

(1999) 01 DEL CK 0001
In the Delhi High Court
Case No : Criminal W. No. 517 of 1998

Vinod Kumar Chawla

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-01-1999

Acts Referred:

Citation : (1999) 2 AD 445 : (1999) 77 DLT 783 : (1999) 48 DRJ 780 : (1999) 3 RCR(Criminal) 153

Hon'ble Judges : J.B. Goel, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. R.L. Mehta and Ms. Neeraj Mehra, for the Appellant; Mr. Madan Lokur, Addl. Solicitor General and Mr. Neeraj Kaul, for the Respondent

Judgement

J.B. Goel, J.—This petition under Articles 226 and 227 of the Constitution of India has been filed challenging the order of the Joint Secretary to the Government of India dated 12.2.1997 passed u/s 3(1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 (for short "the Act").

2. Briefly, the facts as alleged in the grounds of detention are that the Directorate of Revenue Intelligence, New Delhi (DRI) had received information that the petitioner was indulging in large scale evasion of customs duty by importing consumer electronic goods at grossly under invoiced prices and by circumventing Import and Export Policy and remitting payments for the same through illegal channels, the goods being computer accessories, connectors, cables, etc. imported through his various firms/concerns, namely: (1) M/s. Connectronics and Cables Pvt. Ltd., New Delhi (CCPL), (2) M/s. Life Electronics Pvt. Ltd., Noida, (3) M/s. Wings Electronics, Noida, and (4) M/s. Mob can Electronics, New Delhi.

3. On the basis of the said information, the officers of the DRI conducted simultaneous searches on 20.12.1996 at seven residential/business/factory premises of the petitioner and his aforesaid concerns. As a result of the searches, several incriminating documents and several goods like speakers, cabinets,

connectors and AT&T cables of foreign origin were recovered. Statements of petitioner were recorded on 19.12.1996, 20.12.1996 and also on 30.1.1997. Further searches were also made on 30.12.1996 and some more goods of foreign origin were recovered. The details of the goods seized and the extent of excise duty evasion has been noticed in the grounds of detention served on the petitioner. On the basis of the material collected, the Joint Secretary to the Government of India made the impugned order dated 12.2.1997 u/s 3(1) of the Act. Simultaneously, the grounds of detention and the list of documents relied were also drawn. This notice, however, could be served only on 12.3.1998 as the petitioner is alleged to have been evading its service and was absconding.

4. After service of the order the petitioner made a detailed representation dated 24.3.1998 against this order and disputed the correctness of the grounds of detention. Inter alia, grievance was made of non-supply of various documents seized during searches and also the non-supply of copies of search warrants in pursuance of which the searches were made and asked for supply of the same. This representation was rejected by the detaining authority on 21.4.1998. The petitioner had also made representation to the Central Advisory Board thereafter but the Advisory Board had come to the conclusion that there was sufficient cause for his detention. The detention was confirmed by the Central Government u/s 8(f) of the Act vide order dated 4.6.1998. Thereafter, the petitioner has filed the present writ petition.

5. The detention is challenged on the following grounds which have also been canvassed during arguments. The contentions/pleas raised are:

1(a) Copy of the fax message relied upon/referred to in the grounds of detention by the Detaining Authority has not been supplied to the petitioner pari passu the grounds of detention corporation or within 5 days of the service thereof on the petitioner;

(b) Copies of certain other documents which are referred to and relied upon in the grounds of detention and demanded by the petitioner in his representation dated 24.3.1998 to the Detaining Authority and dated 5.5.1998, 8.5.1998 and 15.5.1998 to the Advisory Board were not supplied to him;

2. The representation made by the petitioner was not considered expeditiously and within reasonable time;

3. There was unexplained and inordinate delay in the execution of the impugned order inasmuch as it was served on the petitioner 13 months after it was made;

4. The detaining authority had not applied its mind while passing the impugned order dated 12.2.1997 inasmuch as two letters dated 11.12.1997 relied upon were dispatched only on 12.12.1997 and as such the Detaining Authority could not have applied its mind.

