
(2006) 08 DEL CK 0060

In the Delhi High Court

Case No : Writ Petition (Criminal) 2123 of 2005

Gayatri Agarwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-08-2006

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)
Constitution of India, 1950 — Article 22(5), 226
Customs Act, 1962 — Section 108, 132, 135
Foreign Exchange Management Act, 1999 — Section 37

Citation : (2007) 95 DRJ 236

Hon'ble Judges : R.S. Sodhi, J;P.K. Bhasin, J

Bench : Division Bench

Advocate : R.K. Anand, Harjinder Singh, Piyush Kumar, Navneet Panwar, Shivani Lal, Aparna Dviwedi, Rakesh Nautiyal, Saurabh Kapoor and Chetanya Anand, for the Appellant; Rakesh Tikku, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—This writ petition under Article 226 of the Constitution of India for a writ of habeas corpus has been filed by the petitioner for the release of her husband Shri Sita Ram Aggarwal (hereinafter to be referred as "the detenu") who had been detained on 21/09/05 pursuant to a detention order No. 673/01/2005-Cus VIII dated 05.08.2005 passed by Sh. R.K. Gupta, Joint Secretary, Govt. of India, Ministry of Finance in exercise of powers u/s 3(1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 ("COFEPOSA Act" for short).

2. The facts leading to the passing of the detention order in respect of the petitioner's husband as culled out from the pleadings of the parties and other material placed on record are like this:

The detenu is an exporter of shawls and readymade garments. He has been

carrying on the export business as a sole proprietor of M/s. G&S International, Sadar Bazar, Delhi. The detenu is alleged to have acquired during 2002-04 foreign currency of the value of over eighty crores of rupees from unauthorized sources in violation of the provisions of Foreign Exchange law. After depositing that much foreign currency in cash in his aforesaid Firm's bank account with United Western Bank Ltd., Karol Bagh, New Delhi showing it as advance payments for export of some items from foreign tourists visiting India on the basis of forged Currency Declaration Forms(CDFs) and other forged supporting documents the detenu took certain incentives from the Government. The detenu while indulging in these activities defrauded the Government to the tune of Rs. 9.5 crores under Duty Exemption Pass Book(DEPB) and about Rs. 78 lakhs under Duty Drawback Schemes by way of export incentive when, in fact, no export proceeds had been received. The Duty Drawback amounts earned by the detenu clandestinely and fraudulently used to be credited in his account with Punjab National Bank, IGI Airport. In this manner the detenu had allegedly acted prejudicially to the augmentation of foreign exchange resources of the country thereby necessitating his preventive detention.

3. Initially the detenu was arrested by the Customs officials on 03/08/04 for violations of the provisions of the Customs Act. He had allegedly given wrong value and description of the exported shawls and garments. On completion of usual investigation, during which statement of the detenu was recorded wherein he admitted having indulged in aforesaid illegal activities, a complaint was filed in the Court of Addl. Chief Metropolitan Magistrate, New Delhi on 1/10/04 for the offences under Sections 132/135 of the Customs Act. The detenu was granted bail by this Court on 19/01/05. On 30/5/05 show cause notice was issued to him by the Customs Department. A proposal was thereafter made to the competent authority for the preventive detention of the detenu but while examining that proposal the detaining authority found that acquisition of huge amount of foreign currency by the detenu had not been investigated. Accordingly the matter was referred back for investigation into the sources of acquisition of foreign currency by the detenu. The matter was then referred to the Enforcement Directorate which was the authority to deal with violation of Foreign Exchange laws. After completion of that investigation the matter was then taken up by the detaining authority which found that the detenu's activities of acquiring foreign currency from illegal sources and depositing the same in his bank by using forged CDFs etc. were prejudicial to the augmentation of foreign resources of the country and the manner in which he had been carrying on that activity showed that he had the potentiality and propensity to continue indulging in that activity unless detained preventively. That subjective satisfaction of the detaining authority led to the issuance of the detention order on 05/08/05. In the detention order the detaining authority also observed that he was satisfied that the proximity between the date of the incident and the date of issue of the detention order was maintained. Due to non-availability of the detenu at his given address the detention order could be executed on 21/09/05.

4. First ground of challenge to the validity of the impugned detention order put forth by Mr. R.K. Anand, learned senior counsel for the petitioner, was that there was undue delay in the issuance of detention order and then in its execution inasmuch as the investigation into the alleged illegal activities by the detenu had commenced in June, 2004 and after investigation a complaint was filed in the Court of ACMM, New Delhi on 01-10-2004 under Sections 132 & 135 of the Customs Act. Show cause notice under Customs Act was issued on 30-05-2005 to the detenu but the impugned detention order was passed only on 05.08.2005 and the detenu was arrested on 21/09/05. Learned Counsel submitted that the delay in issuance of the detention order and its execution has remained unexplained and that fact vitiates the detention order.

