
(1994) 01 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Habeas Corpus Writ Petition No. 3470 of 1993

Gopikishan Parihar

APPELLANT

Vs

Joint Secretary, COFEPOSA and Others

RESPONDENT

Date of Decision : 06-01-1994

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 10, 3, 7
Constitution of India, 1950 — Article 14, 19, 21, 22, 226
Criminal Procedure Code, 1973 (CrPC) — Section 438
Customs Act, 1962 — Section 108
National Security Act, 1980 — Section 7

Citation : (1994) 1 WLN 111

Hon'ble Judges : J.R. Chopra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.R. Chopra, J.—Through this Habeas Corpus writ petition filed under Article 226 of the Constitution of India, the petitioner has challenged the validity of his detention order dt. 23.12.93 (Annex.I) passed by the Joint Secretary, COFEPOSA Govt. of India (respondent No. I) and the confirmatory order dated 26/5/93 (Annex.6), whereby u/s 10 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, hereinafter referred to as "the Act of 1974", he has been detained for a period of one year from the date of his detention i.e. from 24.3.93.

2. Succinctly stated the relevant facts are that pursuant to specific information regarding transportation of smuggled silver from Barmar side to Jodhpur on 1/8/92, the Custom Officers intercepted a truck bearing Registration No. RNJ 159 on Jodhpur-Balotra road near Narnadi crossing on interrogation, Umeda Ram driver of the said truck admitted the concealment of contraband silver in the truck. Subsequently, in the presence of said Umeda and two other independent witnesses, through search of the said truck yielded in the recovery of 269 silver

slabs of foreign origin, totally weighing 318.750 k.gms and valued at Rs. 23,15,719/-. Those silver slabs were found concealed underneath the driver's seat in specially built two cavities. Since on demand, Umeda failed to produce any documentary evidence or otherwise for the legal possession/acquisition and transportation of those silver slabs, recovered silvery slabs as well as the truck No. RNJ 159, which was used for the transportation, were seized under the Customs Act, 1962, hereinafter referred to as "the Act of 1962." Umeda Ram in his statement dt. 2.8.1962 recorded u/s 108 of the Act of 1962 while admitting the recovery & seizure of silver slabs stated inter alia that he was aware of the concealment of smuggled silver slabs in the truck by petitioner Gopikishan, who was the actual and facto owner of the said truck; that on the night intervening 31/7/92 and 1/8/92, the petitioner had left him at the bus stand of village Dhawa and went away in the truck alongwith another person and returned after about one hour; that all of them slept in the said truck in the late night; that he alongwith the petitioner reached Bhandu in the morning of 1.8.92. where the petitioner got the said truck loaded with sand gravels (Bazari); that the petitioner had disclosed to him regarding concealment of contraband silver in the truck and asked him to driver the truck from Bhandu to his shop M/s Anil Traders, Mahamandir Chauraha, Jodhpur and promised him to give Rs. 5000/- in addition to his regularly salary. Umeda Ram was arrested and later-on produced in the Court of Chief Judicial Magistrate (Economic Offence), Jaipur on 3.8.92 and was later-on bailed out on 3.10.92. It is alleged that Umeda Ram vide his letter dt. 4.10.92 addressed to Superintendent (R.D.F.) Customs, Jodhpur retracted from his statement dt. 1.8.92.. On 2/8/92, the Customs Officers made a search of the petitioner's house from where one agreement dt. 27/8/88 by which truck No. RNJ 159 was sold by its registered owner Harish Chandra Gehlot and handed-over to the petitioner, Form P.Pu.C. Part-A i.e. permit of the said vehicle issued by the R.T.A., Jodhpur, which is valid upto 20/3/94, insurance policy of the said vehicle and a Passport size photo of the petitioner were seized.

3. The petitioner in his statements dt. 18th & 19th Sept. 1992 recorded u/s 108 of the Act of 1962 inter alia, denied his involvement in the alleged smuggling of the silver slabs as well as the ownership of the truck from which the contraband silver slabs were recovered and stated that he had sold the said truck to one Madanlal s/o Peer Chand Mali r/o Jodhpur by executing an agreement dt. 25.5.91. He further stated that the said Madanlal had engaged his said truck with the construction contractor Shri Shive Kumar Pareek of Chaundary. The petitioner further stated that on 31.7.92, he was staying in the PWD Rest House, Sadari, where he had gone in connection with his contract work and that he had returned to Jodhpur on 31/8/92. He also submitted a copy of the said agreement to sale dt. 25.5.91, which was attested by Shri Roop Dan Ratnu Advocate & Notary, who in his statement dt. 16/10/92 recorded u/s 108 of the Act of 1962 admitted to have attested the said agreement to sale dt. 25.5.91, but specifically stated that there was no entry in respect of the said agreement to sale in his Notary Register. Mandal s/o Peer chand in his statement u/s 108 of the Act of

