
(2015) 03 DEL CK 0055

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 1529/2014

Golam Biswas

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1), 3(1)(i), 3(1)(iii), 5A, 5-A
Constitution of India, 1950 — Article 21, 22, 22(5), 226
Customs Act, 1962 — Section 108, 110, 135

Citation : (2015) 5 AD 479 : (2015) 219 DLT 45

Hon'ble Judges : Ashutosh Kumar, J.; Sanjiv Khanna, J.

Bench : Division Bench

Advocate : Pradeep Jain, S. Bhattacharya, Rajib Mukherjee, A. Samad, Shubhankar Jha, Ashish Batra, Kumar Vikram and Ashish Bansal, for the Appellant; Sanjeev Narula, CGSC, Vidur Mohan and Ajay Kalra, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—Golam Biswas has filed the present writ petition under Article 226 of the Constitution of India for quashing of the detention order dated 27th May, 2014 passed under Section 3(1) and order dated 13th June, 2014 passed under Section 3(1)(i) and 3(1)(iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as COFEPOSA Act, for short). The petitioner was served with the aforesaid detention orders and detained under the COFEPOSA Act on 16th June, 2014 while in judicial custody for offence under Section 135 of the Customs Act, 1962.

2. The writ petition was originally filed on 29th July, 2014 and has since been pending. When the arguments were being put forth in this Bench on 20th January, 2015, it was noticed that the counsel for the petitioner had made certain factual assertions in the written submissions, which were not stated/pleaded in the writ petition. Learned counsel for the respondents prayed for

some time, so as to examine the said factual assertions and if required, file an affidavit. Pursuant thereto, a copy of the objection petition filed by the petitioner before the Calcutta High Court, opposing the application for cancellation of bail was filed. Thereafter, the argument then raised was not pressed.

3. Subsequently, on 2nd February, 2015, learned counsel for the petitioner during the course of arguments, raised new contentions based upon facts, which had earlier not been pleaded or raised in the writ petition as well as the written submissions. This was objected to by the counsel for the respondents, who highlighted the vacillations and new allegations made by the petitioner. Allowing the prayer made by the petitioner, time was granted to file an additional affidavit along with photocopy of documents to show and urge factual and consequent legal submissions. The said affidavit has been filed and the respondents have also filed their response to the said affidavit.

4. The contentions of the petitioner can be divided into five separate submissions. The first submission is that in the present case there are two detention orders dated 27th May, 2014 and 13th June, 2014 and this is contrary to and impermissible under Section 3(1) of the COFEPOSA Act. Secondly, there has been failure on the part of the Sponsoring Authority in not informing and forwarding relevant facts/ documents to the Detaining Authority, which had come to their knowledge and custody, after passing of the first detention order dated 27th May, 2014 but before passing of the second detention order dated 13th June, 2014. Thirdly, the Central Government had failed to consider and decide the first representation made by the petitioner, which they had received on 10th July, 2014. The respondent had without deciding the representation, forwarded the petitioner's case to the Advisory Board. The petitioner avers that this is contrary to law, in light of the decision of the Supreme Court in the case of Jayanarayan Sukul Vs. State of West Bengal, and decision of this Court in Writ Petition (Criminal) No. 680/2008, Rajkumar versus Union of India and Others, decided on 5th August, 2008. Fourthly, it is submitted that the detention order has been passed against the petitioner in the present case without ascertaining and verifying the veracity and correctness of the facts, as the Sponsoring Authority in their letter dated 12th June, 2014, have themselves accepted that they were not in a position to complete the investigation. Reference is made to the order dated 28th May, 2014, passed by the Supreme Court on an appeal preferred by the petitioner against the order dated 14th May, 2014, passed by the Calcutta High Court, cancelling the bail granted to the petitioner by the Chief Metropolitan Magistrate for the offence under the Customs Act. Reliance is placed upon the decision of the High Court in the case of Pooja Batra Vs. Union of India (UOI) and Others, . Lastly, it is submitted that there has been a failure on the part of the respondents in furnishing copy of letter dated 27th November, 2013, in English and the same was furnished to the petitioner on 17th July, 2014. Further, the Bengali translations of some of the relied upon documents were incomplete and imperfect, and the copy of some of the relied upon documents supplied were incomplete or were not readable and legible. Reliance in this

regard was placed on Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, and other cases.

