(1996) 06 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 969 of 1995

Sarabjit Singh APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 03-06-1996

Acts Referred:

Citation : (1996) 3 RCR(Criminal) 291

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

Advocate : Vikas Cuccria, D.D. Sharma, R.S. Randhawa, Advocates for appearing Parties

Judgement

K.K. Srivastava, J.

1. By means of this writ petition filed under Article 226 of the Constitution of India, the petitioner, a detenu, seeks quashing of the order of detention F.No. 673/67/95/OUS VIII dated June 22, 1995, Annexure P1, passed by the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue (respondent No. 2) under Section 3 subsection (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (as amended).

2. The petitioner was detained with a view to prevent him in future from engaging in transporting smuggled goods. The facts which emerge from the grounds of detention, Annexure P2, involving the petitioner in smuggling activity may be narrated briefly as under.

3. The incident is said to have taken place on June 11, 1995, at 11.30 A.M. at New Jawahar Nagar Market, Jullundur. The officers of the Directorate of Revenue Intelligence, Delhi Zonal Unit, New Delhi, and of the Directorate of Revenue Intelligence, Amritsar, had received specific information regarding an illegal transaction of sale proceeds of smuggled gold to take place near the said place. The officers of the Directorate of Revenue Intelligence, Delhi Zonal Unit as well as Amritsar, kept surveillance of the said place. At about 11.30 A.M. on June 11,

1995, these officers saw two persons, on two separate scooters, i.e. L.M.L. VespaPB08J8261 and Bajaj Chetak PB08J9973, reaching near a white Contessa car bearing registration No. PB104787, which was already parked near Guru Nanak Mission Chowk, at New Jawahar Nagar Market. The officers noticed some transactions taking place between the two scooterists and the occupant of the car. The officers soon swung into action and surrounded the vehicles and they succeeded in overpowering the occupant of the car as well as the two riders of the scooters and they were apprehended. The petitioner Sarabjit Singh, the occupant of the white Contessa car on enquiry disclosed his identity to the officers. The other occupant of the car sitting on the front seat gave out his name as Wirsa Singh son of Massa Singh, resident of House No. 1013/1, Sector 39B, Chandigarh. The rider of the L.M.L. Vespa Scooter, disclosed his name as Ranjit Singh son of Dewan Singh, resident of 38, Civil Lines, Jalandhar. The other person having Bajaj Chetak Scooter disclosed his name as Naresh Kumar son of Ram Lubhaya, resident of house No. W.E. 126, Chotte Ali Mohalla, Bazar Sheikhan, Jalandhar City.

4. The officers of the Directorate of Revenue Intelligence called two independent witnesses and in their presence, the aforesaid persons were interrogated. A search was also made of the Contessa car and the two scooterists. The search yielded recovery of a sum of Rs. 60,14,002.40 comprising the equivalent of Rs. 59,03,002.40 in foreign currency and a sum of Rs. 1,11,000.00 in Indian currency. The four persons mentioned above including the petitioner admitted about their participation in the process of handing over/taking over the sale proceeds of smuggled gold in foreign currency and they further admitted that the recovered foreign currency and the Indian currency was the sum received out of the sale of smuggled gold biscuits.

5. These persons were thoroughly interrogated and their statements revealed that Wirsa Singh was engaged in smuggling activities for the past eight years. He had an associate, named Khalid, in Pakistan (Lahore). Earlier, Wirsa Singh was apprehended twice by the customs authorities and the officers of the Directorate of Revenue Intelligence. On the first occasion 520 gold biscuits were recovered from him by the officers of the Directorate of Revenue Intelligence. The second time, he was arrested by the customs officers in 1993 in connection with the seizure of 85 silver slabs and at that time, he gave his name as Ranjit Singh. The petitioner Sarabjit Singh is Wirsa Singh''s maternal aunt''s son and is related to him. The petitioner was associated in smuggling activities by Wirsa Singh when the petitioner approached him for some job. The association of the petitioner was for the purpose of transporting smuggled goods and in collecting the sale proceeds of the same. Ranjit Singh aforesaid is also an associate of Wirsa Singh. Naresh Kumar was working as a commission agent for selling silver ornaments at Lal Bazar, Jullundur. Naresh Kumar also contacted Ranjit Singh and asked his help for some job. This meeting was about six months prior to the present incident of June 11, 1995. Ranjit singh offered Rs. 100/ per gold biscuit to be sold in exchange of foreign exchange to which Naresh Kumar agreed. This Wirsa

