

(1994) 12 DEL CK 0024

In the Delhi High Court

Case No : Criminal W. No. 140 of 1994

Pritam Singh Through Prem Kumar

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 01-12-1994

Acts Referred:

Citation : (1995) 57 DLT 370 : (1995) 2 RCR(Criminal) 643

Hon'ble Judges : Arun Kumar, J

Bench : Single Bench

Advocate : Trilok Kumar and Manoj Taneja, for the Appellant; K.T.S. Tulsi, Addl. Solicitor General, V.K. Shali, Satish Agarwal and S. S. Das, for the Respondent

Judgement

1. This writ petition under Articles 226 and 227 of the Constitution of India challenges the detention of the petitioner in pursuance of an order dated 2nd February 1994 No. F. No. 673/10/94-Cus. VIII, passed by Shri Mahendra Prasad, Joint Secretary to the Govt. of India, Ministry of Finance, Deptt, of Revenue, New Delhi, u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974 (hereinafter referred to as the COFEPOSA Act).

2. The facts leading to the passing of the impugned detention order against the petitioner are : the petitioner was intercepted at the Indira Gandhi International Airport on 12-12-1993 with foreign currency \$ 127500 which was worth Rs. 39.33 lacs at the relevant time. The said currency was concealed in a false cavity in the petitioner's brief case. He was asked to open his brief case. He opened it through a digital code number. Only a few personal clothes and magazines were found. But the officers had suspicion and on close scrutiny it was found that the brief case had a cavity from which the foreign currency was ultimately recovered. The petitioner's passport showed that he had made at least six visits to Singapore and Hong Kong in the preceding three years. Statement of the detenu u/s 108, Customs Act was recorded. He denied knowledge about concealment of foreign currency in the brief case. Later he retracted the confessional statement.

3. The petitioner was produced before the Addl. Chief Metropolitan Magistrate, New Delhi on 13-12-1993 who remanded him to judicial custody. The impugned detention order was passed on 2-2-1994. It was served on the petitioner on 3-2-1994. The documents relied upon for purposes of passing the detention order were supplied to the petitioner on 8-2-1994. On 15-2-1994 the petitioner was granted bail by the Addl. CMM. since no complaint was filed by the prosecuting agency within the statutory period of 60 days and as per the provisions of Section 167(2), Cr.PC., the petitioner became entitled to bail. The meeting of the Central Advisory Board (COFEPOSA) was convened on 8th April 1994. The detention order was confirmed by the Central Govt. on 29th April 1994.

4. The conservation of Foreign Exchange and Prevention of Smuggling Activities Act is a preventive detention law. The preamble of the Act reads : "An Act to provide for preventive detention in certain cases for the purposes of conservation and augmentation of foreign exchange and prevention of smuggling activities and for matters connected therewith". The object of the Act has been stated thus :-

"Whereas violations of foreign exchange regulations and smuggling activities are having an increasingly deleterious effect on the national economy and thereby a serious adverse effect on the security of the State :

And whereas having regard to the persons by whom and the manner in which such activities or violations are organized and carried on, and having regard to the fact that in certain areas which are highly vulnerable to smuggling, smuggling activities of a considerable magnitude are clandestinely organized and carried on, it is necessary for the effective prevention of such activities, and violations to provide for detention of persons concerned in any manner therewith :-

5. A person against whom an order is passed under the Act has his liberty taken away without trial. In the normal course a person cannot be detained without trial. Thus the law pertaining to preventive detention confers a special power on the executive to curtail liberty of individuals without trial. When the consequence of an executive action deriving source of power from a preventive detention statute is to curtail an individual's personal liberty, it is natural that it should be ensured that there is no abuse of such power by the executive and further that the detenu has some safeguards to protect his personal liberty against any arbitrary action on the part of the executive.

6. Whenever a detention order is challenged in a court of law, the inquiry to test the legality of the detention will have to address itself to two aspects. First stage will be to test the validity of the order within the limited scope available. Then it will have to be examined as to whether the safeguards provided under Article 22(5) of the Constitution of India have been adhered to or not. The safeguards under Art. 22(5) are more of a procedural nature and come into play after the

passing of the detention order.