6. Learned Counsel for the petitioner relying on a Division Bench decision of this Court in *M.M. Yusuf Vs. Union of India & Ors.* (Crl. W. No. 324/86 decided on

March 17, 1987), has contended that non-supply of documents has vitiated the detention.

7. In this case, the following legal position for supply of documents as laid down in Mohd. Hussain Vs. Secretary, Govt. of Maharashtra, Home Department, Mantralaya, Bombay and others, , has been referred to with approval:

"(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 the grounds of detention;

(b) the documents which are not relied upon or do not form the basis of 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 detenus;

(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 defense or not is for the detenu to decide and not for the detaining authority to judge."

8. Learned Counsel for the respondent disputes the correctness of legal position in respect of the aforesaid third category of documents.

9. A learned Single Judge of this case (Malik ShariffudDin,J.) in Gurdip Singh Vs. Union of India 1989 Cri.L.J. 41 (Crl.W. No. 257/88 decided on December 7, 1988) had also taken the similar view as taken by the Division Bench in the aforesaid case observing that the settled legal position was that all the documents relied upon for the purpose of ordering detention are to be supplied pari passu the grounds of detention to the detenu and documents not relied upon but casually referred to for the purpose of narration of facts were also to be supplied to the detenu if demanded and where the documents of the latter category are supplied after the meeting of the Advisory Board is over, it was held that would seriously impair the detenu's right to make an effective and purposeful representation which would vitiate the detention.

10. Relying on this latter authority in Kamarunnissa and Others Vs. Union of India and another, , it was contended that since the search authorizations referred to in the detention order were supplied after the meeting of the Advisory Board, the detention orders stood vitiated. This was not accepted in this case and it was held that:

"But in order to succeed, it must be shown that the search authorizations had a bearing on the detention orders. If, merely an incidental reference is made to some part of the investigation concerning a co-accused in the grounds of detention which has no relevance to the case set up against the detenus it is difficult to understand how the detenus could contend that they were denied the right to make an effective representation. It is not sufficient to say that the detenus were not supplied the copies of the documents in time on demand but it must further be shown that the non-supply has impaired the detenu's right to

make an effective and purposeful representation. Demand of any or every document, however irrelevant it may be for the concerned detenu, merely on the ground that there is a reference thereto in the grounds of detention, cannot vitiate an otherwise legal detention order. No hard and fast rule can be laid down in this behalf but what is essential is that the detenu must show that the failure to supply the documents before the meeting of the Advisory Board had impaired or prejudiced his right, however slight or insignificant it may be. In the present case, except stating that the documents were not supplied before the meeting of the Advisory Board, there is no pleading that it had resulted in the impairment of his right nor could Counsel for the petitioners point out any such prejudice."

11. In *Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr*, also it was contended on behalf of the detenu that the detaining authority was under an obligation to supply along with the grounds of detention, copies of all the documents to which reference was made in the grounds irrespective of whether such documents were or were not relied upon in making the order of detention. Repelling this contention it was held that "..... every failure to furnish copy of a document to which reference is made in the grounds of detention is not an infringement of Article 22(5) fatal to the order of detention. It is only failure to furnish copies of such documents as were relied upon by the detaining authority, making it difficult for the detenu to make an effective representation, that amounts to a violation of the fundamental right guaranteed under Article 22(5). In our view, it is unnecessary to furnish copies of documents to which casual or passing reference may be made in the course of narration of facts and which are not relied upon by the detaining authority in making the order of detention". In this case it was held that as the two documents were not of such category which were relied upon by the Detaining Authority in making the order of detention, the detenu could not properly complain that he was prevented from making an effective representation and as such there was no violation of the right guaranteed by Article 22 of the Constitution. *Haridas Amarchand Shah of Bombay Vs. K.L. Verma and Others*, is also to the same effect.

12. Coming to the facts of the case:

1(i) What is the fax message and whether it has actually been supplied to the petitioner?