5. In support of his arguments on the point of delay in passing of the detention order as well as its execution Mr. R.K. Anand, also cited some judgments of the Hon'ble Supreme Court and many of this Court. Those judgments of Hon'ble Supreme Court are reported as "Rajender Arora v. UOI" JT 2006(3) 518, "Naresh Kumar Goyal v. UOI" JT 2005 (12) 428, "A. Mohd. Farook v. Jt. Secretary, GOI" 2000 SCC 411, "Ahmed Mohaideen v. State of Tamil Nadu" 1999 CrL.L.J. 3488 P.U. Iqbal Vs. Union of India (UOI) and Others, , T.A. Abdul Rahaman Vs. State of Kerala and others, , SK. Abdul Munna Vs. The State of West Bengal, , Lakshman Khatik Vs. The State of West Bengal, , and Sk. Nizamuddin Vs. State of West Bengal, . Judgments of Delhi High Court cited by Mr. Anand are: 1993 JCC 414 "Surinder Kumar v. UOI", "Shri Ramesh Lal v. The Administrator and Anr." 1993 JCC 507 , " Daljit Singh Sandhu v. UOI" CrL.W. No. 43/1984 decided on 16.05.1984, "Bhupinder Singh v. Union of India and 2 Ors." CrL.W. No. 124/1985 decided on 06.08.1985, "Narinder Singh v. UOI and Ors." CrL.W. No. 193/1985 decided on 29.11.1985, "Sh. Balbir Singh v. The UOI and Ors." CrL.W. No. 40/1986 decided on 14.07.1986, Dinabandhu Mondal Vs. Union of India and others, , "Durga Dass Sharma v. UOI and Ors." 1987 (3) Crim 579, "Ranjit Singh (Ganga Ram Kapoor) v. UOI" 1987 (2) Crim 624, "Mr. Vakayil Hassan v. UOI and Ors." CrL.W. No. 284/1987 decided on 05.10.1987, "Nirmal Kandoi v. UOI and Ors." CrL.W. No. 455/1987 decided on 15.12.1987, "Ranjit Singh Gabba v. UOI and Ors." CrL.W. No. 384/1989 decided on 22.02.1990 and "A. Mohammed Ilyas v. UOI 1991 CrL. L.J. 2425.

6. On the other hand Mr. Rakesh Tikku, learned Counsel for the Union of India and the detaining authority while supporting the detention order submitted that in this case the so-called gap between the commencement of the investigation and passing of the detention order and the gap between the date of passing of the detention order and its execution by way of arrest of the detenu was fully justified in the peculiar facts and circumstances of this case. He further submitted that the learned Counsel for the petitioner has not projected the correct factual position. Mr. Tikku submitted that initially a proposal was made for the detention of the detenu on the basis of violation of the provisions of the Customs Act only for which violation the detenu was arrested on 03-08-2004 and released on bail only on 19-01-2005. The detaining authority, however, felt that

the matter had not been investigated in regard to the sources from which the detenu had acquired huge amount of foreign currency in cash and, Therefore, the detaining authority directed investigation regarding the acquisition of foreign exchange by the detenu and then the Directorate of Enforcement started investigation into that aspect of the matter. That investigation took some time since a lot of forged documents including a number of currency declaration forms(CDFs) purporting to be of foreign tourists used by the detenu for depositing cash foreign currency in his bank had to be looked into and a detailed enquiry was necessary considering the fact that foreign currency to the tune of almost a hundred crores of rupees was involved. Mr. Tikku submitted that the modus operandi of the detenu was to use forged currency declaration forms while depositing cash foreign currency in his bank account and the foreigners who had allegedly given the CDFs had also to be contacted to verify the genuineness of those CDFs and that process had to consume time and also that the decision to detain the detenu as a preventive measure could not have been taken in a haste without proper and detailed investigation. Learned Counsel also submitted that the show cause notice to the detenu was for the violation of the provisions of Customs Act and not for violation of foreign exchange laws.

7. Learned Counsel, thus, submitted that this is not a case which can be said to be suffering from the vice of delay in passing of the detention order. In support of his contention that when this kind of illegal activity of acquisition of foreign currency through illegal sources/hawala transactions and by resorting to forgery of documents is resorted to by someone and the amount involved runs into several crores of rupees consumption of some time in the completion of investigation before passing of the detention order cannot be said to be unjustified justifying quashing of the detention order. In support of this submission Mr. Tikku placed strong reliance on a very recent decision of the Hon"ble Supreme Court in "D. Anuradha v. Joint Secretary and Anr." Judgments Today 2006 (5) 91.

8. Mr. Tikku also contended that some years back cases of detention used to be of bringing into India few gold biscuits/bars, some electronic items and such like low level smuggling activities but over the years the activities like hawala transactions etc. involving crores and crores of rupees in a very organized and clandestine way are being resorted to by the violators of law and these kind of transactions take a lot of time to be unearthed. He also submitted that majority of the decisions cited by the learned Counsel for the petitioner pertained to solitary instances of smuggling and so in the facts of those cases it was held that it could not be expected that any authority would be genuinely satisfied after lapse of long time that the person sought to be detained on the basis of single activity long time back without any fresh evidence during the interregnum was likely to commit that activity again in future.

9. Dealing with the submission of Mr. Tikku that a fresh investigation was ordered into the case foreign currency deposits in the bank of the detenu Mr. R.K. Anand

submitted that even if that was so still there was unexplained undue delay in issuing the detention order. In this connection Mr. Anand drew our attention to list of documents supplied to the detenu Along with grounds of detention in which the last item is at sl. No. 84 where reference is made to a reply dated 13-06-2005 of United Western Bank to Enforcement Directorate and thereafter there is no activity mentioned. Learned Counsel submitted that even from 13-06-2005 onwards till 05-08-2005 the delay is unexplained and so cannot be condoned by this Court in order to maintain the detention order.

10. We have gone through the judgments of this Court which were cited by the learned senior counsel for the petitioner and which have been noticed by us in para No. 5 and we find that in those cases the detention orders were quashed on account of delay in their issuance. However, out of the many judgments of this Court cited on behalf of the petitioner we find that two of them had been over-ruled by the Hon"ble Supreme Court way back in the year 1988 in Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others, . Those two decisions of this Court which stand over-ruled were rendered in Crl. W. No. 124/85 "Bhupinder Singh v. UOI" and Crl. W. No. 43/84 "Shri Ramesh Lal v. The Administrator".