7. The object of preventive detention is to ensure that the person concerned who is believed to be indulging in unlawful activity is prevented from continuing to do so. If left free and unfettered, such a person is likely to continue to indulge in his unlawful activity. Thus the authority which is bestowed with the task of passing the detention order has to reach a satisfaction that the person concerned is indulging in an unlawful activity which he will continue to indulge unless prevented from doing so by an order under the statutory power conferred on such authority. The thought process emanates more from suspicion than proof. Suspicion is followed by material which leads to formation of an opinion that the person sought to be detained is indulging in an unlawful activity and that it is necessary to prevent him from continuing to do so in future. The matter of formation of an opinion is purely one of subjective satisfaction of the detaining authority. This is up to the stage of passing of the detention order. Then comes the stage of the constitutional safeguards enshrined under Art. 22(5). These safeguards mean that (i) after the detention order the detenu should be informed of the grounds on which the order of detention has been made along with the material relied upon in this behalf as soon as may be and (ii) the detenu must be afforded the earliest opportunity of making a representation against the detention order. In the present case we are concerned with challenge to the detention order as well as to the non-compliance of the safeguards under Article 22(5) of the Constitution of India.

8. In *Khudiram Das v. State of West Bengal*, 1975 SCC 435 : 1975 Cri LJ 446, a Constitution Bench had occasion to consider the question of subjective satisfaction of the executive which leads to the passing of the detention order. The observations have been summarised in the Head-note thus :-

"However, subjective satisfaction being a condition precedent for the exercise of the power conferred on the Executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority; if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad.

Such instances are, firstly, where the authority has not applied its mind at all; in such a case the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied; secondly, where the power is exercised dishonestly or for an improper purpose : such a case would also negative the existence of satisfaction on the part of the authority; thirdly, where in exercising the power, the authority has acted under the dictation of another body; fourthly application of a wrong test or the misconstruction of a statute; fifthly, where the satisfaction is not grounded on materials which are of rationally probative value, i.e. the grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached and they must be relevant to the subject matter of the inquiry and must not be extraneous to the scope and purpose of

the statute; sixthly, failure of the authority to have regard to the express or implied statutory requirements of giving regard to certain matters when exercising the power, and lastly, where the subjective satisfaction is not such that any reasonable person could possibly arrive at and the inference is that the authority did not honestly form that view or that in forming it, he could not have applied his mind to the relevant facts.

The courts in such cases do not act as an appellate authority but as a judicial authority which is concerned, and concerned only, to see whether the statutory authority has contravened the law by acting in excess of the power which the Legislature has confided in it."

9. The efficacy of these safeguards depends on the care and caution and sense of responsibility with which the detaining authority discharges its functions. It is here that the duty is cast on the Courts to ensure that the detaining authority discharges its functions with due care and caution and a sense of responsibility. It is the Court which has to examine in a given case that the above safeguards have been complied with. Wherever the executive is found to be wanting on the judicial scale, the inevitable consequence will be that the detention order will stand vitiated.

10. In the present case the detention of the petitioner has been challenged on various grounds including those regarding the passing of the detention order as well as those concerned with post detention procedural safeguards under Article 22(5) of the Constitution. I do not propose to discuss all the grounds of challenge. As per the law the detention can be quashed even on a single ground when there may be several grounds available to the detenu. I have chosen to confine to certain more glaring and clear cut grounds.

11. The first point for consideration is the submission on behalf of the petitioner that the impugned detention order suffers from total non-application of mind. This argument has been raised with regard to various facets of the case. However, I will consider two aspects which are more glaring and go to the root of the matter : (a) irrelevant material considered while passing the detention order; (b) relevant material which ought to have been considered was not considered while passing the detention order.

12. The ground in this connection has been taken in the writ petition in para 13 where it is stated that "the detaining authority has placed reliance on certain irrelevant material which reflects patent non-application of mind which vitiates subjective satisfaction and the detention order. Some of such material is at pages 102, 103, 107, and 165 with Hindi Translation at pages 231-235 of the Hindi set of the relied upon documents served on the detenu, as per copies enclosed as Annexures F-1 to F-4 respectively". Reply to this para is of mere denial. My attention has been drawn on the concerned documents to substantiate the point made by the learned counsel for the petitioner. The documents have been filed as annexures F-1 to F-4 to the writ petition. These documents are included in the

