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(1999) 02 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Criminal W.P. No. 1088 of 1998

Rakesh Kumar alias Keshi — APPELLANT

Vs

The Joint Secretary to Govt. of India and Others — RESPONDENT

Date of Decision : 09-02-1999

Acts Referred:

- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3
- Customs Act, 1962 — Section 108
- Evidence Act, 1872 — Section 22
- Foreign Exchange Regulation Act, 1973 — Section 40

Citation : (1999) 66 ECC 611 : (1999) 2 RCR(Criminal) 581

Hon'ble Judges : K.K. Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.K. Srivastava, J.—Petitioner Rakesh Kumar @ Keshi prays for quashing the detention order dated 18.6.1998 (Annexure P1) and grounds of detention of the even date i.e. 18.6.1998 (Annexure P-1/A) passed by respondent No. I and further prays that he be released forthwith. The petitioner is challenging the order of his preventive detention which was passed in respect of the alleged activity taking place on 18.6.1997. The detention order was passed exactly a year after the alleged occurrence i.e. on 18.6.1998. The petitioner was served with the detention order and grounds of detention on 27.6.1998 and he was arrested and lodged in Central Jail, Jalandhar. The petitioner submitted a representation against his detention order which included 11 copies to the Superintendent, Central Jail, Jalandhar for onward submission to the Detaining Authority, Central Govt. and the Advisory Board.

The petitioner challenges the order of detention and grounds of detention on the grounds, inter alia, that the satisfaction of the Detaining Authority expressed in the detention order is not real and genuine but the same is mechanical and is a casual one. The purpose for which the petitioner was detained as a preventive measure, did not fall within the scope and ambit of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (for short to be referred as COFEPOSA Act). It has further been contended that there is no proximity between the alleged activity taking place on 18.6.1997 and the detention order dated 18.6.1998. The grievance of the petitioner is that the representation made by him after his detention was not promptly decided by the relevant authorities and undue delay occurred in the disposal of his representation. It has also been alleged that the representation made by the petitioner to the Union of India, the Central Govt. was not decided.

The brief facts leading to the filing of this petition may be noticed as under:

On 18.6.1997 Senior Superintendent of Police, Khanna in the State of Punjab sent an information to the Jalandhar Zonal Office of the Enforcement Directorate that the Punjab Police acting on a specific information searched three bus passengers travelling from Delhi in a Punjab Roadways Bus No. PB-12B. 9018 which yielded the recovery of the following cash and items:

A sum of Rs. 11 lakhs and documents were seized from one Shri Bachan Pal Singh of Delhi. A cash amount of Rs. 1.9 lakhs was recovered from Shri Madan Lal of Adampur and a cash amount of Rs. 2 lakhs was recovered from Shri Piare Lal of VPO Tanda.

The Senior Superintendent of Police informed that the money and documents, referred to above, pertain to Hawala transactions. The further enquiries made by a team of Officers of the Enforcement Directorate deputed to Khanna disclosed that while Shri Bachan Pal Singh was going to local parties in Punjab, on behalf of his brother who resided abroad, the other two persons Madan Lal and Piare Lal were relatives and working for the present petitioner Rakesh Kumar. It was also revealed that Rakesh Kumar petitioner was resident of Adampur, having a fruit shop near the bus stand. The aforesaid persons used to carry packets of foreign currencies to Delhi for sale by Rakesh Kumar to one Shri Muneesh Suneja @ Goldy, resident of 14A/76, WEA, Karol Bagh, New Delhi who was having a shop under the name of M/s Jagdamba Electronics at No. 4 Building No. 2288, Gurdwara Road, Karol Bagh, New Delhi. On the basis of the information received from the aforesaid persons from whom the documents and cash were seized, searches were conducted by the Officers of the Enforcement Department assisted by the Punjab Police on 19.6.1997 at the residential and business premises of Goldy in Delhi and also at the residential premises of the petitioner at Adampur. The searches resulted in seizure of highly incriminating documents. Apart from these documents, foreign currency, Indian currency and foreign marked gold were also recovered and seized from the residential premises of Goldy aforesaid. The grounds of detention thereafter furnish the details of the seizure made by the Officers of Enforcement Directorate. The statement of Goldy was recorded on 19-6-1997 wherein he is reported to have disclosed that he had been purchasing foreign currency from the petitioner and that foreign currency was being sent to Goldy by the petitioner from Adampur through his Carriers. It is alleged that the

