

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 30.10.2014

Judgment delivered on: 04.12.2014

% **W.P.(Crl.) 1695/2014**

MANISH GADODIA

..... Petitioner

Through: Mr. Vikram Chaudhri, Senior Advocate with Mr. Sanjay Agarwal, Mr. Shorab Kirpal, Mr. Raktim Gogoi, & Mr. Wattan Sharma, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Sanjay Jain, ASG along with Mr. Sanjeev Narula, CGSC and Mr. Ajay Kalia, Advocates for respondent no. 1/ UOI.
Mr. S.K. Dubey & Mr. Rajmangal Kumar, Advocate for respondent no. 2/ DRI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J.

1. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to seek a writ of Certiorari – to quash the detention order bearing No. F. NO. 673/06/2014-CUS VIII dated 25.07.2014

(hereinafter referred to as ‘the detention order’) passed under Section 3(1) (i) & 3(1) (iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act) against Sh. Anil Gadodia (detenue) – the Petitioners brother, and a direction to set at liberty the detenue from detention.

2. The Joint Secretary to the Govt. of India, Shri Harmeet S. Singh, passed the detention order in respect of the detenue, therein stating that the detaining authority is satisfied that the detenue be detained “*with a view to preventing him from smuggling of goods and in transportation & concealment of the smuggled goods in future.....*”.

3. The Grounds of Detention (GoD), inter alia, state that an intelligence was received by the officers of Directorate of Revenue Intelligence (DRI), Jaipur, that a syndicate is involved in illegal storage and then export of red sanders (which is a prohibited item under Appendix II of the CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) and as per import-export policy, 2009-14, their export in any form is prohibited). The detenue – Mr. Anil Gadodia is allegedly the kingpin of the syndicate involved in export of red sanders.

4. The respondents claim that on 28.09.2013, five containers were examined and in four of them red sanders was found, apart from marble. The four containers were placed under seizure. Searches were simultaneously conducted, inter alia, at various premises in Delhi, Mundra and Jaipur by the DRI, which resulted in recovery of, inter alia, red sanders apart from documents, etc.

5. The statement of, inter alia, the detainee was recorded on 28.09.2013 and 29.09.2013, wherein he allegedly admitted to having supplied illegally procured red sanders for export through containers. The detainee, however, subsequently retracted from his statement on 30.09.2013.
6. On 29.09.2013, the detainee was arrested under Section 104 of the Customs Act, 1962 by the DRI, Jaipur for allegedly having committed an offence under Section 132, 135(a), 135(b) and 135(c) of the Customs Act, 1962.
7. DRI, Jaipur filed the complaint against the detainee and others on 28.11.2013, where the matter is pending prosecution before the learned Metropolitan Magistrate (MM), Jaipur. After a period of 5 months, the detainee was granted bail by the Court of Session Judge, Jaipur vide its order dated 22.02.2014.
8. On 25.07.2014, the detention order was passed under Section 3 (1) (i) & (iii) of COFEPOSA Act. Thereafter, on 13.08.2014, the police served upon the detainee the one page detention order dated 25.07.2014 (in English language). On the same day he was brought to the police station and was kept in custody. Subsequently, the detainee was taken to Tihar Jail and ever since he has been lodged in it.
9. The petitioner has pleaded several grounds to challenge the detention order against the detainee. However, at the stage of arguments only some of these grounds were highlighted – which are being discussed. On 20.08.2014, the detainee was served with the Grounds of Detention (GoD) along with the other documents i.e. after the expiry of around 7 days.

10. Learned Counsel for the petitioner submits that there is an unexplained and immense delay of about 8 months in passing of the detention order. The prosecution in respect of the alleged recovery of red sanders – which took place on 28.09.2013, was lodged on 28.11.2013 – meaning thereby, that the investigation was complete, while the detention order was passed only on 25.07.2014 and, therefore, on account of the aforesaid delay, the live link between the alleged occurrence – namely the recovery of red sanders, and the object of detention, stood snapped. It is pointed out that the detainee had been granted bail on 22.02.2014. However, the detention order was passed only on 25.07.2014, i.e. five months after the detainee was set at large.