5. As per the grounds stated in the detention order, the petitioner was detained under the provisions of the Customs Act, on 8th March, 2014 at about 1.30 P.M., with 44.659 kilograms of smuggled gold, which was being transported in a Toyota Fortuner Car, bearing Registration No. WB 26 S 2600 in Beliaghat area of Taki Road, district of North 24- Parganas. The car was being driven by Moksed Mandal. The total value of the gold seized was of Rs.1,355.99 lacs. Several other facts stand recorded in the detention order, but these do not require elucidation and discussion in this writ petition.

6. The Chief Metropolitan Magistrate, Kolkata had granted bail to the petitioner on 12th March, 2014, on the ground that there was violation of the directions issued by the Supreme Court in D.K. Basu Vs. State of West Bengal, Stringent conditions were however imposed, requiring the petitioner to join the investigation and report to the Customs Office from Monday to Friday. The authorities being aggrieved, preferred a petition for cancellation of bail before the Calcutta High Court. The petition filed was allowed and the bail granted to the petitioner was cancelled by order dated 14th May, 2014. The petitioner thereupon filed Special Leave Petition (Cri.) No. 4387/ 2014 on 21st May, 2014, against the said order of cancellation of bail, and didn't surrender. The Special Leave to Appeal Petition was dismissed by order dated 28th May, 2014, whereby the Supreme Court declined to interfere with the order passed by the Calcutta High Court cancelling the bail. At the same time, the Supreme Court observed that having regard to the nature of the issue involved, the Directorate of Revenue Intelligence should complete the investigation expeditiously and preferably within four weeks from the said date. The moment investigation was completed, challan would be filed and thereafter the petitioner would be at liberty to move an application for regular bail, which would be considered by the trial court without being influenced by any observation made in the impugned order of the High Court.

7. Thereafter, the petitioner surrendered on 11th June, 2014, and he was thereafter sent to judicial custody.

8. On 12th June, 2014, the Directorate of Revenue Intelligence wrote a letter to Joint Secretary, COFEPOSA stating as under:-

" Please refer to Detention Order No. 673/14/2014- Cus.VIII dated 27.05.2014 issued against Shri Barik Biswas under COFEPOSA Act, 1974. The said detention order has not been executed till date.

Attention is also invited to para-30 and 35 (ix) of Grounds of Detention where the discussion regarding cancellation of bail by High Court, Kolkata and nonsurrender of proposed detenue has been made.

This office has received a letter today from Shri L.M. Sarkar, Advocate enclosing

a copy of the Supreme Court Order dated 28.05.2014 (copy enclosed). On perusal of the said order, it is seen that Hon"ble Supreme Court refused to interfere with the order passed by the High Court cancelling the bail of the petitioner (Barik Biswas and others).

Further, it has been informed by departmental counsel that Shri Barik Biswas has surrendered before the Court of CMM, Kolkata on 11.06.2014 and remanded to judicial custody till 25.06.2014. The copy of this order will be sent as soon as it is received by us. It may be noted that Shri Barik Biswas has surrendered 2 weeks after the order of the Supreme Court. There is also every possibility of bail being granted to him again by the lower court and given his propensity to evade law, there is every likelihood of his absconding after being enlarged on bail. As per the said Hon"ble Supreme Court order, the moment investigation is complete and challan is filed in the court, the petitioner shall be at liberty to move an application for regular bail which shall be considered by the trial court without being influenced by any observation made in the order by the High Court. However, it is difficult to complete the investigation and file prosecution against the accused within the given time. It is therefore felt that the detaining authority may allow serving of the Detention Order in this case.

Now, in view of para E(ii) of the instructions issued under F.No. 671/6/2001-Cus VII dated 12.07.2001, the matter is being brought to your notice. Accordingly, decision regarding service of Detention Order to the said person may be informed to executing authority and this office."