Detaining Authority felt satisfied about the involvement of the petitioner in the aforesaid activity which contravened the provisions of the COFEPOSA Act and the Detaining Authority was satisfied that it was necessary to order the preventive detention of petitioner Rakesh Kumar so that he may not indulge in future in any act and conduct prejudicial of the augmentation of foreign exchange. Resultantly, the following detention order was passed by the Joint Secretary to Government of India by Shri Somnath Pal:

F. No. 673/39/98-CUS.VIII

Government of India Ministry of Finance Department of Revenue. 6th Floor ''B'' Wing, Janpath Bhawan, Janpath, New Delhi

Dated 18th June, 1998

ORDER

WHEREAS, I, Somnath Pal, Joint Secretary to Government of India, specially empowered u/s 3(1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activity Act, 1974 (as amended), am satisfied with respect to the person known as Shri Rakesh Kumar @ Keshi, Address : 920 Ward No. 5, Adam Pur, District: Jalandhar, Punjab, with that a view to preventing him in future from acting in any manner prejudicial to the augmentation of foreign exchange, it is necessary to make the following order-Now, therefore, in exercise of the powers conferred by Section 3(1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 (as amended). I direct that the said Shri Rakesh Kumar @ Keshi be detained and kept in custody in the Central Prison, Jalandhar.

Sd/- (Somnath Pal) Joint Secretary to the Government of India.

Shri Rakesh Kumar @ Keshi S/o Shri Harbans Lal. 920, Ward No. 5. Adam Pur. District: Jalandhar. Punjab.

Notice was issued to the respondent i.e. to the Joint Secretary to Government of India. Ministry of Finance, Department of Revenue (COFEPOSA UNIT), Central Government through the Secretary to Government of India. Ministry of Finance, Department of Revenue and the Superintendent, Central Jail. Jalandhar, (Punjab).

Respondents No. 1 and 2 filed joint written statement which is in the form of affidavit of Shri Somnath Pal, Joint Secretary (COFEPOSA) Ministry of Finance, Department of Revenue, Government of India, New Delhi, while the Superintendent, Central Jail, Jalandhar- Respondent No. 3 filed his separate reply.

Respondent No. 3 gave reply to the allegations made in paras 10 and 11 of the petition related to the sending of representations made by the petitioner and contended that the representation was sent to the Joint Secretary to the Government of India vide his office letter No. 4990 dated 12-8-1998 for consideration and the same was rejected and communicated vide office letter No. F. No. 686/346/98-Cus. VIII dated 31-8-1998. The petitioner-detenu was accordingly informed about the rejection of his representation. Apart from this, respondent No. 3 mentioned in para 12 of his reply that the Under Secretary to Government of India vide his office letter No. F. No. 673/39/98-Cus. VIII dated 22-9-1998 intimated to his office that the detention for a period of one year was confirmed by the Central Government with effect from the date of his detention i.e. from 27-6-1998. Reply to the remaining paragraphs of the petition was denied for want of knowledge and that it related to Respondents No. 1 and 2.

Respondents No. 1 and 2 in their reply narrated the events and the enquiries made regarding the involvement in the activity. Regarding the delay in the detention order being passed on 18-6-1998 it was contended that there was non-cooperative attitude of the petitioner and his Carriers who were his relatives and under his influence/control and this led to prolonged investigation in this case. However, it was alleged, there has not been any undue delay in making enquiries as alleged in the writ petition. The details regarding the enquiries made before the passing of the detention order are mentioned in para 5 of the reply which may be re-produced for the sake of proper appreciation as under:

As regards averment made in para 5 of the petition, it is submitted that the allegation of delay in passing the detention order is wrong and baseless. It is correct that the detention order has been passed on 18-6-1998 after a period of 12 months from the date of incident but the delay is totally justified. In view of the fact that the petitioners and his associates never co-operated in the investigation and have continuously evaded summons issued by the Enforcement Directorate. Moreover, the petitioner had been moving the Courts from time to time and kept the Department engaged in the frivolous Court proceedings; yet the Department moved ahead with their investigations. This is evident from the brief facts narrated in the beginning of this Affidavit as well as from the grounds of detention supplied to the petitioner while serving the detention order. A perusal of the list of the relied upon documents supplied to the petitioner along with the documents relied upon would reveal that the Detaining Authority has considered all the development and the material generated up to 21.5.1998 while passing the detention order. Thus, a clear nexus between the date of incident and the date of passing the detention order has been maintained in this case. The Detaining Authority has also brought out clearly the reasons for his satisfaction in this regard in the Grounds of detention itself.