list of relied upon documents which were supplied to the detenu along with the grounds of detention. Relied upon documents as per the list were also supplied to the detenu. Annexures F-1 to F-3 are photo copies of the applications on behalf of the detenu made before the ACMM while Annx. F-4 is the photo copy of the Vakalatnama executed by the detenu in favor of his counsel and filed before the Collector of Customs, New Delhi. Annx. F-1 is an application praying for permission to make a telephone call to family members of the detenu for ten minutes. Annx. F-2 is an application to permit legal interview to the counsel for the detenu with the detenu. Annx. F-3 is an application on behalf of the detenu praying for his production before the Hon"ble Court of ACMM, New Delhi on the next date of hearing while Annx. F-4 is a photo copy of power of attorney executed by the detenu in favor of his counsel. It is submitted that these documents which form part of the list of relied upon documents and which, Therefore, have admittedly been relied upon by the detaining authority for purposes of arriving at the subjective satisfaction for passing the detention order, have absolutely no bearing on formation of opinion which is necessary for purposes of clamping the detention order on the petitioner. I fail to see how these documents can possibly have any bearing on framing of opinion regarding unlawful activities on the part of the detenu. By no stretch of imagination a power of attorney or an application for permission to have interview with the detenu, or an application for warrants of production of the detenu in Court, or an application for permission to make a telephone call to the relatives have any bearing on the illegal or unlawful activities of a person sought to be detained under the Act. The learned counsel for the respondent could not dispute the fact that these documents were relied upon by the detaining authority while passing the detention order against the petitioner. This was so because the detaining authority itself says that it relied upon these documents by including them in the list of relied upon documents. A desperate argument then advanced was that it did not cause any prejudice to the detenu. In these matters the question is not of prejudice. The effort is to determine the state of mind of the detaining authority at the relevant time and to find out whether it applied its mind to the real issue. In *Mrs. Tsering Dolkar Vs. Administrator, Union Territory of Delhi and Others*, , it was said that in matters of preventive detention the test is not one of prejudice to the detenu but one of strict compliance with the provisions of the Act and when there is a failure the necessary consequence follows.

13. When we consider the process which leads to the passing of a detention order u/s 3(1) of the Act, we find that first the detaining authority should reach a belief on the basis of material which it takes into consideration that the person sought to be detained is indulging in unlawful activity. Then on the basis of such a belief the detaining authority has to form an opinion that the person should be prevented from indulging in such unlawful activity. Therefore, the material which is considered and relied upon should lead to the belief that such a person is indulging in unlawful activity. Naturally the material should be such as connects the person with some unlawful activity. If the material relied upon is such as

does not have any bearing on any unlawful activity on the part of the person concerned, it cannot lead to formation of the opinion that such activities have to be curtailed through preventive detention. Even if such irrelevant material is part of other material which may be relevant, it will still disclose that the detaining authority did not properly apply its mind to the real issue. Consideration of even a few irrelevant documents betrays lack of application of mind. Non-application of mind suggests that mind was not really applied and proper consideration to the issue was not given by the detaining authority. It refers to a state of mind and discloses that the mind was not properly applied or not applied at all. When you consider material which is totally extraneous to the inquiry, it shows a mechanical manner of functioning and non-application of mind. Otherwise like a normal reasonable person the authority concerned ought to have excluded such material from the record. Why should such material form part of the record if it is not relevant or material ? The fact that it forms part of relied upon documents shows nobody really considered the material. At least this shakes the belief that mind was applied before the detention order was passed. When you are curtailing somebody's liberty by passing such a drastic order, the least that is expected is that before the order is passed the material which leads to passing of the order is properly scrutinised and considered. If even the safeguard cannot be ensured a state of anarchy will prevail and rule of law will lose its meaning and content.

14. Of course Court cannot go into the sufficiency of material on which the detaining authority is supposed to reach its decision to pass a detention order. Subjective satisfaction has to be of the authority concerned and there is no scope for objective assessment in such matters. But as already noticed subjective satisfaction pre-supposes application of mind. No one can reach subjective satisfaction without application of mind. The Courts cannot go into the subjective satisfaction but can go into the question of application of mind or non-application of mind on the part of the detaining authority in passing a detention order. Where it is shown that there is no application of mind, the detention order must go. Consideration of irrelevant material and non-consideration of relevant material are both essential aspects in testing the validity of a detention order. Both are indicative of the state of mind of the detaining authority at the time of passing the detention order. They reveal the state of mind of the detaining authority and the care and caution and sense of responsibility displayed by the detaining authority while arriving at the decision to pass the detention order. Having regard to the documents referred to above which have admittedly been relied upon by the detaining authority, the conclusion is inescapable that it is a case of total non-application of mind on the part of the detaining authority while passing the impugned detention order and the detention order is, Therefore, vitiated. If mind was applied, such irrelevant material would have certainly been excluded. This shows a casual and cavalier approach on the part of the detaining authority in a matter of such seriousness and far-reaching effect on the detenu. By passing detention orders in such manner, the persons doing it are playing

with life and liberty of individuals with no sense of responsibility. They are discharging their functions in an arbitrary and mechanical manner.

