

**(2007) 07 DEL CK 0007**

**In the Delhi High Court**

**Case No :** Writ Petition (Criminal) No. 1495 of 2006 and Criminal M.A. No. 6372 of 2006

Vikas Aggarwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 06-07-2007

**Acts Referred:**

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)  
Constitution of India, 1950 — Article 226  
Penal Code, 1860 (IPC) — Section 120B  
Prevention of Corruption Act, 1988 — Section 7

**Citation :** (2007) 96 DRJ 710

**Hon'ble Judges :** R.S. Sodhi, J;H.R. Malhotra, J

**Bench :** Division Bench

**Advocate :** R.K. Anand, Farooq Razzak, Manoj Ohri, Shiwani Lal, Bhagwan Sharma and Vaishnav Nidhi, for the Appellant; Baldev Malik and Satish Aggarwal, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

R.S. Sodhi, J.—By Writ Petition Criminal No. 1495 of 2006 under Article 226 of the Constitution of India, the petitioner herein seeks a writ in the nature of mandamus, certiorari and/or any other suitable writ seeking quashing of the order of detention bearing F. No. 673/19/2005-CUS.VIII, dated 28.12.2005 issued against the petitioner by Sh. R.K. Gupta, Joint Secretary to the Government of India, New Delhi, u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 in terms whereof, the petitioner is being sought to be detained for a period of one year in Central Jail, Tihar, New Delhi.

2. Brief facts of the case as have been stated in the synopsis to the writ petition, pursuant whereto the petitioner has filed this petition in the High Court at Delhi, are as under:

The petitioner is a businessman and carries on business of import and export in the name and style of M/s. V-4 Manufacturing Company. The petitioner is a permanent resident of New Delhi. It is the case of the officers of DRI and on 7.9.2005 an import consignment of M/s. Everest Exports had arrived at Air Cargo Complex, New Delhi and after clearance by the importer free of customs duty, the said consignment was taken to the residential premises of the petitioner on 8.9.2005 and unloaded there instead of being taken to NSEZ. It is further alleged that upon search of the basement of the said premises, the goods imported by M/s. Everest Exports viz., "MOUNTED PCBs" valued at Rs. 6 lakhs were found. On examination of the goods, the same were found to be high value computer goods such as Intel Pentium Processors and E-RAMs of 512 MB capacity having market value of Rs. 1.8 crores. It is alleged that the officers also found Airway Bill Stickers which had been torn off from the boxes. It is further alleged that during search inferior quality of PCBs were also found. All the goods were seized under the provisions of the Customs Act, 1962. The officers concerned also detained the export consignments of M/s. Everest Exports and M/s. Lakshman Overseas at both Delhi and Mumbai on the ground that they are junk goods and are not export worthy.

While the search of the residential premises of the petitioner was in progress, Shri Manish Mani Tiwari, Deputy Director, DRI and Shri Y.S. Verma, Senior Intelligence Officer, DRI, demanded an amount of Rs. 30 lakhs in order not to implicate the petitioner's father and brother in the case of alleged seizure of high value computer goods and further to allow them to leave the premises. As the petitioner's father did not have Rs. 30 lakhs in cash, the petitioner's father and Shri Bansal gave 3 solitaire diamonds valued at approximately Rs. 30 lakhs to the two officers. Thereafter both the petitioner and his father were allowed to leave the residential premises.

Subsequently, Shri Y.S. Verma, Senior Intelligence Officer, DRI, contacted Shri Bansal and demanded Rs. 50 lakhs on behalf of Shri Manish Mani Tewari to settle the matter as otherwise he would implicate the petitioner, his father and brother in the said case and duty and penalty as well as prosecution would be initiated against all.

Not being desirous to pay bribe, the petitioner's father addressed a letter of complaint to the SP, CBI, ACU-VI, New Delhi dated 17.9.2005 stating the entire facts relating to the demand of Rs. 50 lakhs by Shri Y.S. Verma and Shri Manish Mani Tewari. The said letter of complaint was treated as FIR and a case was registered by the CBI authorities against the officers concerned u/s 120B IPC read with Section 7 of the Prevention of corruption Act, 1988. On the same day, Shri Y.S. Verma was caught red handed taking bribe of Rs. 5 lakhs from Shri Bansal in the presence of eye witnesses. The residence of Shri Manish Mani Tewari was searched where assets disproportionate to the known sources of his income worth Rs. 45 lakhs were found.