11. As far as the judgments of Supreme Court cited by the learned Counsel for the petitioner are concerned there is no quarrel about the legal proposition laid down therein. The sum and substance of those judgments is that the issuance of detention order and its execution should be done with expedition and within reasonable period. COFEPOSA Act does not lay down any time limit within which a detention order should be passed and then executed. Even in the various pronouncements of the Supreme Court which were cited by the learned Counsel for the petitioner no time limit has been laid down nor has it been laid down as to what is a reasonable period within which detention order should be passed and then executed. It has been held that it depends upon facts and circumstances of each case and it is for the Court examining the question of delay to decide for itself whether the detention order had been passed and executed within reasonable period or not. It has also been held in those judgments and in many other judgments on the point of delay that the delay, ipso facto, in issuance and then in execution of the detention order is not fatal. Depending upon facts of some of those cases the delay even for a short period was held to be fatal while in some other cases on the basis of facts of those cases the detention orders were upheld even when there was a huge time lag between the prejudicial activity and issuance of the detention order and then between the date of issuance of the detention order and the date of its execution. We would like to notice observations of the Supreme Court in some of its cases. In the case of Rajender Kumar Natwar Lal Shah(supra) on the aspect of delay in the issuance of detention order it was held as under:

9. In the enforcement of a law relating to preventive detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,

1974 there is apt to be some delay, between the prejudicial activities complained of u/s 3(1) of the Act and the making of an order of detention. When a person is detected in the act of smuggling or foreign exchange racketeering, the Directorate of Enforcement has to make a thorough investigation into all the facts with a view to determine the identity of the persons engaged in these operations which have a deleterious effect on the national economy. Quite often these activities are carried on by persons forming a syndicate or having a wide network and Therefore this includes recording of statements of persons involved, examination of their books of accounts and other related documents. Effective administration and realization of the purposes of the Act is often rendered difficult by reason of the clandestine manner in which the persons engaged in such operations carry on their activities and the consequent difficulties in securing sufficient evidence to comply with the rigid standards, insisted upon by the courts. Sometimes such investigation has to be carried on for months together due to the magnitude of the operations....

10. Viewed from this perspective, we wish to emphasise and make it clear for the guidance of the different High Courts that.... It has been laid down by this Court in a series of decisions that the rule as to unexplained delay in taking action is not inflexible. Quite obviously, in cases of mere delay in making of an order of detention under a law like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence have been posing a serious threat to the economy and thereby to the security of the nation, the courts should not merely on account of delay in making of an order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached. ..

12. From the afore-said decision of the Hon''ble Supreme Court it becomes clear that merely on account of delay a detention order cannot be quashed. This judgment, in fact, goes to the extent of laying down that even if the delay is unexplained detention order must not as a course be quashed and that is evident from the following observations also in para No. 12 of the judgment:

12. Even if there was no Explanation for the delay between February 2 and May, 28, 1987 it could not give rise to a legitimate inference that the subjective satisfaction arrived at by the District Magistrate was not genuine or that the grounds were stale or illusory or that there was no rational connection between the grounds and impugned order of detention.... It follows that the test of proximity is not as rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention.

13. In one of the judgments of the Hon''ble Supreme Court cited by the counsel

for the petitioner which is reported as Lakshman Khatik Vs. The State of West Bengal, also it was held that:

Indeed mere delay in passing a detention order is not conclusive, but we have to see the type of grounds given and consider whether such grounds could really weigh with an officer some seven months later in coming to the conclusion that it was necessary to detain the petitioner to prevent him from acting in a manner prejudicial to the maintenance of essential supplies of food-grains.

14. In another case cited by the learned Counsel for the petitioner which is reported as T.A. Abdul Rahaman Vs. State of Kerala and others, it was held that there is no hard and fast rule that merely because there is a time lag between the offending acts and order of detention, the casual link must be taken to be snapped and the satisfaction reached by the detaining authority should be regarded as unreal, but it all depends upon the facts and circumstances of each case and it is for the Court to investigate whether the casual link has been broken in the circumstances of each case. In "Daljit Singh Sandhu v. UOI" 1993 JCC 507 this Court had also held that if the prosecution shows that there is reasonable nexus between the prejudicial activity and the purpose of detention, the delay in passing the detention has to be overlooked.

15. We may also make a useful reference to a division bench judgment of this Court in "Dalbir Singh v. UOI and Ors." 58 (1995) DLT 264 wherein after making reference to various pronouncements of the Hon"ble Supreme Court on the point of delay in passing of the detention order it was held in para No. 8 as under:

8. From the aforesaid rulings, the following principles can be summarized. Unexplained delay may vitiate an order of detention if the Court can infer that on account of that delay the nexus between the incident and the detention order has snapped. But there is no hard and fast rule regarding the length of time which can be regarded as sufficient to snap the nexus. The authorities may sometimes take time for a detailed investigation for action under the Customs Act and also for a criminal prosecution. It may also happen that there is no apprehension as long as the person is in custody in the criminal case and only after he is released on bail, the customs authorities might consider preventive detention necessary and address the Detaining Authority. It may also be that the Detaining Authority may take time in calling for particulars from the Sponsoring Authority, consider the same, place it before the Screening Committee and come to a conclusion later. One cannot say that investigation should have been hurried. The Detaining Authority is not obliged to explain the delay to the detenu but is obliged to explain the same to the Court. While delay in observing the time limits in regard to safeguards provided by Article 22(5) of the Constitution might vitiate detention, that principle does not apply to delay in passing the order of detention. The latter is a factor relevant only in the context of finding out whether, as a fact, the nexus between the incident and the detention has snapped. Unexplained delay does not also lead to the inference of absence of sufficient material or that the subjective satisfaction is not genuine. Explanation

for delay may be found in the detention order or in the counter-affidavit.

In the same judgment it was also held by this Court(in para No. 9) that "if investigation takes time, it is not bad.