9. Thereafter, Joint Secretary to the Government of India passed an order dated 13th June, 2014 with the following subject:-

"Subject:-Additional Grounds on which detention order F.No.673/14/2014-Cus. VIII, dated 27th May, 2014 has been issued against Barik Biswas, i.e., you, S/o Late Ichhaque Biswas under Section 3(1)(i) and 3(1)(iii) of the COFEPOSA Act, 1974, keeping in view of your surrendering on 11.06.2014 read with Supreme Court"s order dated 28.05.2014 in your appeal." Reference was made to the earlier detention order dated 27th May, 2014, which was made under Section 3(1) of COFEPOSA Act, with a view to prevent the petitioner from indulging in smuggling of goods and illegal transportation and concealment of contraband goods in future. Approbation was also made to the fact that the petitioner had not surrendered before the Detaining Authority, despite cancellation of bail by the High Court of Calcutta vide order dated 14th May, 2014, and issue of non-bailable warrants on 16th May, 2014, by the Chief Metropolitan Magistrate, Kolkata. References were made to the order passed by the Supreme Court, dated 28th May, 2014, whereby the Court had refused to interfere with the order passed by the High Court of Calcutta cancelling the bail; surrender made by the petitioner on 11th June, 2014, after more than two weeks of the order passed by the Supreme Court and order passed by the Chief Metropolitan Magistrate, Kolkata remanding the petitioner to judicial custody till 25th June, 2014. Thereafter it was, inter alia, observed:-

"2.As per the Hon"ble Supreme Court's subject Order, the DRI is directed to complete the investigation expeditiously and preferably within four weeks from the date of order (i.e. from 28.05.2014). And the moment the investigation is complete and challan is filed in the Court, the petitioner (i.e. you) shall be at liberty to move an application for regular bail, which shall be considered by the trial court without being influenced by the observations made in the order by the High Court.

3. However, taking into consideration the fact as informed by DRI vide F. No. DRI/KZU/AS/ENQ-5 (INT-5)/2014/COFEPOSA/2954 dated 12.06.2014 that the completion of investigation would take more time and may not be completed within the time stipulated by the Hon"ble Supreme Court, there is every likelihood of you getting bail in near future. Also taking into consideration your conduct throughout the investigation and your tendency to avoid appearance on summons issued and your avoidance to surrender when Non-Bailable Warrant dated 16.05.2014 was issued by CMM, Kolkata and the fact that you have a very high propensity to indulge in smuggling of goods and its transportation and concealment in future also, I am satisfied that you ought to be immobilised by way of putting you under Preventive Detention.

4. Accordingly I order that you be detained in terms of Detention Order bearing F.No. 673/14/2014-Cus. VIII dated 27.05.2014 passed by me, in exercise of the powers conferred by Section 3(1)(i) and 3(1)(iii) of Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) Act, 1974. I further direct that Shri Barik Biswas, i.e., you, be kept in custody in the Presidency Correctional Home, Alipore, Kolkata, consequent to your detention."

10. It is clear to us that the two detention orders, i.e., orders dated 27th May, 2014, and 13th June, 2014, have to be read in seriatim and together and not as two distinct and separate orders. The reason why order dated 13th June, 2014, was passed is apparent and clear from the last paragraph of the letter dated 12th June, 2014 which makes reference to paragraph E(ii) of the instructions issued under File No. F.671/6/2001-Cus (vii) dated 12th July, 2001. The said circular/instruction has been placed on record by the petitioner and it refers to the judgment of the Supreme Court in Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, . In the said judgment, it has been observed that where a detinue is arrested and sent to jail before actual service of the detention order, this change in the background of facts should be brought to the notice of the Detaining Authority. This is required, as within the constitutional framework, the power of preventive detention must be exercised only in exceptional cases and the Detaining Authority must be fully aware and apprised of the facts necessitating preventive detention. For example, if a person is already in custody and there is no imminent possibility of the said person being released, power of preventive detention should not be exercised. It was held in Binod Singh (supra) as under:-