Regarding the delay in disposal of the representation made by the petitioner, it was averred in para 10 as under:

As regards averments made in paras 10 & 11 of the petition, it is submitted that one representation of the detenu dated 10.8.1998 addressed to Joint Secretary (COFEPOSA) was received in the COFEPOSA Unit of the Ministry on 18.8.1998 through Superintendent, Central Jail, Jalandhar, Immediately the comments of the Sponsoring Authority were called vide Ministry''s letter dated 19.8.1998. The Sponsoring Authority furnished their comments vide their letter dated 28.8.1998 received in the Ministry on the same day. The representation of the detenu along with the comments were submitted by the Under Secretary to Joint Secretary (COFEPOSA) on 31.8.1998 (in between 29th and 30th were closed holidays being Saturday and Sunday) who in turn rejected the same on the same date and a memo intimating the detenu about rejection of his representation was also issued on 31-8-1998. Simultaneously, this representation of the detenu was also considered independently by the Central Government and was rejected on 3-9-1998. There is, therefore, no unreasonable delay in deciding the representation of the petitioner, as alleged.

I have heard learned Counsel for the petitioner and learned standing Counsel for respondents No. 1 and 2 and also learned DAG Punjab for Respondent No. 3. I have also carefully perused the records of the case.

Mr. Sandhu, learned Counsel for the petitioner mainly raised three contentions for seeking the quashing of the detention order and the grounds of detention. These grounds are as under:

(i) The detention order was passed after one year and there is no proximity between the alleged activity and the detention order and thus, the detention order is rendered illegal.

(ii) The representation dated 10.8.1998, which was sent on 12.8.1998, was rejected on 31.8.1998 by the Detaining Authority. There was no explanation of the Detaining Authority as to why the comments were called for on the representation of the petitioner and as such, by calling for the comments, undue delay occurred in the disposal of the representation which has seriously prejudiced the petitioner.

(iii) The representation made by the petitioner to the Central Government was not dealt with and, in any case, the petitioner was not communicated the fate of the representation made to the Central Government.

So far as ground No. (i) is concerned, it may be mentioned that the alleged activity. Which is the occurrence, took place on 18.6.1997. The Detaining Authority took full one year and passed the detention order on 18.6.1998. The detention order was served on the petitioner on 27.6.1998. Respondents No. 1 and 2 in para 5 admitted about the fact that the detention order had been passed after a period of 12 months from the date of incident but justified the delay. A careful perusal of para 5 of the reply will go to show that respondents No. 1 and 2 put the blame squarely on the petitioner and alleged that it was due to the non-cooperative attitude of the petitioner and his associates that investigation was prolonged. It was mentioned that the petitioner continuously evaded the summons issued by the enforcement Directorate. The petitioner had been moving the Courts from time to time and kept the Department engaged in the frivolous Court proceedings. Apart from it, it was mentioned that a perusal of the list of the relied upon documents supplied to the petitioner along with the documents relied upon, would reveal that the Detaining Authority considered all the developments and the material generated up to 21.5.1998 while passing the detention order. The stand taken by respondents No. 1 and 2 is that there is a clear nexus between the date of incident and the passing of the detention order. Learned Counsel for the petitioner has challenged the explanation furnished by respondents No. l and 2 and contended that they have not been able to explain each day''s delay in the passing of the detention order and particularly, after the material had been collected and the petitioner had appeared in the Court of competent jurisdiction on 8.8.1997. It will appear from the perusal permission to interrogate these persons injudicial custody too was rejected by the said Court of JMIC, Ludhiana on 16.7.1997 itself. In the meantime, the application pending before Court of Addl. Sessions Judge, Ludhiana, moved by these persons for grant of bail to them (which was also contested by the Directorate of Enforcement) was decided by the said Court on 17.7.1997 granting bail to these persons.