1962 dt. 9/11/92 stated that he was running a shop under the name and style of M/s Niranjan Light Decorator, Jodhpur for repairing of electric appliances and that his monthly income was between Rs. 1500/- and Rs. 2000/-; that he did not purchase truck No. RNJ 159 from the petitioner nor execute any agreement to sale. He categorically stated that the said agreement to sale did not bear his signatures; that he did not have any complicity with the petitioner and that since silver in such a huge quantity has been seized from the said truck, the petitioner has tried to falsely implicate him. However, on 10/11/1992, he sent a telegram to Addl. Collector, Customs, Jodhpur retracting his statement. It is alleged that further investigation revealed that the petitioner was actually the owner of the said truck, which had always been under his control; that the purported sale of the said truck to Shri Madanlal was fabricated and manipulated with an ulterior motive to save himself from the clutches of law. After detailed investigation, the Collector, Customs, Jaipur (Sponsoring Authority), sent the proposal for detaining the petitioner under the provisions of the Act of 1974 to the Joint Secretary, COFEPOSA, (respodent No. I), who after due processing of the case and considering all the relevant record, was satisfied that it was necessary to detain the petitioner u/s 3(1) of the Act of 1974 with a view to preventing him from engaging and concealing smuggled goods and dealing in smuggled goods in future. He accordingly passed the impugned detention order dt. 23.1.2.92 (Annex.1). The impugned detention order alongwith Grounds of detention (Annex.2) and the copies of the documents enumerated in Annex.3 were directed to be served on the petitioner. It is the case of the petitioner on knowing about the detention order sent a telegram dt. 20.3.93 to the Collector, Customs, Jaipur that he was surrendering before the Customs Authorities and eventually, he surrendered on 31.3.93". The petitioner made a representation dt. 21.4.93 (Annex.4) seeking revocation of the impugned detention order. The Central Advisory Board, Delhi, after giving personal hearing to him, confirmed the order of detention and the Govt. of India rejected petitioner's representation vide order dt. 26.5.93 (Annex.6) and confirmed his detention for a period of one year. The petitioner has asserted that there was undue delay in passing the detention order and, as such, the nexus between the alleged prejudicial activities and the necessity for detention has clearly been snapped; that the impugned detention order suffers from the vice of being arbitrary; that material facts and documents were not placed before the Detaining Authority and that there was no subjective application of mind by the Detaining Authority, which has vitiated his detention. The petitioner has further pleaded that there was an inordinate delay in deciding his representation and that there was also undue delay in execution of the detention order, though all the time he was available. He has, therefore, prayed that the impugned detention order Annex.1 and the confirmatory order Annex.6 be declared to be illegal and void; that those be quashed and he be released forthwith.

4. In reply, the respondents have filed an affidavit of Mr. Mahendra Prasad, Joint Secretary, COFEPOSA, who has deposed that on 1.8.92, truck No. RNJ 159 was

searched and from the cavity underneath the driver's seat, the smuggled 269 silver slabs weighing 318.750 kgms." were recovered; that the said truck belonged to the petitioner, which was evidenced from the statements of Umeda Ram driver dated 2.8.92 as well as Harish Chandra dt. 9.8.92 recorded u/s 108 of the Act of 1962 and. also from the agreement to sale dt. 27.8.88 and that this fact was further evidenced from the statement of Madanlal dt. 9.11.92. He has deposed that a summon dt. 24.8.92 was issued against the petitioner directing him to present himself before the Investigating Officer of the Customs Department, but instead of appearing before him, he avoided his appearance by making resort to unnecessary correspondence; that the petitioner absconded and that he did not surrender himself but was actually apprehended by the Customs Officials on 20.3.93 at Pali and was lodged in Central Jail, Jodhpur on 21.3.93, where the detention order alongwith the Grounds of detention and copies of documents, were served on him. He has further deposed that "the contention of the petitioner that he was staying in PWD Dak Bunglow at Sadari from 31.7.92 to 2/8/92 was found to be a fabricated story; that after the matter was thoroughly investigated and proper documentary evidence was collected, the Sponsoring Authority sent the proposal for the detention of the petitioner to the Joint Secretary COFEPOSA; that thereafter the matter was put up before the Screening Committee (an Advisory Board consisting of four independent senior Bureaucrats of Govt. of India) on 25.11.92 and that after the approval of the said Screening Committee, the Detaining Authority (respondent No. 1) after its subjective satisfaction issued the order of detention Annex.I against the petitioner on 23.12.92 after processing the case at length and calling-for the translation of all the documents in Hindi. He has further deposed that the alleged communication of the petitioner dt. 25.11.92 addressed to the Collector, Customs, Jaipur is nothing but a mere repetition of whatever he had said in his statement dated 18th and 19th Sept. 1993, in the telegram dated 10.11.92 and letter dt. 21.11.92 received from Madanlal. Thus, all the material and vital documents were produced before the Detaining Authority. He has also deposed that after the issuance of the detention order, the petitioner absconded; that the officials of the Customs Department made all efforts to apprehend him and as a result of which, he was arrested on 20.3.93 at Pali; that thus there was no undue delay in execution of the detention order and that the nexus between the alleged prejudicial activity of the petitioner and necessity for his detention was not snapped and hence his detention was not vitiated. He has also given detailed account in his affidavit for considering the petitioner's representation, which was eventually rejected. According to him, the delay in considering the petitioner's representation has been well explained and that there was no violation of the provisions of Articles 14, 21 and 22(5) of the Constitution of India.

5. An additional replay to the writ petition which has been supported by an affidavit of Mr. Satyendra Rahinwal, Superintendent, Customs, Divisional Preventive Force, has also been filed wherein it has been reiterated that all efforts were made to apprehend the petitioner, who was absconding and details

thereof have been given. It has been asserted that all the content of petitioner's letter dt. 18.9.92 Annex.4/1 were covered and contained in his statements dt. 18th and 19th Sept. 92, that similarly, the letter dt. 31.8.92 written by the petitioner Annex.4/2, wherein he has stated that he had not connection with the smuggled silver and truck No. RNJ 159, was also covered and contained in his statements dt. 18th & 19th Sept. 92 and the contents of Madanlal's letter dt. 19.9.92 Annex. 4/13 were also covered and contained in the agreement to sale dt. 25.5.91 and that the aforementioned statements and agreement to sale were placed before the Detaining Authority. Madanlal's telegram dt. 10.11.92, wherein he retracted his statements, letters of Madanlal dt. 21.10.92 and 12.11.92 were also placed before the Detaining Authority and copies thereof were supplied to the petitioner. It has also been asserted that the petitioner in his statement dt. 18.9.92 had stated that he was staying in the Dak Bunglow at Sadari on 31.7.92. Thus, the copy of the visitors' register of the said Dak Bunglow in this regard was also covered from the statement of the petitioner, which was placed before the Detaining Authority. Thus, all the material documents and informations were placed before the Detaining Authority and copies thereof were also supplied to the petitioner and there was no delay in apprehending the petitioner.