In the wake of registration of the aforesaid case by the officers of DRI, the entire

DRI department became seriously antagonized against the petitioner's father and his sons, including the petitioner.

The petitioner arrested on 13.10.2005 by the officers of DRI from outside the office premises of his learned Advocate and was beaten by the officers and taken to the DRI office. At the DRI office, the petitioner's brother was forced to give an incriminating statement pursuant to duress, coercion, physical, mental and psychic torture. Thereafter, the petitioner was arrested at 11.30 PM on the said date and was produced before the Link Magistrate on 14.10.2005. Upon his production before the learned Court, the petitioner asked his learned Advocate to prepare a retraction on his behalf which was hurriedly prepared and after obtaining the signature of the petitioner the same was filed before the learned Magistrate which was taken on record. The learned Magistrate was pleased to remand the petitioner to jail custody till 18.10.2005. The petitioner was subsequently enlarged on bail by the learned Additional Session Judge, New Delhi on 29.10.2005.

With a view to seek vengeance against the petitioner's family and to harass them, the officers of DRI forcefully entered and searched the residential premises of the petitioner on 14.11.2005 without any search authorization and misbehaving with the women folk of the house constraining the petitioner's mother lodge a complaint with the local police station about the entire episode. The said complaint is pending investigation by the local police authorities.

As another act of harassment, Shri Y.S. Verma, at present under suspension, along with three well-built unknown persons, accosted the petitioner's father-in-law Shri Kailash Bansal outside St. Sofiya's School on 6.12.2005 and threatened him with dire consequences as other staff members of the school had gathered at that point of time, Shri Y.S. Verma left the place after threatening the petitioner's brother's father-in-law with dire consequences. The petitioner's brother's father-in-law Shri Kailash Bansal, being apprehensive about his life, was constrained to lodge a complaint with the Paschim Vihar Police Station, New Delhi.

The petitioner made various representations on his behalf as well as on behalf of his father and brother to the respondent No. 2 requesting him not to act on the wrong advice of DRI officers and not to initiate and/or proceed under the provisions of COFEPOSA Act since such proposal is unwarranted, malafide and arbitrary as much as there has been no contravention of any law as alleged.

The officers of DRI finally succeeded in prevailing over the detaining authority and orders of detention were issued against the petitioner and his father on 28.12.2005 and against his brother on 3.1.2006.

Subsequently, the petitioner's father received a copy of the letter dated 30.12.2005 from Shri Bhuvan Aggarwal, proprietor of M/s. Everest Exports which was addressed to the Additional Director General, DRI. In terms of the said letter, Shri Bhuvan Aggarwal had stated that neither Shri Ashwani Aggarwal, Shri

Vipul Aggarwal nor the petitioner had any manner of connection with the said goods imported by his firm M/s. Everest Exports and/or the goods seized by the officers concerned from his office premises situated at A-1/330, Paschim Vihar, New Delhi on 8.9.2005. By the said letter, it was prayed by Shri Bhuvan Aggarwal that the investigation in the matter may be properly conducted in the light of the submissions made in the said letter.

Being aggrieved by the said order of detention, the petitioner filed a writ application before the Hon''ble Punjab and Haryana High Court challenging the same. The said writ application was subsequently withdrawn on 23.5.2006 by the petitioner and the Hon''ble Court was pleased to give liberty to the petitioner to invoke the jurisdiction of this Hon''ble Court.

In the meantime, the petitioner's father and younger brother were detained in pursuance of the said orders of detention and were taken to Central Jail, Tihar, New Delhi where the said order were served on them. They were served with the grounds of detention along with a bunch of relied upon documents inside Central Jail, Tihar, New Delhi on 14.6.2006.

The petitioner moved a pre-arrest writ application before the Hon''ble High Court of Punjab and Haryana and the said Hon''ble Court was pleased to grant pre-arrest bail to the petitioner and was further pleased to stay the execution of the order on him till 20.6.2006 to give him time to invoke the jurisdiction of this Hon''ble Court in terms of its order dated 12.6.2006.

