
(1997) 06 BOM CK 0055

In the Bombay High Court

Case No : Criminal Writ Petition No. 429 of 1996

Shakeel Sait

APPELLANT

Vs

C.D. Singh and others

RESPONDENT

Date of Decision : 17-06-1997

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3, 8, 9(1)
Constitution of India, 1950 — Article 22(5)

Citation : (1997) 06 BOM CK 0055

Hon'ble Judges : S.S. Parkar, J; D.K. Trivedi, J

Bench : Division Bench

Advocate : M.G. Karmali and Mrs. A.M.Z. Ansari, for the Appellant; R.L. Patil ,
Assistant Public Prosecutor and R.M. Agrawal, for the Respondent

Judgement

S.S. Parkar, J.—This writ petition has been filed by the petitioner, challenging the detention of his father by name Mustafa Ahmed Ali Merchant under the provisions of COFEPOSA Act. The detention order was issued under the COFEPOSA Act on 16th Feb. 1996 by respondent No. 1 who was, at that time, Principal Secretary to the Government of Maharashtra, Home Department (Preventive Detention) and Detaining Authority. The said order of detention is annexed to this petition as Annexure "A". The respondent No. 1 had also formulated the grounds of detention dated 16th Feb. 1996 which are annexed as Annexure "B" to this petition. Consequent to the said order of detention, the detenu was detained on 29th of Feb. 1996. At the time of his detention the detenu was served with the grounds of detention along with the order of detention and the documents and material relied on by the detaining authority. The initial order of detention was for a period of one year and the same was extended by further period of one year by virtue of the declaration made u/s 9(1) of the COFEPOSA Act on 25th March, 1996 which is annexed as Annexure "D" and the order of confirmation dated 1st June, 1996 issued under clause (f) of Section 8 of the said Act, and annexed as Annexure "E" to the petition.

2. The brief facts leading to the detention of the detenu are as follows :-

Pursuant to the intelligence report, the D.R.I. Officer kept surveillance on the detenu who was to travel by Cathay Pacific flight No. CX-750 scheduled to depart at about 5.05 hrs on 29-8-1995 to Hongkong from Sahar Airport, Mumbai. The Officer of the D.R.I. intercepted the detenu, after he had cleared himself through the customs and security checks and was in the security lounge. Although on inquiry the detenu denied that he was carrying any diamonds, on subsequent questioning the detenu admitted that he was carrying diamonds in his rectum and, therefore, the Officers brought the detenu to the D.R.I. Office at Colaba. From the baggage 750 US dollars were found and the detenu voluntarily ejected two packets containing diamonds. In one packet there was a slip containing the figures 650.17 and in the other packet there was a slip containing the figures 651.81. They were seized under the panchanama along with the 750 US dollars. The statement of the detenu was recorded on 29th and 30th August, 1995 in which he admitted that he was working as a carrier of one Dhanubhai for a consideration of Rs. 5000/- per trip. The air ticket was bought by one Madanlal on 28-8-1995 and handed over to him. He further admitted that two packets were inserted in the rectum of the detenu by Madanlal who also gave him 550 US dollars as remuneration and 200 US dollars for expenses. In addition, Rs. 2000/- were paid for hotel expenses. The detenu is alleged to have made eight trip during the period between 6-3-1990 and 6-4-1995. His passport also was seized. The detenu was arrested on 30th August, 1995, and produced before the learned Chief Metropolitan Magistrate's Court on 30th August, 1995 and remanded to custody. His earlier bail application was rejected. The investigation was completed and the complaint was filed against the detenu in the Court of Chief Metropolitan Magistrate at Mumbai on 9-10-1995 on which date he came to be released on bail under certain conditions. After the release of the detenu on bail he retracted from his confessional statement given u/s 108 of Customs Act to which department filed reply dated 19-10-1995, denying the allegations made in the letter of retraction.

