
(1988) 01 DEL CK 0004

In the Delhi High Court

Case No : Criminal Writ Appeal No. 263 of 1988

M. Mohammed Ali

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-01-1988

Acts Referred:

Citation : (1989) 37 DLT 389 : (1990) 26 ECR 23

Hon'ble Judges : S. Duggal, J

Bench : Single Bench

Advocate : Harjinder Singh, Rohit Kochhar and U.L. Watwani, for the Appellant;

Judgement

Santosh Duggal, J.

(1) The petitioner herein seeks a writ of habeas corpus or any other appropriate writ, order or direction under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, with the consequential prayer for his release forthwith, after quashing the order of detention dated 16/12/1987, passed by respondent No. 2 herein, namely, Shri K. L. Verma, Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue. New Delhi, in exercise of the powers conferred on him u/s 3(1) of the Conservation of FOREIGN Exchange and Prevention of Smuggling Activities Act,(COF"EPOSA for short).

(2) The facts, as called from the grounds of detention, briefly stated are that one Mohindeen Abdul Khader, resident of 15/81.East Street, Kailakarai, a police in Romanad District, TamilNadu was apprehended by the officers of the Central Excise. Coimbatore .at a place in Tamil Nadu. on 9/07/1987, while he was traveling in Bus No. TCB-1274 plying between Palaniand Pollachi and was found in possession of a sum of Rs. 6.00,000.00. Certain documents such as accounts, receipts, chits given by the parties were also recovered from his possession. The currency and the documents were seized and handed over to the Directorate of Enforcement for further investigation .During the course of interrogation on

10th July, 1987. the said Mohindeen Abdul Khader disclosed that out of the seized amount of Rs. 6,00,000; Rs. 3,00,000 were meant turn making payment to M. Mohammed Ali (petitioner), and that this name figured in one of the slips seized from him, and that on earlier occasion also, a sum of Rs. 2,00,000 had been paid by him to the said M. Mohammed Ali, which also was indicated on one of the slips, seized from the afore said Mohindeen Abdul Khader. He further revealed that payments were made on behalf of one Amer of Dubai.

(3) Pursuant to the aforesaid disclosure, a search of the residential premises of the petitioner at Wandoor, in District Malappuram, State of Kerala, was conducted on 11/07/1987. There also number of documents, such as small slips, accounts and other documents were recovered. They were duly seized, under a Mahazar prepared at the spot. The petitioner revealed in his statement given to the officers of the Enforcement Directorate on 11/07/1987 that he had worked from 11/10/1978 up to 12/10/1980 in Dubai, and thereafter in Saudi Arabia from 21/07/1981 to 31/07/1985 and that he had seven brothers out of whom three were still working abroad. He gave their names as well as addresses of the places they were working; all of which happened to be in Saudi Arabia.

(4) In a subsequent statement, the petitioner further revealed that he had been operating on behalf of his elder brother Shabeer Ahmed living in Saudi Arabia, and that the modus operandi was worked out during the visit of his younger brother Inamu Rehman, also living in Jaddah. Saudi Arabia during February, 1987/04/1987 and that Shabeer Ahmed used to send him a list, containing names of the persons to whom money had to be disbursed in India, against a slip, bearing his brother's signature and that amounts used to be paid accordingly, to all such persons, and that the seized money was also meant for similar payments. It was further revealed by the petitioner that under instructions from his brother, he had been collecting the slips, after making payments. and that in this manner he received since March, 1987, Rs. 16.50.000 on four different occasions from persons from Tamil Nadu and that within two or three days of the receipt of the amount; people came to his house with chits and after careful examination of his brother's signature. and the amount written in code. the petitioner had been distributing money, and the papers recovered on search of his house, also included those slips.

