

**(1990) 04 BOM CK 0033**

**In the Bombay High Court**

**Case No :** Criminal Writ Petition No. 139 of 1990

Manpinder Singh

APPELLANT

Vs

L. Hmingliana, Secy. (Prev. Detn.), Home Deptt.

RESPONDENT

---

**Date of Decision :** 19-04-1990

**Acts Referred:**

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

**Citation :** (1991) 54 ELT 57

**Hon'ble Judges :** M.L. Pendse, J; D.J. Moharir, J

**Bench :** Division Bench

**Advocate :** Shri S.D. Lakhani, for the Appellant; Smt. R.P. Desai, Public  
Prosecutor, Smt. P.N. Menon and Shri A.S. Khan, for the Respondent

---

## **Judgement**

Pendse, J.—Secretary (Preventive Detention) to the Government of Maharashtra and detaining Authority by Order dated November 30, 1989 passed in exercise of powers conferred under sub-section (1) of Section 3 of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 directed detention of the petitioner with a view to prevent him from smuggling goods. The order of detention along with the grounds of detention was served on the petitioner only on January 12, 1990.

The Grounds of detention, inter alia, recite that on March 2, 1989 when the detenu and his father arrived at Sahar Airport from Hong Kong, the Customs Officer intercepted them. The detenu and his father had declared goods to a tune of Rs. 4,150/- only. The Customs Officer searched the detenu and his father and recovered 6 foreign marked gold bars of 10 tolas each and one small gold bar of 20 Gms. from the detenu and his father. The gold seized weighed 1,575.8 Gms. and was valued at Rs. 5,35,772/-. The statement of the detenu and his father was recorded. The detenu was arrested and produced before Additional Chief Metropolitan Magistrate, Bombay, and was ordered to be released on bail and the detenu availed of the bail on March 15, 1989. In the statement given by the

detenu, incriminating statement was made in respect of commission of offence of importing contraband goods. The passport of the detenu disclosed that the detenu had travelled abroad frequently. On this material, the detaining Authority came to the conclusion that the detenu is a frequent traveller abroad and is likely to continue to smuggle goods and, therefore, it is necessary to pass order of detention to prevent the detenu from indulging in smuggling activities in future. The Order of detention is under challenge.

2. Mr. Lakhani, learned Counsel appearing on behalf of the detenu, submitted that there is inordinate and unexplained delay in exercising power of detention under COFEPOSA Act. The learned Counsel also submitted that there is considerable delay in execution of the order of detention. We find considerable merit in the submission of the learned Counsel. As mentioned hereinabove, the detenu was intercepted on March 2, 1989 and contraband gold was recovered. The detenu was produced before the Metropolitan Magistrate and was released on bail on March 15, 1989. The order of detention is passed only on November 30, 1989 i.e. approximately after 8 1/2 months. The detaining Authority had material to indicate that the detenu was a frequent visitor abroad and sounded apprehension that the detenu would indulge in smuggling after release on bail. In spite of this apprehension, the detaining Authority waited for 8 1/2 months to pass the order of detention. The delay on the part of the detaining Authority in exercise of powers is fatal to the sustenance of the detention order.

The detaining Authority has filed return affirmed on April 17, 1990 and in paragraph 13, it is explained that though the detenu was arrested on March 1, 1989 the complaint was filed before the Magistrate only on June 17, 1989. The proposal was prepared on August 3, 1989 and placed before the screening committee on September 22, 1989. After clearance, documents were forwarded along with 6 other proposals to the Home Department on November 2, 1989. In paragraph 12 of the return, it is claimed that the detaining Authority considered the proposal along with the documents on November 16, and November 30, 1989 and finalized the grounds of detention. In our judgment, the explanation given by the detaining Authority is entirely unacceptable. The documents supplied to the detenu clearly indicate that there was nothing to investigate, as the detenu was arrested red-handed while smuggling gold. The Panchanama was also prepared on the date of the incident and the bail order passed by the Magistrate was on March 15, 1989. It is difficult to appreciate why the sponsoring Authority had to wait to forward proposal till the filing of complaint before the Magistrate in June 1989. Even otherwise, there is no valid explanation as to why the detaining Authority postponed passing order of detention from June 1989 to November 1989 and more so, when the detaining Authority apprehended that the detenu would continue to indulge in smuggling activities. It hardly requires to be stated that the power to detain a person is to be exercised because of apprehension that the detenu would indulge in activities in near future and order of detention is not to be issued mechanically, merely because in time past the detenu had indulged in smuggling activities. In our judgment, the

order of detention requires to be struck down on the ground that the power of detention was exercised after considerable time. In view of our finding on this issue, it is not necessary to examine whether there was also delay in execution of the order of detention.

3. Accordingly, petition succeeds and the Order of detention is quashed and the detenu is directed to be released forthwith.