Singh, Sarabjit Singh, petitioner, and Naresh Kumar, they all combined in smuggling gold biscuits from across the border, i.e., from Pakistan and for selling the same in exchange for foreign currency and after charging thereon commission at different rates, the remaining sale proceeds used to be handed over to the man of Khalid aforesaid near the border. Their statements showed that on a number of occasions, the smuggling activities of gold biscuits took place successfully and without detection. About 15/16 days prior to June 11, 1995, Wirsa Singh contacted Khalid at Lahore on telephone and 50 gold biscuits were arranged to be handed over to Wirsa Singh at Pandtan Da Dhaba near octroi post. The petitioner Sarbjit Singh was associated in transporting those 50 gold biscuits which were delivered to Ranjit Singh having the alias name of Jeeta for disposal. In turn Ranjit Singh handed over these biscuits to Naresh Kumar who sold them through one Bunti Dalal, and after deduction of the commission, the sale proceeds were handed over by Naresh Kumar to Ranjit Singh at his residence. Ranjit Singh also deducted his own commission, i.e. Rs. 350/ per gold biscuit, handed over the balance amount to the man of Khalid, named, Bira.

6. The statements further reveal that about 5 to 6 days prior to June 11, 1995, another consignment of smuggled gold biscuits of foreign markings numbering 110, were handed over by the said Bira to Wirsa Singh for disposal and as mentioned earlier, these gold biscuits were illegally transported by the petitioner Sarbjit Singh, and at Jullundur the said consignment of gold biscuits was handed over to Ranjit Singh who, in turn, gave them to Naresh Kumar, for disposal. Naresh Kumar utilised the services of Bunti Dalal and the sale proceeds in foreign exchange were realised. Ranjit Singh received a telephonic message from Wirsa Singh on June 11, 1995, at 7.00 A.M. that he was leaving for Delhi to take the sale proceeds which should be kept ready for being handed over. The meeting was fixed at 11.30 A.M. at New Jawahar Nagar Market, Jullundur. Ranjit Singh contacted Naresh Kumar who reached the residence of Ranjit Singh on his Bajaj Chetak Scooter and handed over the sale proceeds in foreign currency kept in two polythene bags. The foreign currency was assorted. One bag was kept on the scooter of Naresh Kumar while another bag was kept in the scooter of Ranjit Singh and they both left for usual place of meeting in New Jawahar Nagar Market, Jullundur. Wirsa Singh accompanied by the petitioner Sarbjit Singh reached the destination about 10 minutes earlier and waited for the arrival of Ranjit Singh there. As mentioned earlier, Ranjit Singh and Naresh Kumar reached there on their scooters and as soon as the polythene bag was handed over by Naresh Kumar to Wirsa Singh after informing him that it contained foreign currency the bag was placed on the front seat of the car when the officers of the Directorate of Revenue Intelligence pounced upon them and succeeded in capturing them. The petitioner was arrested the same day half an hour earlier i.e. at 13.00 hours, Ranjit Singh alias Jita had been arrested on June 11, 1995, at 11.15 P.M. and half an hour later the same day, Wirsa Singh was arrested at 11.45 P.M. All the four accused were produced before the Chief Judicial Magistrate, Jullundur, on June 12, 1995, and they were remanded to the judicial

custody. The petitioner and Wirsa Singh applied for bail by moving a joint application before the Chief Judicial Magistrate, Jullundur, but their petition for bail was rejected. The respondents apprehended that the petitioner might apply for bail and might be released on bail in future. After the case for preventive detection was sponsored, the matter was duly considered by the Joint Secretary to Government of India, Ministry of Finance, Department of Revenue and the impugned order dated June 22, 1995, for preventive detention of the petitioner was passed. The said order was served on the petitioner who was detained in custody in the Central Jail, Jullundur.