6. We have heard Mr. J.P. Joshi, learned Counsel appearing for the petitioner and S/Shri PP Chaudhary and S.S. Lal appearing on behalf of the respondents at length and carefully perused the record of the case in extenso.

7. Mr. Joshi has assailed the impugned detention order and confirmatory over the following grounds:

(i) that there was non-application of mind by the Detaining Authority, because certain material and vital facts and documents were not placed by the Sponsoring Authority and, as such, the petitioner's detention stands vitiated;

(ii) that non-supply of material documents to the detenu alongwith Grounds of detention, vitiates his detention;

(iii) that undue delay in passing the detention order has snapped the nexus between the alleged prejudicial activities of the petitioner and necessity for his detention;

(iv) that there has been unexplained and undue delay in executing the detention order; and

(v) that there was undue delay in disposal of the representation filed by the detenu.

According to him, for these reasons, the detention of the petitioner stands vitiated.

8. We shall first deal with these objections and serially:

IN RE: NON-APPLICATION OF MIND BY THE DETAINING AUTHORITY:

(a) Mr. Joshi has vehemently contended that in response to the summons dt. 24.8.92 issued by the Superintendent (RDF), Customs, Jodhpur, requiring petitioner's presence for recording his statement u/s 108 of the Act of 1962, the petitioner had sent a letter dt. 31.8.92 through registered post to the said Superintendent, which is marked Annex.4/2, but the same was not placed by the Sponsoring Authority before the Detaining Authority and, therefore, the detention order suffers from the vice of non-consideration of material documents and non-application of mind of the detaining authority. A perusal of the letter dt. 31.8.92 (Annex.4/2) reveals that in that letter, the petitioner informed the Superintendent (RDF), Customs, that the summons dt. 24.8.92 was received by his brother because due to some work, he was out of Jodhpur for a pretty long period, that he had received the said summons on 31.8.92; that due to urgent work, he was again going out of station and as such, he would not be in a position to appear before him on 1.9.92. In that letter, he further mentioned that he had no connection with the seized silver weighing 318.750 kgms. as also the truck RNJ 159. He further requested that a copy of the seizure memo and the statements be furnished to him so that he could make his position clear. It may be mentioned here that the petitioner was examined on 18th and 19th Sept. 92 u/s 108 of the Act of 1962, wherein he has exhaustively reiterated the aforementioned facts. Admittedly, the statements of the petitioner were placed before the Detaining Authority and a copy thereof was also given to the petitioner alongwith the Grounds of detention. In such circumstances, the letter dated 31.8.92 was not at all a material and vital documents and non-production thereof before the Detaining Authority did not/could not in any way affect his subjective satisfaction.

(b) Mr. Joshi then submitted that the petitioner had further sent a letter dated 18.9.92 to the Superintendent (RDF), Customs, Jodhpur but the same was also not placed before the Detaining Authority, which has vitiated the detention.

(c) We have perused the said letter dt. 18.9.92 marked Annex.4/2, wherein the petitioner mentioned that in compliance of the anticipatory bail order dt. 3.9.92 passed by the learned Sessions Judge, Jaipur, he has presented himself for interrogation; that earlier he sent a letter dt. 31.8.93, wherein he had explained that he had no connection with the seized silver and the truck RNJ 159, and that from 31.7.92 till 8.30 AM on 2.8.92, he was staying in PWD Dak Bungalow, Sadari and, as such, he was not in any way connected with the seized silver and the truck; that he was a contractor and also doing agricultural work and was not involved in smuggling; that for some time Umeda Ram Driver had worked with Girdhari Singh, Contractor, and during that time, he had an exchange of hot words with him in connection with his salary and for that reason Umeda Ram became angry with him and that it was possible that due to that reason, he might have taken his name. He also mentioned therein that registered owner of truck RNJ 159 was Harish Chandra from who, he had purchased the said truck vide sale deed dated 28.3.89 and that thereafter he had sold the said truck to Madanlal son of Peerchand Mali r/o Mahamandir, Jodhpur vide sale deed dt.

25.5.91. He also enclosed the copies of the aforementioned documents and further mentioned that the aforementioned letter be treated as his statement u/s 108 of the Act of 1962 and that he was prepared to give further explanation. It will suffice to add that on the same day i.e. 18.9.92 and thereafter on 19.9.92, statement of the petitioner was recorded wherein each and every fact mentioned in letter dt. 18.9.92 Annex.4/2 was stated in extenso by him. Admittedly, copies of the petitioner's statements dt. 18th and 19th Sept. 1992 as also the copy of the agreement to sale dt. 25.5.91 Annex.4/3 were sent by the Sponsoring Authority to the Detaining Authority. The copies of these documents were also supplied to the petitioner, which find place at S. Nos. 15 & 16 in the list of documents Annex.3. In such circumstances, we are of the considered opinion that all the material facts and vital documents containing the contents of petitioner's letters dt. 31.8.92 and 18.9.92 were placed before the Detaining Authority and this has not at all resulted in non-application of his mind and that on this account, neither any prejudice has been caused to the petitioner nor his detention becomes invalid or illegal.