(5) As a sequel to disclosures, made by these two persons and on the basis of the facts coming to light, on scrutiny of seized documents; such as chits, receipts, accounts etc., the petitioner was arrested by the Chief Enforcement Officer Calicut on 12/07/1987 and on production before the Chief Judicial Magistrate, Calicut on 13/07/1987. remanded to the judicial custody till 27/07/1987 but on an application being moved, he was ordered to be released on bail by order dated 1/08/1987, subject to certain conditions such as that he was not to leave Calicut, and furnish his address there, and also make himself available for interrogation on all working days; besides execution of a board with solvent sureties. These conditions were, later on modified and eventually the

restriction imposed was that petitioner shall report at the office of the Enforcement Directorate every Monday. The investigation by the Enforcement Directorate continued even hereafter and some other statements resulting in further disclosures were given by the petitioner. These were, however, retracted by means of a letter addressed on 21/08/1987 to the concerned authority. The other person had also retracted confessional statement and thereafter obtained stay of the proceedings being conducted by the officers of the Enforcement Directorate, on a writ having been filed before the Madras High Court.

(6) The detention order, assailed in this writ petition, was passed on 16/12/1987, u/s 3(1) of the COFEPOSA with the object of preventing the petitioner from indulging in activities prejudicial to the augmentation of country's foreign exchange resources. The petitioner was served with this order on 31/01/1988, and one of the challenges to the legality of the order is delay in execution thereof.

(7) It is contended that the petitioner was meticulously complying with the conditions of bail imposed on him and was reporting to the office of the Enforcement Directorate every Monday as ordered, and in spite of the fact that the order of detention was passed on 16/12/1987, it was served only on 31/01/1988, thus involving a long and unreasonable delay in execution of the detention order, which has the effect of vitiating satisfaction of the detaining authority. The plea is that had there been genuine need for preventing the petitioner from the alleged prejudicial activities then the detaining authority would have acted with promptitude, bringing a sense of urgency to bear upon the matter. The fact that period of about one month and 15 days was allowed to lapse in execution of the order of detention is indicative of the fact that the detaining authority, was not genuinely satisfied about the necessity for preventive detention of the petitioner, it is urged.

(8) Shri Harjinder Singh appearing for the petitioner developed this point by referring to the facts of the case, reiterating that there is no suggestion even that the petitioner was not available at the residence or other known places of address for being served with the detention order, and that the indications were that he was very much available inasmuch as he continued to report to the office of the Directorate every Monday, for there is no complaint about his having not been complying with the conditions of the bail, and thus the delay remains unexplained. According to learned counsel, the only corollary deducible from this situation is that detention of the petitioner was not needed, and the order of detention was passed in mala fide exercise of powers, vested in the concerned authority. He also made reference to judgments of this court, wherein in the absence of proper Explanation for the delay involved, and keeping in view the circumstances of the case in hand, it was held that any undue or inordinate delay on the part of the detaining authority to have the order executed, would strike at the validity of the order itself. One such judgment quoted is by learned Single Judge of this Court in Criminal Writ No. 111 of 1988 : Shri Yogesh Chopra

v. Administrator of Delhi & others, decided by H. C. Goel, J. on 19/04/1988(1) where the delay involved was that one month and 24 days. On the facts, it was held that the delay remained unexplained, and that the order of detention stood vitiated and was thus liable to be quashed. Another judgment, cited, also by the same learned Single Judge, is in Criminal Writ No. 16 of 1988 : Shri K. Thomas Vincent Vincent v. Union of India & others, decided on 26/04/1988(2). where also unexplained delay in execution of detention order was held to be a vitiating factor.

(9) Shri U. L. Watwani, learned Government Advocate, appearing for the respondents urged, in reply to this ground of attack, by referring to the circumstances detailed in the counter reply filed on behalf of the respondents, and urged that in fact there was no delay as such, and in case there was any that stood fully explained He invited attention. in this respect, to paragraph 8 of the affidavit, of the detaining authority himself, Shri K. L. Verma, Joint Secretary in the Ministry of Finance, filed in reply, and also to the, with reference to ground No. Xvi, where after controverting the contention that there had been any long or unexplained delay: it has been stated that after the detention order was passed on 16/12/1987 at Delhi, the same was forwarded on the same day to the Home Secretary, Government of Kerala, to get the same executed and that the Home Secretary, Government of Kerala passed the same on to the police authorities, who had to apprehend the detenu, and serve the order. It is further stated that the detention order passed through many hands and ultimately the same was executed on the detenu by the concerned police authority of the area where the detenu resides. It is added that since the petitioner knew Malayalam language, the grounds of detention and documents relied upon by the detaining authority, were got translated and served on the detenu in the Malayalam language, and that this process also consumed time, and thus it could not be said that there had been any unreasonable and unexplained delay in execution of the detention order. Mr. Watwani urged that in any case, the delay could not be said to be inordinate. so as to have the effect of vitiating the subjective satisfaction of the detaining authority.