11. Learned counsel further submits that there was unexplained delay even in service of the detention order after it was made. He submits that there is no explanation as to why it was not served forthwith after it was passed. It is argued that the detainee was available at his given address and was not in the hiding. The detainee, in fact, appeared before the Court in the pending prosecution case on 04.08.2014. No attempt was made to serve the detention order on the detainee on the said date.

12. Learned Counsel further urges that the GoD and “Relied upon” Documents (RuD) had been supplied to the detainee after expiry of around 7 days from the date of detention. The detention order was served on 13.08.2014 to the detainee while the GoD along with the RuD was served only on the intervening night of 19.08.2014 and 20.08.2014. The said act of the respondents is in contravention of Section 3(3), COFEPOSA Act read with Article 22(5), Constitution of India as it mandates that documents are to

be furnished within 5 days, and in the present case there were no exceptional circumstances.

13. Further, the petitioner had requested for the translation of the documents in Hindi which were served on 23.08.2014, and as late as on 02.10.2014, which has prejudiced/ hampered the right of the detinue to effectively make a representation against his detention.

14. Learned counsel sought to place reliance on the following decisions to support his case:

- i. *Hem Lall Bhandari vs. State of Sikkim*, (1987) 2 SCC 9;
- ii. *Parmod Kumar vs. Lt. Governor*, 89 (2001) DLT 34;
- iii. *Khundrakpam Nimai Singh vs. District Magistrate*, (2006) CrLJ 410;
- iv. *Tsering Dolkar vs. Administrator, Union Territory of Delhi*, (1987) 2 SCC 69;
- v. *Kamlesh Kumar Lahwardas Patel vs. Union of India*, (1995) 4 SCC 51;
- vi. *C.B. Gautam vs. Union of India*, (1993) 1 SCC 78;
- vii. *Ibrahim Ahamad Bhatti vs. State of Gujarat*, (1982) 3 SCC 440;
- viii. *State of Rajasthan vs. Talib Khan*, (1996) 11 SCC 3;
- ix. *A. Mohd. Farook vs. Jt. Secy. To G.O.I*, (2000) 2 SCC 360;

x. *Rajinder Arora vs. Union of India*, (2006) 4 SCC 796;

xi. *Adishwar Jain vs. Union of India*, (2006) 11 SCC 339;

15. Learned counsel also places reliance on Guidelines issued for implementation of COFEPOSA i.e. 'Procedural safeguards/ requirements to be observed to avoid delay in execution of detention order' dated 21.02.2007.

16. The respondents have opposed the petition. Learned ASG, appearing for the respondents, to explain the time taken for passing the detention order on 25.07.2014 – although the prosecution was lodged against the petitioner on 28.11.2013, submitted that it took time to scrutinize the documents and, thereafter, for the Detaining Authority to arrive at his subjective satisfaction with regard to passing of the order of detention. He further submits that the detainee is indulging in illicit smuggling of red sanders on a large scale, which is harmful to the national economy and the environment. Thus, having regard to the nature of the activities of the detainee, the Court would not be justified in interfering with the detention order.