15. In this connection my attention has been drawn to various judgments of this court and the Supreme Court quashing detention orders on account of taking into consideration and relying upon irrelevant material by the detaining authority while passing the detention order.

16. First I propose to refer to a decision of the Supreme Court in Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, . It was observed : "it is an unwritten rule of law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. Whether there is further an express statutory obligation to communicate not merely the decision but the grounds on which the decision is founded, it is a necessary corollary that the grounds communicated, that is, the ground so made known, should be seen to pertain to pertinent and proximate matters and should comprise all the constituent facts and the materials that went in to make up the mind of the statutory functionary and not merely the inferential conclusions". The above observation emphasises that the grounds which are made known to the detenu should comprise all facts and material that went into making up the mind of the statutory functionary. Therefore, if irrelevant material (which as already seen, was admittedly taken into consideration since it forms part of the relied upon documents) went into consideration for making up mind of the statutory functionary, the making up of mind itself becomes a mockery.

17. So far as the decisions on this point by this Court are concerned I propose only to enumerate some of them. It is unnecessary to discuss each judgment in view of the fact that the conclusion reached is the same in all the cases. These are :-

1. Diwan Singh Verma v. Union of India, (1988) 2 DL 197
2. Ved Prakash Sikri v. Union of India, 1991 JCC 9 : 1990 Cri LJ 182
3. Mr. Vishwanath Alias Pappu Vs. Union of India and others,
4. Prabhat Kumar Shrivastava v. Union of India, 1993 JCC 398
5. Davinder Singh v. Union of India, 1993 JCC 3119
6. Gurdas Seal v. Union of India, Crl.W. 389/93, dt. 23-3-94
7. Surender Pal v. Union of India, Crl.W. 223/94, dt. 6-9-94
8. Jagir Singh v. Union of India, Crl.W. 514/93, dt. 10-5-94

18. This leads to the next aspect relating to not taking into consideration relevant material. The pleadings in this connection is contained in para 12 of the writ petition which is reproduced as under :-

"12. Detenu is advised to submit that the subjective satisfaction of the detaining authority stands vitiated as substantiated relevant and vital material has not been placed before the detaining authority in arriving at the subjective satisfaction to detain him and the same renders the detention void ab initio. Some of such material is as under :-

(i) Medical reports dated 29-12-93, 5-1-93 and 8-1-94 of the Safdarjung Hospital ;

(ii) Order dated 24-12-93 of ACMM., New Delhi directing Superintendent Jail, to send medical record/reports of the detenu; and

(iii) Detailed retraction/representation dated 22nd/24th January 1994 by the detenu addressed to the ACMM, New Delhi and submitted to jail authorities on 24-1-94 vide diary No. 228 substantiating untrue and involuntary nature of his statement. A copy of the above representation is enclosed as Annexure-E.

Detenu craves leave to place the above and such other material before the Hon"ble Court at the time of hearing."

The relevant para of the counter-affidavit is as under :-

"10. With reference to para No. 12, it is denied that any substantial, relevant and vital material was not placed before the detaining authority. It is also relied that the detention order is void ab initio. It is submitted that the alleged medical reports dated 29-12-1993, 5-1-1994 and 8-1-1994 of Safdarjung Hospital were not available on the judicial file, when the file was inspected finally, before the passing of detention order. The alleged reports are not available on the judicial file even now, the alleged order dated 24-12-1993 giving directions to the Supdt. Jail to send the medical record/reports of the detenu, cannot be called as relevant and vital material. In any case the alleged order dated 24-12-93 of ACMM, New Delhi, directing Supdt. Jail to send medical record was/is also not available on the judicial file, when the same was inspected. The alleged representation, which is stated to have been sent to Jail Authorities on 24-1-94 vide Diary No. 228 was not available on the judicial file, when it was finally inspected before the detention order was passed.

