
(2004) 05 DEL CK 0030

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 783 of 2003

Praduman Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-05-2004

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3, 3(1), 5A
Constitution of India, 1950 — Article 19(1), 21, 22, 22(5), 226
Customs Act, 1962 — Section 108

Citation : (2005) CriLJ 20 : (2005) 2 RCR(Criminal) 741

Hon'ble Judges : Ramesh Chand Jain, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : R.M. Bagai, for the Appellant; K.K. Sud, ASG, Neeraj Jain and Barkha Babbar, for the Respondent

Judgement

R.C. Jain, J.—Through this petition under Article 226 of the Constitution, the petitioner has prayed for the quashing of the detention order passed u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short the 'Act') and his release from the custody.

2. Shorn of unnecessary details, the germane facts which led to the passing of the impugned detention order are that on 22nd February, 2003, on the basis of a specific intelligence, the petitioner who was to board an Indian Airlines flight No.IC-895 bound for Dubai at 0950 hrs. from IGI Airport Terminal-II, New Delhi was intercepted and questioned on suspicion and detained. On 23rd February, 2003, foreign currency viz. 22 Swiss currency notes of the denomination of 1000 each and 22 Euro currency notes of the denomination of 500 each, collectively valued at Rs.13,71,700/- in Indian rupee were recovered from the person of the petitioner, the foreign currency notes having been concealed by him in two capsules concealed in his rectum. A case under the provisions of the Customs Act, 1962 was registered. Statement of the petitioner recorded by the authorities u/s 108 of the Customs Act disclosed that he (petitioner) along with one Iqbal

had engaged in the illegal business of exporting foreign currency to Dubai. Later, a search of the residential house of the petitioner located at M-28, Second floor, Kalkaji, New Delhi was conducted and a demand notice No.118/1996 bearing F.No.VIII(b)48(4)84/Cus/PR/95 dated 28th May, 1996 issued by the Assistant Commissioner of Customs, Penalty and Recovery Cell, Marine and Preventive Wing, Bombay and a letter dated 11th June, 1996 addressed to the Assistant Commissioner of Customs, Penalty and Recovery Cell, Marine and Preventive Wing, Mumbai were seized from his house. On further inquiry, it was revealed that an adjudication order No.CCP/ADJ/MGV/52/95 dated 16th October, 1995 was passed by the Commissioner of Customs, Preventive in regard to the seizure of 2329.700 gms. of gold biscuits (22 pieces), valued at Rs.11,11,733/- which were recovered from one Harish Kumar Baweja who was found to have been recruited by the petitioner in the name of Lovely Singh @ petitioner for monetary consideration. Taking into account these factors, the detaining authority arrived at the conclusion that the petitioner had the inclination and propensity to indulge in smuggling activities and consequently passed the impugned detention order.

3. We have heard Mr.R.M.Bagai, learned counsel representing the petitioner and Mr.K.K.Sud, learned Additional Solicitor General representing the respondent-UOI at length and have thoughtfully considered their rival contentions.

4. The main ground on which the impugned order has been assailed is what can be broadly termed as non-application of mind by the detaining authority in passing the detention order. In this regard, learned counsel for the petitioner has invited the attention of the Court to paragraph 15 of the grounds of detention dated 8th May, 2003 served upon the detainee. The said paragraph reads as under:-

"I have carefully gone through the material placed before me including the relevant documents pertaining to the seizure and your statements as well as the statements of others referred to above in this case which clearly indicate that you had knowingly undertaken and engaged yourself in the prejudicial activity of smuggling of goods."

5. On the strength of the emphasized portion, Mr.Bagai has vehemently urged that there is no mention of statement of any other person in the whole of the grounds except the statement of the petitioner and infact no statement of any other person was recorded or supplied to the petitioner and since such `statements of others' find mention in this paragraph, this shows clear non-application of mind by the detaining authority. In this very connection, his next limb of submission is that if there were other statements as referred to in paragraph 15, which formed the material, copies of none of such statements have been furnished to the petitioner. This aspect has been challenged by the petitioner in Ground VII of the Grounds and has been replied by the detaining authority in the counter. The detaining authority has tried to explain that while making reference to the `statements of others', the detaining authority was referring to the statements cited in the adjudication order passed in 1995 against