3. The reference has been made to the aforesaid facts in the grounds of detention and it is also stated in the grounds that the diamonds which were seized from the detenu were of the value of Rs. 30,80,700/- CIF and Rs. 38,00,000/- LMV approximately. In the grounds of detention at Annexure "B", it is stated that the detaining authority passed the order of detention with a view to prevent the detenu from smuggling diamonds in exercise of the power conferred under sub-section (1) of Section 3 of the COFEPOSA Act. The detaining authority had recorded his satisfaction that it was necessary to detain the detenu under the provisions of COFEPOSA Act to prevent him from indulging in prejudicial activities in future.

4. The petitioner has raised several grounds challenging the order of detention. However, we are satisfied that this petition can be allowed and detention order can be set aside on the ground (i) raised in the petition that there was

unreasonable and unexplained delay in issuing the order of detention and, therefore, the live-link between the prejudicial activities and the order of detention has been snapped.

5. In order to appreciate the point raised by Mr. Karmali on behalf of the petitioner it would be pertinent to mention few relevant facts and dates in brief.

The seizure of the contraband had taken place on 29th August, 1995 and the investigation was over in the first week of Oct. 1995 and the complaint came to be lodged in the Court of Chief Metropolitan Magistrate at Mumbai on 9th Oct. 1995, on which date the detenu was also released by the said Court on bail under certain conditions. Those conditions are as follows :

The detenu was released on bail in the sum of Rs. 4 lakhs with three sureties of Rs. 1 lakh each and cash amount of Rs. 1 lakh. The wife and two sons of the accused were accepted as sureties in the sum of Rs. 1 lakh each provisionally. The detenu was directed not to leave the local limits of Greater Bombay without prior permission of that Court and the hearing of the complaint or criminal case was expedited and it was directed to be heard on day to day basis from 30th Oct. 1995 onwards. The summons were also issued to the prosecution witnesses on the same date i.e. 9th Oct. 1995 when the detenu was ordered to be released on bail and the hearing of the case under the provisions of Customs Act was expedited.

6. Pursuant to the aforesaid order of bail the detenu was released on bail on the same day on furnishing the requisite sureties. Although the bail applications on behalf of the detenu were rejected earlier, as on 28th Sept. 1995 as referred to in the grounds of detention, the department had not objected to the release of the detenu on bail on 9th Oct. 1995, as mentioned in the order dated 9th Oct. 1995, passed by the learned Chief Metropolitan Magistrate, Mumbai, while allowing the application of the detenu for his release on bail.

7. Mr. Karmali, the learned counsel for the petitioner contends that although the date of incident was 29th August 1995 and the entire investigation was completed and the criminal case under the provisions of Customs Act culminated in filing of the complaint in the Court of Chief Metropolitan Magistrate, Mumbai on 9th Oct. 1995, the impugned order of detention came to be issued as late as on 16th Feb. 1996 and thus there was a delay of about 5 and 1/2 months from the date of incident and more than 4 months delay in issuing the order of detention from the date of completion of the investigation and the release of the detenu on bail in the criminal case. He further contended that even after proposal was submitted of the detaining authority for the detention of detenu under the provisions of COFEPOSA Act on 3-11-1995 after it was approved on recommendation by the screening committee, the detaining authority took three months' time to issue the order which delay has not been explained at all. The submission of Mr. Karmali is that since the detaining authority took three months' time after the proposal was placed before him to issue the order of

detention it would mean that the detaining authority did not think that it was imperative or necessary to issue the detention order urgently by way of preventive measure which reflects on his satisfaction and, therefore, the live link between the incident and the purpose of issuing of the order of detention has been snapped. In support of his contention Mr. Karmali referred to several judgments of this Court as well as the Supreme Court. Since the point is too well established, there is no need to refer to all the authorities which are cited across the bar. However, it would be relevant to cite some of the authorities which squarely cover the point in issue.