The Department had instructed the Public Prosecutor dealing with the case to inspect the file, after receipt of notice of the present Writ Petition. The Public Prosecutor has informed that the alleged retraction which is a typed one, is not available on judicial file and is having the endorsement of Ld. ACMM, New Delhi signatures and date as 1-2-94 obviously, the alleged retraction was not available on the judicial file, when it was last inspected."

19. Thus the respondents have not disputed the existence of the documents in question. The only plea raised is about non-availability of the material on the judicial file. In this behalf it is also to be noted that there is no dispute that the material referred to by the petitioner was relevant material. The only defense is its non-availability on the judicial file. To my mind this is no answer in matters of

this nature. The person concerned is in detention. He cannot be blamed for non-availability of the documents before the detaining authority. If the documents are not available on the judicial file, they would be available with the jail authorities. The document referred to in sub-para (ii) of para 12 of the writ petition is an order dated 24th December 1993 of the Court which must find place on the Court file. Similarly the documents of sub-para (iii) bears the jail diary number. Jail is a State functionary. It is the duty of the sponsoring authority to arrange to place all relevant documents before the detaining authority. The facts of the case specially the averments in the counter-affidavit show that no effort was made to ensure that these documents were made available to the detaining authority before the detention order was passed. This again shows a casual approach in which the whole matter has been dealt with on the part of the detaining authority. Except saying that the judicial file was got inspected, nothing has been said or shown as to whether any other effort was made in this behalf. The petitioner's reach is only up to the Supdt. of the jail where he is detained. He cannot be blamed for not making the material available before the detaining authority. Learned counsel for the respondent rightly did not dispute that the material referred to in this behalf was relevant for the purposes of the detaining authority in arriving at its subjective satisfaction to pass the detention order. The medical reports would have shown whether the confessional statement u/s 108 of the Customs Act was voluntary and to what extent it was voluntary.

20. Sr. No. (ii) would show that the Court directed production of the medical record/reports of the detenu from the Supdt. Jail while documents at Sr. No. (iii) is a retraction statement, i.e. statement/representation dated 22nd January 1994 submitted on 24th January 1994 before the Addl. Chief Metropolitan Magistrate, New Delhi showing that the confessional statement was involuntary and retracting the same. The confessional statement finds mention in the grounds of detention leading to the impugned detention order and, Therefore, a document having an important bearing on the entire detention. What weight would the retraction statement carry in this context is a different matter but the detaining authority should at least be alive to the retraction statement. The detaining authority may reject the retraction but then it will not be a case of non-application of mind. While not having retraction statement before the detaining authority will be a case of non-application of mind and would vitiate the detention order.

21. The law on the point is again settled and non-consideration of relevant and material documents has always been held to be a factor which vitiates the detention order. However, counsel for the respondent relied on Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, and urged that the Supreme Court in that case held that if there is sufficient material on record to enable the detaining authority to come to the conclusion that an order of detention should be made, then non-consideration of the retracted confession is immaterial. I am unable to agree with this submission. Reasons for this are the same as recorded in the judgments of this court in Paramlal Abdul

Rahman v. Union of India, (1989) 2 DL 340 and Suresh v. Union of India, 38 (1981) DLT 71. Even otherwise in the facts of this case the decision in Prakash Chander Mehta's case is not attracted. If the statement of petitioner u/s 108, Customs Act is excluded from consideration, we are left with only recovery of the foreign currency from the cavity of the brief case about which the petitioner denied knowledge. Left with only the recovery of foreign currency when even the knowledge of the brief case containing foreign currency is denied by the petitioner, without anything more, there will be nothing to base the detention order on. Secondly, the statement of the petitioner u/s 108 Customs Act in the present case is not wholly incriminating and the retraction of the said statement is not one of total denial of the earlier statement u/s 108. Therefore, in the peculiar facts of this case Prakash Chander Mehta's case in any case is not attracted. This leaves me with a host of decisions taking the view that the material referred to as not having been taken into consideration in this case was relevant and its non-consideration shows non-application of mind vitiating the detention order. These decisions need to be individually discussed. It will suffice to note the same. They are :-

1. Ajay Kumar Goel Vs. Union of India and Others,
2. Vinod Lachwani v. Union of India, (1993) 1 Crimes 191 (Del)
3. Madan Gopal @ Madan Bhैया Vs. Union of India and Others,
4. Syed Nasir Ali v. Union of India, 1992 JCC 241
5. Paramlal Abdul Rehman v. Union of India, (1989) 2 DL 340
6. Suresh Vs. Union of India and Others,
7. Virsa Singh v. Union of India, (1988) 1 DL 190
8. Andrew Simon King v. Union of India, (1988) 3 Crimes 33 (Del)
9. Varinder Singh Batra v. Union of India, 1993 JCC 460
10. Gopal Chand Khandelwal v. Union of India, 1992 JCC 489