16. In the latest case of D. Anuradha (supra), cited by learned Counsel for the respondents, the detenu was found to be indulging in transactions in violation of FERA. The amount involved was in crores of rupees like in the present case. Detention order passed after about two years was, however, upheld when it was challenged on the ground that it was passed on stale material. The challenge to the detention order on the ground of delay was repelled. Mr. Tikku drew our special attention to paragraph 24 of the judgment in D. Anuradha's case which is as follows:

The learned Counsel for the appellant lastly contended that since the detention order was passed only in February 1996, that is, after about two years of the alleged involvement of the detenu for violation of the provisions of FERA on the basis of stale materials, the same was illegal. The allegations made against the detenu are of serious nature. It involved several crores of rupees. The various transactions had been done in a clandestine manner with the help of foreign nationals and the detenu himself had claimed to be a Non-Resident Indian. All these materials had contributed to the delay and the detaining authority had to consider these materials and cross-check the transactions....

17. In the present case the situation is almost similar. The allegations against the detenu were that he had been forging documents for depositing cash foreign currency in the bank in order to earn certain financial incentives after acquiring foreign currency from black market. He used to forge CDFs purporting to have been given to him by foreigners visiting India showing their having brought foreign currency to India and he used to show that he had been given the same by foreigners for purchase of shawls etc. while, in fact, no foreigner had actually done that. This he was found to have done during a period of two years from 2002 to 2004. Mr. Tikku submitted that the grounds of detention and the counter affidavit of the detaining authority clearly explain that thorough investigation was being conducted and that had to consume sufficient time. In this regard Mr. Tikku brought to our notice the following paragraphs of the counter affidavit of the detaining authority:

3 (xiv & xv): In reply to para-3 (xiv & xv) of the petition, it is submitted that the proposal for placing the detenu under preventive detention under COFEPOSA Act, 1974 was forwarded by the Customs Department. On examination of the proposal Along with the Relied Upon Documents, Joint Secretary (COFEPOSA) felt that the case has not been investigated in regard to the source from which the detenu acquired the foreign exchange in case for depositing in the bank. So he directed the Customs Department to investigate the case once again. Thereupon, the proposal was referred by the Customs Department to the Directorate of Enforcement which investigates cases relating to foreign exchange violations and

also Hawala transactions. Thus, the case was taken up by the Directorate of Enforcement Along with documents from the Customs Department. Therefore, the allegations that the Customs Department persuaded the proposal with the Directorate of Enforcement with a vindictive attitude is totally false and baseless. The Customs Department investigated smuggling aspect whereas the Directorate of Enforcement investigated violation of provisions of foreign exchange. This does not amount to suppression of material facts and projection of trivial facts out of proportion. Hence, the documents relied upon by the Customs Department and the Directorate of Enforcement are different.

3 (xxviii to xxxiii): In reply to para-3 (xxviii to xxxiii) of the petition, it is submitted that the Para-3 (Xxxviii) does not call for a reply. The detainee did not cooperate with the investigations of the case by providing his firm's records. Therefore, there is nothing favorable to the detainee could be found from the Commissioner's letter dated 6.5.2005. The time taken for issuing the Detention Order can be attributed to a host of factors such as the non-cooperative attitude of the detainee, collection of a large volume of data from different sources, obtaining statements of different persons corroborating the evidence found against the detainee, investigation by two different agencies namely, Customs Department and the Directorate of Enforcement from two different angles, clearance of the proposal by the Internal Screening Committee of Directorate of Enforcement, Organisation of information collected against the detainee, etc.

18. Counsel also drew our attention to para Nos. 26, 28, 30, 32, 41, 43 to 49 of the grounds of detention which read as under:

26. A further letter-dated 18.08.2004 was sent by the Directorate of Enforcement to Commissioner of Customs, Export Air Cargo Export, New Delhi with a request to forward the copies of Panchnamas and statements recorded u/s 108 of the Customs Act. In response to the above letter, the Customs Department, vide their letter dated 10.09.2004 forwarded the copies of Panchnamas and statements recorded u/s 108 of Customs Act to the Directorate of Enforcement. The documents received from Customs Department were examined by the Directorate and it was found that the modus operandi adopted by you was to procure photocopies of passports of the foreigners visiting India from several sources; to forge the request letters by copying the signatures from such photocopies of passports of these foreigners; thereafter, forging the CDFs as issued by Customs to such tourists declaring import of foreign currency in excess of the stipulated amount on arrival in India, these CDFs were thereupon submitted to the Bank with large sums of foreign currency on behalf of such fictitious buyers and declared as advance payments against their export orders but were actually procured from unauthorized sources by you. It will not be out of place to mention here that the export of garments was made by you to consignees in Dubai of other nationalities, mainly from CIS countries. Forged documents, deposit of foreign exchange in cash and evidence of exports made to a consignee having no connection with the buyers, became the basis for

obtaining Foreign Inward Remittance Certificate/Bank Realization Certificate from the remitting Bank, for you.

28. On 03.09.2004, a report in response to the Customs letter dated 13.08.2004 from Intelligence Bureau was received. Perusal of the report revealed that the dates on CDFs submitted by you or your authorized person did not match with the dates of arrivals of the said tourists in India. In fact, most of them were not even in India on the dates when they supposedly visited your offices to place orders, signed the letters, handed over the photocopies of their passports and foreign currency to you in your office for depositing the same in your remitting Bank.

30. After receipt of CDFs from the Bank, investigations were taken up by the Directorate of Enforcement with the Aeroflot Russian Airlines and Uzbekistan Airways on the basis of Flights Nos. and dates mentioned in CDFs. A statement of Shri Vitaly. M. Vasyutkin, General Manager, Aeroflot Russian Airlines, New Delhi, was recorded on 15.09.2004 u/s 37 of Foreign Exchange Management Act, 1999 and a list of incoming passengers who visited India by SU Flight as mentioned on the CDF forms were shown to him. In his reply dated 05th October 2004, he confirmed, "no passenger has arrived, as per the list and flight dates shown to him.