3. Learned Counsel for the petitioner contends that he can challenge the order of detention prior to its execution on any of the grounds mentioned in 1992 Supp. (1) SCC 496; Additional Secretary to the Government of India and Ors. v. Alka Subhash Gadia and Anr. He contends that the order under challenge has been passed for a wrong purpose and that it is vague, based on extraneous and irrelevant grounds. He contends that this Court in view of the above judgment has the jurisdiction to entertain the present writ petition which is maintainable. Learned Counsel contends that in the present case, the order of detention has been issued u/s 3(1)(i) with a view to preventing the petitioner from smuggling goods in future whereas the entire material placed on record, if assumed to be correct, makes out a case for abetting the smuggling of goods u/s 3(1)(ii) or dealing in smuggled goods otherwise than by engaging in transporting, concealing or keeping smuggled goods which falls u/s 3(1)(iv) of COFEPOSA and is a case of non-application of mind. He also contends that he is challenging the order of detention on the ground that vital and relevant documents were not placed before the Detaining Authority which has vitiated the subjective satisfaction rendering the detention order bad. Another ground taken by the learned Counsel is that the order of detention is malafide inasmuch as it has been passed at the behest of officers of DRI with a view to seek revenge on account of petitioner's father having filed criminal complaint against officers of the DRI pursuant to their demanding bribe in which complaint Y.S. Verma, Senior Intelligence Officer, DRI was caught red handed taking a bribe of Rs. 5 lacs from

the petitioner's father. Further to this, a search was conducted by the CBI at the residence of M.M. Tiwari who is being prosecuted for disproportionate assets. The grounds of challenge of detention taken in the writ petition inter alias are as follows:

III. BECAUSE it is clearly evident from the chronology of events as narrated above that the petitioner is an unfortunate victim of persecution and high handedness on the part of the DRI officials apparently for malafide and extraneous considerations.

IV. BECAUSE from the facts and circumstances of the case, it is abundantly clear that the two officers of the Directorate of Revenue Intelligence, i.e., Manish Mani Tewari and Y.S. Verma, against whom proceedings were initiated by the CBI authorities pursuant to the complaint filed by the petitioner's father, are hell bent on seeking revenge against the petitioner and his family and for this purpose, they used their influence to obtain orders of detention for the purpose of detaining the petitioner in pursuance of the said order of detention passed under the COFEPOSA Act. The entire action of the respondents in passing the detention orders is tainted with malice, wholly illegal, arbitrary and malafide.

V. BECAUSE an order of detention under the COFEPOSA Act can be lawfully passed against a person or persons, who are engaged in smuggling or other related activities. For the purpose of detaining a person or persons, there must be relevant materials before the detaining authority on the basis of which, it can pass an order of detention on the subjective satisfaction. In the instant case, the goods in question seized by the officers of the DRI on 08.09.2005 were admittedly imported by Shri Bhuvan Aggarwal, the sole proprietor of M/s. Everest Exports, who had taken the basement of the building on leave and license basis. The goods found were stored in that basement, which is under occupation and control of Bhuvan Aggarwal. The petitioner is not in any manner connected or related with the goods seized. In this context, it is pertinent to assert that there is no material to connect the petitioner with the commission of the alleged crime, except the self-inculpatory statement of the petitioner obtained under duress, threat and coercion which was subsequently retracted. In these circumstances, the order of detention has neither being passed for any lawful purpose nor the same is in accordance with law.

VI. BECAUSE the petitioner, his father and brother were sought to be detained with a view to teach the petitioner's family a lesson, as the petitioner's father had dared to lodge a complaint against the two influential officers of the DRI and in pursuance whereof a proceedings under the Prevention of Corruption Act was started.

VII. BECAUSE in pursuance of the complaint filed by the petitioner to the CBI authorities, not only a case was registered against the aforesaid two DRI officers but the CBI also arrested Shri Y.S. Verma, who was caught red handed while accepting a bribe of Rs. 5 lakhs. Thereafter, he was produced before the CBI

court, where he was remanded to custody and ultimately, was granted bail. The said officer was, thereafter, suspended. Further more, upon the search of the residence of Manish Mani Tewari, the officers of the CBI detected assets disproportionate to the known sources of his income worth Rs. 45 lakhs. However, he was not arrested because of his influence. The said case is pending investigation by the CBI authorities.

VIII. BECAUSE the entire records pertaining to the seizure of Intel Pentium Processors and E-RAMs of 512 MB capacity, have already been taken over by the CBI authorities from the DRI authorities. The entire proceedings before the CBI are vital, relevant and essential, which were suppressed from the detaining authority, while seeking orders of detention. Even the statements of the witnesses recorded by the CBI were also not placed before the detaining authority. In these circumstances, the impugned order of detention against the petitioner, are not for any lawful purpose but have been passed in colourable exercise of the powers vested in the officials concerned.