the petitioner, a copy of which has been supplied to him and, Therefore, there was nothing wrong or objectionable. On a thorough reading of the various grounds of detention and more particularly those contained in paragraphs 12 to 15, it is difficult to accept the above Explanation of the detaining authority with regard to the 'statements of others' being relatable to the statement of Harbhajan Singh and another recorded in the 1995 adjudication proceedings. It appears to us that this phrase "as well as the statements of others" referred to above in this case was totally irrelevant as admittedly statement of no other person, except that of the petitioner was recorded by the Customs Authorities in the present case.

6. Yet another reason which would fortify our aforesaid conclusion is that in his representation to the detaining authority, the Central Government and the Central Advisory Board (COFEPOSA), the petitioner had specifically submitted that the statements of no other person except that of the petitioner as referred to in paragraph 15 of the grounds of detention finds mention in the list of documents and material 'Annexure C' nor it has been supplied and, Therefore, the detention order is vitiated on either counts viz., for non-supplying the copies of the statements of other persons which the detaining authority had taken into consideration or if no statements of any other person were placed before the detaining authority, then the subjective satisfaction arrived at by the detaining authority was based on non-existent and illusory facts and material. This representation was rejected vide a communication dated 13th June, 2003 without reflecting on the above aspect and explaining that the mention of 'statements of others' was made by the detaining authority because he was merely referring to the statements cited in the adjudication order passed against the petitioner in the year 1995, a copy of which had been supplied to the petitioner. In absence of such Explanation coming forth at the earliest occasion, the same appears to be clearly after-thought.

7. Now, the important question which awaits consideration is as to whether the reference of 'statements of others' in the grounds of detention when there were none, would vitiate the detention order as a whole even if it is found that the statement of the petitioner and other material obtaining on record was sufficient for passing the detention order. Mr.R.M.Bagai has referred to a large number of decisions of the Apex Court and various High Courts to fortify his contention that the detention order in this case would vitiate on the ground of non-application of mind and the subjective satisfaction reached by the detaining authority being mechanical. We do not wish to burden this judgment with all those authorities because there is no quarrel with the settled legal proposition on this aspect. In the case of Khudiram Das Vs. The State of West Bengal and Others, , the Apex Court had more fully considered and answered the basic question as to what does the word 'Grounds' mean and what are the consequences of not supplying the material which would form the ground and held as under:-

".....Nothing less than all the basic facts and materials which influenced the

detaining authority in making the order of detention must be communicated to the detenu. That is the plain requirement of the first safeguard in Article 22(5). The second safeguard in Article 22(5)....."

8.Reference has then been made to a Division Bench judgment of the Bombay High Court in Crl.W.P.No.246/1988 wherein the detention order was held to have been vitiated on the ground of certain typographical error appearing in the detention order and the Court observed that the liberty of an individual is important and sacrosanct and the detaining authority must take all precautions and should not take shield behind the alleged typographical errors.

9.There is no denial of the legal position that to avoid infraction of Article 22(5) of the Constitution, the entire material which constitute the grounds for detention and which has been considered by the detaining authority for arriving at his subjective satisfaction, should invariably be furnished to the detenu. Failure to do so will deprive the detenu of his valuable right of making an effective representation against the detention order.

10.In the case in hand, we have found the Explanation furnished by the detaining authority in his counter affidavit as untenable and, consequently, the impugned detention order when it refers to `statements of others" in para No.15 of the grounds of detention, in absence of any such statements on record, passed by the detaining authority can well be termed as without due application of mind or mechanical. The larger question is as to whether the non-existence of this ground would amount to non-application of mind in passing the detention order on other grounds as well and should vitiate the same. Mr.K.K.Sud, learned Additional Solicitor General has emphatically urged that even if the Court comes to the conclusion that there was no other statement or the copies of the statements referred to in the adjudication proceedings ought to have been supplied to the petitioner, this will constitute only one ground on which the detention order was passed and since this ground is severable from other grounds, the detention order would not be vitiated by virtue of Section 5-A of the Act. Section 5A of the Act provides as under:-

"5A.Grounds of detention severable---Where a person has been detained in pursuance of an order of detention under sub-section (1) of section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly---

(a)such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are---

i.vague,

ii.non-existent,

iii. not relevant,

iv. not connected or not proximately connected with such person, or

v. invalid for any other reason whatsoever,

and it is not, Therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of section 3 with reference to the remaining ground or grounds and made the order of detention;

(b)the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds."