7. Respondent No. 2, Joint Secretary to Government of India, Ministry of Finance, Department of Revenue, New Delhi, filed written statement. The respondent categorically denied the averments of the petitioner that the impugned order of detention along with other material was served upon him on June 26, 1995. It was mentioned that it is a matter of record that the detention order dated June 22, 1995, and the grounds of detention alongwith the other relied upon documents were served on the petitioner on June 24, 1995 in the Central Jail, Jullundur. The respondent categorically denied the averments made in the petition that the order of detention was passed in a hurry and without proper application of mind. It was also denied that the impugned order of detention was passed with mala fide intention and to falsely rope in the petitioner. The allegations of adopting third degree methods against the petitioner were also denied. It was mentioned in the written statement that the petitioner was put under arrest on June 12, 1995, and not on June 11, 1995. It further mentioned that in his voluntary statement dated June 11, 1995 and June 12, 1995, tendered under Section 108 of the Customs Act, 1962, the petitioner admitted the recovery and concern with the recovered foreign and Indian currency. Subsequently, he was placed under arrest, under Section 102 of the Customs Act, 1962. On preliminary enquiry conducted at the point of intersection itself, the petitioner made admission of his participation in the incident in the presence of two independent witnesses. In the aforesaid voluntary statement, the petitioner admitted the said recovery and his involvement and concern in the transportation of the smuggled gold biscuits. The time of arrest of the petitioner on June 12, 1995, has been mentioned as 13.30 hours. Averment to the contrary made by the petitioner that he was arrested on 23.45 hours on June 11, 1995, was wholly incorrect. The allegations of the petitioner that the recovery was planted on the whims and dictates of the officials of the Directorate of Revenue Intelligence was described as totally baseless and denied. The claim of the petitioner that this was his first and the only instance was specifically controverted and it was averred in paragraph 4 of the written statement that, in fact, the petitioner''s previous role in the transportation of 50 foreign marked gold biscuits alongwith Wirsa Singh by concealing the same in the Contessa car is admitted by the petitioner in the statement recorded, as averred. It was specifically mentioned that the petitioner moved the application for bail in the Court of the Chief Judicial Magistrate, Jullundur, on June 12, 1995, itself when he

was put under arrest and this clearly showed his intention that the petitioner was eager and serious in his efforts to get bail. The averments of the petitioner regarding the nonsupply of the documents relied on in support of the impugned order of detention and about the supply of documents asked for by the petitioner was categorically denied. It was specifically mentioned that the copies of all the documents relied upon in the grounds of detention, were supplied to the petitioner alongwith the order of detention in the Central Jail, Jullundur. The allegations made by the petitioner about the undue and inordinate delay in the disposal of his representation against the preventive detention under impugned order were denied and it was specifically mentioned that the authorities dealt with the representation of the petitioner expeditiously.

8. In reply to the plea of the petitioner, that the impugned order of detention was passed at a time when the petitioner was already in custody in jail, the respondent No. 2, in his written statement submitted that the law has been well settled by the Apex Court that the authorities being satisfied about the preventive detention of the person concerned can pass an order of detention even when the said person is already in custody provided the detaining authority is satisfied that there were reasonable grounds to believe that the petitioner was likely to be released on bail in future and if so released, he was likely to indulge in the smuggling activity again.