22. As a result of the above discussion the impugned detention order does not survive.

23. The present is a case which also suffers from non-observance of post detention order safeguards as contained in Article 22(5) of the Constitution of India. These safeguards as already noted are;

(1) Communication to the detenu of grounds of detention as soon as may be practicable;

(2) affording earliest opportunity to the detenu for making a representation against the order of detention which has been held to include disposal of the representation at the earliest.

24. On the first point it is pertinent to note that this is a case of detention under the COFEPOSA Act. Section 3(3) of the Act provides as under :-

"3. Power to make orders detaining certain persons -

(1) & (2) x x x

(3) For the purposes of clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily, not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention."

25. Thus the statutory provision itself prescribes a period of five days for service of the grounds of detention after the detention order's service. The detention order was served on the petitioner on 3-2-1994. The grounds of detention along with the relied upon documents were served on him on 8-2-1994. The point for consideration is as to whether this complies with the statutory provision or not. According to the petitioner it does not; while according to the respondents it does. For counting five days the petitioner wants me to start from 3-2-1994 which will mean that the material was served on the 6th day while according to respondents 3-2-1994 is to be excluded and period starts running on 4-2-1994. If we start from 4-2-1994 it is within time. The answer to this controversy lies in interpretation of Sec. 3(3) of the Act. The key words are "after" and "from" as used in the said provision.

26. According to the learned counsel for the petitioner the word "after" is used in the sub-section to qualify the word "detention", i.e., the grounds are to be served after the detention. For purposes of time allowed for service the words used are from the date of detention. If it is from the date of detention, the day of detention is to be counted and five days in this case will expire on 7-2-1994. On the other hand according to the learned counsel for the respondents where five days are mentioned the word used is "after detention" and where 15 days are mentioned in the later part it is from the date of detention. Thus he does not dispute that the word "from" will mean that time starts running on the day of detention.

27. The interpretation suggested by the learned counsel for the respondents besides being punctuation-wise incorrect, is unreasonable and illogical. For the same purpose, i.e. laying down a time frame why should different words be used "after" in one case and "from" in the other case ? When it is a question of prescribing a period, the qualifying word should be the same. Coming to the principles of punctuation, the interpretation suggested by the respondent's learned counsel means that the comma after the word detention has to be ignored. This will not be correct to do. It will do violence to the language of the provision. The correct way to read the statutory provision is that the comma after the word detention shows that up to that point the provision is dealing with

service of grounds of detention, i.e. the grounds of detention are to be served after the detention. For the remaining part of the section, i.e. ordinarily not later than five days and in exceptional circumstances not later than fifteen days the common words are - from the date of detention. Where period is prescribed, in both cases the starting point should be the same. That is why for both the periods the common qualifying words are from the date of detention. The interpretation suggested by the learned counsel for the petitioner is grammatically correct and is reasonable and logical also.

28. The interpretation of the provision suggested on behalf of the petitioner is also in consonance with the language and spirit of Art. 22(5) of Constitution of India. Article 22(5) of Constitution of India enshrines certain safeguards for a detenu. It uses the words as soon as may be for purposes of service of grounds of detention. Section 3(3) COFEPOSA Act puts as soon as may be in a time frame. Further the words "not later than" used in this sub-section have also to be given their meaning and content. The combined effect is that any interpretation of sub-section 3(3) should lean in favor of the detenu, i.e. it should curtail the period as far as possible.

29. The aforesaid discussion impels me to hold that the grounds of detention along with the relied upon material should be served on a detenu not later than five days from the date of detention in ordinary circumstances and in exceptional circumstances not later than 15 days from the date of detention and that too for reasons to be recorded in writing. In the present case exceptional circumstances are not pleaded. The service of grounds of detention was effected on the 6th day. This is violative of sub-section 3(3) COFEPOSA Act and, Therefore, vitiates the detention.