11.The above provision of law has been interpreted by the Apex Court in the case of Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, . In that case, the Supreme Court ruled as below in para No.70, 73 & 74:-

"70. Section 5A stipulates that when the detention order has been made on two or more grounds, such order or detention shall be deemed to have been made separately on each of such grounds and accordingly that if one irrelevant or one inadmissible ground had been taken into consideration that would not make the detention order bad.

73. As has been said by Benjamin Cardozo, "A Constitution states or ought to state not rules for the passing hour, but principles for an expanding future". The concept of "grounds", Therefore, has to receive an interpretation which will keep it meaningfully in tune with the contemporary notions of the realities of the society and the purpose of the Act in question in the light of concepts of liberty and fundamental freedoms guaranteed by Articles 19(1), 21 and 22 of the Constitution. Reviewing several decisions in the case of Hansmukh Vs. State of Gujarat and Others, , this Court held that a democratic Constitution is not to be interpreted merely from a lexicographer's angle but with a realisation that it is an embodiment of the living thoughts and aspirations of a free people. The concept of "grounds" used in the context of detention in Art.22(5) of the Constitution and in sub-section (3) of S.3 of COFEPOSA, Therefore, has to receive an interpretation which will keep it meaningfully in tune with a contemporary notions. While the expression "grounds" for that matters includes not only conclusions of fact but also all the "basic facts" on which those conclusions were founded, they are different from subsidiary facts or further particulars or the basic facts.

74.In the instant case, the ground of detention is the satisfaction the detaining authority that with a view to preventing the detenu from acting in any manner prejudicial to the conversation or augmentation of foreign exchange or with a view to preventing the detenu from, inter alia, dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping the smuggled goods, or engaging in transporting or concealing or keeping smuggled goods the detention of the detenu is necessary. This satisfaction was arrived at

as inferences from several factors. These have been separately mentioned. One of them is the contention (confession?) but this ground was taken into consideration without taking note of the retraction made thereafter. But the inference of the satisfaction was drawn from several factors which have been enumerated before. We have to examine whether even if the facts stated in the confession are completely ignored, then the inferences can still be drawn from other independent and objective facts mentioned in this case, namely the fact of seizure after search of 60 gold biscuits from the suitcase of the daughter in the presence of the father which indubitably belonged to the father and admitted by him to belong to him for which no Explanation has been given and secondly the seizure of the papers connected with other groups and organizations - Pratap Sait and others to whom gold has been sold by the father are relevant grounds from which an inference can reasonably be drawn for the satisfaction of the detaining authority for detaining the detenus for the purpose of section 3(1)(iii) and 3(1)(iv). We are of the opinion that the impugned order cannot be challenged merely by the rejection of the inference drawn from confession. The same argument was presented in a little different shade namely the fact of retraction should have been considered by the detaining authority and the Court does not know that had that been taken into consideration, what conclusion the detaining authority would have arrived at. This contention cannot be accepted. We are not concerned with the sufficiency of the grounds. We are concerned whether there are relevant materials on which a reasonable belief or conviction could have been entertained by the detaining authority on the grounds mentioned in Section 3(1) of the said Act. Whether other grounds should have been taken into consideration or not is not relevant at the stage of the passing of the detention order. This contention, Therefore, cannot be accepted. If that is the position then in view of S. 5A of the Act there was sufficient material to sustain this ground of detention."