32. On 14.09.2004, FRRO furnished data on arrival and departure of the said foreign nationals to the Customs Department. This re-established that most of these tourists were not even in India during the time they could have visited the office and given foreign currency along with CDFs and request letters to you or your authorized persons.

41. Statements of Chief Manager and Manager Forex of the Bank were recorded on 12.01.2005 in which they deposed that it is an irregularity on the part of the bank in accepting the foreign currency on bogus CDFs. Shri Anil Arvind Godbole, Chief Manager further deposed that the concerned Forex Manager Shri Ravindra Rajorkar was also arrested by the Customs Authorities and later on released on bail.

43. Summons dated 3/1/05, 20/1/05, 2/02/05 were issued to you, your son Shri Rajesh Aggarwal and your employee Shri Pramod Gupta. However both Shri Rajesh Aggarwal and Shri Pramod Kumar did not appear before the Directorate of Enforcement. A reply dated 11.01.2005 was received from you in response to the summons intimating that Shri Pramod Gupta was working in the firm, but had left the job eight months back. Similarly, a reply-dated 31.01.2005 was also received from one Shri Gurbaksh Singh, Advocate, on behalf of Shri Rajesh Aggarwal intimating that Shri Rajesh Aggarwal was out of station. A statement of yours was recorded on 09.02.2005, in which you stated, inter-alia, that you were the proprietor of M/s. G & S International; that in the year 1989 you were arrested and detained under COFEPOSA in another case by the Directorate of Enforcement; that M/s G & S International was maintaining a current account

with the United Western Bank, Karol Bagh Branch, New Delhi; that you had withdrawn a huge amount of Indian Currency from that account and huge amount of foreign currency had been deposited; that on the basis of CDFs you and your son Shri Rajesh Aggarwal deposited the foreign currency worth Rs. 80,13,61,617.59 and Rs. 2,41,47,790.94 in the accounts of M/s. G & S International and M/s. A.S. Raj International, respectively; that the foreign buyers used to come to your office and used to handover foreign currency along with CDFs to you; that these foreign buyers never used to go to the Bank to deposit the currency; that all the CDFs might have been written in one handwriting; that in response to a question regarding the Flight details mentioned on CDFs, you stated that you had no idea about it; that you and your son used to submit export documents to Bank and Customs authorities; that you were not aware about the genuineness of CDFs but foreign currency was deposited in Bank by you and your son. You further stated that the Russian buyers came and met you on the particular dates mentioned in CDFs but you could not give any details in this regard.

44. You have also claimed export benefits to the extent of about Rs. 9.5 Crores under DEPB and about Rs. 78 lakhs under Duty Drawback scheme without receiving export proceeds but by depositing foreign exchange in cash on the basis of fake CDFs. You did not receive foreign exchange from foreign tourist buyers as claimed by you but acquired the same exchange from unauthorized sources. The export proceeds, which would have augmented the foreign exchange resources of the country, were not realized from the exports thereof. Instead, the foreign exchange already available in the country was acquired illegally and deposited against export proceeds on the basis of fake CDFs. This amount to a prejudicial activity to the augmentation of the foreign exchange resources of the country.

45. To summarize, M/s. A.S. Raj International and M/s. G & S International promoted by your son Shri Rajesh Agarwal and you respectively, exported Shawls & Readymade garments to Dubai and CIS Countries. The export proceeds in case of all such exports were purportedly realized by depositing foreign exchange in cash in your bank account with the Bank against fake CDFs, copies of passports, letters of buyers and other documents.

46. During the course of investigations by the Directorate of Enforcement, it was noticed that all the CDFs submitted by you and your son Sh. Rajesh Agarwal with the Bank, during the span of two years were in the same handwriting. The signatures on the passports and CDFs did not tally in most of the cases. Further a D.I.Y. printing kit was also seized by the Customs Officer from your premises, for which you could not give any Explanation as evident from the statement dated 03.08.2004 recorded u/s 108 of Customs Act, 1962.

47. On verification of the contents of CDFs, it was noticed that these showed the details of the flight Nos. and date of arrival of the tourists. Enquiries made with Aeroflot and Uzbekistan Airlines, however, revealed that none of the passengers,

whose names were mentioned on the CDFs, had arrived in India.

48. Thus, on the basis of (i) Bogus currency declaration forms as is evident from common handwriting in all the CDFs, dissimilarity of signatures on CDFs and passports submitted to bank authorities, and the fact that a D.I.Y. printing kit seized from your residence; (ii) Confirmation from Aeroflot and Uzbekistan Airlines stating that none of the passengers had arrived in India as per details mentioned on the CDFs submitted by you, it can logically be inferred that foreign currency to the tune of Rs. 80,13,61,617.51 in case of M/s. G & S International and Rs. 2,41,47,790.47 in case of M/s. A.S. Raj International, was acquired by you from unauthorized sources in gross violation of the Foreign Exchange Management Act, 1999. further, you had also obtained Foreign Inward Remittance Certificates (FIRCs) from the bank showing the above foreign currency as advance payments from the tourists. On the strength of the FIRCs, DEPB licenses were obtained by you from Directorate General of Foreign Trade(DGFT). You also tried to establish artificial link between your exports and foreign currency so deposited by you against the forged supporting documents. You had indulged in these activities with a view to defraud the Government to the tune of about Rs. 9.5 Crores under DEPB and about Rs. 78 lakhs under Duty Drawback scheme by way of export incentives. You also failed to realize the sale proceeds of the exported goods but acquired foreign currency illegally within the country and thus acted prejudicial to the augmentation of foreign exchange resources of the country.