(d) Mr. Joshi has next submitted that immediately after the statement of Madanlal was recorded on 9.11.92 u/s 108 of the Act of 1962, he had sent a telegram to the Addl. Collector, Customs Jodhpur retracting his statement and that thereafter he had also sent letter dt. 21.11.92 retracting his earlier statement alongwith his affidavit dt. 11.11.92 but those documents were not sent by the Sponsoring Authority to the Detaining Authority and that those documents were material and vital documents and non-consideration thereof, has vitiated petitioner's detention. A careful perusal of list of documents Annex.3, relied-on by the Detaining Authority clearly reveals that at S. Nos. 25, 26 & 27, the aforementioned documents find mention, which were sent by the Sponsoring Authority and considered by the Detaining Authority. Copies of these documents were also supplied to the petitioner with Annex. 1 Besides this, the letter dt. 15/11/92 sent by the Addl. Collector, Customs, Jodhpur to Madanlal was also placed before the detaining authority, wherein it was mentioned that the allegations detailed in the telegram, were false and baseless and that Madanlal had given his statement dt. 9.11.92 voluntarily. Therefore, the submission made by Shri Joshi in this behalf is factually incorrect and on this count, petitioner's detention does not stand vitiated.

(e) Mr. Joshi then submitted that copies of the entries of the visitors' register of the PWD Dak Bunglow, Sadari dt 31.7.92 and 2.8.92 were not placed before the Detaining Authority. It will suffice to mention here that no such record was in the possession of the Sponsoring Authority. On the other hand, the petitioner alongwith his representation dt. 21.4.93 submitted a copy of the letter of the A.En. P.W.D.. Sub Division Desuri dt. 17.4.93 marked Annex. 4/20, wherein it was mentioned that in response to petitioner's registered letter dt. 6.4.93, it was testified that the petitioner had stayed in PWD Dak Bunglow, Desuri from 31.7.92 to 2.8.92 and thereafter on 24.8.92, 11.9.92 and 12.9.92. The A.En. also enclosed a copy of the relevant entries of the visitors' book of the Dak

Bungalow. Thus, it is clear that on the date of passing the detention order dt. 23.12.92 the letter of A.En. dt. 17.4.93 was not in existence and the entries of the visitors' book were not in the possession of the Sponsoring Authority. Therefore, there was no question of placing those documents before the Detaining Authority.

(f) Mr. Joshi has relied on the following cases: 1. State of U.P. Vs. Kamal Kishore and Another, 2. Union of India (UOI) and Others Vs. Manoharlal Narang, 3. M. Ahamedkutty Vs. Union of India (UOI) and Another, 4. Sunil Longia v. Union of India 1992 (2) WLC 521

(g) We have gone through these rulings, wherein it has been emphasized that all vital and material documents should be placed before the Detaining Authority to enable him to reach a subjective satisfaction and that non-production thereof vitiates the detention for non-application of mind. We respectfully agree with this dictum. But as mentioned earlier, Mr. Joshi has failed to establish that any material and vital document was not placed before the Detaining Authority and that for want of such vital document, the detaining authority was not in a position to apply his mind for arriving at the subjective satisfaction regarding the necessity of the detention of the petitioner. In our considered opinion, the Sponsoring Authority had placed all relevant, vital and material documents before the Detaining Authority and, therefore, the impugned detention of the petitioner does not suffer from the vice of non-application of mind or absence of his subjective satisfaction in this regard. We, therefore, repeal the first contention raised on behalf of the petitioner.

9. IN RE: Non Supply of Material Documents:

(a) Mr. Joshi has submitted that admittedly on 1.8.92 as per seizure memo Annex. 3/1, a printed receipt No. 034924 dt. 31.7.92 as shown in Annex. D to the Seizure Memo issued by the Mines Department, was seized by the Customs Officers; that the said receipt pertained to transport of ballast (Khandas), which were loaded in the truck RNJ 159 on 31.7.92, but on the other hand at the time of seizure, the said truck contained sand gravels (Bazari) and not ballast (Khandas.) in such circumstances, said receipt was a material and vital document, but neither that receipt was placed before the Detaining Authority nor a copy thereof was supplied to the petitioner alongwith the Grounds of Detention and the order of impugned detention, which vitiates the impugned detention.

(b) Again, it is a misstatement of facts because a bare perusal of list of documents (Annex.3) reveals that at S. No. 1, copies of Panchanama alongwith Annexs. A, B, C and D were relied by the detaining authority and copies thereof were supplied to the petitioner. Annex.D pertains to that receipt. Besides this, as per statement of Umeda recorded u/s 108 of the Act of 1962, sand gravels (Bazari) was loaded in the said truck at about 7 A.M. on 1.8.92 from village Bhandu, which means that ballast (Khandas), which were loaded in that truck on 31.7.92 from Galana Quarry had already been unloaded somewhere and

thereafter on the next day, the sand gravel was loaded in the said truck. Hence, in this case all the documents referred-to, relied upon or taken into consideration by the detaining authority, have been supplied to the petitioner as part of the Grounds so as to enable him to make an effective representation.

(c) Mr. Joshi has placed reliance on the following cases 1. S. Gurdip Singh Vs. Union of India (UOI) and Others, . Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, 3. AIR 1981 1620 (SC) 4. Kirit Kumar Chaman Lal Kundaliya Vs. Union of India (UOI) and Others,

We have carefully gone through these cases. In these cases, copies of the documents, relied-upon and taken into consideration by the detaining authority, were not supplied to the detenu immediately as part of the Grounds so as to enable him to make an effective representation and the detentions were held to be void. Apparently, such are not the facts of the case in hand,

(d) It has been held in Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, that failure to supply the documents and material which are casually or possibly referred to in narration of facts in grounds of detention and which are not relied upon by the detaining authority, does not render the detention illegal. Moreover, as has been observed in Pramod Kumar v. Union of India 1987 Cri. L.J. 1354, material relied upon in grounds of detention cannot be demanded by the defence and non-supply thereof does not make the detention illegal. It is needless to mention that documents supplied to detenu should be such as will not impair or prejudice his right to put his representation. In the case in hand, we are firmly of this view that all necessary, relevant, material and vital documents have been furnished by the detaining authority to the petitioner and that on this ground, the impugned detention order cannot be held to be illegal or invalid.