"6. In this case there were grounds for the passing of the detention order but

after that the detenu has surrendered for whatever reasons, therefore the order of detention though justified when it was passed but at the time of the service of the order there was no proper consideration of the fact that the detenu was in custody or that there was any real danger of his release. Nor does it appear that before the service there was consideration of this aspect properly. In the facts and circumstances of this case, therefore, the continued detention of the detenu under the Act is not justified." 11. Thus, the first detention order dated 27th May, 2014, was passed after examining the relevant facts when the petitioner was not in detention. Bail granted by the trial Court had been cancelled, but the petitioner had not surrendered or arrested. Subsequently, the petitioner surrendered on 11th June, 2014 and till then the detention order had not been served. Thus, the Sponsoring Authority deemed it appropriate to intimate the said factual position to the Detaining Authority to ascertain whether they should execute the said order. The Detaining Authority after examining the relevant facts, passed an additional detention order in continuation of the earlier order dated 27th May, 2014, elucidating reasons why the detention order dated 27th May, 2014, should still be served and executed. We do not think that the letter/order dated 13th June, 2014, which purports to provide additional grounds of detention can stand on its own. It is not by itself a separate and independent detention order. It is necessarily an adjunct and a corollary to the earlier order dated 27th May, 2014. Appropriate in this regard would be reference to the following observations made by the Constitution Bench of the Supreme Court in Attorney General for India and Others Vs. Amratlal Prajivandas and Others, :

"48. Now, it is beyond dispute that an order of detention can be based upon one single ground. Several decisions of this Court have held that even one prejudicial act can be treated as sufficient for forming the requisite satisfaction for detaining the person. In Debu Mahato Vs. The State of West Bengal, it was observed that while ordinarily-speaking one act may not be sufficient to form the requisite satisfaction, there is no such invariable rule and that in a given case one act may suffice. That was a case of wagon-breaking and having regard to the nature of the Act, it was held that one act is sufficient. The same principle was reiterated in Anil Dey Vs. State of West Bengal, It was a case of theft of railway signal material. Here too one act was held to be sufficient. Similarly, in Israil Sk. Vs. The District Magistrate of West Dinajpur and Others, and Dharua Kanu Vs. State of West Bengal, single act of theft of telegraph copper wires in huge quantity and removal of railway fish-plates respectively was held sufficient to sustain the order of detention. In Mrs Saraswathi Seshagiri Vs. State of Kerala and Another, , a case arising under COFEPOSA, a single act, viz., attempt to export a huge amount of Indian currency was held sufficient. In short, the principle appears to be this: Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity. The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would

continue to indulge in similar prejudicial activity. That is the reason why single acts of wagon-breaking, theft of signal material, theft of telegraph copper wires in huge quantity and removal of railway fish-plates were held sufficient. Similarly, where the person tried to export huge amount of Indian currency to a foreign country in a planned and premeditated manner, it was held that such single act warrants an inference that he will repeat his activity in future and, therefore, his detention is necessary to prevent him from indulging in such prejudicial activity. If one looks at the acts the COFEPOSA is designed to prevent, they are all either acts of smuggling or of foreign exchange manipulation. These acts are indulged in by persons, who act in concert with other persons and quite often such activity has international ramifications. These acts are preceded by a good amount of planning and organisation. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention.

49. Now, take a case, where three orders of detention are made against the same person under COFEPOSA. Each of the orders is based upon only one ground which is supplied to the detenu. It is found that the ground of detention in support of two of such orders is either vague or irrelevant. But the ground in support of the third order is relevant, definite and proximate. In such a case, while the first two orders would be quashed, the third order would stand. This is precisely what the first part (the main part) of Section 5-A seeks to do. Where the order of detention is based on more than one ground, the section creates a legal fiction, viz., it must be deemed that there are as many orders of detention as there are grounds which means that each of such orders is an independent order. The result is the same as the one in the illustration given by us hereinabove. The second part of it is merely clarificatory and explanatory, which is evident from the fact that it begins with the word "accordingly" - apart from the fact that it is joined to the first part by the word "and". In such a situation, we are unable to see how can the section be characterised as inconsistent with Article 22(5). Had there been no first part, and had the section consisted only of the second part, one can understand the contention that the section is in the teeth of Article 22(5) as interpreted by this Court - this was indeed the situation in *K. Yadigiri Reddy v. Commissioner of Police* [ILR 1972 AP 1025] as we shall presently indicate. It is difficult to conceive any inconsistency or conflict between Article 22(5) and the first - the main - part of Section 5-A. Parliament is competent to create a legal fiction and it did so in this case. Article 22(5) does not in terms or otherwise prohibit making of more than one order simultaneously against the same person, on different grounds. No decision saying so has been brought to our notice. Be that as it may, we do not see why Parliament is not competent to say, by creating a legal fiction, that where an order of detention is made on more than one ground, it must be deemed that there are as many

orders of detention as there are grounds. If this creation of a legal fiction is competent, then no question of any inconsistency between the section and Article 22(5) can arise."