(10) It may be noted here that Shri Harjinder Singh very fairly conceded that delay by itself could not be treated as fatal, and that his insistence was that the same must be explained. He reiterated that in this case this Explanation was wholly lacking, and whatever offered was not enough to repel the charge of mala fide exercise of powers, with a view to circumvent the process of law. This allegation of abuse of power has been specifically controverted, by the detaining authority on affidavit, and it is averred that the detaining authority had passed the detention order after close scrutiny of the records placed before him and subjectively arrived at the decision to detain the petitioner on the basis of the clinching evidence available with him, that the detention of the petitioner was necessitated with a view to preventing him from continuing to indulge in activities entailing violation of Foreign Regulations and other connected laws.

(11) It may be noted that the delay in passing of the detention order was also urged in the writ petition, to be one of the grounds ,assailing the validity of the detention order, but that ground has obviously not been pursued and pressed because of the recent judgment of the Supreme Court, in Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others, . Since in this case before the Supreme Court, there was no delay in execution, inasmuch as the order had been served on the detenu there in three days, their Lordships did not advert to this aspect but have overruled as many as five Judgments of this Court whereby petition had been allowed inter alias on the ground of delay in passing the order of detention. After taking into consideration, the Explanation given, as to how the action had proceeded in that case, it was observed that even though there was no Explanation for delay between certain intervals covered by the total period taken, it could not give rise to a legitimate inference that the subjective satisfaction arrived at by the District Magistrate was not genuine or that the grounds were State or illusory or that there was no rational connection between the grounds and the impugned order of detention. It was also emphasised that the court has to investigate whether the casual connection had been broken in the circumstances of each case, by reference to an earlier Judgment of the Supreme Court, in Odut Ali Miah Vs. The State of West Bengal, , where the plea raised on delay, was repelled, and it was held that the test of proximity is not a rigid or mechanical test to be blindly applied by merely absolute or obsessive, and there has to be lee-way, depending the order of detention.

(12) It has been held yet in another case by the Supreme Court in Frances Coralie Mullin Vs. W.C. Khambra and Others, ; that the time-imperative can never be absolute or obsessive, and there has to be lee-way, depending upon the necessities of the case.

(13) The guiding factor is the test as to whether the action of the concerned authority smacks of lethargic indifference, or needless procrastination, or whether there is absolute lack of sense of urgency verging on near total inaction, and in such cases there may be scope for the inference that the concerned authority was not earnest about the need for preventive detention, of the person concerned, and that the circumstances are such ,as were indicative of mindless exercise of power. With all respects to the view taken, in the judgments of this Court, cited before me, I have no hesitation in recording that these could not have been intended to be laying down any universal principles of mechanical application in all cases; and were essentially based on the facts of each particular case. The proposition that whenever there is delay, the order has to be struck down, cannot be countenanced as a rule of uniform application .The real requirement is that of Explanation for such a delay.

(14) I have carefully analysed the Explanation ,given in the affidavit of the detaining authority, and I find that on the facts of this case, it is not possible to accuse the detaining authority of any inordinate delay in execution of the detention order. The plea is that the order was passed by the detaining authority

located in Delhi and it was transmitted the same day to the Home Secretary, Kerala State, for having the detention order served on the detenu. That had necessarily to pass through various local and functional jurisdictions, before it could be served on the other petitioner. I do not find any element of unreasonableness in this Explanation for the court cannot be unmindful of the various inter-State. inter-departmental and inter-jurisdictional procedures, which have to be crossed before this order could be served on the detenu at his place of residence in some village, of a district in the State of Kerala.