30. I am supported in my above view by two decisions of the Andhra Pradesh High Court in Nallapareddi Chandrasekhara Reddy Vs. The Government of Andhra Pradesh and Another, and C. Krishna Reddy and Another Vs. Commissioner of Police, Hyderabad and Others, . The learned counsel for the respondents relied on Jitender Tyagi Vs. Delhi Administration and another, in this connection. However, this decision is not of any assistance since the key word in the statute under consideration in this decision uses the word "after". In the case in hand, the keyword is "from". Rather this will show that when word "from" is used in the statute, the same meaning is not intended as when word after is used.

31. The second safeguard contained in article 22(5) of Constitution of India, i.e. earliest opportunity to make representation against the detention order and disposal of the representation without unreasonable delay, also stands violated in the facts of the present case. It is settled law that the representation of a detenu against the detention order should be disposed of by the competent authority expeditiously and without unreasonable delay. Whether delay in disposal of the representation is reasonable or unreasonable is a question of fact and has to be considered in each case on the basis of time spent and the Explanation of the state for the same. A comparatively longer period if properly and reasonably

explained, will not vitiate detention while even a comparatively shorter period of delay, if it remains unexplained will vitiate the detention.

32. The relevant ground of the writ petition is ground VI.

"VI. Because there has been long and inordinate delay in the consideration of detenu's representation dated 8-2-94 (Annexure-I) to the writ petition) vide Central Govt. memorandum dated 11-3-1994 (Annexure-R-1) vitiates his right under Article 22(5) of Constitution of India;"

In reply to the said ground it has been stated as under :-

"7. With regard to ground VI, it is submitted that the detenu's representation dated 7-2-94 addressed to the Detaining Authority and the same was received in COFEPOSA Unit on 9-2-94 through the Superintendent, Central Jail, Tihar vide his letter dated 8-2-94. paradise comments for the same were called for from the Sponsoring Authority on 9-2-94 and subsequently reminder dated 22-2-94 and 4-3-94. paradise comments were received in the COFEPOSA Unit on 7-3-94. The case file, was processed and submitted to Joint Secretary (COFEPOSA) on 8-3-94 who considered the representation and the file was submitted to Secretary (Revenue) on 8-3-94, who considered the representation and submitted the file to MOS (R&E) on 8-3-94 who considered the representation on 9-3-94 and submitted to FM. The FM considered the representation and rejected the same on 10-3-94. A memo was issued to the petitioner accordingly on the same day, i.e. 11-3-94. There is thus no delay in consideration of representation keeping in view the time required for just and proper consideration of representation, postal delay and other administrative work involved in proper consideration of the representation. It is also denied that right of the petitioner under Article 22(5) of Constitution of India has been vitiated."

33. Thus for the representation of the detenu dated 7-2-1994 comments of the sponsoring authority were invited on 9-2-1994. Nothing objectionable so far. The paradise comments were received in the COFEPOSA Unit on 7-3-1994. The representation was disposed of on 11-2-1994. The period spent in obtaining comments of the sponsoring authority is 26 days. The sponsoring authority is in the same city as the detaining authority. There is no Explanation at all for this period of 26 days. Explanation if at all, could come from the sponsoring authority. No affidavit of the sponsoring authority has been filed. This period has remained totally unexplained. The aforesaid reply of the respondents says categorically that two reminders were sent to the sponsoring authority on 20-2-1994 and 4-3-1994 to send the comments. This shows that the detaining authority admits that the sponsoring authority was delaying the comments. So far as the detenu is concerned the delay has remained unexplained. This delay is fatal. Thus the detention of the petitioner in this case is vitiated also on account of unreasonable and unexplained delay in disposal of the first representation itself made by the detenu. The petitioner has urged that there is delay in disposal of subsequent representation also. I need not go further.

34. The result is that not only the impugned detention order is liable to be struck down in this case but also the petitioner's detention is vitiated on account of failure on the part of the respondents to observe the safeguards provided to the detainee/petitioner under Article 22(5) of Constitution of India as also for violation of sub-section 3(3) of the COFEPOSA Act.

35. The writ petition succeeds. Rule is made absolute. The detention order No. F. No. 673/10/94-Cus. VIII, dated 2nd February 1994 passed by Shri Mahendra Prasad, Joint Secretary to the Govt. of India, Ministry of Finance, Deptt. of Revenue, is struck down. It is further ordered that the detention of the petitioner is vitiated on account of violation of Article 22(5) of Constitution of India and sub-section 3(3) of the COFEPOSA Act. The petitioner is ordered to be set at liberty forthwith unless required to be detained in connection with any other matter.

36. Petition allowed.