12. Reliance placed by the petitioner on the earlier decision of the Supreme Court in *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, is misplaced. Section 5A of the COFEPOSA Act was enacted subsequently. In *Amritlal Prajivandas and others versus Attorney General for India* (supra), it has been held that the said Section is not contrary to Article 22(5) of the Constitution of India. The judgment in the case of *Atma Ram Sridhar Vaidya* (supra) was considered in paragraph 45 of *Amritlal Prajivandas and Others* (supra) and elucidated upon in the following words:-

"45. Petitioners challenged the validity of Section 5-A of COFEPOSA on the ground of it being violative of the twin safeguards provided by clause (5) of Article 22. It is submitted that the said clause gives two rights to the detenu, viz., (i) to have the grounds on which the order of detention is based communicated to him as soon as possible and (ii) to be afforded the earliest opportunity of making representation against the order of detention - (see *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, . If the grounds included irrelevant or non-existent grounds, it is submitted, the first right is violated and if the grounds included vague grounds, the second right is violated. According to the learned counsel, Article 22(5), as interpreted by this Court over the last more than four decades, means this: An order of preventive detention is based upon the subjective satisfaction of the authority and where such satisfaction has been arrived at on grounds some of which are relevant and definite grounds and some irrelevant, vague and nonexistent, it is not possible or permissible for the court to predicate which grounds have influenced the formation of his satisfaction - which means that the order of detention must fall to the ground; if this is what Article 22(5) means and says, it is not open to Parliament to make a law saying that where the grounds upon which the requisite satisfaction has been formed are partly good and partly bad, yet the order must be held to be good with reference to and on the basis of good grounds, eschewing the bad grounds. Such a law, it is submitted, would be in direct conflict with Article 22(5). Let us examine this submission rather closely." 13. The first contention, therefore, fails and ought to be rejected.

14. The second contention would fail for the reasons stated while dealing with the first contention. As held above, the second order dated 13th June, 2014 is not a separate order. The second detention order has been passed in consonance with the decision of the Supreme Court in *Binod Singh* (supra), noticing the changed factual matrix post the arrest/ detention of the petitioner under the provisions of the Customs Act. The arrest of the detenu was an event subsequent to the first detention order dated 27th May, 2014. We do not agree with and accept the contention of the petitioner that the Detention Authority should have reviewed and re- examined the entire factual matrix or it should

have requisitioned and furnished all details, including documents, letters etc. that were exchanged and communications that had transpired between the period intervening 27th May, 2014 till 13th June, 2014. That was not the true object and purpose of passing the consequential order dated 13th June, 2014. Once we hold that the order dated 13th June, 2014 is not an independent order of detention, but only a necessary adjunct to the previous detention order, keeping in view the changed factual matrix i.e. the arrest of the petitioner, the second contention has to be rejected.

15. The third contention is also without merit and has to be rejected in view of the judgment of the Supreme Court in *K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others*, which exposit and explains the earlier judgment of the Supreme Court in the case of *Jayanarayan Sukul (supra)*. In *Jayanarayan Sukul (supra)* it was held as under:-

"20. Broadly stated, four principles are to be followed in regard to representation of detenus. First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the Government will not send the matter to the Advisory Board. If however the Government will not release the detenu the Government will send the case along with the detenu's representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of release of the detenu the Government will release the detenu. If the Advisory Board will express any opinion against the release of the detenu the Government may still exercise the power to release the detenu." 16. Reliance is placed upon the observations made by the Supreme Court under the fourth principle. Before we quote from the decision in the case of *K.M. Abdulla Kunhi (supra)*, it would be appropriate to refer to the factual matrix in the case of *Jayanarayan Sukul (supra)*. The detention order in the said case was executed on 7th June, 1969. The detenu had made a representation on 26th June, 1969 and the same was decided by the Detaining Authority on 19th August, 1969. The detention of the detenu was forwarded to the COFEPOSA Board on 1st July, 1969 and was finally decided on 13th August, 1969. It is quite apparent that there was a considerable delay in deciding the representation made by the detenu, which was received on 26th June, 1969 and was finally decided after nearly two months on 19th August,