After release of petitioner''s carriers on bail, a number of summons were issued to them but they did not appear and adopted a totally non-cooperative attitude with the intention to delay the investigations. Despite all this, the Department carried out the investigations expeditiously. From the evidence gathered and the investigations made, it is clear that the petitioner had links with the carriers. The documents recovered show that foreign currency was being sent (to other places) through Madan Lal & Mulkh Raj (which is the other alias of Piare Lal). The petitioner''s belated plea of disowning these documents as implanted ones is deliberate and motivated one. It may be added that during the course of search of petitioner''s premises, his father was present all throughout. His father in his statement given u/s 40 of the FERA, 1973 on 18.2.1998, reaffirmed the fact of recovery and seizure of these documents and when asked to explain these documents, he stated that he could not explain the same as they have been seized from the room of the petitioner. It will thus be seen that the non-cooperative attitude of the petitioner and his carriers (who are also his relatives and are under his influence/control) has led to prolonged investigations in this case. However, there has not been any undue delay in making enquiries as alleged in W.P.

The aforesaid reply will go to show that the petitioner had appeared in the Court on 8.8.1997 and after recording his presence in response to the summons he refused to make further statement. It may be mentioned that the Officers of the Enforcement Directorate were in a position to interrogate the petitioner when he appeared in the Court on 8.8.1997 but the interrogation did not take place on the alleged refusal of the petitioner to make the statement. There is nothing on the record to show that any such effort was made by the Officers of the Enforcement Directorate and the petitioner had refused to make the statement. No such application was moved before the Court from which it may be inferred that the Officers of the Enforcement Directorate wanted to interrogate the petitioner but the petitioner did not co-operate and make a statement. Event if it be assumed for a moment that the petitioner refused to make a statement, he was still in custody of the Court because his application for bail was pending on

19.8.1997 when the case for grant of regular bail came up for hearing before the Additional Sessions Judge, Ludhiana. The petitioner''s Counsel is alleged to have moved an application for initiation of contempt proceedings against the officers of the Enforcement Directorate on false allegations including use of force against him by the officers on 8.8.1997. The said application was contested by the Department of Enforcement and was disposed of by the Court on 4.11.1997 when the application for initiation of contempt proceedings was dismissed. It is alleged that the petitioner was again summoned on 7.11.1997 and 20.11.1997 but the summons could not be served on him and further summons issued for 28.11.1997 also could not be served on him as he was not available. It is alleged that the petitioner was again summoned of the following averments made by respondents No. 1 and 2 in their written statement at internal pages 5 to 10 that the delay occurred as the petitioner was not available for interrogation:

The explanation of the petitioner on the documents seized from his place could not be taken on the day of the search i.e. on 19.6.1997 as he was not available nor did he appear on 20.6.1997, in response to the summons issued to him, which were received by his father, on his behalf. Later, it was learnt that the petitioner had obtained interim anticipatory bail from the Court of Hon''ble Addl. Sessions Judge at Ludhiana and that hearing for grant of regular bail to him was in progress in the Court of the Addl. Sessions Judge, Ludhiana. The Directorate of Enforcement opposed this matter in the said Court on 1.8.1997 and in the meantime two summons dated 3.7.97 and 24.7.1997 were issued to the petitioner and were served on him by affixure. The petitioner did not appear on any of the dates. In reply to the next summons dated 5.8.1997, which was also served by affixure, the petitioner appeared on 8.8.1997 and after recording his presence in response to summons, he refused to make further statement. When the case for grant of regular bail came up for hearing before the Addl. Sessions Judge, Ludhiana on 19.8.1997, the petitioner''s Counsel moved another application for initiation of contempt proceedings against the officers of Enforcement Directorate on false allegations including use of force etc. against him by the officers on 8.8.1997. This application was contested by the Directorate of Enforcement. The matter was finally disposed of by the said Court on 4.11.1997 when the petitioner''s application for initiation of contempt proceedings was dismissed by the said Court. Petitioner was again summoned on 7.11.1997 and 20.11.1997 but the same could not be served on him due to his non-availability. Further summons dated 28.11.1997 also could not be served on him by the officers of Enforcement Directorate/Police as he was not available. The attitude of the petitioner remained non-cooperative all throughout. Thereafter, the petitioner was again summoned vide summons dated 9.2.1998 which were served on him on 10.2.1998 on which date, he appeared and made a statement u/s 40 of the FERA, 1973. Here too, he remained non-cooperative and gave evasive replies to the questions put to him stating inter alia, that the documents seized from his premises were neither written by him nor by his father and that he never purchased or sold any foreign exchange; so much so, on being shown the statements of Sh. Goldy, he even refused to put his signatures on the relevant pages in token of having seen the same. The petitioner was arrested by the officers of the Enforcement Directorate on 10.2.1998 and was later remanded to judicial custody. He was finally released on conditional bail vide CJM, Jalandhar''s orders dated 3.3.1998. His further statement was recorded on 18.3.1998 wherein he, inter alia, gave details of his bank a/cs.