12.Mr.K.K.Sud, the learned Additional Solicitor General has then referred to a recent judgment of the Supreme Court in the case of Union of India vs. Paul Manickam and Anr. JT 2003 (Supp 2 SC 503 wherein His Lordship Justice Arijit Pasayat speaking for the Court has fully considered the scope of writ of habeas corpus in relation to the fundamental right conferred by Article 22 of the Constitution. Mr.Sud has in particular relied on the following observations from the said judgment:-

"Preventive detention is an anticipatory measure and does not relate to an offence while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the executive is convinced on the materials available and placed before it that such detention is necessary in order to prevent the person detained from acting in a matter prejudicial to certain objects which are specified by the law. The action of executive in detaining a person being only precautionary, the matter has necessarily to be left to the discretion of the executive authority. It is not

practicable to lay down objective rules of conduct, the failure to conform to which alone should lead to detention. In case of preventive detention of a citizen, Article 22(5) of the Constitution enjoins the obligation of the appropriate government of the detaining authority to accord the detenu the earliest opportunity to make a representation and to consider that representation speedily. The right to make a representation implies right of making an effective representation. It is the constitutional right of the detenu to get all the ground on which the order has been made. As has been said by Benjamin Cardozo, "A Constitution states or ought to state not rules for the passing hour but the principles for an expanding future". The concept of grounds used in the context of detention in Article 22(5) has to receive an interpretation which will keep it meaningful in tune with contemporary notions of the realities of the society, and the purposes of the Act in the light of concepts of liberty; and fundamental freedoms. While the expression "grounds" for that matter includes not only conclusions of fact but also all the basic facts on which those conclusions were founded; they are different from subsidiary facts or further particulars of the basic facts. The detenu is entitled to obtain particulars as to the grounds which will enable him to make an effective representation against the order of detention."

13. Keeping in view the legal position emerging from the above decisions, it is to be seen if the detention order can be sustained on the premises that its passing would be justified on other grounds and the order would be saved by application of Section 5-A of the Act. We have already noticed that the satisfaction recorded by the detaining authority about the propensity of the petitioner to indulge in smuggling activities in future was mainly based on the occurrence of 22nd February, 2003 regarding which the statement of the petitioner alone was recorded by the customs authorities and placed before the detaining authority. Statement of no other person was recorded or constituted the material on the basis of which such satisfaction could be reached. Infact, the statement of the petitioner and other persons (though there existed none) constituted one and only one ground and not separate grounds. Therefore, it is not possible to hold that the impugned order which is vitiated on account of non-application of mind by the detaining authority, can be saved on the strength of Section 5-A of the Act. We, Therefore, hold that the impugned order is vitiated and is liable to be quashed on this ground alone.

14. Mr. Bagai then urged that the reply filed by the detaining authority would itself show that the detaining authority did not apply his own mind while passing the detention order and he has simply approved the draft detention order put to him by the lower functionaries in his departments. The reply reads as under:-

"It is further respectfully submitted that it is wrong on the part of the Petitioner herein to assume that the Detaining Authority had only one day i.e. 7.5.2003 for scanning and perusing various documents and for formulating and preparing the Grounds of detention. The contention of the Petitioner herein in this regard is

totally wrong, misplaced, misdirected and without any foundation whatsoever. The fact of the matter is that the Detaining Authority keeps in touch with the detention case right from the time the proposal is received in the COFEPOSA Unit. Therefore, the Detaining Authority has enough time to go through various documents and formulate and finalize his views in a particular case. Insofar as the case of Shri Praduman Singh @ Lovely Singh i.e. the Petitioner herein is concerned, apart from the fact that the Detaining Authority had already seen the proposal and the connected papers on earlier occasions also, the final proposal was submitted on file to the Detaining Authority on 6.5.2003 along with the document at Sl.No.37 of the relied upon documents together with the draft Grounds of detention by the Deputy Secretary (COFEPOSA) so that in case the Detaining Authority ultimately decided to pass the Detention Order against the accused person, it may also like to go through the Grounds of detention as placed on the file and vet the same with whatever changes or additions it may deem fit. The Detaining Authority has access to the file and the relevant papers on all the three days i.e. 6th, 7th and 8th May, 2003. It is, Therefore, wrong to assume that the Detaining Authority had only one day to apply itself to the whole case for arriving at the final decision to pass the Detention Order. It is further respectfully submitted that what is material is whether the Detaining Authority had gone through all the available material and has taken its own decision to pass the Detention Order and has also personally approved the Grounds of detention."