(e) Mr. Joshi has contended that the detaining authority did not take into consideration the fact that on the date of seizure of contraband silver i.e. 1.8.92, the petitioner was neither the owner nor had the effective control over the truck RNJ 159 nor in any way, he was connected with the seized silver slabs; that from 31.7.92 to 2.8.92, he was staying in Dak Bungalow, Sadari and that Umeda and Madanlal had retracted from their statements made u/s 108 of the Act of 1962. Thus, there was no adequate material for the detention of the petitioner and, therefore, his detention is illegal and void.

(f) We are not at all impressed by this argument because the High Court in its writ jurisdiction u/a.226 of the Constitution has only to see whether the order of detention has been passed on any materials before it and if it is found that the order has been passed by the detaining authority on materials on record then the Court cannot go further and examine whether the material was adequate or not. The High Court can examine the material on record only for the purpose of seeing whether the order of detention has been passed on no material because the satisfaction mentioned in Section 3 of the Act of 1974 is the satisfaction of the detaining authority and not of the court and the rule of criminal

jurisprudence that the guilt of an accused must be proved beyond reasonable doubt, cannot be imported into the law of detention. For this, we place reliance on the observations made by the Hon'ble Apex Court in State of Gujarat Vs. Adam Kasam Bhaya,

(g) In Asha Keshavrao Bhosale Vs. Union of India (UOI) and Another, , it has been held that if subjective satisfaction of the detaining authority has been reached on certain evidence bonafide, then the Court will not interfere by testing adequacy of evidence, relied-upon.

(h) In Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, , the subjective satisfaction of the detaining authority was reached not only on the basis of the retracted confession but also on other materials warranting detention. It was held that the detention was not illegal.

(i) Thus, passing of order of detention is a question of subjective satisfaction of the detaining authority and it is not for the Court to question the sufficiency or otherwise of the ground. In the instant case, the detaining authority has given detailed reasons incorporated in the grounds of detention Annex.2, which are based on the documents mentioned in Annex.3. The detaining authority has also taken into consideration the retracted telegram & letter of Madanlal, letter of retraction of Umeda Ram as also the alleged agreement to sale date 25.5.91 and found those manipulated and fabricated. Hence, it cannot be said that the detention order Annex.1 is not based on record or it suffers from the vice of non application of mind or it is invalid, illegal and void. Therefore, the submissions made by Shri J.P. Joshi on this Court are devoid of any force & substance and those are hereby repelled.

10. REGARDING INORDINATE DELAY IN PASSING THE DETENTION ORDER:

(a) Mr. J.P. Joshi has emphatically argued that in this case, the contraband silver slabs and the truck were seized from the possession of Umeda Ram on 1.8.92 but the detention order Annex.I was passed on 23.12.93 i.e. after a lapse of four months and twenty three days; that this delay has not been explained by the respondents and in such circumstances, the nexus between the alleged prejudicial activity and the necessity for detention of the petitioner had clearly been snapped and, therefore, the impugned order for detention is liable to be quashed on this ground alone, especially when the petitioner was neither concerned with the contraband silver nor was the owner of the seized truck.

(b) On the other hand, Mr. P.P. Chaudhary, learned Counsel for the respondents has submitted that it is true that smuggled silver was seized on 1.8.92 but thereafter the matter was thoroughly investigated and proper documentary evidence was collected and after detailed investigation, the Sponsoring Authority sent the proposal for the detention of the petitioner to the detaining authority, who after processing the case and after due application of mind, issued detention order Annex.I. A perusal of the pleadings and the relevant record shows that immediately after the seizure of the contraband silver on 1.8.92, the Custom

Authorities conducted search of the shop of M/s Anil Traders and house of Harish Chandra. On 2.8.92, the house of the petitioner was also searched and incriminating documents regarding the ownership and possession of the truck RNJ 159 namely the agreement to sale dated 27.8.88. Registration Certificate and Insurance policy of the said truck and the photographs of the petitioner were seized. From the statement of Umeda Ram dated 2.8.92 recorded u/s 108. Customs Act, complicity of the petitioner with the smuggled slabs was prima facie made out. On 4.8.92, the Superintendent (RDF), Customs, Jodhpur issued summons against the petitioner directing him to appear before him on 10.8.92 but the petitioner did not turn up. Again summons dt. 24.8.92 was issued against him for appearing before the Custom Authorities on 1.9.92, but he avoided to appear before the Customs Authorities for his statement u/s 108 of the Act of 1962. It appears that the petitioner had filed an application u/s 438 Cr.P.C. before the learned Sessions Judge, Jaipur seeking his anticipatory bail. The learned Sessions Judge vide his order dt. 3.9.92 passed an ad interim order to the effect that if the petitioner appeared before the Custom Authorities on 18.9.92 for his statement u/s 108 of the Act of 1962, then he should not be arrested till 21.9.92. Thereafter, the petitioner appeared before the Custom Authorities on 18.9.92 and his statements were recorded on that day and also on 19.9.92 wherein he stated that he had no connection with the seized contraband silver and the truck. However, keeping in view the statements of Harish Chandra, Madanlal and Umeda Ram and the documents pertaining to the truck, a detailed investigation was conducted by the Custom Authorities and it was found that the alleged agreement to sale dt. 25.5.91 in favour of Madanlal was a fabricated and manipulated document because the said document was not even registered by Shri Roop Dan Ratnu, Notary, in his register. As per affidavit of Shri Mahendra Prasad, Joint Secretary, Cofeposa, further investigation in the matter was carried upto 12.11.92. Thereafter the proposal for detention of the petitioner was sent by the Addl. Collector, Customs, Jodhpur to the Sponsoring Authority i.e. the Collector, Customs, Jaipur, who in turn after processing the case, sent the relevant case record alongwith the proposal to respondent No. I. Thereafter the matter was put up before the Screening Committee, consisting of four independent senior Bureaucrats of Govt. of India. On 25.11.92, the Screening Committee approved the detention after due application of mind. Respondent No.1 after calling for translation of all the documents in Hindi issued the impugned detention order dt. 23.12.93 Annex.I.