The statement of the petitioner''s carriers also could not be recorded. They were arrested by the Police of P.S. Payal on 21.6.1997 and were later remanded to judicial custody till 5.7.1997 and it was further extended till 19.7.1997. On 2.7.1997, the Directorate of Enforcement had moved an application in the Court concerned i.e. Court of JMIC, Ludhiana, for getting the custody of these two carriers of the petitioner & for handing over the property seized by the Police in this case. The said Court finally decided this application, rejecting the request of the Deptt. (Directorate of Enforcement) for giving custody of these persons. Another application moved by the Directorate on 16.7.1997 for vide summons dated 9.2.1998 which were served on him on 10.2.1998 when he appeared and made a statement u/s 40 of the FERA, 1973. Here it may be mentioned that the Enforcement Directorate did not make any further attempt to record the statement of the petitioner when he was in custody of the Court and waited for the application for bail to be disposed of and further instead of interrogating the petitioner they remained busy in contesting the petition for initiation of contempt proceedings moved by the petitioner and ultimately it was on 10.2.1998 that the statement of the petitioner was recorded. However, the case of respondents No. 1 and 2 is that the petitioner had given evasive replies to the questions put to him and refused to put his signatures on the relevant papers. The petitioner was arrested by the Officers of the Enforcement Directorate on 10.2.1998 and was remanded to judicial custody and was finally released on conditional bail vide order of the Chief Judicial Magistrate, Jalandhar passed on 3.3.1998. Further statement of the petitioner was recorded on 18.3.1998. Even according to the reply filed by respondents No. 1 and 2, the statement of the petitioner had been recorded on 10.2.1998 and then on 18.3.1998. Even thereafter the detention order was passed on 18.6.1998. There is no plausible and sufficient explanation for the delay that occurred between 18.3.1998 and 18.6.1998 when the detention order was eventually passed against the petitioner. However, it is relevant to note that the Officers of the Enforcement Directorate were not vigilant enough in recording the statement of the petitioner who was available to them on 8.8.1997 and they allowed the same to be delayed and were engaged in contesting other proceedings in the Court regarding the initiation of the contempt proceedings. In this view of the matter, it cannot be reasonably inferred that respondents No. 1 and 2 were vigilant in recording the statement of the petitioner and that the petitioner alone is to be squarely blamed for the delay in the passing of the detention order. It is well settled that the detention order in such cases should be passed with reasonable expediency from the date of the alleged activity so as to establish a close nexus between the alleged activity and the detention order and that the same serves the purpose and objective which is sought to be achieved by the preventive detention of the petitioner. If the Authorities indulge in whiling away time for no valid and proper reasons, the preventive detention would, in fact, be a punitive detention rather than preventive detention and would render the preventive detention illegal and liable to be quashed. The Hon''ble Supreme Court in the case of Lakshman Khatik Vs. The State of West Bengal, held that in the absence of any explanation regarding the delay, the order of detention, passed with a view to prevent disruption of supplies of food grains on the grounds based on incidents of removal of rice which took place about seven months earlier, was invalid. It was held that:

? Indeed mere delay in passing a detention order is not conclusive, but we have to see the type of grounds given and consider whether such grounds could really weigh with an officer some 7 months later in coming to the conclusion that it was necessary to detain the petitioner to prevent him from acting in a manner prejudicial to the maintenance of essential supplies of food grains. It is not explained why there was such a long delay in passing the order. The District Magistrate appears almost to have passed an order of conviction and sentence for offences committed about 7 months earlier. The authorities concerned must have due regard to the object with which the order is passed, and if the object was to prevent disruption of supplies of food grains one should think that prompt action in such matters should be taken as soon as incidents like those which are referred to in the grounds have taken place....