The learned counsel for the petitioner challenged the impugned order of detention on a variety of grounds, but he pressed only the following grounds:

1. That the impugned order of detention was passed by the detaining authority in a hurry. The last document mentioned in the list of documents supplied with the grounds of detention is dated June 21, 1995, which is mentioned at serial No. 35 of Annexure P3 of the file. It is an application for inspection of Court''s file with inspection report thereof along with its Punjabi translation;

2. That the order of detention was passed by the detaining authority without proper application of mind and as a matter of fact, there has been total nonapplication of mind on the part of the said authority;

3. That the nonsupply of documents which were essential for making effective representation by the petitioner has seriously prejudiced the detenu/petitioner and it vitiates the order of detention;

4. That the passing of the detention order while the petitioner was in custody and without recording satisfaction that the petitioner was likely to be released on bail or such release was imminent, makes the detention of the petitioner illegal;

5. That the petitioner was denied the opportunity of cross examining the witnesses before the Advisory Board and this has prejudiced the petitioner and thereby vitiates the order of detention; and

6. That the representation submitted by the petitioner was decided after considerable delay by the detaining authority as well as the Central Government.

9. So far as the first and the second grounds are concerned, the learned counsel for the petitioner submitted that the detaining authority has acted in a hurry and the material which has been furnished along with the grounds of detention was not properly gone through and there has been a total nonapplication of mind by the detaining authority in making the order of detention. It was further submitted that the satisfaction of the detaining authority is not real and germane to the purpose of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The authority cited by the learned counsel for the petitioner is : Ramesh Kumar Wadhera v. Union of India, 1994(1) Recent Criminal Reports 409 . Therein, a learned Single Judge of this Court took the view that the records in the case which was to be examined by the detaining authority for its subjective satisfaction was quite voluminous. Some of the documents could not have been put up before the detaining authority on the date when the detention order was passed. In that case, the averment made in the petition to the effect that the detaining authority could not have applied its mind to all the material placed on record were not denied by the respondent. It was held that it cannot be said that the detaining authority applied its mind while passing the order of detention. The order of detention in the said facts and circumstances was quashed. In the instant case there is a categorical denial in the written statement by respondent No. 2 wherein it has been averred in reply to ground No. (A) that after careful consideration of the entire evidence on record and in view of the past smuggling activities of the petitioner, the detaining authority reached the subjective satisfaction that if not prevented the petitioner would continue to engage himself in prejudicial activities in future. It was also mentioned that there is no personal animosity between the petitioner and the officers of the Directorate of Revenue Intelligence. The question of mala fides does not arise. It was further mentioned that the detention order has been passed by the detaining authority with due application of mind and after perusing the entire material on the record. The detention order has been passed after consideration of entire evidence on record upto June 21, 1995. The aforesaid case relied upon by the petitioner has no application to the facts of this case. After going through the reply of the respondent as also Annexure P3 containing the list of documents, it will be quite apparent that the detaining authority had sufficient time to peruse the same and pass the order of detention. Grounds Nos. 1 and 2, as urged by the learned counsel for the petitioner, have no substance.

10. In regard to the third ground, the learned counsel for the petitioner contended that the petitioner was not supplied with the documents which he had asked for and it materially prejudicated him in making effective representation. This is ground No. (F) mentioned in the writ petition. The stand of respondent No. 2 in respect of this ground is that the copy of the report of the Screening Committee asked was a secret document and strictly for use of the department. As regards the supply of the additional documents asked for by the petitioner in his representation, the same have already been supplied to him in the Central Jail, Patiala on August 7, 1995 and on August 21, 1995. The Panchnama of

Search has also been supplied to the petitioner. The representation of the petitioner, a copy of which is Annexure P4, contains the details of information and documents which were asked for by the petitioner. The documents which are referred to paragraph 10 of the representation are :

(a) Passport of Virsa Singh;

(b) Statement of Sajjan Singh son of Bhan Singh dated June 16, 1995;

(c) Summons issued to Naresh Kumar;

(d) Summons issued to Virsa Singh;

(e) Summons issued to Ranjit Singh;

(f) Arrest Memos; and

(g) Search warrants and Panchnamas.

