
(2015) 07 BOM CK 0106
In the Bombay High Court
Case No : Writ Petition No. 2105 of 2015

Vrushali Vilas Ambokar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3, 3 (2)
Constitution of India, 1950 — Article 21, 22 (5), 226
Customs Act, 1962 — Section 108, 110

Citation : (2015) 07 BOM CK 0106

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : V.B. Singh and Santosh Shetty, for the Appellant; J.P. Yagnik, APP,
Advocates for the Respondent

Final Decision : Allowed

Judgement

G.S. Kulkarni, J—This Writ Petition under Article 226 of the Constitution of India challenges the order dated 10th April 2015 passed by the 2nd respondent in exercise of the powers under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "COFEPOSA Act"). By the impugned order the 2nd respondent has directed that one Mr. Vilas Vithal Ambokar (for short "the detenu") be preventively detained with a view to preventing him from smuggling of goods and has directed that the detenu shall be detained in Nasik Road Central Prison, Nasik. As averred in the writ petition, the petitioner claims to be wife of the detenu and as such interested in the life and personal liberty of the detenu.

2. Learned counsel for the petitioner has drawn our attention to the impugned detention order and the grounds of detention on the basis of which the detention order is made by the 2nd respondent as served on the detenu.

3. The facts on the basis of which the detention order has been made are that

there was a specific intelligence received that gold smuggling racket was operating at the Chhatrapati Shivaji Maharaj International Airport with the connivance of airlines staff and ground handling staff. A discreet watch was kept outside the customs area of the arrival hall of Terminal II of CSI Airport, Mumbai on the night of 18/19th October, 2014. One Mr. Ahamed Kunhi Pallath holding Indian Passport was suspected of carrying foreign marked gold bars and was identified upon his arrival by Indigo Flight from Dubai. This person was found carrying a blue coloured document folder and a black coloured trolley bag. Search of the document folder resulted in recovery of three mobile carrying cases and each mobile carrying case was found containing three FM bars of gold of one kg each wrapped together with blue coloured adhesive tape. In all nine gold bars having foreign make each weighing 1 kg was recovered from his possession. These gold bars were not declared by Mr. Ahamed to the customs authorities. The value of these gold bars in the international market was approximately Rs. 2.23 crores. The gold bars were seized under section 110 of the Customs Act, 1962 under a panchanama dated 19th October, 2014 under a reasonable belief that the gold bars were liable for confiscation under the Customs Act. Inquiries revealed that one Mr. Mahesh Mahadik who was working as Security Officer in Indigo Airlines would help Mr. Ahamed while he boarded the coach meant to ferry passengers from the aircraft to the terminal building of the Airport. Mr. Mahadik would accept the folders containing gold bars from Mr. Ahamed and would exchange the same for identical empty folder. Inquiries revealed that this modus operandi was adopted for quite sometime in the past. The statement of Mr. Mahesh Mahadik was also recorded who revealed that on earlier occasion he had received similar bag of black or grey coloured folder containing gold bars at the aircraft ladder or inside the airline coach and thereafter he used to hand over the same to one Mr. Ganesh Jagtap employed as a Coach driver who in turn used to hand over the folder containing gold bars to the detenu who was employed as a Security Manager in India Bulls for their chartered flights at Mumbai Airport and posted at Gate no. 8 of the CSI Airport. On further inquiry it was revealed by Mr. Mahesh Mahadik that the gold bars inside the folder were finally smuggled out of the Airport premises by the detenu through gate no. 1 at the Domestic Terminal of CSI Airport.

4. On the basis of this information, a search operation was undertaken at the residence of the detenu and as also at the residence of Mr. Ganesh Jagtap. Search at the residence of the detenu resulted in recovery of Rs. 70,00,000/- both in Indian and foreign currency, gold jewellery valued at Rs. 12 lacs and one Maruti Ertiga car valued at Rs. 8,00,000/-. Two bank lockers operated by the detenu were also searched on 20th September, 2014 which resulted in further recovery of cash of Rs. 55,00,000/- and gold jewellery of Rs. 2.81 lacs. The statement of Mr. Ahamed and Mr. Mahesh Mahadik were recorded under section 108 of the Customs Act, 1962 on 19th October, 2014 wherein it was revealed that they were involved in gold smuggling and that Mr. Mahadik was roped in the syndicate by the detenu while the detenu was working as a Security Manager in