8. In the case of Rabindra Kumar Ghosel alias Buli Vs. The State of West Bengal, the Supreme Court had set aside the order of detention passed under the Maintenance of Internal Security Act where the District Magistrate had passed the order of detention u/s 3 of the said Act about three months after placing of the proposal for detention before him and without affording any explanation for the said delay. In that case the order of detention was passed on the basis of two criminal cases dated 5th Dec. 1973 and 20th Dec. 1973 registered against the detenu. The Superintendent of Police placed the case of the detention before the District Magistrate on 30th Nov. 1973 and the actual order of detention was passed by the District Magistrate around three months thereafter. While setting aside the order of detention, the Supreme Court was pleased to observe as follows at page 1235 of Cri LJ :

"The whole purpose and object of the Maintenance of Internal Security Act is that persons who are likely to imperil public order are not allowed to be free to indulge in this dangerous activity. We cannot understand the District Magistrate sleeping over the matter for well nigh three months and then claiming that there is a real and imminent danger of prejudicial activity affecting public order. The chain of connection between the dangerous activities relied on and the detention order passed is snapped by this long and unexplained delay."

9. In this case the affidavits have been filed by the respondent No. 1, the detaining authority so also the Assistant Director, Directorate of Revenue Intelligence. Mumbai Zonal Unit, Mumbai. The relevant portion of para 5 of the reply affidavit dated 4-11-1996 filed by the respondent No. 1, detaining authority, states as follows :

"5. With reference to paragraph No. 4(i) of the petition, I say that the Assistant Inspector DRI, BZU, Mumbai submitted the proposal in respect of detenu along with the documents mentioned in the list of documents which was received by the Home Department on 3-11-1995. I considered, the proposal and scrutinized, the documents and formulated the draft of Grounds of Detention on 15-1-1996, I say that, translations of draft of Detention order, Grounds of Detention and documents were called for on 2-2-1996 and the same was received on 15-2-1996. I say that, after receipt of the said translation, I again considered the proposal and the documents and issued the Detention Order on 16-2-1996. I say that, no additional documents were thereafter received. I say that there is no

inordinate delay in issuing the Order of Detention"

10. From the above quoted reply of the detaining authority, it is very clear that the proposal, after approval of the Screening Committee, was received by the detaining authority on 3rd November, 1995. He considered the proposal and scrutinized the documents and formulated the draft ground of detention on 15-1-1996 i.e. after a period of about 2 and 1/2 months. Though he formulated the draft grounds of detention on 15-1-1996 he keeps the papers with him until 2nd of February 1996 on which date he sends for translation of the draft grounds of detention and the other documents which were received by him on 15-2-1996 and thereafter he "again considered the proposal and the documents and issued the detention order on 16-2-1996," as per his affidavit. In his reply affidavit the detaining authority does not even seek to explain the delay of three months which took place at his own level. One would be at loss to understand as to why, for earthly or heavenly reason, the detaining authority waited to call for the translations of the draft of the detention order, the grounds of detention and other documents until 2nd February, 1996 when according to him he had formulated the draft of the grounds of detention on 15th January, 1996. There is, therefore, substance in the contention of Mr. Karmali that the live-link between the activities of the detenu relied on by the detaining authority and the detention order is snapped by this long and unexplained delay as observed by the Supreme Court in the aforesaid judgment of Rabindra Kumar's case.

11. Mr. Patil, the learned Additional Public Prosecutor and Mr. Agrawal the learned counsel appearing on behalf of Union of India have heavily placed reliance on the decision of the Supreme Court in the case of Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others, and in particular on para 10 of the said judgment which is as follows at page 1260 :

"10. Viewed from this perspective, we wish to emphasise and make it clear for guidance of the different High Courts that a distinction must be drawn between the delay in making of in order of detention under a law relating to preventive detention like the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 and the delay in complying with the procedural safeguards of Art. 22(5) of the Constitution. It has been laid down by this Court in a series of decisions that the rule as to unexplained delay in taking action is not inflexible. Quite obviously, in cases of mere delay in making of an order of detention under a law like the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence have been posing a serious threat to the economy and thereby to the security of the nation, the Courts should not merely on account of delay in making of in order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached, taking of such a

view would not be warranted unless the Court finds that the grounds are "stale" or illusory or that there is no real nexus between the grounds and the impugned order of detention."