1969. This decision on the representation by the Detaining Authority was obviously not made available and before the COFEPOSA Board, when the case was forwarded to them on 1st July, 1969 and the Board's decision was taken on 13th August, 1969. Decision of this Court in Rajkumar (supra) refers to the judgment in Jayanarayan Sukul (supra) has applied the fourth principle in the factual matrix of the said case. In Rajkumar (supra), representation was made by the detenu on 11th March, 2008 and reference was made to the Advisory Board of COFEPOSA after 13 days on 24th March, 2008. The decision on the representation made by the detenu was taken by the Joint Secretary, the Detaining Authority, by memo dated 27th March, 2008 and by the Special Secretary and Director General, Central Economic Intelligence Bureau, Ministry of Finance on 28th March, 2008, i.e., after the matter was forwarded to the Advisory/ COFEPOSA Board. In these circumstances, it was held that there was a lapse on the part of the authorities in not deciding upon the said representation, before sending the case along with detenu's representation to the Advisory/ COFEPOSA Board. It was observed that the representation has to be decided as soon as possible and unreasonable delay cannot be accepted. In K.M. Abdulla Kunhi (supra), it has been held as under:-

"12. The representation relates to the liberty of the individual, the highly cherished right enshrined in Article 21 of our Constitution. Clause (5) of Article 22 therefore, casts a legal obligation on the government to consider the representation as early as possible. It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. This has been emphasised and re-emphasised by a series of decisions of this Court. (See: Jayanarayan Sukul Vs. State of West Bengal, ; Frances Coralie Mullin Vs. W.C. Khambra and Others, ; Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others, and Aslam Ahmed Zaire Ahmed Shaik Vs. Union of India and Others,

16. We agree with the observations in Frances Coralie Mullin Vs. W.C. Khambra and Others, . The time imperative for consideration of representation can never be absolute or obsessive. It depends upon the necessities and the time at which the representation is made. The representation may be received before the case is referred to the Advisory Board, but there may not be time to dispose of the

representation before referring the case to the Advisory Board. In that situation the representation must also be forwarded to the Advisory Board along with the case of the detenu. The representation may be received after the case of the detenu is referred to the Board. Even in this situation the representation should be forwarded to the Advisory Board provided the Board has not concluded the proceedings. In both the situations there is no question of consideration of the representation before the receipt of report of the Advisory Board. Nor it could be said that the government has delayed consideration of the representation, unnecessarily awaiting the report of the Board. It is proper for the government in such situations to await the report of the Board. If the Board finds no material for detention on the merits and reports accordingly, the government is bound to revoke the order of detention. Secondly, even if the Board expresses the view that there is sufficient cause for detention, the government after considering the representation could revoke the detention. The Board has to submit its report within eleven weeks from the date of detention. The Advisory Board may hear the detenu at his request. The constitution of the Board shows that it consists of eminent persons who are Judges or persons qualified to be Judges of the High Court. It is therefore, proper that the government considers the representation in the aforesaid two situations only after the receipt of the report of the Board. If the representation is received by the government after the Advisory Board has made its report, there could then of course be no question of sending the representation to the Advisory Board. It will have to be dealt with and disposed of by the government as early as possible.

17. The crucial question that remains for consideration is whether the government should consider and dispose of the representation before confirming the detention. This Court in *Vimalchand Jawantraj Jain Vs. Shri Pradhan and Others*, has observed (at SCC p. 405) that it is a constitutional obligation under clause (5) of Article 22 to consider the representation before confirming the order of detention. If it is not so considered, the confirmation becomes invalid and the subsequent consideration and rejection of the representation could not cure the invalidity of the order of confirmation. To reach this conclusion, the court has relied upon two earlier judgments of this Court: (i) *Khudiram Das Vs. The State of West Bengal and Others*, and (ii) *Khairul Haque v. State of W.B.* [W.P. No. 246 of 1969, decided on September 10, 1969 (Unreported)]"