India Bulls chartered flight at Mumbai Airport. Similarly statement of Mr. Ganesh Jagtap was also recorded under section 108 of the Customs Act on 19th October, 2014. He also provided incriminating information against the detenu of his routine involvement of smuggling of gold. The statement of the detenu was recorded on 19th October 2014 and 20th October, 2014 wherein the detenu admitted that he was working as a Security Manager in India Bulls Air Mid Aviation and job of the detenu was to get Airport Entry Passes made for the staff of India Bulls Air Mid Aviation and that the detenu had access to all areas of Mumbai International and Domestic Airport and at the instance of one Mr. Sanjay Gowda the detenu got involved in smuggling activities for some extra money. The detenu retracted his statement on 20th October 2014 to which a rebuttal was filed by the sponsoring authority on 3rd November, 2014. The detenu was arrested on 19th October, 2014 and was released on bail on 21st November, 2014 by an order passed by the Additional Chief Metropolitan Magistrate, on the condition that the detenu would not leave the country without the prior permission of the Court. Thereafter, the detenu had applied before the Additional Chief Metropolitan Magistrate for relaxation of bail conditions. By an order dated 2nd February, 2015 the learned Additional Chief Metropolitan Magistrate directed the detenu to attend the D.R.I. office on the first Monday of every month for a period of six months and accordingly modified the earlier bail conditions. On this factual background the detaining authority was subjectively satisfied and accordingly passed the detention order on 10th April, 2015.

5. The learned counsel for the petitioner has urged that the impugned detention order is rendered illegal and stands vitiated on several grounds as raised in the writ petition. The principal ground as urged on behalf of the petitioner is ground A which pertains to the inordinate delay on the part of the detaining authority in passing the detention order. It is urged that the delay is of 5 months and 21 days. There was a delay on the part of the sponsoring authority in initiating proposal. It is urged that there is no explanation much less a satisfactory explanation to explain this delay which has vitiated the detention order. The second ground as urged on behalf of the petitioner is ground E (iii) set out at page 23 of the Memo of the petition which pertains to non-placement of vital documents for consideration of the detaining authority. According to the petitioner, the documents which were vital and not considered by the detaining authority were the Customs Declaration Form (CDF) which was duly signed by Mr. Ahamed who opted to use green channel and came out of the arrival hall which was the relevant material to establish smuggling of gold by Mr. Ahamed. The second document according to the petitioner which has not been furnished by the detaining authority as also not considered is the termination of the detenu from the services of India Bulls Corporation which showed that the detenu would not have any access to the airport area and that these documents were vital as it would have a direct impact on the subjective satisfaction to be reached by the detaining authority. The third ground as urged on behalf of the petitioner is ground D (i) which pertains to non-application of mind as regards the

panchanama dated 19th October, 2014 pertaining to search and seizure at the residence of the petitioner and also search of the premises of the detenu on 20th October, 2014. This ground is raised as ground G in the writ petition.

6. The respondent-Sponsoring authority has filed a reply affidavit of Mr. Dhananjaya Mali, Assistant Director, Directorate of Revenue Intelligence. As regards the issue of delay in passing the order of detention as urged on behalf of the petitioner in para 7A of the petition, the sponsoring authority contends that there was no delay on the part of the sponsoring authority in initiating the proposal. It is stated that the proposal for preventive detention of the detenu was placed before the Screening Committee on 12th February 2015. The minutes of the meeting of the scrutiny committee conveying the approval of the proposal was received on 12th February 2015 and the proposal was forwarded to the detaining authority on 20.2.2015 (14th February 2015 and 15th February 2015 were Saturday and Sunday and 17th February, 2015 was a Holiday being Mahashivratri). The proposal was forwarded to the detaining authority along with relied documents serially numbered from 1 to 290. Thereafter, further generated documents including show cause notice dated 11th April, 2015 issued to the detenu and others were forwarded to the detaining authority on 23rd April, 2015. It is contended that the detaining authority was justified in recording in para 27 of the grounds of detention to say "Whatever time was required for scanning the proposal containing 290 pages and formulating grounds for issuing the detention order, was for the purpose of better verification of the material placed before me for applying my mind and arriving at subjective satisfaction. Therefore, I was satisfied that the nexus between the date of the incident and passing of the detention order as well as the object of Mr. Vilas Vithal Ambokar's detention had been maintained." Learned counsel for the petitioner has contended that the sponsoring authority is absolutely silent on any demand made by the detaining authority for further documents after 20th February 2015.