IX. BECAUSE the stated purpose of the impugned detention order is to prevent the detenu from smuggling goods in future, whereas, the entire narrative in the grounds of detention at best depict abetting in smuggling of goods. Thus, it appears that the order of detention has been passed under Clause (i) of Sub-section (1) of Section 3 of COFEPOSA whereas in the grounds a case of abetting within the meaning of Clause (ii) of Sub-section (1) of Section 3 of COFEPOSA has been made out depicting complete non-application of mind on the part of the detaining authority.

X. BECAUSE the detaining authority has passed the instant order of detention with a view to preventing the petitioner from smuggling goods in future, the entire narrative in the grounds of detention, even if assumed to be correct though not admitted to be correct, makes out a case of abetting the smuggling of goods and/or dealing in smuggled goods otherwise than by transporting, concealing or keeping smuggled goods. Statements of different persons which have been relied on by the detaining authority and made the basis for passing the instant order of detention against the petitioner portrays the petitioner's father Shri Ashwani Aggarwal as the mastermind and the person controlling the activities of the four firms in question. The petitioner has been projected as a person who has abetted the smuggling of goods. In the premises, the instant order of detention ought to have been passed u/s 3(1)(ii) with a view to preventing the petitioner from abetting the smuggling of goods in future or u/s 3(1)(iv) with a view to preventing the petitioner from dealing in smuggled goods otherwise than by transporting, concealing and keeping smuggled goods. Unfortunately, the detaining authority has passed the instant order of detention against the petitioner with a view to preventing the petitioner from smuggling goods in future when in fact and effect, the materials on the basis of which the said order of detention has been passed projects the petitioner as a person abetting the smuggling of goods and dealing in smuggling goods, engaging in

transporting or concealing or keeping smuggled goods. It is respectfully submitted that Section 3 Sub-section (1) envisages five different prejudicial activities from which orders of detention can be passed which are distinct and separate and provisions of one clause cannot be invoked for activities covered by other clauses. Therefore, in the instant case, the impugned order of detention which has been passed for preventing the petitioner from smuggling goods in future is unsustainable under the provisions of the Act. Non-application of mind is writ large in the instant case and demonstrates that the detaining authority acted with complete non-application of mind whereby the said order of detention stands vitiated.

XII. BECAUSE law is well settled that if vital and relevant materials and/or documents which are bound to influence the mind of the detaining authority on the question whether he should make or not an order of detention are not placed before him, the same would vitiate the order of detention. In the instant case, pursuant to seizure of goods belonging to M/s. Everest Exports from the basement of the residential premises of the petitioner, a sum of Rs. 30 lakhs was demanded as bribe by Shri Manish Mani Tewari, Deputy Director, DRI for the purpose of not implicating the petitioner's father and brother including the petitioner in the case of alleged duty evasion and diversion of imported goods, cleared free of customs duty, in the local market. As Rs. 30 lakhs was not available with the petitioner's father, three solitaire diamonds worth approximately Rs. 30 lakhs were handed over to Shri Tewari by the petitioner's father and the petitioner's and brother were allowed to leave the residential premises by Shri Tewari. Thereafter, Shri Y.S. Verma, Senior Intelligence Officer, DRI, contacted the petitioner's father-in-law and told him that Shri Tewari had demanded a further sum of Rs. 50 lakhs for not implicating the petitioner's father and brother including the petitioner in the case in question. As the petitioner's father was not prepared to pay the said amount of Rs. 50 lakhs as demanded by Shri Tewari, he addressed a letter of complaint to the CBI authorities on 17.9.2005. The said letter of complaint was treated as an FIR and a case was registered by the CBI authorities against the officers in question. Shri Y.S. Verma was, thereafter, caught red handed by the officers of CBI taking a bribe of Rs. 5 lakhs from the petitioner's father-in-law and pursuant to the search conducted at the residence of Shri Tewari, assets disproportionate to his known sources of income amounting to approximately Rs. 45 lakhs were found. The said case had a direct link with the case started against the petitioner, his father and brother. In the course of investigation, search witnesses were examined and their statements were recorded by the officers of CBI. The officers of DRI were also examined and their statements were recorded. Similarly, statements were recorded from other persons including the petitioner's father and father-in-law. All the original records were taken over by the officers of CBI from the officers of DRI and even today they are with the officers of CBI. At the time of passing the instant order of detention, statements recorded from the search witnesses, the officers of DRI and other persons including the petitioner's