The list of documents asked by the petitioner and relied upon by the detaining authority in the grounds of detention were supplied to the petitioner vide Annexure P6. The other documents were not relied upon by the detaining authority while making the impugned order. The learned counsel for the petitioner cited Ashok Kumar alias Shoki v. Union of India, 1994(2) Recent Criminal Reports 708 . Therein a learned Single Judge of this Court considered the authority reported in Mohd. Hussain v. Secretary to Govt. of Maharashtra, 1982 Criminal Law Journal 1848 regarding the law relating to supply of copies of documents to the detenu and observed as under,

"I have considered the respective contentions of the learned counsel for the parties and I am of the view that the contention of the learned counsel for the petitioner is valid. The law relating to supply of copies of documents to the detenu had been summarised in the case of Mohd. Hussain v. Secretary to Govt. of Maharashtra, 1982 Criminal Law Journal 1848, as follows :

(a) the copies of all the documents which are relied upon in or which form the basis of the grounds of detention must be supplied to the detenu along with grounds of detention.

(b) the documents which are not relied upon or do not form the basis for the detention order but which are merely referred to casually or incidentally as and by way of narration of facts in the grounds of detention need not be supplied to the detenu.

(c) however even such documents, if the detenu requests for the same have to be supplied to him, for whether they are relevant to his defence or not is for the detenu to decide and not for the Detaining Authority to judge."

11. The Supreme Court in Kamarunnissa v. Union of India, 1991(2) Recent Criminal Reports 401 , held that it is not sufficient to say that the detenus were not supplied the copies of the documents in time on demand, but must further be

shown that the nonsupply (of the documents, in time), has impaired the detenus'' right of making an effective and purposeful representation. Demand of any or every documents, however irrelevant it may be for the concerned detenu, merely on the ground of detention, cannot vitiate an otherwise legal detention order. The ratio of the decision noted is that copies of all documents which have been relied upon or which form the basis of the ground of detention must be supplied to the detenu alongwith the grounds of detention, but copies of such documents which have not been relied upon in the grounds of detention and are merely referred to therein and have no direct concern with the detenu, need not be supplied to the detenu and nonsupply of the later category of documents will not impair the right of the detenu to make an effective representation. In the instant case, a perusal of the documents mentioned in paragraph 10 of the representation, Annexure P4, referred to above, will go to show that those documents have not been relied upon in the grounds of detention and these documents do not directly concern the petitioner/detenu. It cannot, therefore, be said that nonsupply of such documents had caused prejudice to the petitioner inasmuch as he could not make an effective and purposeful representation against his preventive detention. Ground No. 3, urged on behalf of the petitioner has, thus, no force.

12. Now coming to the next ground, i.e., ground No. 4, urged on behalf of the petitioner, it may be mentioned that the law has been well settled by the Supreme Court regarding the making of the detention order in respect of a person who was already in custody. In Vijay Kumar v. Union of India, 1988(1) Recent Criminal Reports 602 , the Supreme Court held that when a detenu is already under detention for an offence, whether bailable or nonbailable, the detaining authority will take into consideration the fact of detention of the detenu. There must be compelling reasons to justify his preventive detention in view of the fact that he is already under detention on a charge of a criminal offence. It was held that two facts must appear from the grounds of detention, namely, (i) awareness of the detaining authority that the detenu is already in detention; and (ii) there must be compelling reasons justifying such detention despite the fact that the detenu is already under detention.

13. In Abdul Sathar Ibrahim Manik v. Union of India, 1992(1) Recent Criminal Reports 101 : 1992 Supreme Court Cases (Cri) 1 , the Supreme Court held that a detention order can validly be passed even in case of a person who is already in custody. In such a case, it must appear from the grounds of detention that the authority was aware that the detenu was already in custody. It was further held that when such awareness is shown then it should further appear from the grounds of detention that there was enough material necessitating the detention of the person in custody. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order.