17. Reverting to the facts of the present case and applying the ratio decidendi in *K.M. Abdulla Kunhi* (supra), we find that the representation in the present case dated 8th July, 2014 was received only on 11th July, 2014. As comments were required from the concerned departments, the representation was forwarded to them. Comments were received on 17th July, 2014. As per Section 8(b) of COFEPOSA Act, the detention file had to be forwarded to the Advisory Board within a period of five weeks from the date of service of the order of detention. The file was accordingly forwarded to the Advisory Board on 18th July, 2014 as 19th and 20th July were holidays. It is apparent and crystal clear that the Central Government did not have sufficient time to apply their mind and decide upon the

representation, on the comments received by the concerned departments. Detaining Authority while forwarding the case to the Advisory Board had specifically noted and informed the Advisory Board that the petitioner had made a representation to the Central Government, which was pending consideration. The Advisory Board was accordingly apprised about the said facts. The representation was decided by Special Secretary-cum-DG, CEIB on 21st July, 2014 and communicated to the detenu i.e. the petitioner by memorandum of the same date. The said decision is within a reasonable time. The Advisory Board as per the counter affidavit filed by the respondent on 8th November, 2014, had not conducted any hearing and given their advice till 21st July, 2014. The hearing before the Advisory Board was fixed on 16th August, 2014.

18. The fourth contention of the petitioner, relying upon judgment in the case of Pooja Batra versus Union of India (supra) is entirely misconceived and fallacious. It would be incorrect and improper to state that the authorities had not ascertained full facts. Filing of charge sheet on the completion of investigation is a separate matter. In the present case, the contention of the respondents is that there were several collateral and ancillary aspects, which required consideration before the charge sheet could be filed. We do not think that this case can be equated with a case of incomplete or inchoate investigation. The detention order is a speaking order and is crystal clear on the factual narration and factual matrix. The object and purpose of preventive detention which is anticipatory and precautionary in nature in the said sense does not relate to an offence punishable in criminal proceedings. A preventive detention order is not a parallel proceeding.

19. The fifth and the last contention raised by the petitioner is based upon the additional affidavit dated 9th February, 2015, filed on 10th February, 2015. The said additional affidavit is predicated and premised on the assertion that the petitioner is well conversant only in Bengali and he can read and write Bengali and does not understand and cannot read English. Along with the affidavit, the petitioner has enclosed a copy of the pre-paid mobile application form which was bilingual i.e. English and Bengali and it is stated that certain parts of the form relating to verification etc. are not bilingual and are only in English. Our attention is also drawn to another pre-paid mobile application form which is in English, of which full and complete Bengali translation was not submitted, but the translation furnished/supplied is of respective columns which were written or filled up. Translation of the blank columns was not furnished. Our attention is also drawn to the Arms Licence Form no. III and it is submitted that the said form though bilingual had a noting in English to the effect that on 26th September, 2014, one 32 bore pistol was supplied. Similarly, the Bengali translation of the inventory of the goods, recovered and seized under Section 110 of the Customs Act, was provided but without the Bengali translation of the handwritten note to the effect that one cloth wrapped sealed steel box sealed with DRI seal No. 1 vide a particular file had been received. Similar allegations were made with regard to letter dated 11th February, 2014 of which Bengali

translation was made and furnished but the Bengali translation of the noting by the Inspector (Customs), that one vehicle Toyota Fortuner, bearing a particular number was intercepted, was not supplied. Our attention was drawn to certain other documents, mentioned at page 27 to 30 of the affidavit, of which Bengali translations were supplied, but the Bengali translation of the standard terms and conditions of the pre-paid mobile phone forms, printed in English on the said form had not been submitted.

20. The said contentions have to be rejected for several reasons. Firstly, the contention of the petitioner that he knows and understands only Bengali is inaccurate. In fact, we feel that the petitioner has deliberately projected and misstated that he does not know and understand English. Given his background, it appears that he knows and understands English perfectly well. It was stated on behalf of the petitioner that he has studied upto Class 7. No doubt, the respondents have given Bengali translations of the relied upon documents and statements under Section 108 have been recorded in Bengali and even several documents have been signed by the petitioner in Bengali, there is clinching evidence available on record to show that the petitioner knows and can write in English. Perusing through the documents filed by the petitioner, we find that he has filed tax invoice dated 26th September, 2013, issued by N.C. Daw and Co. Arms and Ammunitions Dealer, Calcutta. By the said invoice, the petitioner has purchased one 32 bore pistol for Rs.34, 350/-. The said document is signed by the petitioner in flowing and well scripted English as Barik Biswas. He has also signed the original tax invoice copy again in English. This apart, it would be fallacious and wrong to hold that the failure to supply Bengali translation of the standard terms and conditions and other portions/ notings on the documents is fatal to the validity of the detention order and would merit setting aside or quashing of the detention. The said terms in mobile application form are of no relevance. This is not even asserted. Appropriate in this regard would be reference to the decision of the Supreme Court in *M. Kudubdeen versus Union of India* (2010) 15 SCC 741. In the said case, the detention was challenged on the ground of non- supply of translated documents in the language known to the petitioner therein. Keeping in mind the factual matrix of the case, the Supreme Court rejected the plea and observed that non- supply of certain translated documents had not affected the detenu's cherished and constitutionally conferred right of making an effective representation under Article 22(5) of the Constitution. The detenu had studied upto class V and claimed that he did not know English language and knew only Tamil language. This was disbelieved by the Supreme Court for the reason that the petitioner had written Rs.30,000/- in English. Further the assertion that the Tamil translation of the front portion of the declaration form had not been supplied was considered by the Supreme Court as inconsequential and irrelevant. The said front portion contained certain basic details like name, flight number, number of packages etc. The said details were given by the detenu in his application form. The contention was accordingly rejected observing as under:

