount to abandonment of the power or denial to the proposed detenu, but prevents abuse and perversion of law. On a consideration of the relevant provisions of the Constitution and the COFEPOSA Act, the Apex Court held that it is not open to the detenu to contend that the State must first disclose the grounds before executing the order and that a petition at the pre-execution stage could be maintainable in the five exceptional circumstances which were enumerated in the said decision. Even in those exceptional cases, it was held that the Court is not obliged to interfere with the impugned order of detention at the pre-execution stage and may insist that the detenu should first submit to it. It will ultimately depend on the facts of each case. Recently, while deciding Criminal Writ Petition No. 648 of 1996 of Gauri Shankar Jakhalia v. The Joint Secretary, Department of Revenue, Ministry of Finance, Government of India, New Delhi on 2nd July, 1996 we have followed the said decision in Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, case, as also the decision in the case of N.K. Bapna Vs. Union of India (UOI) and Others, and in N.K. Bapna Vs. Union of India (UOI) and Others, . Following the ratio of the decisions in the said cases of

(i) Alka Gadia and (ii) N. K. Bapna, we have held that even in the five specified categories where interference at the pre-execution stage may be permissible, the Court is not obliged to interfere at the pre-execution stage and may insist that the detenu should first submit to the order of detention. Thus, in our view, the scope of a representation and even a petition to this Court at the pre-execution stage would be extremely limited. At any rate, we have no hesitation in rejecting Mr. Karmali's contention that a representation at the pre-execution stage like the one in the present case made on the 5th October, 1995 before the order of detention was executed on the 10th October, 1995 must be placed on the same pedestal as the representation made under Clause (5) of Article 22 of the Constitution. The least that can be said about this contention is that the non-consideration of such a representation made before the execution of the order of detention cannot vitiate the order of detention which was executed subsequently. Hence, there is no merit in the third contention raised by Mr. Karmali.

19. The fourth contention that has been raised is about the alleged non-consideration of the prior detention order dated 3rd June, 1991 issued by the detaining authority with a view to preventing the detenu from indulging in smuggling activities. The present order has been issued with a view to preventing him in future from acting in any manner prejudicial to the augmentation of foreign exchange. Thus, while the earlier order of detention dated 3rd June, 1991 was passed with a view to preventing him from indulging in smuggling activities, the present order has been passed with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange. That apart, it is stated before us that the Calcutta High Court had granted an interim stay to the execution of the said order for a period of one week. This interim stay was granted on the 21st June, 1991 and after the expiry of the said period of one week, interim relief was not continued. In reply to this contention, the second respondent has stated that the purposes of the two orders are entirely different. As indicated above, the 3rd June, 1991 order was with a view to preventing him from indulging in smuggling activities, whereas the present order is with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange. The earlier order of detention is based on his conduct obviously prior to June, 1991, whereas the grounds of detention in the present case show that it is the detenu's conduct in the immediate past viz. the transaction between March, 1995 and June, 1995 of export of gold jewellery worth Rs. 7 to Rs. 7.5 crores to Hong Kong under the Export Promotion Replenishment Scheme which is the basis of issuance of the present order of detention for a different purpose viz. with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange. It also appears from the grounds of detention that prior to 1994 the detenu was mostly dealing within the country itself, whereas since 1994 he started the export of gold jewellery to Hong Kong to certain firms viz. M/s. Full Gold Limited and Golden Jewel Enterprises Limited. In our view, therefore, the fact that there was an earlier order of detention issued on 3rd June, 1991 for a

different purpose was really not relevant to the exercise of power u/s 3(1) of the COFEPOSA Act where the impugned order has been issued with a view to preventing the detenu in future from acting in any manner prejudicial to the augmentation of foreign exchange.

20. The fifth contention is that the annexure to the letter dated 22nd July, 1995 sent by the petitioner to the Deputy Director of Enforcement, at Bombay, was not placed before the detaining authority. The contention has been raised in ground (x). Reply to this ground is that the annexure to the said letter dated 22nd July, 1995 addressed by the detenu to the Deputy Director of Enforcement at Bombay was fully legible. However, the letter shows that the information mentioned in the annexure was already available to the detaining authority and there was nothing new about it viz. position of Jagat Shah as director of M/s. Golden Jewels Enterprises, Hong Kong. In the affidavit, the detaining authority has given a list of documents from which the position of Jagat Shah as a director of M/s. Golden Jewel Enterprises could be ascertained. Hence, it is contended that there was nothing vital in the partially illegible annexure to the letter dated 22nd July, 1995. Hence, the satisfaction recorded in the order of detention is not in any manner impaired. We have perused the said letter dated 22nd July, 1995 and the annexure thereto. In our view, there is nothing vital in the said document viz. annexure to the letter dated 22nd July, 1995 which was partially illegible when it was sent to the Deputy Director and the perusal of the letter and the copy of its annexure annexed to this petition shows that all the basic facts on which the order of detention and the grounds have been formulated were already before the detaining authority. There were no new facts, relevant or material, which could have affected the satisfaction of the detaining authority one way or the other and hence, in our view no grievance can be made of this failure on the part of the Deputy Director of Enforcement to place the annexure to the letter dated 22nd July, 1995 before the detaining authority. Accordingly, we reject the contention of Mr. Karmali.

21. The last contention which Mr. Karmali tried to raise was that some of the Gujarathi writings in some of the documents furnished to the detenu, which constituted the material for formulation of the grounds of detention, though intelligible to the detenu, were not intelligible to the detaining authority. It is contended that the detaining authority does not know Gujarathi and since the detaining authority was not conversant with Gujarathi language, there is failure to consider the said documents before recording the satisfaction in the order of detention. This according to the detenu affects his right under Article 22(5) of the Constitution. Contention is raised in ground (vi) of the petition. In reply, it is contended by the second respondent that though some portion of some of the English documents did contain Gujarathi writings, the English version of the said Gujarathi portion was available in the bracket immediately after the Gujarathi portion. The detaining authority has given a list of such documents with their pages. As far as the names and figures were concerned, they were intelligible since the script is a devanagari script. The detaining authority has said that some

Gujarathi names appearing in the documents in the Devanagari script were easily decipherable and were explained to the detaining authority by the officers in the Ministry knowing Gujarathi. It is, therefore, contended that the recording of the satisfaction in the order of detention was not impaired in a manner. It is then contended that at any rate as far as the detenu is concerned, since he knew Gujarathi language well, there was no question of any prejudice being caused to him in his making a representation under Article 22(5) of the Constitution. It is also suggested that some of the portions were wholly unintelligible containing short forms. Mr. Karmali took up one such document, for instance, at page 207 of the compilation containing the documents constituting the material. Some figures have been mentioned after which the word (Ro) has been mentioned in Devanagari script. After the word "Ro" in Devanagari script, it is mentioned in bracket "cash". It is obvious that the word "Ro" means "Rokad", which means "cash". Thereafter, the word "Ro" is mentioned at number of places without repeating the word "cash" after it. We do not think that mentioning of such words in Gujarathi would have made it impossible for the detaining authority to know what the document conveyed. Further, having regard to the affidavit made by the detaining authority before us, we find no merit in this submission of Mr. Karmali.

22. In the result, there is no merit in any of the six contentions raised by Mr. Karmali. The petition is, thus, devoid of any merit. The same is accordingly dismissed. Rule is discharged.

23. Petition dismissed.