14. A learned Single Judge of this Court in Criminal Writ Petition No. 796 of

1995, filed by the codetenu Ranjit Singh alias Jita who was apprehended alongwith the petitioner held that subsisting custody of the detenu by itself does not invalidate an order of preventive detention and the decision of the detaining authority must depend on the facts of a particular case. The learned Single Judge has referred to the authority reported in Dharmendra Suganchand Chelawat v. Union of India, 1990(1) Recent Criminal Reports 446 : AIR 1990 Supreme Court 1196 , a case of preventive detention under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, wherein it was held by the Apex Court,

"An order of detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

As mentioned earlier, the petitioner was apprehended along with three other persons, namely, Wirsa Singh, Ranjit Singh and Naresh Kumar on June 11, 1995 and was formally put under arrest under the Customs Act on June 12, 1995, and was produced before the Chief Judicial Magistrate who remanded him to judicial custody. The petitioner had applied for bail which was declined by the Chief Judicial Magistrate. The detaining authority in the instant case was aware of the fact that the petitioner was already in custody in connection with the offences averred and the authority in view of the indulgence of the petitioner in smuggling activities along with his coaccused Wirsa Singh, and his applying for bail, the same day he was put under arrest, were taking into account by the detaining authority. The detaining authority had the subjective satisfaction that it was likely in future that the petitioner may make an attempt to get himself enlarged on bail and looking to his antecedents, he was likely to indulge in smuggling activity. This Court will not going into the validity of the satisfaction of detaining authority. Consequently, the two tests laid down by the Apex Court are satisfied in the instant case and, therefore, it cannot be said that the detaining authority did not properly consider the matter while passing the detention order. The detention order is not liable to be quashed on this ground which is devoid of substance.

15. Coming to the next ground, No. 5, raised by the petitioner, respondent No. 2, in reply to ground (M) of the writ petition, stated that opportunity was given to the petitioner to appear before the Advisory Board and he was produced by the

Central Jail authority Patiala before the Advisory Board meeting held on July 28, 1995. There is no material furnished on behalf of the petitioner to show that the petitioner made any request before the Advisory Board for crossexamining any witness or to lead his own evidence. On the other hand, respondent No. 2 has categorically denied about it. Thus, this ground also has no substance.

16. The last submission of the learned counsel for the petitioner is that there was considerable delay in deciding the representation made by the petitioner and there was delay in communicating the order of rejection of the representation. This delay has not been properly explained and it goes to the root of the matter and the detention order is liable to be quashed on the ground of delay. The learned counsel for the petitioner submitted that the detaining authority as well as the Central Government, both decided the representation belatedly. The representation was moved in July, 1995, and the same was received by the Superintendent of the District Jail, Patiala on July 21, 1995. It was received by the detaining authority on July 27, 1995. Parawise comments from the sponsoring authority were called for on July 28, 1995 and the same were received by the Ministry on August 4, 1995. The case file was then processed by the concerned Under Secretary and put up on August 11, 1995 (5th and 6th were closed, holidays on account of Saturday and Sunday) to JS (Cofeposa) who after careful consideration of the representation, rejected the same on August 14, 1995. A memo, intimating the petitioner of rejection of his representation by detaining authority was issued the same day. This is the explanation regarding the dealing of the representation by the detaining authority as contained in reply to ground (I) of the writ petition. It was further mentioned in the reply of respondent No. 2 that the representation addressed to the Central Government was forwarded to the Additional Secretary (Admn) for consideration of the representation by Central Government on August 16, 1995, who forwarded it to the Secretary (Revenue) the same day. The Secretary (Revenue) forwarded the file to Minister of State (R&E) on August 21, 1995, who submitted the same to the Finance Minister on August 23, 1995. The Finance Minister rejected the representation the same day and returned the file to the COFEPOSA Unit through proper channel. A memo, intimating the petitioner about rejection of the representation by the Central Government was issued on August 25, 1995. The petitioner was informed about the rejection of the representation by the D.A. (detaining authority) by order dated August 14, 1995, and the rejection of the representation by the Central Government was conveyed to the petitioner on August 29, 1995. There is no material on record to corroborate the averment made in the writ petition that the jail authorities served the rejection order dated August 14, 1995, passed by the detaining authority after 10 days of the date of the order and that the order dated August 25, 1995, passed by the Central Government rejecting the representation of the petitioner was communicated to him on September 4, 1995. On the other hand, the official record shown to the Court by the learned standing counsel, Shri D.D. Sharma, showed that the order rejecting representation of the petitioner by detaining authority on August 14,