49. In view of the foregoing, I have no hesitation in arriving at the conclusion that you have been engaging yourself in activities, which have adversely affected the augmentation of the foreign exchange resources of the country. I am aware that you are on bail at present subject to certain conditions. Considering the nature and gravity of the offence, your role therein, the well-laid out manner in which you have been indulging in such prejudicial activities and your dubious conduct - all of which reflect your high potentiality and propensity to engage yourself in such prejudicial activities in future, I am satisfied that unless detained, you are likely to continue to engage in the aforesaid prejudicial activities in future also and Therefore, it is necessary to detain you under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, with a view to preventing you from acting in any manner prejudicial to the augmentation of foreign ex-change in future. I am also satisfied that the nexus that is proximity between the date of incident and the date of issue of detention order and the object of detention is well maintained.

19. Considering the nature of allegations and all other facts and circumstances brought on record by the detaining authority and the aforesaid paragraphs extracted from the grounds of detention and the counter affidavit of the detaining authority we are more than convinced that in the present case the detention order cannot be quashed on account of time taken in its issuance. The detention order was passed on 05/08/05. Considering the clandestine manner in

which the detenu was operating it cannot be said that the nexus between the prejudicial activities and the purpose of detention had got snapped or that the detention order was based on stale material. We are also satisfied that considering the nature of activity in which the detenu was regularly indulging in organized way in collusion with bank staff it cannot be said that the subjective satisfaction of the detaining authority that the detenu had the propensity to continue indulging in same activity, if not detained, was not genuine. These kind of activities need thorough investigation which is bound to take sufficient time. The petitioner herself has placed on record an order dated 6-5-2005 of the Commissioner of Customs whereby detenu's request for defreezing his bank accounts was declined. It was mentioned in that order that the accounts could not be defreeze as investigation was incomplete for want of records from exporters and their non-appearance in response to the summons. So it cannot be said that authorities were sleeping over the matter. Here we may also state that in most of the judgments relied upon by the learned Counsel for the petitioner the persons who were detained preventively were found to have indulged in solitary incidents of smuggling etc. and so in those cases it was held that the undue delay in the issuance of detention order had snapped the link between the prejudicial activity and the purpose of detention. In the present case, however, the prejudicial activities of the detenu came to the fore on secret informations gathered by the Enforcement Directorate and it was found out that the detenu had been regularly depositing cash foreign currency in his bank account on the strength of forged documents in collusion with bank officials. So the facts of the present case are materially different from the facts of the cases cited by the learned Counsel for the petitioner.

20. We now come to the contention of learned senior counsel for the petitioner that the detention order is liable to be quashed on account of delay of 47 days in effecting arrest of the detenu. The detention order was issued on 05-08-2005 and executed on 21-09-2005 and the gap between these two dates, according to the counsel, has remained unexplained. Mr. Anand also pointed out that on 18-08-2005 the detenu had appeared in the Court of ACMM, New Delhi in the complaint case of Customs Department but still he was not arrested which shows that the authorities were really not apprehensive that the detenu was likely to continue with illegal activities unless detained. On this aspect the reply of the detaining authority in its counter affidavit is contained in para No. 3(xxxvii) which reads as under:

In reply to para-3(xxxvII) of the petition, it is submitted that the Detention Order was issued on 05-08-2005 and was executed on 21-09-2005. The Order could not be executed earlier due to non-availability of the detenue at the given address. The appearance of the detenue on 18-8-2005 before Ld. ACMM Court, New Delhi in connection with a trial relating to customs case which is a civil case cannot be taken as a plea for availability of the detenue.

21. Regarding the appearance of the detenu in the Court of ACMM on 18/08/05

learned Counsel for the respondents had submitted that the complaint referred to by the petitioner was filed by the Customs Department regarding the violation of the provisions of the Customs Act and the detaining authority had ordered detailed investigation into the acquisition of large amounts of foreign currency by the detenu in violation of the foreign exchange laws which had not been done earlier, Therefore, the officials of Enforcement Directorate dealing with the violation of foreign exchange laws were not supposed to be following up that customs case. So, just because the detenu claims to have appeared in person in the Court of ACMM on 18-08-2005 the detention order cannot be quashed on that ground.

22. Considering the reply in para No. 3(xxxvii) of the counter affidavit of the detaining authority to the effect that the detention order could not be executed due to non-availability of the detenu at the given address, which reason we have no doubt to disbelieve, we are of the view that the detention order need not be quashed because of the time taken in arresting the detenu after the passing of the detention order. On this aspect of the matter we may also make a useful reference to a decision of the Supreme Court in Abdul Salam alias Thiyyan Vs. Union of India and others, wherein dealing with the objection of the delay in execution of the detention order it was held (in para No. 15) that "That apart there is no decision where a Court has gone to the extent of holding that a mere delay in arresting the accused renders the detention invalid." In the said case the delay in execution of the detention order was 21/2 months and the same was not found to be fatal. In Dalbir Singh's case(supra) this Court had also held that the delay in execution of the detention order to be fatal must be of such length and remain unexplained so as to snap the nexus between the incident and the detention. In the said case an argument had been raised before the division bench that it was not sufficient for the authorities to say that detenu was not available at his known address and it had also not been stated by the authorities as to how many times attempts were made to serve the detenu and so the detention order was bad. In support of this argument the counsel for detenu had placed reliance on another decision of this Court in "Manmohan Singh v. UOI" (1988) (1) Delhi Lawyer 171. The division bench, however, over-ruled the said decision in Manmohan Singh's case holding that it ran counter to the Hon'ble Supreme Court judgments (which had been referred to by the division bench). In the present case we have already held that the nexus between the activities of the detenu and the purpose of detention cannot be said to have been snapped with the passage of time. We, Therefore, repel this ground of challenge also to the detention order.