7. On behalf of the detaining authority, Mr. Sanjay Dagadu Khedekar Deputy Secretary Home Department, Government of Maharashtra has filed a reply-affidavit. In dealing with the grounds of delay in passing the detention order as raised by the petitioner the detaining authority in para 5 of the affidavit denies that there is a delay of more than 5 months. In this regard, it is stated that two proposals for preventive detention along with documents as relied upon running into pages 1 to 290 were received from the sponsoring authority on 20th February 2015, the detaining authority had issued the detention order on 10th April, 2015 which was after a period of 49 days from the date of receipt of the proposal. It is stated that the time consumed by the detaining authority was for scrutinizing, evaluating and analyzing in detail the proposal as well as documents which were received by the detaining authority. In a sub-para of para 5 appearing at page 71 of the paper book the detaining authority has sought to justify dealing of the proposal as under :

" I say that the proposal for preventive detention received from sponsoring

authority under COFEPOSA Act, 1974 is to be scrutinized by the detaining authority according to the safeguards and the procedural guidelines received by the detaining authority time to time from Department of Revenue, Ministry of Finance, Government of India. For this office of the detaining authority is constituted which consists of the Assistant, the Section Officer the Deputy Secretary and the Principal Secretary (Appeals and Security) Home Department who is empowered with powers of detaining authority. This office works only according to the directions of the detaining authority. This office scrutinizes the proposal according to the safeguards procedural guidelines of Government of India and submits for order of the detaining authority. Accordingly, when the current proposal was received, it was scrutinized and the scrutiny Note was submitted by the concerned Assistant on 07.03.2015. The Section Officer endorsed it on 09.03.2015 and the Deputy Secretary endorsed it on 10.03.2015. After perusing the same the detaining authority directed to get additional information on following points on 11.03.2015."

(Emphasis supplied)

8. From the averments in the above paragraph it appears that the detaining authority directed to get additional information on 12 points as enumerated at pages 72 to 74 of the paper Book. It is stated that the sponsoring authority responded to this and forwarded information by letter dated 20th March 2015 which was submitted by the concerned Assistant on 23rd March 2015 to the Section Officer. The Section Officer and the Deputy Secretary endorsed the same on 23rd March 2015 and the detaining authority after considering the proposal and subjective satisfaction on 31st March 2015 directed to take dictation and the detention order was thereafter issued on 10th April, 2015.

9. Learned counsel for the petitioner has submitted that as regards the contention of the detaining authority that it had sought additional information on 12 points on 11th March 2015 and the same came to be supplied to the detaining authority on 20.3.2015 finds no mention in the affidavit filed on behalf of the sponsoring authority. On the basis of the averments as found in the affidavit of the sponsoring authority and detaining authority, on behalf of the petitioner it is contended that, this state of affairs clearly shows that the contention of the respondents that a subjective satisfaction has been reached is an eye-wash. The detaining authority in its reply has also sought to justify other grounds as raised on behalf of the petitioner. Learned counsel for the petitioner in support of the above contentions has relied on the decisions of the Supreme Court in the case of Lakshman Khatik Vs. The State of West Bengal, AIR 1974 SC 1264 : (1974) CriLJ 936 : (1974) 4 SCC 1 : (1974) SCC(Cri) 289 : (1974) 6 UJ 297 , Pradeep N.Paturkar 1997 Supp 2 SCC 61; Adishwar Jain Vs. Union of India (UOI) and Another, (2006) 112 ECC 328 : (2006) ECR 328 : (2006) 9 JT 432 : (2006) 10 SCALE 553 : (2006) 11 SCC 339 : (2006) 7 SCR 801 Supp : (2006) 2 UJ 1353 .