12. Relying on the said decision of the Supreme Court, it is argued on behalf of the respondents that merely because no explanation is given by the detaining authority for the delay of three months at his level for issuing the order of detention, it cannot be said that the live-link between the incident and the order of detention is snapped, especially in the detentions under the provisions of COFEPOSA Act. Going by the observations of the Supreme Court in the said paragraph, one would be inclined to take that view but the ratio of the decision of a case depends on the facts of each case which has been emphasized by the Supreme Court in umpteen cases. Para 11 of the said judgment refers to the circumstances obtaining in the said case which impelled the authority to issue the order of detention. The detenu in that case was importing in bulk foreign liquor acting as a broker from across the border. This was revealed from the statements of the witnesses recorded in January 1987. The detenu had applied for anticipatory bail and he was arrested on 2nd February, 1987 on which date he made statement admitting his guilt. The proposal to detain the appellant was placed before the District Magistrate who passed the order of detention. There was no explanation for the delay between 2nd February and 28th May, 1987 and, therefore, the Court held that it could not give rise to a legitimate inference that the subjective satisfaction arrived at by the District Magistrate was not genuine or that the grounds were stale or illusory or that there was no rational connection between the grounds and the impugned order of detention. This decision was followed by the Division Bench of this Court at Nagpur in the case of Kakkovayal Kuhbi Hamja Vs. State of Maharashtra and another, , which was cited by Mr. Patil. In the case there was unexplained delay of eight months and the Division Bench following the aforesaid decision of the Supreme Court in the Rajendrakumar's case held that delay in passing the order of detention is not ipso facto fatal to the detention of a person and the real test to judge whether an order of detention is vitiated by reason of delay in passing the same is whether the grounds are stale or illusory or that the live-link between the grounds and the impugned order is snapped by reason of delay. In the facts of that case the Court held that there was no inordinate delay.

13. In the Rajendra Kumar's case (supra) Supreme Court has made a distinction between the delay in making an order of detention under a law relating to preventive detention with the procedural safeguards of Article 22(5) of the Constitution and it was held that the rule as to unexplained delay in taking action is not inflexible, in the sense that the Court has to consider all the facts of the case. In the case before the Supreme Court the detenu was involved in a sort of Hawala transaction which had to be unearthed and required investigation which by its very nature takes time and therefore Supreme Court held that mere delay is not ipso facto fatal.

14. The point of delay in issuing the order was considered by the Supreme Court in the later decisions as in the case of T.A. Abdul Rahaman Vs. State of Kerala and others, . In para 9 of the said decision the Supreme Court has made reference to the earlier dicta of the Supreme Court including in the case of Rajendrakumar v. State of Gujarat and observed in para 10 that "it is necessary to consider the circumstances in each individual case to find out whether the delay has been satisfactorily explained or not." In paras 11 and 12 of the said judgment the Supreme Court has observed as follows :

"11. The conspectus of the above decisions can be summarised thus : The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined (explained) such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case.

12. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner."

15. The question of delay in issuing the order was also considered by the Supreme Court in yet another later case of Pradeep Nikanth Paturkar Vs. S. Ramamurthi and others, . In that case there was delay of four months in issuing the order and this Court negating the contention raised on behalf of the petitioner had held that "The period of four months required by the authorities to pass the order can by no stretch of imagination be treated as unduly long. Though the statements were available in March 1991, the procedure required some time before the powers are exercised. In our judgment, the order of detention does not suffer from the vice of delay." Allowing the appeal and reversing the judgment of this Court the Supreme Court held in para 14 that under the circumstances taking into consideration the unexplained delay whether short or long especially when the appellant had taken a specific plea of delay, the Court was constrained to quash the detention order. In that case there was delay

of about five months and eight days from the date of registration of the last case and more than four months before the submission of proposal. Countering the arguments on behalf of the learned Additional Solicitor General who placed reliance on the judgment of the Supreme Court in *Rejendra Kumar's* case, the Supreme Court in para 12 of the judgment in *Paturkar's* case observed as follows at page 622 of Cri LJ :