There seems to be force in this argument because according to this reply, the file was submitted to the detaining authority on 6th May, 2003 along with the document at Sl.No.37 of the relied upon documents together with the draft Grounds of detention by the Deputy Secretary (COFEPOSA) so that in case the detaining authority ultimately decided to pass the detention order against the accused person, it may also like to go through the Grounds of detention placed on the file and vet the same with whatever changes or additions it may deem fit. Whether such a procedure/practice as has been adopted in the case can be said to be in accordance with law or established procedure and practice which is followed in such like matters? We must remember that Section 3 of the Act provides for power to make detention order. Sub-section (1) of Section 3 of the Act speaks of the authorities who are competent to make detention orders. In the case of Central Government, an officer not below the rank of a Joint Secretary and in the case of State Government, not below the rank of a Secretary to that Government, who have been specially empowered for the purposes of Section 3, can only make detention orders. This clearly depicts the legislative intent that the task of passing a detention order can only be entrusted to high/senior functionaries of the State. Only such functionaries who are specially empowered in this behalf are entitled to pass the detention order if they are satisfied that the detention of any person is required with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from

smuggling of goods etc. Therefore, the satisfaction envisaged in Section 3 has necessarily to be of the officer specially empowered in that behalf and of nobody else. We do not mean to stretch this proposition to the extent that only the specially empowered officer himself has to do each and every thing in connection with the passing of the detention order. He is certainly entitled to take the assistance, from his lower functionaries for accomplishing this task but their input will be limited only to place the entire material before the detaining authority and they should not involve themselves in decision making process about the recording of satisfaction. That is entirely within the domain of the detaining authority. What has been done in the case in hand is somewhat disturbing because even before the detaining authority considered the matter and applied its mind to the material placed before him and recorded his satisfaction about making the detention order, the lower functionaries had actually put up a draft of detention order for the approval/vetting by the detaining authority which implies that the lower functionaries presumed that the detaining authority is going to pass the detention order in all eventualities/probabilities. Such a procedure or practice of putting up draft orders for approval/vetting by the competent authorities/senior functionaries can perhaps be justified in the routine discharge of administrative functions and duties in various Ministries and Departments of the Governments while dealing with purely administrative matters. The Rules of business allocation of the Government permits such a procedure but when it comes to the passing of quasi-judicial orders or a detention order under various preventive detention laws, it has to be different. Adoption of such a practice or procedure would vitiate the order as the detaining authority is likely to be influenced by such an assistance rendered by the lower functionaries, with whatever bona fide or sincerity it may be. It would have been a different thing if the entire material had been placed before the detaining authority and he had applied his mind and reached a satisfaction about the need to detain the petitioner on certain grounds and then the lower functionaries had assisted him in formalising the task of preparation and issuance of the detention order. We have, Therefore, no hesitation in holding that the impugned detention order can again be termed as without application of mind by the detaining authority himself and the satisfaction recorded in the case in hand was not solely of the detaining authority. The impugned order is vitiated on this count as well.

15.The next ground pressed for by Mr.Bagai is also relatable to the non-application of mind or passing of the detention order in haste because of the shortage of time at the disposal of the detaining authority to consider the matter in an effective manner. In this connection, it is pointed out that a reply dated 6th May, 2003 filed by the Customs Authorities in the Court of learned Additional Sessions Judge to the bail application dated 28th April, 2003, moved by the petitioner is also stated to have been considered by the detaining authority. Mr.Bagai contended that if the said reply dated 6th May, 2003 was considered by the detaining authority, then there was hardly enough time at the disposal of the

detaining authority to consider the voluminous material as appearing in annexure P-3 of the list of relied upon documents because only one day was available for considering the material, the detention order having been passed on 8th May, 2003.