(15) The fact that he was presumably reporting every Monday in the office of the Enforcement Directorate would be wholly inconsequential as the order was to be executed by the police authorities of the place at his residence.

(16) The plea that some time was also spent in having the translation of the grounds of detention, as well as the accompanying documents in Malayalam, is an added Explanation and cannot be rejected outright, as being without substance.

(17) In the cases referred to by the learned counsel for the petitioner; in one case viz. Shri Yogesh Chopra (*supra*), the delay of one month and 24 days was held to be fatal for the reasons that the detaining authority was the Administrator of the Union Territory of Delhi, and the petitioner's place of residence as well as business was also in Delhi, and there was definite material to show that during that period the petitioner had attended the court of a Metropolitan Magistrate, atleast four times during the month of February, 1988 itself, and it was in this setting of facts that it was held that the fact of the petitioner there being available at his residence, as well as place of work, during the entire period from 8/01/1988 to 1/03/1988, would materially effect the genuineness of the subjective satisfaction of the detaining authority, for preventive detention .

(18) As against this, in the present case, as already noted. the Explanation in the reply affidavit of the detaining authority, is that no time was wasted in dispatching the order of detention because it was sent on the same day to the Home Secretary, State of Kerala and that the execution of the same took time as it had to pass through various hands, before and after being entrusted to the police authorities. The inbuilt limitations of the situation cannot be lost sight of and authorities accused of remissness or lapses, by applying mathematic formulae of counting the days, obvious of the factors involved: such as seat of the detaining authority being in Delhi, whereas the detention order had to be served through the local police authorities ,which in this case happened to be some remote village in the State of Kerala.

(19) The ratio of the other case, referred to by the learned counsel for the petitioner in Criminal Writ No. 16 of 1988 :Shri K. Thomas Vincent Vinecnt v. Union of India and others, is also not obviously applicable, because the delay there was five months and three weeks, and there were factors to indicate long

intervals, when the concerned authorities at each stage had been inactive or betrayed lack of proper diligence or sense of urgency. The Supreme Court's authority referred to in the case of Shri Yogesh Chopra (supra) also proceeded on the facts of that case where there was a delay of 2-1/2 months in detaining the petitioner, pursuant to the detention order and the case proceeded on the facts of that case as there was total lack of Explanation. It is pertinent to note that in that case also the detenu was local resident of the same place where the seat of the detaining authority was.

(20) Considering the totality of the circumstances, as explained in the reply affidavit in this case, I am of the considered view that present is not the case where period of one month and 15 days in all, including the time taken in transit, and also having the translation of the grounds of detention and the accompanying documents being done; can be said to constitute such element of unexplained or undue delay, which would have the effect of vitiating the detention order. The ground of delay in execution of the detention order, Therefore, cannot prevail in the facts and circumstances of the present case, and the contention based thereon is thus rejected.

(21) Another ground of challenge pressed strenuously is that the Advisory Board declined request of the petitioner for a sitting in some place in Kerala, made by means of a letter, sent personally, as well as through a lawyer, for the reason that the petitioner was an illiterate person, and unfamiliar with any language except Malayalam, and had thus expressed his handicap in the representation sent to the Advisory Board and further pleaded that he was a poor person and not in a position to afford to bring his witnesses, all the way from Kerala to Delhi, for production before the Advisory Board and that the hearing may be held at Trivendrum or at some convenient place in the State of Kerala. Mr. Harjinder Singh argued that despite this request, the Advisory Board went ahead with the sitting on the scheduled date, and that the counter reply now filed on behalf of the respondents reveals that this request did not find favor with the Advisory Board and the representation of the petitioner was rejected in absentia thereby depriving him of an opportunity to effectively represent before the Advisory Board.