"12. Countering the argument of Mr. Gupte, the learned Additional Solicitor General drew our attention to *Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others*, in which this Court held that the non-explanation of the delay between 2nd February and 28th May, 1987 could not give rise to legitimate inference that the subject of satisfaction arrived at by the District Magistrate was not genuine. In the same decision, the learned Judges have pointed out "It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation". A perusal of the various decisions of this Court on this legal aspect shows that each case is to be decided on the facts and circumstances appearing in that particular case."

16. Mr. Karmali also brought to our notice the judgments of the Division Bench of this Court on the same point which had the occasion to consider the Supreme Court judgment in the *Rajendrakumar's* case. The first such judgment is in the case of *Vardichand Shankarlal Oswal Vs. L. Hmingliana, Secretary (Preventive Detention) to the Government of Maharashtra and others*, . Countering the argument advanced on behalf of the State placing reliance on the judgment of Supreme Court in *Rajendra Kumar's* case, the Division Bench quoted para 9 from the judgment of the Supreme Court and observed in para 3 as follows which appear at page 1028 of the report :

"Therefore it is not as if every incident of delay in matters under the COFEPOSA Act was to be assumed to be either explained or justified on account of the assumed complexity of such matters. Tested thus, it is not possible to hold that the subjective satisfaction reached here by the detaining authority had a live-link with the prejudicial activity detected on 12-10-1988. At the very first instance the detenu made it clear that though the package containing the contraband was found under his seat, he was in no way connected with it. This denial he maintained right up to the end. In the six days following 10-12-1988 various person were questioned. What the authorities did between 12-10-1988 and 22-2-1989 is not known. The only answer is that nothing was done to effect a break through vis-a-vis the mantle of innocence donned by the detenu. What took place in the months following the last week of February 1989 was in the realm of ministerial activity i.e. preparation of papers, their translation etc. Even after 17-5-1989 nothing was done and this inactivity lasted for more than two months. Surely, a more glaring case where a causal link is snapped would be difficult to conceive of."

Distinguishing the judgment of the Supreme Court in Rajendra Kumar's case, the Division Bench held in the above case that delay of more than two months was a glaring case where the causal link between prejudicial activity and subjective satisfaction was snapped.

17. Another decision of this Court relied on by Mr. Karmali is the unreported judgment of the Division Bench (Pendse and Mane, JJ.) in the Criminal Writ Petition No. 261 of 1991 in the case of Smt. Nafisa Mohd. Hanif Ilahi v. State of Maharashtra, decided on August 22, 1991, where the incident had taken place on 11th July, 1990 and after the investigation and collecting necessary documents the Sponsoring Authority prepared the proposal and the same was approved by the Screening Committee on 27th September, 1990. The Asstt. Collector of Customs submitted the proposal by letter dated October 31, 1990 to the Home Department which was received on November 1, 1990. The Government called for additional information on 20th November, 1990 and before the additional documents were available the detaining authority formulated the grounds of detention on 29th November, 1990. Additional documents were received on 5th January, 1991 and the order of detention was passed on 16th February, 1991. This Court held that there was no explanation why the order was not immediately passed after the receipt of the documents on January 5, 1991 and why it required 1 and 1/2 months from January 5, 1991, to pass the detention order. In para 4 of the said judgment this Court observed that the prejudicial activities of the detenu were more serious and so there was greater reason why the detaining authority should have acted expeditiously. In this case also although the diamonds valued at Rs. 30.80 lakh were seized from the detenu who had undertaken about eight trips previously in carrying the contraband at the instance of the third party, yet the detaining authority did not take it seriously enough to issue the order of detention promptly though to its knowledge the detenu was released on bail as far back as 9th October, 1995 and the proposal was received on 3-11-1995.

