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**(1988) 07 BOM CK 0028**

**In the Bombay High Court**

**Case No : Criminal Writ Petition No. 451 of 1988**

Gautam Vishnu Bhosale

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision : 08-07-1988**

**Acts Referred:**

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —  
Section 3(1)

**Citation : (1989) 39 ELT 394**

**Hon'ble Judges : V.P. Tipnis, J;M.L. Pendse, J**

**Bench : Division Bench**

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**Judgement**

Pendse, J.—The Secretary to the Government of Maharashtra, Home Department, by order dated April 11, 1988 passed in exercise of powers u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 directed detention of the petitioner with a view to preventing him from smuggling goods. The order was served on April 16, 1988 and grounds of detention were furnished.

2. Briefly the grounds recite that the consignment in the name of the petitioner was received at Sahar Air Port as unaccompanied baggage. On June 24, 1987 the petitioner was called from his house and wooden box was examined in presence of the panchas and 20 gold bars of 10 tolas each, cleverly concealed in the specially made cavities in the base of the box in between the two plywood planks were recovered. The wooden box also contained one room air conditioner and two pillows. The statement of the petitioner was recorded and the petitioner claimed that he came down to Bombay from Dubai on June 17, 1987. The detenu was serving in Dubai as a waiter in the restaurant. Just prior to his return to Bombay he purchased an air-conditioner. The detenu met one Aziz Zaveri and handed him over the air-conditioner for being forwarded an unaccompanied baggage to Bombay. Aziz Zaveri was also desirous of sending some goods to Bombay and promised that those goods would be packed with the air-conditioner. On the strength of the statement of the detenu, Aziz Zaveri was also contacted

and searched but nothing incriminating was found. On the strength of this material, the detaining authority passed the impugned order of detention and it is under challenge in the present petition.

3. Shri Siwani, learned counsel appearing on behalf of the petitioner, submitted that the impugned order of detention is required to be set aside as the same was passed after considerable delay from the date of recovery of the gold bars and there was no material before the detaining authority to come to the conclusion that the order of detention is necessary with a view to preventing the detenu from smuggling goods. The learned counsel urged that the order of detention can be passed provided there is an eminent danger of detenu indulging in smuggling activities. We find considerable merit in the submission of the learned counsel. It is not in dispute that on June 24, 1987 on recovery of gold bars the detenu was arrested. The detenu was released on bail by the Metropolitan Magistrate. Now, the impugned order was passed on April 11, 1988 that is after about ten months, and though it is true that the delay ipso facto is not fatal to the order of detention, it is necessary that the detaining authority must give reasonable explanation for such delay. The detaining authority has filed return and paragraph 5 recites that the statements were recorded till August 19, 1987 and search of the premises of Zaveri was carried out on September 7, 1987. The sponsoring authority, that is Superintendent of Customs, forwarded the recommendation for detention on October 5, 1987. The Screening Committee met on December 11, 1987 and approved the proposed detention. The proposal and the documents were then sent to the detaining authority of February 12, 1988 and the order came to be passed on April 11, 1988. Shri Page, learned Assistant Public prosecutor, was unable to explain why it took two months from the date of meeting of the Screening Committee to forward the proposal and the documents to the detaining authority. There is no explanation as to why the detaining authority sat over the proposal for further two months. In these circumstances the conclusion is inescapable that the order of detention is passed after a considerable delay and there is no reasonable explanation for the same. On this ground the order of detention is required to be set aside.

4. Accordingly, rule is made absolute and the impugned order of detention is quashed. The detenu is directed to be released forthwith. There will be no order as to costs.