In Issac Babu v. Union of India and Anr. 1990 SCC 564 it was held that it was not incumbent on the authorities to wait till the issue of the show cause notice. The need to issue a show cause notice within six months has nothing to do with the processing of the detention papers. Therefore, the explanation is far from satisfactory. The facts involved in the case of Issac Babu (supra) are mentioned in para 2 from which it will appear that the delay of almost four months was sought to be explained by the Authorities and the same was not found to be satisfactory. Para 2 reads as under:

Heard Counsel on both sides. From the facts of the case, it is evident that the house of the main culprit Sirajudeen was searched on November 30,1986 and his statement u/s 108 of the Customs Act, 1962 was recorded on the same day. In the course of his statement, he disclosed the name of the present detenu as one of the persons involved in the act of smuggling. Thereafter, the matter was under investigation. It appears that the detenu had applied for bail and he was enlarged on bail. The detention order was however passed as late as on October 7, 1987 and was executed on May 23, 1988. One of the contentions raised by the detenu is that the Detaining Authority has not explained the reasons why the detention order was delayed for almost 11 months, after the involvement of the petitioner was revealed to the concerned authorities. In the counter filed in this behalf, the Detaining Authority has contended that even though the seizure was effected on November 30, 1986 the investigation ended in April 1987 i.e. five months after the seizure, even thereafter the proposal for detention was not moved till August 26,1987. This delay of almost four months is sought to be explained by the following statement founded in paragraph 27 of the counter:

After investigation the case records were processed for issue of show cause notice as it is mandatory under the Customs Act, 1962 to issue show cause notice to the persons involved in the case within 6 months from the date of detection of the case. In this case, show cause notice was issued on May 18, 1987 to the detenu and others. After the issue of show cause notice the voluminous records were processed for initiating COFEPOSA action.

We do not think this is a satisfactory explanation. It was not incumbent on the authorities to wait till the issue of the show cause notice. The need to issue a show cause notice within 6 months has nothing to do with the processing of the detention papers. In our view, therefore, this explanation is far from satisfactory.

In Pradeep Nikanth Paturkar Vs. S. Ramamurthi and others, the detention was ordered on the basis of some criminal cases registered against the detenu and also on the basis of statements of witnesses. The detention order was passed after five months and eight days from registration of last case and more than four months from submission of proposal. Statement of the witnesses referred to in the grounds of detention was obtained after the detenu was released on bail in all cases. It was held that the detention order was liable to be set aside on the ground of delay. Learned Counsel for the appellant in the case of Pradeep Nilkanth Paturkar (supra) had raised the contention that there was undue and unreasonable a delay in passing the order by the Detaining Authority and that the delay was unexplained and the same vitiated the impugned order. Dealing with the contention of the petitioner, the Hon''ble Supreme Court held in para 13 as under:

Coming to the case on hand, the detention order was passed after 5 months and 8 days from the date of the registration of the last case and more than 4 months from submission of the proposal. What disturbs our mind is that the statements from witnesses A to E were obtained only after the detenu became successful in getting bail in all the prohibition cases registered against him, that too in the later part of March, 1991. These statements are very much referred to in the grounds of detention and relied upon the detaining authority along with the registration of the cases under the Act.

In view of the law as settled by the Hon''ble Supreme Court it will be abundantly clear that the delay by itself is not fatal but the delay had to be satisfactorily explained by the concerned authorities and they have to furnish a plausible and satisfactory explanation for the delay. In the instant case, the events that have been narrated in the reply would go to show that the concerned authorities of the Enforcement Directorate and the Detaining Authority did not take up the matter in the right earnest and with expediency. They allowed the matter to prolong and pass the detention order after three months of the date when even according to them the statement of the petitioner had been recorded. In this view of the matter, the detention order was passed with undue delay and the delay has not been properly and satisfactorily explained. The delay in passing the detention order has the effect of vitiating the detention order as the same has no reasonable nexus with the objective sought to be achieved.