16.To buttress his submission, Mr.Bagai has relied on a number of decisions more particularly in the case of Shri Anwar Abdulla etc. Vs. The Union of India and others, . In that case, the Division Bench of the Karnataka High Court noted with concern the movement of the file of the detenu in the Secretariat of the Karnataka Government and found that the file had been put to the Home Commissioner towards the end of pre-lunch office hours on 7th March, 1991 after making elaborate nothings thereon by the COFEPOSA Cell in regard to the proposed detention. The Home Commissioner having approved the proposal on the same afternoon and having sent the file for immediate scrutiny by the Law Department of the State Government and after vetting by Law Department, the file was returned and the order came to be passed on the same day. The Court noting the fact that there were as many as 260 full scrape closely typed pages on record, it reached the conclusion that the detaining authority had not applied its mind in reaching at the pre-requisite subjective satisfaction spoken of under sub-section (1) of Section 3 of the COFEPOSA Act and consequently quashed the detention order. Though the facts of the case in hand are not exactly similar to those noted in the above case, yet the manner in which this matter was dealt with in the office of the detaining authority and by the detaining authority himself would justify a conclusion that the matter was hurried and chased by the concerned officers leaving very little time at the disposal of the detaining authority to consider the question of detention in an appropriate and effective manner. Despite this we are of the view that detention order would not vitiate on this ground alone.

17. Yet another ground taken up by Mr.Bagai is about the surrender of the passport by the petitioner thereby incapacitating him from indulging in any prejudicial activity like exporting of foreign exchange in future. In this connection, he has placed reliance on the decision of the Apex Court in the case of Rajesh Gulati vs. Govt. of NCT of Delhi & Anr. 2002 SCC (Cri) 1627, wherein a plea was raised on behalf of the detenu that there was no question of the detenu traveling out of the country or indulging in smuggling of goods once his passport was ordered to be held by the Customs authorities. On this aspect, the Court observed that the likelihood of the detenu indulging in smuggling activities was effectively foreclosed by the retention of his passport by the Customs Department. The Court held that the conclusion that despite the absence of his passport the appellant could or would be able to continue his activities is based on no material but was pure speculation on the part of the detaining authority which was sufficient to invalidate the impugned detention order amongst other grounds. On the other hand, Mr.K.K.Sud, learned Additional Solicitor General has cited a later judgment of the Supreme Court in the case of Sitthi Zuraina Begum vs. Union of India & Ors. 2002 (8) SCALE 561, wherein the above question was

again considered and the Court observed as under:-

".....it is urged on behalf of the detenu that on a solitary instance without any propensity to evade duty should not be made a ground for detention and particularly when his passport had been seized on the same day of his arrest, there is no chance of his committing further acts of smuggling for which he has now been detained. In the present case, it is stated that detenu's passport disclosed that he had made several trips abroad and he was not a man of such affluence as to make so many trips out of the country unless they be in the context of his business activities. Therefore, considering the number of trips he had made out of the country, the volume of goods seized now and the prima facie misdeclaration of value, an inference can be drawn that the detenu was a part of bigger network in bringing the goods for commercial distribution inside the country by avoiding the payment of duty. In the background, absence of passport will not be a handicap to the detenu for his activities in the present case in which the fact situation is different from the one available in Rajesh Gulati's case. Nor can we confine the meaning of the word 'smuggling' only to going out of country and coming back with goods which are contraband or to evade duty but may encourage such activities as well by dealing in such goods."

In view of the above legal position, we are unable to hold that on the retention of passport of the detenu, there was no possibility of his indulging into smuggling activities.

18.The last ground pressed for by Mr.Bagai is in regard to the finding of the detaining authority that despite the petitioner being in custody for substantive offences under the Customs Act, there was any likelihood of his being released on bail. According to Mr.Bagai, there was hardly any possibility of the petitioner being released on bail as his earlier bail applications dated 10th March, 2003 and 20th March, 2003 had been rejected by the learned ACMM and Additional Sessions Judge respectively and there being no fresh grounds available to the petitioner. We see absolutely no force in the contention of Mr.Bagai because despite the rejection of his earlier two applications, the appellant was not dissuaded from making further applications for bail and infact made another application for bail dated 28th April, 2003 in the Court of Additional Sessions Judge to which a reply dated 6th May, 2003 was filed by the DRI and the application was listed for hearing after a few days. On the face of these facts and circumstances, the finding of the detaining authority that the possibility of the release of the petitioner on bail in near future could not be ruled out and in case the bail was granted, he was likely to indulge in smuggling activities, seems to be quite justified.

19.No other point was pressed before us.

20.The net result of the above discussion is that the impugned detention order cannot be legally sustained and is liable to be quashed. We order accordingly.