(22) The whole thrust of arguments of the learned counsel is that proceedings of the Advisory Board stand vitiated as an element of arbitrariness had crept there and were bereft of fairness of procedure. It is argued that recommendation of the Advisory Board, being a very relevant consideration for the Appropriate Government, for the confirmation of the detention order, and this report having been given without affording full opportunity to the detenu of presenting his defense, including evidence in rebuttal, the confirmation order stands vitiated, rendering the continued detention of the petitioner unsustainable.

(23) A reference has been made, with great vehemence, to the dictum laid down by the Supreme Court in the case of A.K. Roy and Others Vs. Union of India (UOI) and Others, wherein guiding principles were laid down in connection with

the proceedings of an Advisory Board. The learned counsel pointed out that one of the important rights recognised by the Constitutional Bench of the Supreme Court in that case was that the detenu may offer oral and documentary evidence before the Advisory Board in order to rebut the allegations which are made against him, as it was pointed out that neither the Constitution nor the relevant Statutes dealing with preventive detention, contained any provisions denying to the detenu the right to present his own evidence in rebuttal of the allegations made against him, and that the proceedings of the Advisory Board should be so structured as to ensure reasonableness of procedure.

(24) Developing his arguments, based on the aforesaid guidelines, Mr. Harjinder Singh made reference firstly to the representation dated 21/03/1988 (Annexure J) addressed to the Chairman, Cofeposa Advisory Board, Delhi High Court, New Delhi by Mr. K. M. Suresh Chandran, Advocate, on behalf of the detenu, requesting that the Board meeting should be held somewhere in Kerala so that the detenu can bring his witnesses and lead evidence in rebuttal to the charges leveled against him, and also to a translated copy of a representation dated 23/03/1988 (Annexure K) sent to the Advisory Board by the petitioner himself, reiterating the same request. He also indicated the names of the witnesses he wished to examine stating that they were residents of a place in district Malappuram, Kerala State and that they were similarly placed as the petitioner, namely, not conversant with any language other than Malayalam, and that apart from the difficulty, due to lack of financial resources, for the detenu to bring them to Delhi for examination before the Advisory Board; even otherwise also they being not conversant with any language besides Malayalam suffer from the handicap of lack of communication. and for that reason the meeting was necessary to be held in Kerala so as to enable the petitioner to make an effective representation before the Advisory Board. The learned counsel, therefore, argued that the failure on the part of the Advisory Board, as revealed from the counter reply, to accede to this request, and having concluded the proceedings, and finalise the report, without the petitioner having been able to avail of the opportunity, would have the effect of rendering Advisory Board's report vitiated and thus continued detention of the petitioner was liable to be revoked.

(25) Mr. U. L. Watwani, Advocate, appearing for the respondents, centered this plea by contending that there was no provision in the Cofeposa or in the Constitution, which conferred any right on the detenu to seek shifting of the venue of the Advisory Board's meeting or to insist that its proceedings be held at a place desired by him, or on the territory of his choice, and as such there was no infirmity in the proceedings conducted by the Advisory Board, which can vitiate the confirmation of the detention order or render illegal the continued detention of the petitioners there under.

(26) Mr. Watwani also pointed out that the date of hearing was well within the knowledge of the petitioner, as is indicated from his lawyers' letter dated

21/03/1988 because it contains a reference to the date fixed for meeting, namely, 5/04/1988 and that this letter clearly states that the detenu had been informed of the Advisory Board's meeting fixed for 5/04/1988. The learned counsel also submitted that the documents sought for by the detenu in his letter dated 21 stMarch, 1988 had already been supplied to him on 16/03/1988 as mentioned in the counter reply and also corroborated by letter dated 14/03/1988 (Annexure 1), addressed by the Deputy Director, Enforcement Directorate, Government of India .Madras to the detenu enclosing copies of the documents as requested by him vide his letter dated 7/03/1988 addressed to the Ministry. The copy of the memorandum dated 7/03/1988 (Annexure H) is also on record, which has been filed by the detenu himself, and while conveying the rejection of his representation by the detaining authority. he was informed that in so far as the prayer for supply of documents was concerned; the Enforcement Directorate was being directed to provide to him the available documents, and that it was pursuant to this that the copies of documents were forwarded to him, and received by him on 16/03/1988.Mr. Watwani argued that inspire of having received them on 16/03/1988 the detenu had falsely complained in his letter dated 23/03/1988 addressed to the Advisory Board that he had not been supplied copies of the documents requested for by him. The learned counsel pleaded that there was no requirement for the Advisory Board to go to the place of detenu's home State and that it was for the Advisory Board to regulate its procedure particularly when it is comprised of three sitting or retired Judges, headed by a sitting Judge of Delhi High Court, and the detenu could not expect all of them to proceed to Kerala to accede to his request for a sitting there .