Paras 17 and 18 of the Grounds of Detention read as under:

"17. Further scrutiny of the recovered documents revealed a fax message from M/s. Matrix Enterprises (HK) Ltd., addressed to Life Electronics, attention: Vinod Chawla i.e. you. This fax was a Statement of Accounts which gives a detailed Account Statement with Invoice Number and date, the items supplied, the actual prices of these items, the prices mentioned on the invoices which were filed before customs at time of paying duty, the differential amount between the two, and the differential amount which was remitted by you through personal cheques, demand drafts, telegraphic transfers, travellers cheques and cash. The

total amounts representing the difference between the actual prices, and the declared prices to Customs, as per the statement, comes to US \$ 2,19,486.95. However, you had transferred US \$ 2,42,256.62 through illegal channels thereby contravening the provisions of FERA 1973, during the period between June, 1995 to September, 1996 only.

18. This statement of accounts recovered from the premises of M/s. Connectronics And Cables Pvt. Ltd. shows the extent of under invoicing done by you. The difference in actual prices and the declared prices was remitted by you through illegal channels in contravention of provisions of FERA, 1973."

13. This fax message has obviously been relied upon by the detaining authority while passing the order of detention and it was bound to supply copy thereof to the petitioner *pari passu* the grounds of detention.

14. In para 3 of the writ petition relying on paras 17,18 and 19 of the Grounds of Detention, it is alleged that the fax message mentioned therein was not supplied to the petitioner with the Grounds of Detention or thereafter and this has vitiated the detention order. It is also pleaded that such fax message was not seized from the premises of CCPL. In the counter affidavit filed on behalf of the detaining authority, in para 5, it is pleaded that this document was available at S. No. 44 of File No. 2 mentioned in the panchnama and was recovered from the premises of CCPL during search on 10.12.1996 and the petitioner and his son Ashish Chawla were shown this document on 31.1.1997 and 7/8.1.1997 respectively and that it is the same fax message containing statement of account of Matrix Enterprises (Taiwan) which depicts the particulars of the invoice numbers, amount differential values, actual value pertaining to the said invoices, remittances of money and its mode etc. and all those particulars match with the invoices recovered from the premises of CCPL. This fact has been duly incorporated in the Grounds of Detention also and a copy of this has also been supplied to the petitioner along with the relied upon documents.

15. Item 54 of the list of documents supplied along with the grounds of detention reads as under:

"54. Statement of Account forwarded by M/s. Matrix Enterprises, Taiwan to Mr. V.K. Chawla, depicting the actual/declared invoice prices, the mode of payments made, and outstanding balances, together with the copies of the relevant invoices reflected in the said statements."

16. The petitioner has not disputed that the document mentioned at S. No. 54 of the list of documents has been supplied to him along with the Grounds of Detention. It is also not alleged that he had not been shown this document on 31.1.1997. A copy of this document has been annexed on behalf of the petitioner with the rejoinder at Annexure "Q" (page 150 of the paper book) and the original of this was also produced and shown in Court at the time of arguments. Whether or not it was received through fax or otherwise is within the knowledge of its recipient. The fact remains that this document contains a statement of account of

the transactions drawn by Matrix Enterprises (HK) Ltd. issued from their Taiwan Branch and addressed to "M/s. Life Electronics, Attn: Mr. Vinod Chawla". Obviously, the detaining authority has relied on this document treating it to be a "fax message containing the statement of account and copy of it has been supplied to the petitioner. It is not for the detaining authority to further prove that it was received by the petitioner through fax. This document has been supplied to the petitioner and his grievance of non-supply of alleged fax message in the circumstances is not bona fide and has no merit.

(ii) Certain other documents not supplied

17. The plea is that copies of the search authorizations for search of various premises searched have not been supplied. It is also alleged that certain other documents were also not supplied to the petitioner though demanded.

18. As already noticed the detenu would be entitled to those documents which were relied upon by the Detaining Authority for formulating the Grounds of Detention and not all the documents which find mere casual mention of the same.