17. Learned ASG submits that the detention order is not liable to be quashed on the ground of delay in service of the GoD, since there were exceptional circumstances existing in the present case, and the GoD documents were served on the detainee on 20.09.2014, i.e. well within the period of 15 days prescribed under Section 3(3), COFEPOSA read with Article 22, Constitution of India. In this regard, he has sought to draw the attention of this Court to the exceptional circumstances set out in the reply filed by respondents, which reads as follows:

“With respect to the contentions raised in this para it is submitted that the contention that documents have not been supplied to the detainee “as soon as possible” from the date of detention nor within a period of five days as provided under Section 3(3) of the COFEPOSA Act, 1974 is, not tenable as Section 3(3) of COFEPOSA Act, 1974 also permits service of grounds of detention ‘in exceptional circumstances and for the reasons to be recorded in writing’ within a period of fifteen days, from the date of detention. Exceptional circumstances emerged in view of the following:-

- Detention was affected on 13-14/08/2014 and TELEX communication to that effect was sent by the executing authority (Delhi Police) to the office of detaining authority on 14/08/2014 [copy annexed as ANNEXURE – ‘A’] and on 14/08/2014, the ADJ (COFEPOSA) was on tour to Kolkata for attending hearing before Hon’ble Advisory Board (COFEPOSA) in another matter. No information to that effect was sent from executing authority to the sponsoring authority (SA).*
- In the matter, it is pertinent to note that, the central government offices at Delhi and Jaipur (where regional office of DRI is located and was coordinating with executing authority in the matter) remained closed for four (04) days due to holidays from 15/08/2014 to 18/08/2014. 15/08/2014 (on account of Independence day), 16/08/2014 & 17/08/2014 (being Saturday & Sunday respectively) and 18/08/2014 (on account of Janmasthmi).*
- It was on 19/08/2014 at around 4 pm that, DRI Jaipur was enquired telephonically about the progress made after detention of detainee (sic) on 14/08/2014 (as got known from per telex message “PNDLIPHDP_82” received from Delhi Police on 14/08/2014 as well as letter No. I/SCJ-1/AS(CT)/2014/2129 dated 14.08.2014 received on 19/08/2014 from Jail Superintendent, Tihar, New Delhi [copy annexed as ANNEXURE – ‘B’]. As such, the grounds of detention could not be served to Shri*

Anil Gadodia within the stipulated period of five days in terms of Section 3 (3) of the COFEPOSA Act, 1974.

- *However, when it came to the knowledge of the sponsoring authority, immediate efforts were made and the grounds of detention and relied upon documents could be served to the detainee on 20/08/2014. As such, it is evident that only so much time has, elapsed in communicating the grounds of detention and relied upon documents to the detainee, which is required for transit from Jaipur to Central Jail, Tihar.*

*Thus, according to Section 3 (3) of the COFEPOSA, Act, grounds of detention are required to be made “as soon as” after the detention and not **immediately**, as contended in the petition. The phrase “as soon as” is undoubtedly based on belief of rationality and as such Section 3 (3) of COFEPOSA Act, 1974 contemplates a period of five days within the meaning of phrase “as soon as” in ordinary circumstances and period of 15 days in exceptional circumstances. In the instant case the exceptional circumstances have emerged in view circumstances detailed in this para.”*

18. Learned ASG submits that the detention order under COFEPOSA Act, 1974, to prevent him from engaging in prejudicial activities in future. He further submits that the High Court of Rajasthan had rejected the bail application of the detainee on 09.12.2013, as it was of the opinion that it is very difficult to rule out the possibility that the detainee would indulge in similar activities, if he is released on bail.

19. Learned ASG places reliance on *M. Ahamedkutty vs. Union of India*, (1990) 2 SCC 1, to urge that the test of proximity is not a rigid one or can a mechanical calendar test be blindly applied by merely counting the number of months and days between the offending act and the order of detention. He further places reliance on *Daku Devi W/o Baburam Choudhary vs. State of*

Tamil Nadu, H.C.P. No. 590 of 2004, decided on 21.09.2004, wherein the Madras High Court observed that in case of exceptional circumstances, the phrase “as soon as” translates to mean “for reasons to be recorded in writing not later than fifteen days, from the date of detention”.