23. It was then contended by the learned senior counsel for the petitioner that the detention order is liable to be quashed on the ground of non-submission of very material documents by the sponsoring authority to the detaining authority. Mr. Anand submitted that in this case in August, 2004 itself the two bank accounts of the detenu with United Western Bank Ltd. and Punjab National Bank had been frozen by the authorities and when the detenu filed a writ petition in

this Court (being WP(C) No. 5777/2005) for defreezing of the bank accounts this Court had not passed any order of defreezing of the account and instead had directed the authorities to consider the request of the detenu and pass appropriate orders within four weeks from 07-04-2005 when the writ petition was disposed of with the afore-said direction. The Commissioner of Customs vide his order dated 06-05-2005 declined to defreeze the accounts on the ground that investigation in the matter was still on. Thereafter another writ petition was filed by the detenu for quashing the afore-said order dated 06-05-2005 and for directing the authorities to defreeze the detenu's bank accounts. In that writ petition (being WP(C) 8390/2005) also no orders for defreezing of the bank accounts were passed by this Court. Mr. Anand submitted that the sponsoring authority in this case did not place before the detaining authority the copies of the orders passed by this Court in the two writ petitions of the detenu as also the order dated 06-05-2005 of the Commissioner of Customs declining to defreeze the bank account of the detenu in United Western Bank Ltd. and also the copies of the writ petitions filed by the detenu which if had been placed before the detaining authority the impugned detention order would not have been passed because of the reason that with the freezing of the detenu's bank account with United Western Bank Ltd., which was the only authorized bank account in the name of detenu's firm where foreign exchange transactions could be done, the detenu could not have continued to deposit cash foreign currency in that account, which activity was the foundation for issuing the impugned detention order. Learned Counsel submitted that if the detenu could not have operated this foreign exchange bank account and it being not the case of the authorities that he had any other such account in which he could deposit foreign currency the detaining authority could not have recorded the satisfaction that there was likelihood of the detenu indulging in similar kind of activity in future necessitating his preventive detention. It was also submitted that even in the account with United Western Bank Ltd. the last deposit of foreign currency was on 05/04/04. Counsel also submitted that even though in the grounds of detention order there is reference to the bail application of the detenu filed before Addl. Sessions Judge and the order passed thereon but in the list of relied upon documents supplied to the detenu Along with grounds of detention those documents are not included. In these circumstances, according to the counsel, there was non supply of relevant documents by the sponsoring authority to the detaining authority and so non-application of mind on the part of the detaining authority to the relevant material. In support of this contention some judgments of Supreme Court reported as (2005) 8 SCC 390 Felix C. Okochi Vs. The State of Tamil Nadu and Others, " V.C. Mohan Vs. Union of India and Others, " A. Sowkath Ali Vs. Union of India and Others, "A. Sowkath Ali v. UOI" 1985(1) SCALE 374 Union of India (UOI) and Others Vs. Manoharlal Narang, Jai Singh and Others Vs. State of Jammu and Kashmir, Jai Singh and Ors. v. State of Jammu & Kashmir and AIR 1979 SC 447 " Ashadevi v. K. Shivraj and Anr." and one judgment of this Court in Crl W.P. No. 101 of 1984 " Smt. Ansuyaban Babubhai Ravibhai v. UOI" were also cited.

24. We have given our thoughtful consideration to this objection also raised by learned senior counsel for the petitioner and find the same also to be without any merit like the earlier ones. Although we find from the grounds of detention that there is no reference to the two writ petitions filed by the detenu for defreezing of his bank account with United Western Bank Ltd. where he used to deposit foreign currency and the one in Punjab National Bank where Duty Drawback earned by his firm used to be credited as also about the order of the Commissioner of Customs dated 6-5-2005 (reference to which has already been made) declining to defreeze these two accounts of the detenu but in our view that does not make any difference and it cannot be said that the detention order was passed without application of mind and without taking into consideration relevant material. In this regard the stand of the detaining authority as pleaded in para No. 3 (xxxiv and xxxv) of its counter affidavit is that the main ground for placing the detenu under preventive detention was for acquiring foreign currency illegally from the market, fabrication of CDFs and supporting documents and, Therefore, despite the freezing of the bank accounts of the detenu these activities could be carried on by the detenu in the name of other persons and, Therefore, the contention of the petitioner that freezing of the bank accounts of the detenu would have prevented him from carrying out the prejudicial activities cannot be taken on its face value. It has also been stated that there was nothing favorable to the detenu in the afore-said order dated 6/5/05 of the Commissioner of Customs declining to defreeze his bank accounts. We are in full agreement with the said stand of the detaining authority. We also feel that despite the fact that the bank account of the detenu was frozen the detaining authority could still have been satisfied about the likelihood of his continuing to indulge in same activity by opening other bogus bank accounts since even in the existing account meant for deposit of export proceeds he was depositing foreign currency in cash on the strength of forged CDFs in collusion with bank staff and that is evident from a reading of the grounds of detention wherein it is mentioned that after recording statements of some officials of the bank on 12-01-2005 wherein they had admitted about the irregularities on the part of the bank in accepting foreign currency on bogus CDFs. Forex Manager Shri Ravindra Rajorkar was also arrested. We do not think that the writ petitions filed by the detenu had any relevance in the matter of formation of subjective satisfaction by the detaining authority. So, even if copies of the same and orders passed therein had not been placed before the detaining authority the detention order cannot be quashed for that reason.

25. In this regard we may make a reference to one judgment of this Court reported as Pawan Bajaj Vs. Union of India (UOI) and Others, In that case the detenu had taken a plea that since his passport had been seized and some conditions had been imposed in his bail order there was no possibility of his indulging in the alleged prejudicial activity for which he had been arrested under the Customs Act and FEMA. Rejecting that plea a Division Bench of this Court of which one of us (R.S. Sodhi, J) was also a member observed as under:

21. The other plea also sounds untenable on the face of it. Because mere surrender or seizure of the detenu's passport or any conditions faced by him for his bail could not furnish any guarantee or proof of his having abandoned his prejudicial activity. By this logic any person facing detention could get away with on seizure or surrender of his passport and continue indulging in prejudicial activity all the same.