(27) I have given earnest consideration to the respective contentions in this regard. I am afraid, it is not possible to subscribe to the arguments set forth by the learned counsel for the petitioner. It is to be noted that no such requirement, as sought to be made out by the learned counsel, can be spelt out from the wording of Article 22(5) of Constitution of India. It does ensure right of an effective representation before all the concerned authorities, including the Advisory Board, but the fact remains that the Advisory Boards have been left free to regulate their own procedure. This position has been recognized the Supreme Court in a very recent judgment reported as Harbans Lal Vs. M.L. Wadhawan and Others, whereby taking note of the dictum of the Supreme Court in A.K. Roy's case (supra), recognising the right of a detenu to lead evidence in rebuttal of the allegations against him, before the Advisory Board, it was emphasised that it is obligatory upon the detenu to keep his witnesses ready for examination at the appointed time. It was specifically observed:

"THE law recognises a right in the Advisory Board to regulate its own procedure within the constraints ofthe Constitution and the Statute and this procedure is referable to the time limit within which the Advisory Board must complete its enquiry."

(28) In the leading authority in A. K. Roy's case (supra), as well as in this latter

judgment, the only right granted to the detenu. in so far as the proceedings before the Advisory Board are concerned, is that of proper representation, right of cross-examination and the right to present his evidence in rebuttal ,but there is a clear and unambiguous acknowledgment of the constraint of time to which the Advisory Board's proceedings are subjected, inasmuch as u/s 8(a) of COFEPOSA, the Advisory Board is required to forward its opinion to the Appropriate Government, as to whether there was ,or not, sufficient cause for detention of the person concerned and this report the Advisory Board is obliged to submit within 11 weeks from the date of detention of the person concerned. In A. K. Roy's case, where certain rights which were available to the detenu, qua the proceedings before the Advisory Board were spelt out including the right to examine witnesses, it was stressed that, "if the detenu desires to examine any witnesses, he shall have to keep them present at the appointed time and no obligation be caste on the Advisory Board to summon them". It was further pointed out by their Lordships:

"THE Advisory Board, like any other Tribunal, is free to regulate its own procedure within the constraints of the Constitution and the statute. It would be open to it, in the exercise of that power to limit the time within which the detenu must compete his evidence."

(29) It was also observed in this case that the detenu cannot insist as a matter of right for an adjournment and the Advisory Board would be justified in a given case to close the case .if the. detenu does not have his evidence ready. It has been emphasised at more than one place in the said judgment that incase the detenu wants to examine any evidence in rebuttal he has to keep his witnesses ready, and produce at his own responsibility before the Advisory Board, and that he can neither seek an adjournment for this purpose nor insist that the Board summon the witnesses named or cited by him.

(30) It is thus clear that although detenu's rights of a really effective representation before the Advisory Board, including the right of cross-examination of witnesses as well as right of evidence in rebuttal and right to assistance by friend during hearing ,and even by a legal practitioner, in case the department takes aid of a lawyer during proceedings before the Advisory Board, is recognised, but nevertheless the freedom to regulate its procedure has been left entirely to the Advisory Board .It has been rather acknowledged that the Advisory Board ,like other Tribunals is free "to regulate its own procedure" .

(31) The judgment in Harbans Lal's case (supra) further recognises the fact that the Advisory Board has to work within a limited time frame-work inasmuch as the report is to be submitted to the appropriate government within 11 weeks of the date of detention, and in that context full freedom in the matter of regulation of procedure has to be left to the Advisory Board .