10. On the other hand, Mr.J.P. Yagnik learned Additional Public Prosecutor

appearing for the detaining authority has opposed the writ petition. In opposing the grounds as urged on behalf of the petitioner, the learned APP has taken us through the affidavit in reply filed on behalf of the detaining authority as also on behalf of the sponsoring authority to contend that there is no delay on the part of the detaining authority in issuing the detention order. The learned APP submits that the subjective satisfaction as arrived by the detaining authority is on the basis of concrete facts as revealed in various statements which are recorded under section 108 of the Customs Act and other material which were placed for consideration before the detaining authority by the sponsoring authority. The learned APP submits that the detaining authority has appropriately explained that there is no delay on the part of the detaining authority and/or whatever time which was taken in passing the detention order was appropriately explained on behalf of the detaining authority. In support of the same the learned APP has relied on the decision of the Supreme Court in case of Licel Antony vs State of Kerala (2014) 11 SCC 326 and Rajendra Natwarlal Shah vs State of Gujarat 1988 3 SCC 130.

11. We have heard learned counsel for the parties and with their assistance we have gone through the detention order, the grounds of detention and pleadings as filed on behalf of the parties. On examining the above facts as referred by us herein above, we feel persuaded in the submissions made on behalf of the learned counsel for the petitioner that the impugned order of detention is vitiated on the grounds of delay which in our opinion, is unexplained and inordinate. This would be clear from the sequence of events which we note. The detenu was apprehended on 19th October, 2014. Statement of the detenu came to be recorded on the same day on 19th October, 2014. He was arrested on the same day. The detenu had applied for bail before the Court of the Additional Chief Metropolitan Magistrate Mumbai and was released on bail on 21st November, 2014 with a condition that the detenu should not leave the country without prior permission of the Court. The detenu had applied for modification of this condition by moving an application before the learned Additional Chief Metropolitan Magistrate on which an order came to be passed on 2nd February 2015 whereby the condition was modified directing the detenu to attend DRI office on the first Monday of every month for a period of six months. The case of the sponsoring authority is that the statement of the detenu and other persons who were alleged to be involved was recorded on 19th October 2014 and after approval of the Scrutiny committee as obtained on 12th February 2015 a proposal was forwarded to the detaining authority on 20th February 2015. The detaining authority thereafter was seized with the proposal. In the reply affidavit filed on behalf of the detaining authority it is stated that by letter dated 11th March 2015 further information on 12 issues was sought from the sponsoring authority which came to be forwarded by the sponsoring authority to the detaining authority on 20th March, 2015 and thereafter on examining the same the detaining authority had dictated the order on 31st March, 2015 and the detention order came to be issued on 10th April, 2015. In our opinion, the above sequence of dates

completely fortifies the contention as raised on behalf of the petitioner that the sponsoring authority took almost more than 4 months to forward its proposal to the detaining authority. Admittedly the statements of the detenu and concerned persons were recorded on 19th October, 2014. Further the detenu was in custody up to 21st November, 2014. That is almost for a month from the date of his arrest. After release of the detenu he had applied for modification of the bail conditions i.e. modification of the conditions that he would not be permitted to leave the country without the prior permission of the Court came to be modified by an order dated 2nd February 2015 passed by the learned Additional Chief Metropolitan Magistrate. The effect of this modified bail order was that the detenu was free to undertake travel to a foreign country. Thereafter the sponsoring authority on 20th February, 2015 forwarded the proposal to the detaining authority. Further what is material is that the delay on the part of the sponsoring authority in forwarding the detention proposal to the detaining authority being a period of more than 4 months finds no explanation in the reply-affidavit as also grounds of detention. The detaining authority thereafter handled the proposal and in our opinion in a very casual manner. What is more glaring is the detaining authority writing a letter dated 11th March 2015 to the sponsoring authority seeking further information on 12 points and contending that this information was received by the detaining authority from the sponsoring authority on 20th March 2015. The most significant aspect is that the affidavit of the sponsoring authority is absolutely silent that any such information was sought by the detaining authority alleged to be sought by its letter dated 11th March, 2015. This goes to the root of this matter and raises a serious doubt about the genuineness of the subjective satisfaction claimed to have been reached by the detaining authority. The discrepancy also goes to show the lackadaisical conduct on the part of the detaining authority in handling of the detention proposal and claiming that the subjective satisfaction has been arrived at, to pass the detention order. In our opinion, these facts clearly go to show that the delay in passing the detention order is not only inordinate but also unexplained which would completely vitiate the subjective satisfaction.