19. The search warrants in the present case in themselves are not the documents or material which are the basis of detention. It is the incriminating material recovered during search in the course of investigation which is relied upon in the Grounds of Detention. The plea taken in the representation is that "I can prove from the search warrants that most of the premises where the searches have been made are not in my name and Therefore they ought to have been placed before the detaining authority but the search warrants and the reports of the search warrants are very important documents. They are referred to in the Panchnama and as such are deemed to be incorporated in the Grounds of Detention". Search warrants in themselves are no proof of the ownership of the premises searched. The premises searched in pursuance of the search warrants are mentioned in the grounds of detention and the panchnamas drawn during searches have been mentioned in the list of documents. Copies of which have been supplied to the petitioner. The fact if any premises searched are not in his name could be proved by some material/document which is in possession or power of the petitioner or someone else who may be its occupier at the relevant time. The search warrants, have been referred to incidentally and are not the basis of grounds for passing of the order of detention and obviously are not relevant for making an effective representation by the petitioner.

20. As regards other documents, in the counter affidavit filed on behalf of the detaining authority it is stated that the detaining authority has passed the detention order against the petitioner after careful consideration of all the material placed before it and after arriving at the subjective satisfaction and all the material relied upon in this regard together with a copy of the grounds of detention have been duly served on the detenu (vide paras 6, 17 and 19). In the Additional Affidavit dated 17.8.1998 of Shri Anil Kumar Gupta, Asstt. Director of Revenue Intelligence, also it is stated that :

"The seized documents were scrutinised that all the documents which were considered material for the purpose of consideration of the proposal for passing of detention order of Shri V.K. Chawla were supplied to the detaining authority. Further, at the time of issue of the show cause notice, the documents which were considered relevant and were relied upon, the copies of the same were supplied to the petitioners representative Along with the show cause notice. The seized documents which were not relied upon in the show cause notice were returned in original to Ms. Neeraj Mehra, Advocate of the detenu and Shri Ashish Chawla son of the petitioner on 31.12.97, 6.1.98, 15.6.98 (against acknowledgement obtained from them)..... The petitioner in his representation dated 26.3.1998 has asked for all the documents seized as per the panchnama from the premises of M/s. CCPL, M/s. Wings Electronics, and M/s. Life Electronics. As explained hereinabove these documents had been returned in original even before the detention of the detenu. All the documents relied upon in the grounds of detention have been supplied to the petitioner on 12.3.1998. It is further pertinent to mention here that thousands of documents were seized by the Directorate and the document which were not relied upon in the grounds of detention were all returned to the representatives of the petitioner. Thus it is not possible for the Directorate to comment upon the document which the petitioner is referring to as no document which has not been relied upon in the Grounds of Detention as well as the show cause notice is any longer in the possession of the Directorate."

21. In ground (I) of the writ petition it is further pleaded that the following documents also have not been supplied. That ground reads as under:

"I. Because the following material which could have influenced the mind of the detaining authority one way or another has been suppressed thereby vitiating the order of detention and rendering the same void ab initio.

(i) There is a personal chart of quotations in the documents seized by DRI. This is a comparison of prices which would have shown that the price of the same item varies substantially. (Also demanded and not supplied).

(ii) Enquiries were made from M/s. Lucent Technologies, Bombay and the correspondence which was entered into by DRI officers. (Also demanded and not supplied).

(iii) Statement of Asheesh Chawla dated 8.1.1997.

(iv) Retraction made by Asheesh Chawla of his statements dated 7.1.1997 and 8.1.1997 before the learned Duty Magistrate on 8.1.1997. The statement made by Mr. Asheesh Chawla on 7.1.1997 and 8.1.1997 have been relied upon, his retraction of the same before the Magistrate has not been placed before the detaining authority."

22. In reply to it, in additional counter affidavit of Shri Anil Kumar Gupta, it is stated that documents mentioned in ground 1(i), that the seized documents

which were considered material for the purpose of passing of detention order were supplied to the Detaining Authority and those not so relied upon in the show cause notice were returned in original to Ms. Neeraj Mehra, Advocate of the detinue or his son Ashish Chander on 31.12.1997, 6.1.98 and 15.6.98 against acknowledgements obtained from them (Para 5).