26. Another submission of the learned Counsel for the petitioner was that non-application of mind on the part of the detaining authority is apparent from a reading of para No. 50 of the grounds of detention wherein the detaining authority mentioned that adjudication proceedings under FEMA and Customs Act were likely to be initiated in due course. Mr. Anand submitted that the fact is that already adjudication proceedings had commenced on 30th May, 1995 but still the detaining authority had mentioned in the detention order that adjudication proceedings would be initiated in due course and that shows non-application of mind by the detaining authority. In this regard learned Counsel pointed out to us para No. 3(xxxvi) of the writ petition wherein this ground was taken. We find from the reply of the detaining authority that adjudication proceedings by the Directorate of Enforcement which was concerned with the violation of Foreign Exchange laws had not been initiated when the detention order was passed. It has been claimed that there was a passing reference to adjudication proceedings under the Customs Act and just because it had not been taken note of that adjudication proceedings under the Customs Act had, in fact, been initiated already that would not vitiate the detention order which was passed because of his activities considered to be prejudicial to the augmentation of the foreign exchange resources of the country. In our view the detention order does not suffer from the vice of non-application of mind by the detaining authority for this reason put forth on behalf of the detenu.

27. As far as the submission of the learned Counsel for the petitioner, which is the last contention raised by him, that some documents had not been placed before the detaining authority by the sponsoring authority nor were they supplied to the detenu and so for that reason also the detention order is liable to be quashed is concerned we find the same also to be devoid of any merit. In this regard we may notice the views of the Hon"ble Supreme Court expressed in *Kamarunnissa and Others Vs. Union of India* and another, which judgment was later on followed by a Division Bench of this Court also in *"Ramesh Chander Khurana v. UOI and Ors. 112 (2004) DLT 858*. In the said judgment the Hon"ble Supreme Court had held that the detenu would not be entitled to any document which has no relevance to his detention and no obligation is cast upon the detaining authority to supply to the detenu copies of those documents in respect of which mere mention is made in the grounds of detention but are not made the basis of detention. It was further held by the Hon"ble Supreme Court that demand of any or every document, however, irrelevant it may be for the concerned detenu merely on the ground that there is a reference thereto in the grounds of detention cannot vitiate and otherwise legal detention order. It was

also held that the detenu must show that the failure to supply the documents had impaired or prejudiced his right, however, slight or insignificant it may be. During the hearing of the said case before the Hon"ble Supreme Court reliance was placed on behalf of the detenu upon a decision of Delhi High Court in "Gurdeep Singh v. UOI" 1989 CrL. L.J. NOC 41 wherein it was held that even those documents which had not been relied upon but had been referred to casually for the purpose of narration of facts were also to be supplied to the detenu on demand. The Hon"ble Supreme Court, however, accepted the view of the Bombay High Court whose decision was in appeal and which had held that copies of the documents reference to which is made in the detention order by way of completing the narration are not to be supplied to the detenu. Similar view was taken by a division bench of this Court in Ramesh Chander Khurana's case(supra) to the effect that non supply of any or every document which is referred to in the grounds of detention only as a background fact would not vitiate the detention order and in such a situation it has to be shown by the detenu that failure to supply those documents had impaired his right to make an effective representation. This view was taken by this Court following the decision of the Hon"ble Supreme Court in Kamarunnissa's case(supra).

28. We have gone through the grounds of detention in respect of the detenu and have also gone through the counter affidavit of the detaining authority on the aspect of non supply of some documents to the detenu. In the counter affidavit it has been claimed by the detaining authority that all the documents which were considered relevant for the preventive detention of the detenu were supplied to him. In paragraph No. 3(xxi) of the writ petition the petitioner has pleaded that in para No. 26 of the grounds of detention it has been alleged that the Customs Department vide letter dated 10-09-2004 forwarded copies of Panchnamas and statements to the detaining authority which were duly examined but at least five documents referred to in the list annexed with the letter dated 10-09-2004 of the Customs Department were not a part of the relied upon documents list of which had been supplied to the detenu along with the grounds of detention and that showed that subjective satisfaction of the detaining authority was without considering those documents. The petitioner, however, has not specified as to which particular document was not considered by the detaining authority and, Therefore, we cannot accept the argument that the detaining authority passed the detention order without considering some relevant document. In this regard we may once again refer to the decision of this Court in Dalbir Singh's case(supra) wherein in para No. 30 it was held that the fact that certain documents were not placed before the detaining authority or not communicated to the detenu was not violation of the law.

29. Regarding the bail application filed by the detenu before the Additional Sessions Judge and reply thereto of the Customs Department and the order of the Court the detaining authority has stated in its counter affidavit that there was only a passing reference to the rejection of bail application by the Additional Sessions Judge and the same was not relied upon for placing the detenu under

preventive detention. It was further stated that for the preventive detention reliance was made on the CDFs against which foreign currency was deposited by the detenu and FIRCs was obtained by him from his bank and that the CDFs were forged by the detenu and further that verification of particulars of passengers mentioned in CDFs revealed that the supportive documents to the CDFs were also fabricated and all these documents relied upon had already been supplied to the detenu. The petitioner has not been able to show any prejudice caused to the detenu because of non furnishing to him of any document and it is not the case of the petitioner that any document relied upon by the detaining authority while arriving at the subjective satisfaction for passing the detention order was not supplied to the detenu.

30. Having, thus, rejected the challenge to the validity of detention order on the grounds of delay in its issuance and its execution, non-submission of some documents before the detaining authority and non-application of mind by the detaining authority and which were the only grounds of challenge urged on behalf of the petitioner this writ petition is liable to be dismissed. We accordingly dismiss this writ petition.