12. The reliance of the learned counsel for the petitioner on the decisions of the Supreme Court in the case of *Adishwar Jain Vs. Union of India (UOI) and Another*, (2006) 112 ECC 328 : (2006) ECR 328 : (2006) 9 JT 432 : (2006) 10 SCALE 553 : (2006) 11 SCC 339 : (2006) 7 SCR 801 Supp : (2006) 2 UJ 1353 is well placed. These decisions of the Supreme Court lay down that if there is undue and long delay between the prejudicial activities and passing of a detention order the detention order would be rendered vitiated. The reason being that the order of detention is required to be proximate to the time so that there is a live-link between the prejudicial activities and the detention. In the decision in the case of *Pradeep N. Paturkar vs S.Ramamurthy and other* (supra) in considering the delay of 4 months in passing the detention order the Supreme Court has held that the delay may be short or long. However, if the same is unexplained the detention order would be required to be quashed. In paras 13

and 14 the Supreme Court has observed thus:

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

14. Under the above circumstances taking into consideration of the unexplained delay whether short or long especially when the appellant has taken a specific plea of delay, we are constrained to quash the detention order. Accordingly, we allow the appeal, set aside the judgment of the High Court and quash the impugned detention order. The detenu is directed to be set at liberty forthwith."

In Adishwar Jain Vs. Union of India (UOI) and Another, (2006) 112 ECC 328 : (2006) ECR 328 : (2006) 9 JT 432 : (2006) 10 SCALE 553 : (2006) 11 SCC 339 : (2006) 7 SCR 801 Supp : (2006) 2 UJ 1353 in considering the issue of delay in passing of the detention order and while referring to the decision in the case of Sk. Serajul Vs. State of West Bengal, AIR 1975 SC 1517 : (1975) 2 SCC 78 the Supreme Court observed thus:

15. "Delay, as is well known, at both stages has to be explained. The court is required to consider the question having regard to the overall picture. We may notice that in Sk.Serajul vs State of W.B. This Court opined (SCC p.80 par 2):

" There was thus delay at both stages and this delay, unless satisfactorily explained would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate Burdwan recited in the order of detention. It would be reasonable to assume that if the District Magistrate of Burdwan was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner he would have acted with greater promptitude both in making the order of detention as also in securing the arrest of the petitioner, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities."

13. The learned APP in support of his submissions has placed reliance in the case of Rajendra Natwarlal Shah (supra) and Licil Antony (supra). We are of the opinion that these decisions would not assist the respondents in the facts of the present case. There is no satisfactory explanation on the delay on the part of the sponsoring authority as also on the part of the detaining authority culminating into passing of the detention order dated 10th April, 2015. In these decisions relied on behalf of the respondents the Supreme Court in the facts of the case considering the entire factual matrix of the cases in hand held that the delay was sufficiently explained.

In Rajendra Kumar Natwarlal Shah (supra) as relied on behalf of the respondents the direct and proximate cause for the order of detention was importation of bulk of Indian made foreign liquor by the appellant on the night between December 29/30, 1986 who was acting as a cross border broker. On 1st April 1986 the driver and cleaner of the truck made a statement implicating the appellant as a main person. The appellant thereupon absconded and had moved for an anticipatory bail on 21st April 1987 but no orders were passed as the police made a statement that there was no proposal at that stage to arrest him. The appellant was prosecuted for the offences under Bombay Prohibition Act. On 2nd February 1987 the appellant was arrested but later on released on bail./ After a lapse of 5 months i.e. 20th May 1987 the District Magistrate, Godhra passed the impugned order of detention and the grounds were served on the appellant on 30th May 1987 when he was taken into custody. The immediate and proximate cause of detention was the transportation of foreign liquor on 29/30th December, 1986. In this case, what weighed with the Supreme Court was that when the appellant moved an anticipatory bail application there was no proposal to arrest the appellant. When the appellant was arrested on 2nd February 1987 and on the same day he made a statement admitting the facts. In the meanwhile the proposal to detain the appellant was placed before the District Magistrate. The District Magistrate on careful consideration of the material on record that he was satisfied that it was necessary to make an order of detention under section 3 (2) of the COFEPOSA Act, passed the detention order on 28th May 1987. In the aforesaid set of facts, where the appellant had admitted the case against him the Supreme Court observed that there being no explanation for the delay between 2nd February, 1987 and 20th May 19897 could not give rise to the 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. Moreover, in para 12 of the decision the Supreme Court has clarified that there is no mechanical test "by counting the months of interval was sound" and that 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 and participation being available only in the course of investigation. The Court has to investigate "whether the causal connection has been broken in the circumstances of each case. "