23. With respect to ground I (ii) it is stated that the said documents have been supplied to the petitioner and are at pages 201207 of the relied upon documents served to the petitioner along with the grounds of detention. (Para 6)

And with respect to ground I (iii) it is stated that statement of Ashish Chawla dated 8.1.1997 was not considered material by the Directorate and was not relied upon. Accordingly, the same was not supplied to the detaining authority. This has caused no prejudice to the petitioner as the said document was not material and was not relied upon. (Para 7)

24. It may be mentioned that the statement dated 8.1.1997 and retraction dated 8.1.1997 have been placed on record here on behalf of the petitioner vide Index/ list dated 24.8.1998. These two documents obviously were available to the petitioner. The facts stated in this Additional Affidavit have not been refuted.

25. The position that emerges is that the documents which were relied upon by the detaining authority for passing the order of detention had been supplied and some other documents which were demanded by the petitioner were not relied upon by the Detaining Authority, and those were in the power and/or possession of the petitioner having been returned to his representatives before he had made the representation against his detention. In these circumstances, the question of non-supply or any prejudice being caused to the petitioner does not arise. This ground thus also has no merit.

2. Delay in consideration of the representation

26. The representation dated 24.3.1998 was rejected by the detaining authority on 21.4.1998 and by the Central Government on 29.4.1998. It is alleged that there is delay in considering the representation.

27. Learned Counsel has relied on Harish Pahwa Vs. State of U. P. and Others, and Satnam Singh Vs. Union of India and Others, .

28. In the first case, the order of detention was made on 16.5.1980, the representation made from jail on 3.6.1980 was received by the State Government on 4.6.1980; no action was taken for two days; on 6.6.1980, comments were called for from the customs authorities with regard to the allegations made in the representation and such comments were received by the State Government on 13.6.1980. On 17.6.1980, the State Government referred the representation to its Law Department for its opinion which were furnished on 19.6.1980. It was rejected on 24.6.1980 and communicated to the jail authorities two days later. Rejecting the Explanation for delay it was held that:

"We may make it clear, as we have done on numerous earlier occasions that this Court does not look with equanimity upon such delays when the liberty of a person concerned calling comments from other departments, seeking opinions of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration, as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case, we have no option but to declare the detention unconstitutional."

29. In the case of Satnam Singh (supra), it was observed that:

"It is a well established principle of law that the representation made by the detenu under Article 22(5) of the Constitution has to be disposed of expeditiously and if there is a delay it has to be explained."

30. In this case, there was unexplained delay of 17 days in disposal of the representation and it was held that this delay vitiated the proceedings.

31. This aspect has been considered in Kamrunissa's case (supra). In that case representations made on December 18, 1989 were rejected by communication dated January 30, 1990. After receipt of representation, by registered post on December 28, 1989, comments of the Sponsoring Authority were called which were received on January 9, 1990, there being 4 nonworking days in between and thereafter the representation was submitted to the Finance Minister, who rejected it on January 16, 1990, though it was dispatched on January 18, 1990. There was postal delay in the receipt of the communication by the detenu for which it was held that the Detaining Authority could not be blamed. The contention that the views of the Sponsoring Authority were totally unnecessary and the time taken by that authority could have been saved was rejected holding that consulting the authority which initiated the proposal could never be said to be an unwarranted exercise and that there was no delay in that case. It was further held that whether or not delay, if any, is properly explained would depend on the facts of each case. In K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, (a Five Judges Bench) held as under :

"12. The representation relates to the liberty of the individual, the highly cherished right enshrined in Article 21 of our Constitution. Clause (5) of Article 22 Therefore, casts a legal obligation on the government to consider the representation as early as possible. It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible.

The words "as soon as may be" occurring in Clause (5) of Article 22 reflects the concern of the framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal. This has been emphasised and reemphasised by a series of decisions of this Court (See: Jayanarayan Sukul Vs. State of W.B.; Frances Coralie Mullin Vs. W.C. Khambra; Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police, and Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India.)."

And it was held that the time required for consideration of representation can never be absolute or obsessive. It depends upon the necessities.

32. In *Kamlabai (Smt) Vs. Commissioner of Police, Nagpur and Others*, , the representation was received on May 19,1992 and rejected on July 15,1992. The objection was that from June 18,1992 to July 13,1992, no Explanation has been given regarding the delay. It was held that the delay by itself is not a ground which proves to be fatal if there is an Explanation . However, the short delay cannot be given undue importance having regard to the administrative actions. The delay was held to be not so inordinate as to warrant interference.