1995, was served by the jail authorities on August 14, 1995, and the letter regarding service of the rejection order was sent to the Under Secretary to Government of India, Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau, New Delhi, on August 23, 1995. The order of rejection of the representation by the Central Government on August 25, 1995, was served on the petitioner by the jail authorities on August 29, 1995, and the letter regarding service of the said order on the petitioner was sent to the said Under Secretary by letter No. 5416/ASW dated September 8, 1995. Respondent No. 2 in his written statement, has submitted that there was no undue delay in consideration of the representation by the detaining authority as well as by the Central Government. From the narration of the procedure through which the representation was processed up to the stage of the detaining authority and the Central Government, it is clear that there was no undue or inordinate delay in considering the representation at any stage. The representation was considered expeditiously and promptly and proper intimation was promptly given to the detenu personally by the jail authorities.

17. In Frances Coralie Mullin v. W.C. Khambra, AIR 1980 Supreme Court 849, their lordships of the Supreme Court reiterated the law as laid down in Jayanarayan Sukul v. State of West Bengal, 1970(3) SCR 315, as follows,

"No definite time can be laid down within which a representation of a detenu should be dealt with save and except that it is a constitutional right of a detenu to have his representation considered as expeditiously as possible. It will depend upon the facts and circumstances of each case whether the appropriate Government has disposed of the case as expeditiously as possible......"

18. In Aslam Ahmed Zahire Ahmed Shaik v. Union of India, 1989(1) Recent Criminal Reports 486 : AIR 1989 Supreme Court 1403 , it was laid down that 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 the detenu has to be disposed of with reasonable expedition, but it must necessarily depend on the facts and circumstances of each case. Since 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.

19. In M. Mohamed Sultan v. Joint Secretary to Government of India, 1990(2) Recent Criminal Reports 655 , the representation against detention under Section 3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, was processed and decided in 34 days. In the facts and circumstances of the case, their lordships of the Supreme Court held that there was no inordinate delay in view of the process involved which included sending of petition by jail

authority to Government; inviting of comments from sponsoring authority; considering of representation by Government and communication of rejection order.

20. In Birendra Kumar alias Virendera Kumar Rai v. Union of India, 1993 Supreme Court Cases (Cri) 324, the representation against preventive detention was decided and there was delay of 35 days in disposal of the representation which was adequately explained showing absence of any slackness, callousness, casualness, inaction or leisurely treatment of detenu''s representation. In these circumstances, their lordships of the Supreme Court held that the detention was not vitiated on the ground of delay in disposal of the representation.

21. In Panna (Smt) v. A.S. Samra, 1995 Supreme Court Cases (Cri) 137, representation against preventive detention was submitted on April 24, 1992. The rejection order was communicated to the detenu on June 15, 1992. It was held that the delay in considering the representation, in the facts and circumstances, was not unreasonable.

22. As mentioned above, in the instant case, the representation of the petitioner was processed by the authorities and considered expeditiously. There is no callousness or slackness on the part of the authorities in deciding the representation.

23. The learned counsel for the petitioner submitted that one copy of the representation was sent to the President of India and the same has not been decided. Suffice it to say that the Union Minister for Finance, Government of India, considered the representation of the petitioner and rejected the same. Thus, there is no unreasonable or inordinate delay in the disposal of the representation made by the petitioner. This ground is also without any merit.

No other contention was raised.

For the reasons mentioned above, this writ petition is devoid of any merit and is dismissed.