(c) Whether the time gap between the commission of offence and the detention is enough to snap the reasonable nexus between the prejudicial activity and the purpose of detention would depend upon the facts of each case. The test of proximity is not a rigid or a mechanical test to be blindly applied by merely counting number of months between the offending acts and the order of detention.

(d) In Yogendra Murari Vs. State of U.P. and Others, the detention order was passed four months" after the incident and the detenu was in custody during

that lime. It was held that there was no undue delay by the Detaining Authority in passing the detention order. The Hon''ble Apex Court observed that it is not right to assume that an order of detention has to be mechanically struck down if passed after some delay and that it is necessary to consider the circumstances in each individual case to find out whether the delay had been satisfactorily explained or not.

(e) In *Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others*, there was an unexplained delay of five months in making the detention order against an economic offender under the COFEPOSA Act. Keeping in view the facts & circumstances of that case, it was held that the delay was not sufficient to vitiate the order & that the Grounds for detention were to stale and next between the grounds and the order existed. Hence, the delay of about six months in passing the detention order was condoned.

(f) In *M. Ahamed Kutty v. Union of India and Anr.* (1990) 2 SCC 7, it has been reiterated that where the seemingly long time taken for passing the detention order after the prejudicial act is the result of full and detailed investigation and on consideration of the facts of the case, the ground cannot be held to be remote then the detention cannot be held to be bad on that ground. In that case, it was submitted for the State that as a through investigation of the case was required on the part to the Customs Authorities both for the proceedings under the Customs Act and for prosecution in the Criminal Court, the proposal could not have been hurried through. Considering that explanation of the period in between the interception on Jan. 30, 1988 and the order of detention on June 25, 1988, the Apex Court held that the nexus was not snapped and the ground was not rendered stale and the order of detention was not rendered invalid thereby.

(g) In the instant case, the delay has been occasioned because firstly, the petitioner avoided appearing before the Customs Authorities and thereafter the Customs Authorities conducted the detailed investigation keeping in view the retracted statements of Umeda Ram and Madanlal and in finding out whether the alleged agreement to sale dt. 25.5.91 executed by the petitioner in favour of Madanlal was a fabricated and manipulated document. Thereafter the proposal for detention of the petitioner was sponsored and processed by the Collector, Customs, Jaipur and thereafter by the Screening Committee and the detaining authority. Considerable time was also taken in translating the documents. Hence keeping in view all the facts and circumstances of the case, we are of the considered opinion that delay in issuing the detention order has been satisfactorily explained; that the nexus between the prejudicial activities of the petitioner and the grounds for his detention existed and that the same was not snapped nor the grounds for detention have become stale and, therefore, this delay does not vitiate the detention order. Accordingly, the submission of Mr. J.P. Joshi in this behalf is foiled-down.

11. DELAY IN EXECUTION OF THE DETENTION ORDER:

(a) It was next contended by Mr. J.P. Joshi that in the instant case, the detention order Annex. 1 was passed on 23.12.93 while the petitioner was arrested on 20.3.93. Thus, there was delay of two months and 27 days and this delay ipso facto vitiates the detention order. He has submitted the petitioner alongwith his partner Shri Girdharilal Parmar in the construction Company under the name and style of M/s Girdharilal Parmar had openly been participating in the work of the said company, in as much as he had issued a withdrawal cheque dt. 16.3.93 Annex. 4/27; that the Customs Authorities did not take effective steps u/s 7(a) (b) of the Act of 1974 for apprehending the petitioner and in such circumstances, the purpose of his preventive detention was lost. He has placed reliance on the following cases: 1. Sk. Nizamuddin Vs. State of West Bengal, T.A. Abdul Rahaman Vs. State of Kerala and others, 3. Safiq Ahmed v. Distt. Magistrate, Meerut AIR 1990 SC 220 4. Kishan Singh v. State of Raj. 1991 Cri.L.R.112 5. Suleman v. State of Rajasthan 1992 (1) W.L.C. 745

(b) On the other hand, it has been asserted on behalf of the respondents that after the detention order was issued, the petitioner went underground and absconded; that all regular Nakabandies were organized to cover the suspected routes leading from Abu Road, Sirohi, Sheoganj, Pali & Balotra etc.; that on 10.3.93 his residence at Magra Punjala was raided by a contingent of Custom Officers to arrest him under proper search warrant but he was not available. Eventually, the petitioner was apprehended on 20.3.93 at Pali and was lodged in jail at Jodhpur on 21.3.93, where he was served with the detention order and allied documents Annex.1 to Annex 3. It has been contended that the withdrawal cheque dt. 16.3.93 Annex. 4/27 cannot be relied upon because such document can be signed by any person, who has gone underground with the help of any other person of his confidence. It has been submitted that generally no-one keeps the photo coy of the cheque whenever such cheque is issued and that the precaution taken by the petitioner to keep the photo copy of the said cheque is an abnormal action, which itself is sufficient to establish that he had gone underground and was avoiding arrest.

(c) We have considered the rival contentions and gone through the case law.

(d) In S.K. Nizamuddin's case (supra), there was a delay of about two and half months in arrest of the detenu pursuant to the detention order. It was alleged by the State that the petitioner was arrested in connection with the criminal case arising out of the incident dt. 14th April, 1993 set out in the Grounds of detention; that criminal case was ultimately dropped as the witnesses were not willing to come forward to give evidence for fear of danger to their lives and the petitioner was discharged. However, the date of discharge was neither given in the affidavit nor was disclosed in the Court nor it could be discerned from the record. In such circumstances, it was held that the delay was not well explained and that the subjective satisfaction of the District Magistrate for detaining the petitioner under the maintenance of Internal Securities Act, 1971 was not genuine. Apparently, such are not the facts of the case in hand. Here, the delay

has been well explained.