33. In *Mrs. Venmathi Selvam Vs. State of Tamil Nadu and Another*, , relied upon on behalf of the petitioner, the detenu made the representation on 7.10.1997, the Governor Secretariat received it on 14.10.1997, it was dispatched to the Government on 15.10.1997, it called for the remarks of the detaining authority on 17.10.1997, the latter in turn called the remarks of the sponsoring authority on 21.10.1997 who gave its remarks on 24.10.1997 which was forwarded by the Commissioner of Police to the Government on 28.10.1997. The representation was rejected by the Government on 10.11.1997. In this case, no counter was filed on behalf of the Government inspire of opportunities given and it was noticed that the Government failed to file any counter and explain why it had called for the remarks of the detaining authority and that the delay from 21.10.1997 to 10.11.1997 has remained unexplained. The order of detention was set aside. In this case also, it was held that though the delay by itself is not fatal, the delay which remained unexplained becomes unreasonable.

34. Coming to the facts of the present case, the representation was received in the Ministry on 27.3.1998, comments of the sponsoring authority called on 30.3.1998 were received on 17.4.1998, comments were put up to the Secretary (R) through the ADG on 22.4.1998 (18th and 19th being holidays), decision of the Central Government was taken and communicated on 29.4.1998 (25th and

26th being holidays). Representation was also considered by the detaining authority in the meantime and was rejected on 21.4.1998.

35. In the Additional Affidavit filed on behalf of the sponsoring authority, it is stated that the representation was received by them on 2.4.1998, comments were dispatched on 17.4.1998 and during this period there were holidays on 4th, 5th, 8th to 12th and only seven days were available in between. Again there were holidays on 18th, 19th, 25th and 26th.

36. Learned Counsel for the respondent has contended that the delay has to be viewed in the facts and circumstances of each case. In this case, the grounds of detention run into 35 paras, of 13 pages of single space and accompanied by 82 documents of 447 pages. The representation itself run into 23 pages. The material to be considered was quite voluminous. Several contentions / pleas had been raised . The detaining authority required the comments of the sponsoring authority, that cannot be said to be unreasonable. After consideration of the material decision was taken by the detaining authority on 21.4.1998 and the Central Government on 29.4.1998.

37. We have given due consideration to the facts and circumstances, nature of controversy raised and the volume of work and material involved in considering the representation and taking a decision. We are satisfied that there is neither inordinate delay nor explained delay in disposing of the representation both by the detaining authority and the Central Government. This objection also has no force.

3. Delay of 13 months in executing the order of detention

38. The order was made by the detaining authority on 12.2.1997 but was actually served on 12.3.1998, i.e., after 13 months. Learned Counsel for the petitioner has contended that there is unreasonable and unexplained delay and has relied on P.U. Iqbal Vs. Union of India (UOI) and Others, and S.M.F. Sultan Abdul Khadar Vs. Joint Secretary to the Government of India & Ors. 1998 3 SVLR SC 19.

39. In the case of P.U. Iqbal (supra), after referring to the relevant case law, the legal position has been laid down in para 18 as under :

"18. It is manifestly clear from a conspectus of the above decisions of this Court, that the law promulgated on this aspect is that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenu, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the live and proximate link" between the grounds of the detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case."

40. On facts it was found that there was unexplained delay of nearly 7 months at the hands of the Circle Inspector in executing the warrant and a total period of one year delay in securing the detenu and serving the order from the date of passing of the detention order which delay was unreasonable and remained unexplained and in those circumstances the detention was rendered invalid.

41. In the case of Abdul Khadar, the order of detention was passed on 14.3.1996 and the detenu was detained on 7.8.1997. The delay sought to be explained in the counter affidavit was not found satisfactory and it was held that apart from the fact that the delay in execution of the detention from 14.3.1996 to 25.4.1996 remained unexplained, each attempts to find out the detenue was made mostly at the interval of one month; no effort was made to find out from the police authorities as to why they were not able to apprehend the petitioner nor any material was produced to show that the police authorities had made reasonable efforts to locate and apprehend the petitioner nor any efforts were shown to have been made by the detaining authority if the detention order was executed or not. In the facts and circumstances delay was not explained.