18. Mr. Karmali also relied on another unreported decision of the above Division Bench of this Court in the case of Smt. Pushpa Trilokchand Chopda v. The State of Maharashtra, in Criminal Writ Petition No. 480 of 1991 decided on 4th September, 1991. Countering the argument advanced on behalf of the detaining authority which put reliance on the decision of the Supreme Court in the Rajendrakumar's case, the Division Bench observed in para 3 as follows :

"We are afraid that the decision of the Supreme Court is misunderstood by the detaining authority. The observations made by the Supreme Court do not give a charter to the authority to pass order of detention after considerable delay and dispense with the responsibility to explain the same. The Supreme Court in the observations which are adverted hereinabove made it extremely clear that the delay in exercise of power could lead the Court to find that the grounds are stale or illusory or that there is no nexus between the grounds and the impugned order of detention. It is time that the detaining authority should realise the

powers of serious consequences conferred under the Act and in case the powers are to be exercised, they must be exercised with utmost urgency. The liberty to the citizen cannot be deprived merely because the detaining authority is busy with several activities connected with Government work or enough staff is not available."

19. Mr. Karmali also cited before us one more judgment of Division Bench of this Court in the case of Manharlal Karsandas Dattani v. The Union of India and others, in Criminal Writ Petition No. 80 of 1991, (unreported) decided on 1st August, 1991 (Coram : Mrs. Sujata Manohar and B. N. Srikrishna, JJ.). He placed reliance specifically on para 12 of the judgment wherein explaining the ratio of the decision of the Supreme Court in Rajendra Kumar's case (supra), the Court observed as follows :

"..... She (APP) also relied on the judgment of the Supreme Court in Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others, and contended that the Supreme Court has in this case laid down the principle for guidance of High Courts that while dealing with cases under the COFEPOSA Act and allied laws, the proximity test should not be applied rigidly and even if there is unexplained period of delay the Court ought not to strike down the order of detention. We have carefully considered the observations of the Supreme Court in these two judgments as well as the two judgments rendered in the year 1990 which were cited by Mr. Karmali. We are of the view that it is the duty of the Court to examine the explanation offered for delay in each matter and, though it may be possible to excuse a longer period of delay while the investigations were actually in progress, depending upon the complexity of the case and its ramifications, when it comes to unexplained delay which is caused purely due to tardiness of the authorities, the Court ought to be vigilant and strict"

20. We are of the view that the ratio of the judgment of the Supreme Court in the Rajendra Kumar's case (supra) as interpreted in the two later decisions of the Supreme Court in T. A. Abdul Rahman v. State of Kerala and in Pradeep Paturkar v. S. Ramamurthi (supra) as also decisions of this Court adverted to earlier does not stand in the way of this Court in considering whether the delay in issuing the order of detention has the effect of snapping the live-link between the prejudicial activity of the detenu and the order of detention. In the facts of this case and in view of the judgments of this Court and that of the Supreme Court of India cited above, there is no doubt that there was inordinate and unexplained delay of three months at the level of Detaining Authority itself in issuing the order of detention. It is surprising to find that after formulating the draft grounds of the detention the Detaining Authority waited for 17 days to send the papers back for the purpose of translation and trying. The total delay of three months occurring at his own level was not at all explained by him in the affidavit filed by him in this writ petition. When the detenu was acting as carrier and had undertaken in all eight trips for carrying the contraband; when the investigation was over as far back as 9th October, 1995 and when the proposal approved by

the Screening Committee was placed before him on 3-11-1995, it is not understood why the detaining authority had taken three months' time for issuing the order of detention. He has not also made an attempt to explain the said delay when the contraband which was seized on 29th August, 1995 was of such a large value of Rs. 30.80 lakh. The detaining authority ought to have acted more promptly and if there was any good reason which precluded him from taking prompt action he would have certainly stated the same in the affidavit-in-reply which he filed in this Court.