(e) In Safiq Ahmed's case (supra), the detention order was passed on 15.4.88 but the detenu was arrested on 2.10.88. From 15.4.88 to 12.5.88, no attempt had been made to contact or arrest the detenu. No explanation was given for this period. There was also no explanation why from 19.9.88 to 2nd Oct. 88, no attempt had been made. It was contended on behalf of the District Magistrate, Meerut that from May, 1988 to Sept. 1988, the entire police force was extremely busy in controlling the law and order situation in the town. The Apex Court held that though omission to take action u/s 7 of National Security Act for declaring the detenu as absconder did not debar the Govt. from raising plea that the detenu was absconding but the ground that law and order was threatened and prejudiced and the entire police force was extremely busy in controlling the situation. It was not the conduct of the detenu but because of the inadequacy or inability of the police force to control the situation and, therefore, there was undue delay which was unexplained and not warranted by the facts situation and the detention was vitiated. Clearly, the facts of this case are distinguishable.

(f) In T.A. Abdul Rehman's case (supra), there was an unexplained delay of three months in securing the arrest of the detenu. The police officer to whom the detention order was forwarded for execution did not file any supporting affidavit explaining the delay in securing the arrest of the detenu. In such circumstances, it was held that the non-explanation of the delay threw a considerable doubt on the genuineness of the subjective satisfaction of the Detaining Authority vitiating the validity of the order of detention.

(g) In the case in hand. Shri Satyendra Rahinwal, Superintendent, Customs, Divisional Preventive Force, Jodhpur has submitted his affidavit in support of the additional reply to the writ petition. From the record shown to us of the Addl. Collector, Customs, Jodhpur, it is amply borne out that the Customs Authorities had organised regular Naka-bandies for apprehending the petitioner; that on 10.3.93, his house was searched under a proper search warrant and that eventually, he was arrested on 20.3.93 at Pali and thereafter lodged in jail at Jodhpur on 21.3.93. The contention of the petitioner that he had suo motu surrendered, is not substantiated from the record. In such circumstances, Safiq Ahmed and T.A. Abdul Rehman's cases (supra) do not render any assistance to the petitioner.

(h) Similarly in cases of Kishan Singh and Suleman (supra), the delay in arresting the detenu and in execution of the detention order was not explained at all and, therefore, it was held that the detaining authority cannot be said to be really and genuinely satisfied as regards the necessity of detaining the detenu. As mentioned earlier, in the case in hand, the delay in execution of the detention order has been satisfactorily explained. Besides this, it appears that the petitioner after the issuance of the detention order went underground and was absconding.

(i) In *Bhawarlal Ganeshmalji Vs. State of Tamil Nadu and Another*, the detention order was passed under the Act of 1974 and the delay in arresting the detenu was caused as he was found absconding and despite of all necessary efforts, he could not be arrested. It was held that the live and proximate link between the grounds of detention and the avowed purpose of detention namely the prevention of smuggling activities was not snapped and that the delay was caused due to recalcitrant or refractory conduct of the detenu in evading arrest and hence the detention order could not be held to be invalid.

(j) Similarly, in *M. Ahmad Kutty's case (supra)*, the delay in execution of the order was caused due to the abscondance of the detenu and, therefore, it was held that the detention order was not vitiated.

(k) In *Jugal Kishore Chopra Vs. State of Bihar and Others*, there was delay of two years and ten months in execution of the detention order. Since the delay was caused due to the abscondance of the detenu, same was condoned.

(l) In the case in hand, the delay in execution of the detention order has been satisfactorily explained. To our mind, the petitioner had gone underground, the Customs Authorities took effective measures to apprehend him and that the live and proximate link between the grounds and the purpose of detention of the petitioner have not been snapped. Therefore, the impugned detention order cannot be held to be invalid on this count.

12. UNDUE DELAY IN DISPOSAL OF PETITIONER'S REPRESENTATION:

(a) Mr. J.P. Joshi has strenuously contended that the petitioner preferred his representation dt. 21.4.93 Annex.4 to his Detaining Authority, which was decided as late as on 26.5.93 vide Annex.5 and that this unexplained delay in deciding the representation per se vitiates the order of detention. For this, he has placed reliance on the following cases: 1. *Harish Pahwa Vs. State of U. P. and Others*, 2. *Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others*, 3. *Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others*, 4. *Gazi Khan alias; Chotia Vs. State of Rajasthan and another*,

(b) On the other hand, Shri Mahendra Prasad, respondent No. 1, in his affidavit has deposed that petitioner's representation dt. 21.4.93 was sent by the Superintendent, Central Jail, Jodhpur on 22.4.93 and the same was received in the COFEPOSA Unit of the Ministry of Finance on 23.4.93; that on the same day, parawise comments were called for; that the letter sent from COFEPOSA Unit was received in the office of the Collector, Customs, Jaipur, which was transmitted onwards to the office of the Addl. Collector, Customs, Jodhpur for seeking parawise comments on 26.4.93; that letter was received in the office of the Addl. Collector, Customs, Jodhpur on 28.4.93 and the comments of the concerned Superintendent were sent-for, which were sent to the Collector, Customs, Jaipur on 7.5.93. In between this period, 24th and 25th April and 1st, 2nd and 6th May, 1992 were Saturdays, Sundays and gazetted holidays and, as such, there was no delay on the part of the Sponsoring Authority in sending the

comments. Shri Mahendra Prasad has further deposed that Senior Technical Officer, COFEPOSA Unit after processing the representation of the petitioner and the case record, placed the same on 11.5.93 to the Joint Secretary, COFEPOSA, who considered the representation on 12.5.93 and sent the same to the Special Secretary, Narcotics and Director General, EIV, who considered the representation on the same day and sent it to the Minister of State, R & E, Govt. of India on the same day i.e. 12.5.93. He has further deposed that the Minister of State, R&E, considered the case on 13.5.93 and sent the representation of the petitioner to the Finance Minister, who considered the same and rejected on 13.5.93 itself and that the case record along with the representation were received back in the Ministry on 14.5.93 and on 17.5.93 a memo was issued to the petitioner informing him about the rejection of his representation, because 15th and 16th May, 1993 being Saturday and Sunday were holidays. Moreover, the concerned Officer was busy with the Advisory Board matters on 14.5.93 and, as such, the memo could be issued on 17.5.93 i.e. at the earliest opportunity. He has further deposed that in such circumstances, petitioner's representation was considered expeditiously and without any delay.