father and father-in-law, report of search conducted at the residence of Shri Tewari and finding of assets disproportionate to his known sources of income and the apprehension of Shri Verma who had been caught red handed taking bribe of Rs. 5 lakhs were not placed before the detaining authority. As the said documents were very vital and relevant and were bound to influence the mind of the detaining authority one way or the other on the question whether he should make or not an order of detention against the petitioner, the same ought to have been placed before him by the sponsoring authority. Unfortunately, the said vital and relevant documents and/or materials were not placed before the detaining authority, and as such, the same were not considered by him at the time of passing the instant order of detention. In the premises, non-placement of vital and relevant documents before the detaining authority which were bound to influence his mind has rendered the said order of detention passed against the petitioner illegal.

XIII. BECAUSE the petitioner was released on bail way back on 29.10.2005, i.e., about 2 months prior to the passing of the detention order. Admittedly, no complaint has been filed by the DRI in the Court of law for initiation of criminal proceedings against the petitioner. It is further an admitted fact that no adjudication proceedings have been initiated in the matter by way of a Show Cause Notice under the Customs Act. Apparently, Therefore, the impugned detention order has been passed to bypass a criminal trial and to scuttle the adjudication proceedings, thereby rendering the same to be purely punitive in nature.

xxxvII. BECAUSE the concerned authority has withheld relevant and vital material information and documents from the detaining authority inasmuch as the entire proceeding before the CBI authorities pursuant to the complaint filed by the petitioner's father has been suppressed and/or withheld from the detaining authority. The fact that an FIR was lodged by the CBI authorities in pursuance of a written complaint filed by the petitioner and in the course of investigation Shri Y.S. Verma was caught red handed by the officers of CBI taking bribe of Rs. 5 lakhs and assets disproportionate to the known sources of income of Shri Manish Mani Tewari were found upon search of his residential premises clearly demonstrates that the preset orders of detention obtained by the sponsoring authority from the detaining authority are neither for the purpose of the COFEPOSA Act nor for any lawful purpose but the same has been obtained with a view to seek revenge against the petitioner. Neither the Constitution of India nor the COFEPOSA Act authorise and/or sanction the obtaining of orders of detention for the purpose of setting scores against those persons who had dared to make allegations of corruption against the officers concerned. The facts of the case highlighted hereinbefore demonstrates that the said order of detention has not been passed for the purpose of the COFEPOSA Act but have been passed in a motivated, illegal, arbitrary and malafide manner. In the circumstances, the case in had present features which are of great importance warranting interference by this Hon''ble Court in its writ jurisdiction.

4. Upon Rule being issued, counter affidavit was filed on behalf of respondent Nos. 1 & 2 by Sh. R.K. Gupta, Joint Secretary, Department of Revenue, Ministry of Finance, Government of India. In the affidavit dated 17.08.2006 so filed, the sole objection taken is to the maintainability of a pre-detention writ petition. There is, however, no reply to the allegations made in the grounds of the writ petition.

5. When the case came up for hearing, we found that the respondents have not cared to file an appropriate affidavit placing on record facts which would enable this Court to hold that the allegations made by the petitioner of non-application of mind, etc., were not made out. We reminded counsel for the respondents and pointed out the defect, however, counsel for the respondents while conceding that there is no denial of allegations made in the writ petition and its grounds was candid enough to argue only on its maintainability. Learned Counsel for the State contends that this Court would interfere in a pre-detention matter rarely and that too if the petitioner discloses facts as would fall within the four corners of the law laid down by the Supreme Court in Alka Subhash Gadia's case (supra). He contends that the petitioner has sought to tarnish the entire administration which cannot be permitted. He further contends that the material facts stated in the affidavit are sufficient to enable this Court to dismiss the writ petition.

6. We have carefully examined the averments made in the writ petition some of which have been set down herein above. The order of detention dated 28.12.2005 made in exercise of power conferred u/s 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, clearly states that it is necessary to detain Vikas Aggarwal with a view to preventing him from smuggling goods in future. However, the material placed before us by the petitioner viz. a viz. the memo of arrest, indicates that the petitioner was arrested by the officers of DRI on the ground that he was engaging in diversion of duty free goods in the local market. In the aforesaid arrest memo there was no charge of smuggling goods. A perusal of the show cause notice also indicates that the allegations are of diversion of duty free goods into the local market and not of smuggling goods. The present order of detention passed for preventing the petitioner from smuggling goods in future appears to be contrary to the material placed on record in the writ petition. This, Therefore, could be a case of non-application of mind.