14. In the decision of the Supreme Court in the case of Licel Antony vs State of Kerala (2014) 11 SCC 326 the Supreme Court has reiterated the position in law that if there is no explanation offered by the authorities concerned with detention as to why the order of detention has been issued after a long time, then in that case such unsatisfactory and unexplained delay would vitiate the detention order. The facts of the case with which the Supreme Court was dealing, were quite gross. The allegations related to export of red sanders through International Container Transshipment Terminal. The sponsoring authority took some time to determine whether the prejudicial activities of the detenu justified the detention.

During the inquiry, it transpired that the detenu and two others were part of a well-organised gang operating in smuggling of red sanders in India and abroad. It is only thereafter that on 17th December 2012 the sponsoring authority made recommendations for the detention of the detenu and two others under section 3 of the COFEPOSA Act. In the counter affidavit, it was stated by the respondents that the record of the sponsoring authority and the scrutiny committee and other material consisted of over 1000 pages. The proposal of the sponsoring authority was received in the Office of the detaining authority on 21st December 2012 as a huge proposal was required to be evaluated and scrutinized with great care, caution and circumspection, the detaining authority upon such scrutiny and evaluation decided on 25th January 2013 to place the proposals before the screening committee and forwarded the same to it on 1st February 2013. The Supreme Court observed that if one expects care and caution in scrutiny and evaluation on the proposals, time taken by the detaining authority to place the proposal before the screening committee it cannot be said in the facts of the case there is an inordinate delay. The meeting of the scrutiny committee had taken place on 1st February 2013 and final call was to be taken by the detaining authority, which was expected to scrutinise, evaluate and analyze all the material in detail and after the said process, the detaining authority decided on 15th April 2013 to detain the detenu. In these facts, the time taken for coming to the decision was held to have been sufficiently explained. In para 18 the Supreme Court has observed that the necessity to pass a detention order is required to be considered in the facts and circumstances of each case so as to determine whether the live-link between the prejudicial activity and the purpose of detention is snapped. The Supreme Court has observed thus :

18. "From what we have stated above, it cannot be said that there is undue delay in passing the order of detention and the live nexus between the prejudicial activity has snapped. As observed earlier, the question whether the prejudicial activity 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 activity and the purpose of detention is snapped depends on the facts and circumstances of each case. Even in a case of undue or long delay between the prejudicial activity and the passing of detention order, if the same is satisfactorily explained and a tenable and reasonable explanation is offered, the order of detention is not vitiated. We must bear in mind that distinction exists between the delay in making of an order of detention under a law relating to preventive detention like COFEPOSA and the delay in complying with procedural safeguards enshrined under Article 22 (5) of the Constitution. In view of the factual scenario as aforesaid, we are of the opinion that the order of detention is not fit to be quashed on the ground of delay in passing the same."

15. It is therefore, quite clear that the decisions in the case of Rajendra Natwarlal Shah (supra) and Licel Antony (supra) will not assist the respondents in the facts of the present case. We have observed that not only there is a delay on the part of the sponsoring authority and the detaining authority in passing the

detention order also there is no explanation much less satisfactory for the delay on the part of the sponsoring authority and the detaining authority culminating into passing of the detention order. The liberty of a person and the valuable constitutional rights guaranteed under Article 21 of the Constitution of India cannot be nullified by such arbitrary exercise of powers by the authorities exercising these powers of detention. This is clear from the scrutiny of the above facts. We are therefore quite clear that the live link between the prejudicial activities and purpose of detention is snapped on account of the long delay in passing the detention order. The impugned detention order therefore cannot be sustained and deserves to be quashed on the ground of unexplained and inordinate delay. As we have quashed and set aside the detention order on the ground of delay, we have not examined the other grounds of challenge as raised in the writ petition.

16. In the result of the above discussion, the writ petition needs to succeed. Hence, we pass the following order :

ORDER

1. Rule is made absolute. The order of detention impugned in this Writ Petition dated 10th April 2015, is quashed and set aside. The detenu be released forthwith if not required in any other case.
2. In the view that we have taken and on the point of delay, we do not deem it fit and proper to make reference to or observe anything in relation to the other grounds on which the detention order has been challenged.