(32) There can be no gainsaying the fact that the place where the Tribunal or Board holds its sitting is a matter of procedure for the said Tribunal or Board.

Consequently, none including the detenu, in the case of a hearing before the Advisory Board, can claim or insist as of right that the Advisory Board hold its sitting at the place of his choice. In the facts of this case, it is clear that the detenu had the information about the date of hearing before the Advisory Board well in advance so that he could have time even to contact a lawyer ,and get a representation forwarded to the Advisory Board .In given cases, detenu's rights to have assistance even of a legal practitioner has been recognised and once the petitioner had a lawyer to guide or assist him, then his plea that he or his witnesses were not conversant with any language other than Malayalam, is without any substance, and it cannot now be urged by him that the Advisory Board proceedings stood vitiated by its refusal to grant him his request for a meetir..in the State of Kerala.

(33) The counter reply indicates that the Advisory Board had addressed itself fully to this request and did not find it tenable and after rejecting the same, and after taking note of the fact that in spite of notice of hearing, the detenu had chosen not to present himself before the Board, gave its report. It is also mentioned in the counter reply, on the basis of record of proceedings forwarded by the Advisory Board, that the Board had informed the detenu that he could take the assistance of his friends and lawyer at the time of hearing.

(34) I, Therefore, do not find any case made out for entertaining this ground of attack on the validity of the detention order or continued detention of the petitioner.

(35) Another point very strenuously urged by the learned counsel for the petitioner, and rather taken up as the first point ,is that all the relevant material had not been placed before the detaining authority, and that this by itself detracted from the subjective satisfaction of the said authority: thus vitiating the validity of the detention order. The material to which reference was made in this connection was the petition for modification of the terms and conditions of the bail moved by the petitioner, subsequent to the order of bail passed in the first instance, and the modifications ordered thereon. The learned counsel conceded that the fact that the petitioner had been arrested, was remanded to judicial custody, and had been allowed bail as also the fact that he was put on certain terms and conditions while granting bail, were all placed before the detaining authority, as also the fact of his retraction of his statement, made to the Custom authorities but still contended that the subsequent modifications of the bail order, were also very relevant material and that failure to place the same before the detaining authority would vitiate the detention order. He further laid stress on the point that these modifications were granted by the concerned Court, without any opposition from the sponsoring authority and that this by itself was a very pertinent factor to have been taken into consideration by the detaining authority, and the inference cannot be ruled out that had it been placed before the detaining authority, he would have come to the conclusion that preventive detention of the petitioner was not necessary.

(36) The learned counsel referred to number of judgments in support of his contention that the bail order or subsequent modifications issued by the court to the original order, were relevant material, required to be placed before the detaining authority .I do not find it necessary to refer to them in detail because of the controversy now having been put at rest, by a judgment of the Supreme Court in case Haridas Amarchand Shah of Bombay v. K. L. Verma and others, decided on 9/12/1988, reported in Judgment Today 1988 4 S.C.632 where it has been specifically held that in cases of preventive detention of a person allegedly indulging in Hawala business, the failure to place before the detaining authority the application for variation of bail, and order of the magistrate modifying the terms and conditions of bail would not. in any manner, vitiate the detention. It has been observed by their Lordships :

"THE detention was to prevent the detenu from indulging in Hawala business i.e. making various payments to various persons in this country on receiving instructions from Rafiq from Dubai. The application for variation of condition of bail and the order passed by the Metropolitan Magistrate varying the condition of bail is. in our opinion, not a vital and material document inasmuch as the granting of bail by the Magistrate enabled the detenuto come out and carrying on his business activities as before. Condition imposed by the Magistrate directing the detenu to appear before the office of the Enforcement Department every day between 11 a.m. to 2 p.m. has been varied to the extent that "the accused to attend Enforcement Department as and when required. The condition imposed by the Magistrate has no relation to the activities carried on by the detenu and as such the High Court after considering all the circumstance, held that the order varying the condition of bail wasn't a relevant document and failure to produce the document before the detaining authority before arriving at his subjective satisfaction had not vitiated the order. We agree with the same."