(c) In Harish Pawa's case (supra), the detenu submitted his representation on 3rd June, 1980, which was ultimately rejected on 24.6.80 and communicated to jail authorities two days later. The State Govt. after calling for the comments from the Customs Authorities and receipt thereof, had referred the representation to its Law Department for its opinion without any reason. The Hon'ble Apex Court held that there was no reason as to why the Law Department had to be consulted at all and, as such, the representation of the detenu was not dealt with expeditiously.

(d) In Smt. Salini Soni's case (supra), the Apex Court emphasized that the obligation imposed on the detaining authority by Article 22(5) to afford the detenu the earlier opportunity of making a representation carries with it the imperative implication that the representation shall be considered at the earliest opportunity; that since all the constitutional protection that a detenu can claim is the little that is afforded by the procedural safeguards prescribed by Article 22(5) read with Article 19. It was also observed that the Courts have a duty to rigidly insist that preventive detention procedures be fair and strictly observed and that a breach of the procedural imperative must lead to the release of the detenu.

(e) In R.D. Borade's case (supra), it has been reiterated that the detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution and correspondingly, there is a constitutional mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation within reasonable dispatch and to dispose the same as expeditiously as possible. The Apex Court has stressed that this constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would

amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty the highly cherished right which is enshrined in Article 21 of the Constitution. It has also been stressed that the words "as soon as may be occurring in Article 22(5) of the Constitution, reflects that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay.

(f) We respectfully agree-with this well crystalised principle of law propounded by the Hon"ble Supreme Court, but what is reasonable dispatch and expeditious disposal of detenu's representation, depends on the facts and circumstances of each case and no hard and fast rule can be laid down in this regard.

(g) In *Frances Coralie Mullin Vs. W.C. Khambra and Others*, , it has been held that the principal enemy of the detenu and his right to make a representation is neither high-handedness nor mean-mindedness but the casual indifference, the mindless insensibility, the routine and the red-tape of the bureaucratic machine. The procedure prescribed for making representation is aimed at shielding personal freedom against indifference, insensibility, routine and red-tape and thus to secure to the detenu the right to make an effective representation. Their lordships have further observed that expedition is essential at every stage, however the time- imperative can never be absolute or obsessive, that there has to be lee way, depending on the necessities of the case, but no allowance can be made for lethargic indifference, no allowance can be made for needless procrastination. The Apex Court has clearly laid down that allowance must surely be made for necessary consultation where legal intricacies and factual ramifications are involved & that the burden of explaining the necessity for the slightest departure from the time-imperative is on the detaining authority. In that case, it was held that the delay was not due to any want of care but because the representation required through examination in consultation with investigators of facts and advisors on law and the habeas corpus writ petition was dismissed.

(h) In *Abdul Salam alias Thiyyan Vs. Union of India and others*, , the representation was made by the detenu on 27.9.88 and disposed of by the Central Govt. on 2.11.88 i.e. within one months and five days. The delay was well explained. It was held that from the explanation given by the detaining authority, it was evident that the representation was considered most expeditiously and that there was no negligence or callous inaction or avoidable redtapism and as such the delay did not amount to violation of Article 22(5) of the Constitution of India.

(i) In *Kamarunnissa and Others Vs. Union of India and another*, , the detenu made representation on 18.12.89, which was rejected by the communication dt. 30.1.90. The detailed explanation for the delay was given by the respondent to wit in sending-for the comments from the Sponsoring Authority, non-working days and the postal delay. The Apex Court held that whether the representation

was expeditiously considered and the delay in disposal was properly explained would depend upon facts of each case; that seeking comments by v Sponsoring Authority is necessary and consequent reasonable delay is unavoidable. Moreover, having regard to the processes of receiving the representation from detenu by jail authorities and sending it to the COFEPOSA Unit, obtaining comments of sponsoring authority, taking of decision by the concerned Minister and communicating the same to the detenu, as also the non-working days and the postal delays, the delay in disposal of the representation was properly explained and reasonable.

(j) Therefore, keeping in view the latest trend of the Apex Court, the time taken for sending-for the comments, the fact of non-working days and the postal delays should also be taken into consideration for deciding as to whether the detenu's representation was considered by the detaining authority expeditiously and with promptitude.

(k) We have peeped into the entire record of the case in hand and find that the facts deposed by Shri Mahendra Prasad (respondent No. 1) stand substantially corroborated. In the instant case, the respondents have given day to day explanation, which is reasonable and satisfactory; the delay has not been caused by any negligence, lethargic inaction or indifference or callous attitude of any bureaucrat. Therefore, in such circumstances, in our considered opinion, there is no violation of Article 22(5) of the Constitution of India and the delay in rejection of the petitioner's representation does neither make the detention order invalid nor vitiates the same.

13. No other point was argued before us.

14. The result of the above discussion is that the detention order dt. 23.12.93 Annex. 1 as well as the confirmatory order dt. 26.5.93 Annex.6 are perfectly legal, proper and justified and the same do not stand vitiated. Hence, this habeas corpus writ petition is hereby dismissed.