20. Having heard learned counsel for the parties and considered the submissions in the light of the parties, we are of the view that the impugned order of detention suffers from the vice of unexplained delay in the passing and service of the detention order. We are also satisfied that Article 22(5) of the Constitution stands violated on account of delay beyond 5 days in service of the GoD upon the detainee with the RuD, and that the respondents have failed to disclose exceptional circumstances to justify service of the GoD and documents when they were served.

21. We find merit in the submission of learned counsel for the petitioner that there was unexplained delay in passing of the detention order. After the alleged seizure of red sanders from the possession and custody of the detainee on 28/29.09.2013 and conduct of investigation, the complaint was filed under Section 132 and 135 of the Customs Act on 28.11.2013. Thus, the investigation was complete by the said date.

22. Further, the show cause notice under the Customs Act was issued to the detainee on 24.03.2014, which clearly establishes that the material evidence required for passing of the detention order were available to the Detaining Authority and inspite of the same, he did not pass the detention order till 25.07.2014. In the present case, the detention order was passed after a delay of about 8 months, which has defeated the purpose of the

detention as it was to prevent the detainee from acting in a prejudicial manner by indulging in the prohibited trade. Thus, the live link had already broken by the time the detention order was passed belatedly on 25.07.2014.

23. Another aspect that requires consideration is that after the detainee was granted bail on 25.02.2014. Although the Central Screening Committee had considered the proposal for preventive detention, and approved it on 12.02.2014, the Detaining Authority filed for cancellation of bail rather than passing the detention order to prevent the detainee from carrying out such prejudicial activities. Further, there are no valid reasons disclosed by the respondents as to why the detention order was passed only on 25.07.2014, i.e. after about 5 months of grant of bail when the proposal was approved by the Central Screening Committee on 12.02.2014.

24. In this regard, reliance may be placed on **Rajinder Arora** (supra) and **Adishwar Jain** (supra), which followed the decision of the Supreme Court in **T.D. Abdul Rahman v. State of Kerala**, AIR 1990 SC 225, wherein the Supreme Court observed as follows:

*“10. The conspectus of the above decisions can be summarised thus: **The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long***

delay between the prejudicial activities and the passing of detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.

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

(Emphasis supplied)

25. The Detaining Authority even delayed the execution of the detention order passed on 25.07.2014. The detenu was served with the same only on 13.08.2014 i.e. after about 19 days. It is evident from the facts of the case that the detenu had been available all along; rather he even attended the hearing in the prosecution case on 04.08.2014, when he could have been served with the detention order. The respondents have not disclosed that any attempt was made to serve the detention order soon after it had been made. It is not the respondents case that the detenu was avoiding service of the detention order. In fact, the same was served upon him at his residence.

26. The purpose of a detention order is preventive in nature and not punitive. Therefore, there must be strict compliance of the procedural safeguards in every case of preventive detention.

27. In **A. Mohd. Farook** (supra), the detention order was passed on 25.02.1999, however, it was executed by the Detaining Authority on 05.04.1999. Although the detenue was present in the Court of Addl. Chief Metropolitan Magistrate on 25.02.1999 and 25.03.1999, but neither the Detaining Authority, nor the Executing Authority served the detention order on the detenue, at the earliest. In these circumstances, the Supreme Court held as follows:

“9. There is catena of judgments on this topic rendered by this Court wherein this Court emphasised that the detaining authority must explain satisfactorily the inordinate delay in executing the detention order otherwise the subjective satisfaction gets vitiated. Since the law is well settled in this behalf we do not propose to refer to other judgments which were brought to our notice.