42. Learned Counsel for the respondent on the other hand has relied on Bhawarlal Ganeshmalji Vs. State of Tamil Nadu and Another, and a Division Bench judgment of this Court Dalbir Singh Vs. Union of India and Others, . In Bhawarlal's case, it was found that the appellant was evading arrest and surrendered three years after making of the order of detention. The delay was held to be adequately explained and was found to be the result of recalcitrant or refractory conduct of the detenu in evading the arrest and that there was nothing to show that the "live and proximate link" was snapped and rather strengthened due to his having absconded.

43. A large case law, both for and against has been considered in the other case of Dalbir Singh (supra), and in para 14 it has been held that the delay in executing a detention order, if satisfactorily explained, cannot vitiate the detention. If the detenu has been absconding or trying to evade arrest, till he surrenders after initiation of proceedings under Sections 82 and 83 Cr.P.C., the delay cannot be fatal. Delay due to lack of coordination between the detaining authority and the officers executing the warrant may not also be fatal. If detenu was, in spite of frequent search, not found at his known residential address, that could be a valid Explanation. Delay to be fatal must be of such length and remain unexplained so as to snap the nexus between the incident and the detention.

44. The delay in executing the order of detention thus has to be seen in the light of facts and circumstances of each case.

45. In counter affidavit filed on behalf of the respondent it is stated that continued efforts were made both by police authorities as well as officers of DRI but the petitioner was absconding, evading and was not traceable at his known address; notice u/s 7(1)(b) of the Act was published in the Official Gazette on 23.8.1997 and also published in leading English and Hindi newspapers on

4.10.1997; an application u/s 7(1)(a) of the Act was also moved before the Court of ACMM for proceeding under Sections 82 and 83 Cr.P.C. where proclamation u/s 82 was made on 3.12.1997 to appear on 9.1.1998; an order of attachment u/s 83 Cr.P.C. was also issued and brought to the notice of his family members and only then the petitioner could be apprehended and detained on 12.3.1998 and the detention order was served on him. Three letters dated 28.2.1997, 17.7.1997 and 5.9.1997 from the police headquarters about efforts made to serve the detenu have been placed on record. On the efforts made on 15.2.1997 and 16.2.1997, it was reported that the daughter of the petitioner had met and informed "that the petitioner had left the house on 12.2.1997 to an unknown place and that his whereabouts were not known". In the second report, it is reported that raids were conducted by the local police at his house at E526, Greater Kailash where Shri J. C. Malhotra, his father-in-law had met and he had told that he did not know about the whereabouts of the detenu after the order of detention was issued against him and had not visited the house. In the third report also it was reported that he was absconding since 12.2.1997 and close watch was being kept through beat staff. A cutting from Indian Express newspaper with photograph of the petitioner of publication of notice u/s 7(1)(b) of the Act on 4.10.1998 has also been placed on record. In Additional Affidavit of Shri Anil Kumar Gupta, Asstt. Director of Revenue Intelligence dated 15.1.1997 filed during arguments, it is further explained that 11 summons were issued to the petitioner during 20.2.1997 to 26.11.1997, six by speed post, one served on his Counsel (Ms. N. Mehra, Advocate), one served on his son (Ashish Chawla), one on Shri J.C. Malhotra, his father-in-law and two served on one Shri Vijay Verma. On 21.2.1997, his Advocate, Ms. Neeraj Mehra had informed that the petitioner was out of town and on 9.4.1997 she had returned the summons served for 8.4.1997. Mrs. Rajni Chawla, wife of the petitioner had returned on 29.3.1997 six summonses meant for 20.2.1997, 21.2.1997, 24.2.1997, 3.3.1997, 6.3.1997 and 1.4.1997 and two summons on 18.6.1997 meant for 6.6.1997 and 19.6.1997 informing that the petitioner was out of town. A red alert was also issued on 5.3.1997 by the DRI.

46. In the rejoinder filed on behalf of the petitioner by his wife Smt. Rajni Chawla, it is stated that the petitioner was always available conducting his normal business and family affairs. There is no Explanation why then various memos sent to him were not attended to by him and were returned on the ground that he was out of town. There is no material to show where he was on the dates when his presence was required through various summonses.