7. Before proceeding with the challenge to the detention order on the grounds mentioned in the writ petition, we would necessarily have to deal with the maintainability of this pre-detention writ petition. In Alka Subhash Gadia's case (supra), the Supreme Court has in no uncertain terms held as under:

it is not correct to say that that courts have no power to entertain grievance against any detention order prior to its execution. The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have

interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.

31. Lastly, it is always open for the detenu or anyone on his behalf to challenge the detention order by way of habeas corpus petition on any of the grounds available to him. It is not, Therefore, correct to say that no judicial review of the detention order is available. In the view we are taking which applies also to the cases under other laws, the stage at which the judicial review is made by the Court only stands deferred till after the order is executed. A ground on which a detention order is challenged which requires investigation and cannot be adjudicated without hearing the other side and without proper material, has necessarily to await decision till the final hearing. In such cases the operation of the order of detention by its very nature cannot be stayed pending the final outcome. The only proper course in such cases is to hear the petition as expeditiously as possible.

8. In the present case, the challenge to the order is on the ground that it is passed for a wrong purpose and also that the same is passed on vague, extraneous and irrelevant grounds. Such being the challenge to the detention order, the present writ petition is maintainable.

9. Coming to the facts of the case at the cost of repetition, we may point out that the Detaining Authority has chosen not to file a detailed affidavit controverting allegations made in the writ petition. The petitioner has categorically stated that the order of detention is bad on the grounds that it has been passed by suppressing vital and relevant documents before the Detaining Authority inasmuch as the statements recorded by the CBI Authorities pursuant to the registration of the F.I.R. and apprehension of Shri Y.S. Verma, who was caught taking bribe relating to the case in hand, has not been placed before the Detaining Authority. The statements recorded by the officers of CBI of search and seizure made at the residence of Ashwani Aggarwal on 8.9.2005 as also the statement of Ashwani Aggarwal and statement of Kailash Bansal has not been placed before the Detaining Authority. It is also alleged that the statement recorded by the DRI and the report relating to the search of the residential premises of Manish Mani Tewari and recovery of disproportionate assets to his known sources of income amounting to Rs. 45 lakhs has not been placed before the Detaining Authority. It was also contended that the copy of the show cause

notice dated 23.12.2005 issued by the Development Commissioner for cancellation of letter of permission was not placed before the Detaining Authority. This was issued at the behest of the DRI authorities and was available with the officers prior to the issuance of the order of detention.

10. The aforesaid documents which the petitioner claims were vital, relevant and germane for consideration by the Detaining Authority having not been placed for consideration, renders the detention order bad. The Detaining Authority did not get an opportunity to apply his mind to the vital and relevant documents mentioned above. Failing to place the vital material before the Detaining Authority would also render the order bad. The counter affidavit does not squarely deal with this aspect of the matter and Therefore, we have no material before us to show that the Detaining Authority had before it the material stated above or considered the same at the time of passing the detention order. In the case of *Rajinder Arora Vs. Union of India (UOI) and Others*, , the Supreme Court, while dealing with the similar situation as we are confronted with, has held that withholding of relevant material from the Detaining Authority would vitiate the order of detention. Besides this, we find that even though a substantially long period has elapsed, yet the Department has not chosen to launch prosecution against the petitioner. When the aforesaid question was raised, the only answer we got from the counsel for the Detaining Authority was that it would be lodged shortly. It is, however, beyond apprehension as to why despite a long passage of time, the respondents have not been able to get any material to lodge a complaint against the petitioner. No Explanation whatsoever has been offered by the respondent as to why no prosecution has been launched against the proposed detenu. The withholding of relevant material coupled with the delay in launching prosecution, leads us to hold that the order of detention is passed for extraneous reasons and for a collateral purpose.

11. We need hardly examine each and every ground taken in the writ petition suffice it so say that there is no effective reply on record of the Detaining Authority and must, Therefore, be assumed that the allegations are not controverted. It is not disputed that the detention orders against Ashwani Aggarwal and Vipul Aggarwal have already been struck down in writ petition Nos. 1484 of 2006 and 1485 of 2006 respectively. In that view of the matter, we have no hesitation in quashing the order of detention bearing F. No. 673/19/2005-CUS.VIII dated 28.12.2005. Writ Petition (Criminal) No. 1495 of 2006 is allowed and Rule made absolute. Criminal M.A. No. 6372 of 2006 stands disposed of.