10. As indicated earlier the only explanation given by the detaining authority as regards the delay of 40 days in executing the detention order is that despite their efforts the petitioner could not be located at his residence or in his office and therefore the order could not be executed immediately. No report from the executing agency was filed before us to indicate as to what steps were taken by the executing agency to serve the detention order. In the absence of any satisfactory explanation explaining the delay of 40 days, we are of the opinion that the detention order must stand vitiated by reason of non execution thereof within a reasonable time. From Annexure P.2 (the proceeding sheet of the M.M. Court Madras) it appears that the petitioner (accused) was present in the court of Additional Chief Metropolitan Magistrate on 25.2.1999 as well on

25.3.1999. Despite such opportunities neither the detaining authority nor the executing agency as well as sponsoring authority were diligent to serve the detention order on the petitioner at the earliest. In this view of the matter, we are of the opinion that the subjective satisfaction of the detaining authority in issuing detention order dated February 25, 1999 is vitiated. It is in these circumstances it is not possible for us to sustain the detention order.”

28. Similarly, in the present case, there is a delay of 19 days in executing the detention order. It is no more res integra that the Detaining Authority must explain satisfactorily the inordinate delay in executing the detention order, otherwise the subjective satisfaction gets vitiated.

29. The respondents have sought to explain the delay in execution of the detention order in their reply in the following terms:

“With respect to the contentions raised here, it is submitted that the Detention Order dated 25.07.2014 was sent to the Commissioner of Police, New Delhi for execution and the detention order moved from detaining authority to Delhi Police Head Quarter and finally to P.S. Sabzi Mandi. As such, there are many stages, which took its own time due to procedural requirement. Thus, there is no apparent or unreasonable delay in execution of detention order. It is also pertinent to mention that Shri Anil Gadodia was granted bail and according to the conditions of bail Shri Anil Gadodia was required to cause his personal appearance every month in first week either at DRI office situated at Jaipur or at DRI office situated at Delhi. However, Shri Anil Gadodia did not cause his personal appearance in first week of August in DRI office at Jaipur or Delhi for which departmental counsel has been asked to file application for cancellation of bail.

Besides, summon was issued to Shri Anil Gadodia on 15.07.2014 to appear on 24.07.2014 in connection with case of

Red Sanders booked at Delhi against him. However, instead of complying the summons, Shri Anil Gadodia requested for another date preferably 04.08.2014. Accordingly, he was issued another summon to appear on 01.08.2014. However, Shri Anil Gadodia vide fax letter dated 01.08.2014 informed the Senior Intelligence Officer, DRI, Jaipur that he is physically unable to move and requested to condone his personal appearance on 04.08.2014, though detainee came to Jaipur on 04.08.2014 and faced the trial on 04.08.2014 in the Court of CMM (Eco. Off.), Jaipur but he did not appear in DRI office to comply the summons as well as cause his appearance in DRI office in terms of bail condition. ”

30. The aforesaid explanation furnished by the respondent is most unsatisfactory. The respondents have adopted a wishy washy approach by stating “As such, there are many stages, which took its own time due to procedural requirement”. As to what are these so called “many stages” or “procedural requirement” has not been explained. It is not even explained as to what is meant by “took its own time”. The counter affidavit of the respondents shows that the respondents treated the aspect of service of detention order as a routine matter. It is abundantly clear to us as there was no sense of urgency displayed by the respondents in execution of the detention order once it was passed. Merely because the detainee may not have appeared before the DRI, Jaipur or DRI, Delhi in the first week of August or in response to the summons issued to him on 15.07.2014, requiring his appearance on 24.07.2014, or 01.08.2014, it does not follow that the detainee was evading the service of the detention order. It appears that the respondents were content with keeping the detention order in their pocket in the hope that the same would be served upon the detainee when he

appears in the DRI office at Jaipur or Delhi, but no effort was made to locate the detenu and serve him with the detention order at his residential address.

31. Pertinently, it is not disputed that the detenu appeared in the Court of CMM, Jaipur on 04.08.2014. There is absolutely no explanation offered as to why the detention order was not served upon him on the next date. The respondents have themselves tendered in Court a time chart showing the chronological sequence of events in respect of the detenu. In this chronological chart at sl. No.108, it is disclosed that on 01.08.2014, a letter was written by SA to DGP Rajasthan with a copy to the Ministry, informing that if the detention order has not been executed till then, the same could be executed against the detenu on 04.08.2014 when he had to appear before the CMM, Jaipur. In this background, the failure of the respondents to serve the detenu with the detention order on 04.08.2014 is, in our view, fatal.