21. The learned A.P.P. relied on the satisfaction expressed in the grounds of detention and took us through the grounds of detention to point out that the detaining authority had passed the order after he was satisfied that there was need to pass the order in order to prevent the detenu from indulging in similar activities and the satisfaction of the detaining authority being subjective satisfaction, the same cannot be gone into by this Court. It is true that the subjective satisfaction cannot be gone into by this Court, but the Supreme Court in para 10 of the judgment in the case of *Sadhu Roy Vs. The State of West Bengal*, has observed that : "The satisfaction, though attenuated by "subjectivity" must be real and rational, not random divination, must flow from an advertence to relevant factors, not be a mock recital or mechanical chant of statutorily sanctified phrases". The Court has further observed in the said judgment that "The Court can lift the verbal veil to discover the true face". In the facts of this case we are convinced that the satisfaction expressed in the grounds of detention is not genuine because of the unwarranted inertia on the part of the Detaining Authority and, therefore, the live-link between the alleged satisfaction and the prejudicial activity did not exist which is sine qua non for the issue of detention order.

22. We are conscious of the fact that the contraband involved in this case was of a large value. As pointed out by the Supreme Court in the case of *Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others*, , the order of detention cannot be upheld unless the power to detain without trial which involves the personal liberty of the citizen is exercised strictly in accordance with the requirements not only of the Constitution but also of the law. The Courts always have to lean in favour of upholding personal liberty for it is one of the most cherished values of mankind and is one of the pillars of free democratic society. In this connection we may do no better than quote the words of the Supreme Court in the aforesaid case which appear in para 3 of the said judgment, which are as follows at p. 1986 :

"3. We may point out straightway that we are not at all happy at the thought that our order may have resulted in setting free a possible smuggler. But at the same time we cannot forget that the power of preventive detention is a draconian power justified only in the interest of public security and other and it is tolerated in a free society only as a necessary evil. The power to detain without trial is an extraordinary power constituting encroachment on personal liberty and

it is the solemn duty of the Courts to ensure that this power is exercised strictly in accordance with the requirements of the Constitution and the law. The Courts should always lean in favour of upholding personal liberty for it is one of the most cherished values of mankind. The Constitution has, therefore, while conceding the power of preventive detention, provided procedural safeguards with a view to protecting the citizen against arbitrary and unjustified invasion of personal liberty and the Courts have always zealously tried to uphold and enforce these safeguards. This Court has also through its judicial pronouncements created various legal bulwarks and break waters into the vast powers conferred on the executive by the laws of preventive detention prevalent at different points of time. If the detaining authority wants to preventively detain a smuggler, it can certainly do so, but only in accordance with the provisions of the Constitution and the law and if there is a breach of any such provision, the rule of law requires that the detenu must be set at liberty, however, wicked or mischievous he may be. This Court would be laying down a dangerous precedent if it allows a hard case to make bad law. We must, therefore, interpret the provisions of the Constitution and the law in regard to preventive detention without being in any manner trammelled by the fact that this is a case where a possible smuggler is seeking his release from detention."

23. In the case of *Sk. Nizamuddin Vs. State of West Bengal*, the Supreme Court has held that the live-link is snapped between the prejudicial activities of the detenu and the order of detention when there is unexplained delay even in serving the detenu with the detention order.

24. In view of the above position we are satisfied that the live-link between the alleged activity of the detenu and the order of detention has been snapped because of the indolence on the part of the detaining authority by causing three months' inordinate and unexplained delay in issuing the order of detention. We are, therefore, left with no alternative but to quash and set aside the impugned order of detention dated 16th February, 1996. Since the order of detention is being quashed and set aside the continued detention of the detenu pursuant to the declaration under the provisions of Section 9(1) of the COFEPOSA Act is also consequently quashed and set aside.

25. We, therefore, set aside the order of detention dated 16th February, 1996, and the continued detention of the detenu and make the rule absolute in terms of prayer clauses (a) and (b) of the petition. The petitioner shall be set at liberty forthwith unless required in any other case.

26. Petition allowed.