(37) These observations clinch the arguments against the petitioner and I do not feel called upon to notice the earlier judgments referred to by the learned counsel for the petitioner because in the present case, like in the above cited case. thedetenu is accused of indulging in activities of making Hawala payments, and thus the case is identical to the one before the Supreme Court. This ground, Therefore, is also of no avail to the petitioner.

(38) No other ground was pressed at the time of hearing though there was some attempt to assail the continued detention on the contention that there was long and unreasonable delay in consideration of the representation of the detenu bythe detaining authority as well as by the Central Government.

(39) However, on a reference to the counter reply, filed bythe detaining authority: it is noted that there is a complete Explanation ,which is fully satisfying, and it, cannot he said on the facts of this case that there has been any delay in disposal of the representation either by the detaining authority or the Central Government. In so far as the detaining authority is concerned ,it is stated on affidavit, that the representation dated 22/02/1988 addressed to the

detaining authority was received in the Cofeposa unit of the Ministry of Finance, on 25/02/1988 and that some of the points raised in the representation required comments from the Directorate of Enforcement and so it was forwarded to the said Directorate on the same day and that it was sent to the Madras office of the Enforcement Directorate on 26/02/1988 by speed post and it was received there on 29/02/1988. The comments were sent by Madras office also by speed post. on 1/03/1988, and the same were sent by the Director of Enforcement to the Ministry on 3/03/1988. These were placed before the detaining authority on the same day, namely, 3/03/1988. It is specifically averred that 4th, 5th and 6/03/1988 were public holidays, Therefore, the detaining authority considered the representation on 7/03/1988 and passed the order of rejection on the same day, and communicated the same by means of memorandum to the petitioner on that day itself.

(40) There is thus no delay at any point of time or stage by the detaining authority in consideration or disposal of the representation of the detenu.

(41) Similarly, the representation dated 8/03/1988 addressed to the Central Government, had been dealt with very expeditiously inasmuch as it is stated to have been received in the Cofeposa unit on 17/03/1988 and for the reason that some clarifications were required from the sponsoring authority, it was sent to Directorate of Enforcement for comments on that very day i.e. 17/03/1988 and that comments were received back on 22/03/1988. The counter reply further discloses that the file containing the representation the comments of sponsoring authority as well as other material was forwarded to the Finance Minister on that very day through the Minister of State for Revenue and the latter forwarded the file with his comments to the former also on the same day. The order, rejecting the representation, after due consideration, was passed by the Finance Minister on 31/03/1988. It is explained that the Finance Minister was on tour on 23rd, 26th, 27th and 28/03/1988. Thus the only period, during the interval from 22/03/1988 to 31st March, 1988, that he was in Delhi was of four days; namely, 24th, 25th, 29th and 30/03/1988 and that Parliament was in session during those days and the Finance Minister was busy particularly in connection with the budget and other important parliamentary work and so could attend to the representation only on 31/03/1988.

(42) On the facts and circumstances of this case when the Parliament was in session, and the Finance Minister is stated to have been busy in connection with budget and other parliamentary work, period of four days taken, cannot be said by any stretch of reasoning, to be unreasonable. It has already been noticed, while dealing with the contention of the petitioner regarding delay in execution of the detention order, that delay by itself is not fatal, and that the only consideration is the Explanation or want thereof. The courts have also to bear in mind that the time factor cannot be reduced to mechanical or mathematical formula, divorced from the facts of a given case or the constraint of time or pressure and demands of other official work, under which a given authority or

functionary was operating at a relevant time.

(43) The memorandum conveying rejection of the representation was issued on 4/04/1988 and again there is Explanation to the effect that 1st, 2nd, and 3/04/1988 were public holidays. There is thus no delay at all in the facts and circumstances of this case in the disposal of the representation of the petitioner either by the defaming authority or the Central Government.

(44) No other point remains for consideration nor any urged, It is, Therefore, a case where rule is to be discharged and the writ petition dismissed. It is ordered accordingly.

(45) No order as to costs.