47. In these circumstances, there is no reason to doubt that the order of detention could not be served in spite of attempts made to serve him and that the petitioner to evade its service was absconding from his house. In these circumstances, it cannot be said that the "live and proximate link" of purpose of detention had snapped and rather it was strengthened because of his absconding. This ground also fails.

4. Non application of mind by the detaining authority while passing the detention order

48. It is alleged that certain documents which had originated from the office of the sponsoring authority on 11.2.1997 and issued on 12.2.1997 would not have been placed before the detaining authority on 12.2.1997 which have been relied upon/referred to in the Grounds of Detention.

49. In the counter affidavit, this fact is denied. Two letters both dated 11.2.1997, Annexure "L" appear to have been issued on behalf of the sponsoring authority and addressed to the petitioner. By these letters, the petitioner has been informed that the department had not asked him to remit the amounts sent vide three bank drafts No. 454265, 454264 and 358795 all dated 10.2.1997 of Rs. 6.00 lakhs, Rs. 9.00 lakhs and Rs.10.00 lakhs and that house amounts had not been accepted by them and the same be collected by him from their office.

50. The detaining authority in para 34 of the Grounds of Detention has noticed as under:

"34. I am aware that the Directorate of Revenue Intelligence received letters from M/s. Wings Electronics and M/s. Connectionism and Cables Pvt. Ltd. on 11.02.1997 by speed post enclosing therewith demand draft of Rs.15 lakhs and 10 lakhs respectively. I am also aware that the Directorate wrote in reply two letters dated 11.02.1997 to you stating that the Directorate has not directed you to deposit the same at any time."

51. The contention is that these two letters dated 11.2.1997 would not be available to the detaining authority on 12.2.1997 if the order was passed on that day. A reliance is placed on an unreported judgment of Supreme Court in Umesh Chandra Verma Vs. Union of India & Ors., (Crl . A.No.878/85 decided on December 20, 1985). In this case, in the detention order reference has been made to an arrest memo which was prepared at 6.00 P.M. on 13.6.1985 besides reliance having been made to 234 documents. In the facts and circumstances, it was observed that the documents of the proposal for detention must have been placed before the detaining authority some time after 6.00 P.M. in which case it would certainly be difficult, if not impossible, for the detaining authority to make the order the same night and in that case it could not have possibly applied his mind to the voluminous documentary evidence which was placed before him and for that reason the order of detention was quashed.

52. It would depend upon the facts of each case whether the relevant material was placed before the detaining authority. Reference to these letters has been made in the last paragraph 34 of the Grounds of Detention. These two letters in themselves are not the Grounds of Detention and it cannot be said from this circumstance alone that the other material which was available from before had not been placed before the detaining authority or that he had not applied his mind before passing the order on that material.

53. In *Tarapada De and Others Vs. The State of West Bengal*, , where the authorities had already applied their mind to the suspected activities of each of the several detenus and were satisfied as to the necessity of detaining them but there being doubts as to the validity of the local Acts and the Preventive Detention Act having been passed in the meantime, the question was to make fresh order under the new Act. It was held that under these circumstances, it could not be said that the fact that a large number of fresh orders of detention were made "overnight" indicated bad faith on the part of the authorities.

54. In *A.K. Gopalan Vs. The Government of India*, , it was held that from the mere fact that 140 orders of detention were passed on the same day, it could not be said that there was no satisfaction of Government with respect to each individual case where the cases were under consideration for quite some time before the detention orders were actually passed.

55. In the present case, the relevant material relied upon by the detaining authority had been collected and available well before the order of detention was passed . There is nothing on record to show that this material would not have been available before the detaining authority to apply its mind and to take a decision in the matter on 12.2.1997. The two letters dated 11.2.1997 obviously having been brought to its notice before the order was passed, the reference has been made to these letters. From this circumstance alone, it cannot be said that the detaining authority had not applied its mind. This objection also thus has no merit.

56. For all these reasons, this writ petition fails and is hereby dismissed. Rule made absolute.