So far as grounds No. 2 and 3 regarding the representation made by the petitioner are concerned, it will appear from the perusal of the reply that the representation dated 10-8-1998 was forwarded by the Superintendent, Central Jail on 12-8-1998. It was received in the COFEPOSA Unit of respondent No. 1 on 18-8-1998. Comments were called on 19.8.1998 which were received on 28-8-1998 and the representation was rejected on 31.8.1998. Learned Counsel for the petitioner has contended that the comments on the representation are not required to be called in every case and there must be a reasonable explanation necessitating to call the comments of Sponsoring Authority.

In para 10 of the reply filed by respondents No. l and 2 which had already been quoted above, it was, inter alia, mentioned that the representation of the detenu dated 10-8-1998 was received in the COFEPOSA Unit of the Ministry on 18-8-1998 through the Superintendent, Central Jail, Jalandhar. Immediately, the comments of the Sponsoring Authority were called vide letter dated 19-8-1998. The Sponsoring Authority furnished the comments vide letter dated 28-8-1998 received in the Ministry on the same day. The representation along with the comments was submitted by the Under Secretary to Joint Secretary (COFEPOSA) on 31.8.1998 as 29th and 30th August were closed holidays being Saturday and Sunday. The representation was rejected on 31-8-1998 a memo intimating the detenu about the rejection of the representation was issued the same day. Simultaneously the representation of the detenu was considered independently by the Central Government and was rejected on 3-9-1998. It will appear that the representation dated 10.8.1998 was forwarded by the Superintendent. Central Jail, Jalandhar on 12.8.1998. The representation had been received there on 18.8.1998 and was processed and comments of the Sponsoring Authority were called on 19.8.1998. The comments of the Sponsoring Authority were received on 28.8.1998. The Sponsoring Authority, thus, took about nine days to send the comments. There is no explanation of the Sponsoring Authority as to why such a long period of nine days was taken in sending the comments to the Ministry. The Ministry, however, dealt with the representation after the receipt of the comments promptly and passed the order rejected the representation on 31.8.1998.

Though the representation was dealt with in the Ministry without any delay but the Sponsoring Authority took its own time in sending the comments and the time taken by the Sponsoring Authority was of nine days which is obviously a long time in sending the comments and particularly when no explanation was furnished by the Authorities in sending the comments. In Aslam Ahmed Zahire

Ahmed Shaik Vs. Union of India and Others, the representation of the detenu was handed over to the Superintendent of Central Prisons on 16.6.1988 and the same left unattended for a period of seven days and he forwarded the same to the Government on 22-6-1988. The Superintendent, Central Prisons had not given any satisfactory, cogent and convincing explanation as to why he had kept the representation with himself except saying that during the period of seven days there was a Sunday. The delay of seven days was held to be sufficient to render the detention illegal and unconstitutional. The Hon''ble Supreme Court held in paras as 7 and 9 under:

It is neither possible nor advisable to lay down any rigid period of time uniformly applicable to all cases within which period the representation of detenu has to be disposed of with reasonable expedition but it must necessarily depend on the facts and circumstances of each case. The expressions ''reasonable expedition'' is explained in Sabir Ahmed Vs. Union of India (UOI), as follows:

What is ''reasonable expedition'' is a question depending on the circumstances of the particular case. No hard and fast rule as to the measure of reasonable time can be laid down. But it certainly does not cover the delay due to negligence, callous inaction, avoidable redtapsim and unduly protracted procrastination.

Para-9

Thus, when it was emphasised and re-emphasised by a series of decisions of this Court that a representation should be considered with reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay, caused by slackness on the part of any authority, will ultimately result in the delay of the disposal of the representation which in turn may invalidate the order of detention as having infringed the mandate of Article 22(5) of the Constitution.

In the instant case, the delay of nine days occurred in sending the comments by the Sponsoring Authority and there is absolutely no explanation for this delay. This unexplained delay has thus, rendered detention of the petitioner illegal and unconstitutional and the detention order on this score is also liable to be set aside.

So far as ground No. 3 is concerned, it will appear from the reply of respondents No. 1 and 2 that the representation made to the Central Government was simultaneously dealt with and rejected. There is thus, no force in ground No. 3.

However, in view of the foregoing discussion on grounds No. 1 and 2, the detention order and grounds of detention are liable to be quashed being illegal and unconstitutional. The petition is allowed and the impugned order of detention, Annexure P1, along with the grounds of detention are set aside. The petitioner accused be set free unless wanted in connection with some other case.