"3. The first ground pressed by the learned counsel is about the non-supply of documents in the language known to the petitioner which, it is claimed, has adversely affected the detenu's valuable right of making effective representation under Article 22(5) of the Constitution. The detenu claims to have studied up to fifth standard. He does not know how to read, write and understand English and claims to know only the Tamil language. The documents whereof the English (sic Tamil) translation has not been supplied to the detenu is a customs declaration. According to the facts noticed in the ground of detention, the petitioner was apprehended at Chennai Airport with 140 mobile phones and certain gold ornaments. The total value of the goods was approximately Rs 7,29,000. In the customs declaration the value of the goods was mentioned as Rs 30,000. The details about Rs 30,000 are noticed on the reverse of the document in respect of which the complaint has been made that the English (sic Tamil) translation has not been supplied. It is apparent from a look at the document, namely, the customs declaration that the reverse side of it is predominantly in the Tamil language. It is written by the petitioner. The grievance made is in respect of the front portion of the customs declaration. That is in English. It is contended that the Tamil translation of the front portion has not been supplied. It is a relied-upon document.

4. A perusal of the said document (front portion) shows that the material particulars therein are the name of the passenger, flight number, numbers of the packages, checked baggage, hand baggage, total value of the dutiable goods being imported and signature. All these particulars have been filled in that document. The name, flight number and number of packages have been mentioned in the document in question. Against the value of the goods tick mark has been made. The document has been signed by the detenu. In the face of the above details given by the detenu in the aforesaid declaration, the contention that the translation thereof has not been supplied particularly keeping in view that the reverse is in the Tamil language, is without any substance. Therefore, there is no merit in the contention that non-supply of the English (sic Tamil) translation of the document has resulted in depriving the petitioner from making an effective representation under Article 22(5) of the Constitution. The first contention is therefore rejected."

21. The contention of the petitioner that though he was furnished with the Bengali translation of the letter dated 27th November, 2013, he wasn't supplied with the English version of the same, must perish for the same reason. Once the petitioner accepts that he was furnished with the Bengali translation of the said letter, which he can read and understand, it should be held that there was adequate and proper compliance with the constitutional mandate. The last contention on the said aspect related to two pages enclosed on pages 25 and 26 of the additional affidavit dated 9th February, 2015 filed on 10th February, 2015. The first page is the opening sheet of CRM No. 4830/2014 and is the cause title. It is not signed by any person. This is not a relied upon document. It will be incorrect and wrong to hold that the document relied upon by and supplied to the

petitioner is incomplete. For similar reasons, the document at page 26 which is the back side of the certified copy furnished by the High Court of Calcutta and contains the dates on which the copy was applied for and delivered etc. has to be rejected. Clerical and numerical mistakes in Bengali translation would be also immaterial. Respondents have stated that all copies of documents supplied were photocopies of originals as received. The originals available with them cannot be improved. Even otherwise, the documents were legible. This did not hamper or prejudice the petitioner.

22. We would like to record that in the present writ petition, a number of contentions had been raised. However, these were not pressed or argued during the course of hearing before us on 19th February, 2015. A comprehensive and complete hearing was held on 19th February, 2015 and this was made clear to the parties on the said date.

23. For the reasons stated above, we do not find any merit in the writ petition and the same is dismissed. In the facts of the case there will be no order as to costs.