32. The petitioner also placed reliance on the ‘Procedural safeguards/ requirements to be observed to avoid delay in execution of detention order’ dated 21.02.2007. The relevant portion is extracted below:

*“4. Despite these clear instructions, instances have come to the notice of this Ministry where even though the detenu was available at his own address, no real effort had been made to locate the detenu and execute the detention order. **The Hon’ble Supreme Court has held in a no. of cases that if the authorities did not make sincere and honest efforts and take any urgent or effective steps the service of the detention order on the detenu, the order of the detention is liable to be set aside.***

5. It is generally noticed that the Sponsoring Authorities who originally move the proposal, somehow develop a lax

attitude after a detention order based on their proposal has been issued. They tend to harbour a feeling that they have no further role in the matter and it is entirely for the Detaining Authority and the Executive Authority to ensure that the Detention Order is served. This wrong notion needs to be dispelled forthwith. The Sponsoring Authority must keep in mind the fact that their role and object is not confined merely to having a detention order issued but to have a person detained otherwise the very object of issuing the detention order gets defeated.

6. *All the Sponsoring Authorities, Executive Authorities and the Detaining Authorities are once again requested that they must ensure that timely action is taken for execution of the detention order after it has been issued. Simultaneously, they should keep detailed records of the efforts made for execution of the Detention order from time to time, as it would be important to convince the Advisory Board / Hon'ble High Courts, if need arises.....”*

(Emphasis Supplied)

33. The detention order is passed as a preventive measure and therefore, its purpose is defeated if the detenu is not detained at the earliest possible opportunity after the alleged act. The actions of the respondents should display a sense of urgency in the matter of passing of, and execution of the detention order, if the preventive detention is to be justified. In the present case, the entire exercise undertaken by the respondents appears to be rather casual and cavalier.

34. The third limb of the argument was pertaining to violation of Section 3(3), COFEPOSA Act, 1974 read with Article 22(5), Constitution of India. In this respect, the petitioner had urged that there were no exceptional circumstances which could have been the reason for delay in supplying the

GoD as well as RuD. The detention order was served on 13.08.2014 while the GoD and the RuD were served on the detenu in Tihar Jail only during the intervening night of 19.08.2014 and 20.08.2014. Thus, there can be no doubt that the GoD and the RuD were not served within five days of the service of the detention order. The only hope for the respondents to save the detention order in these circumstances would be by disclosing such exceptional circumstances as would explain the reasons why the GoD and the RuD could not be served within five days of the service of the detention order. The Supreme Court in ***Parmod Kumar*** (supra) has held as follows:

“8. In view of the high pedestal on which personal liberty is pressed, even smallest of unexplained delay in disposal of the writ petition is considered to be breach of constitutional protection afforded to a citizen. Reading of Sub-section (3) of Section 3 of the Act, makes it clear that in the normal course communication of the grounds on which order of detention has been directed, has to be made as soon as may be after the detention, but ordinarily not later than five days. Only in exceptional circumstances and for reasons to be recorded in writing, it is to be done not later than fifteen days. There can be no relaxation of the maximum period of fifteen days, even for exceptional circumstances. The time imperative is inbuilt in the provision itself and the legislative intent, is apparent even from a bare reading of the provision. The object for setting out the limits is apparent. The constitutional mandate is for grant of immediate opportunity to detenu to make a representation. It is inconceivable that any representation, much less an effective representation can be made with detenu not being communicated that grounds of detention. The utmost expedition with which representation has to be disposed of has to be preceded by expeditious communication of the grounds of detention, for which legislature has provided a time-frame. When detaining authority delays in furnishing grounds of detention to a detenu, there is denial of an opportunity of

making the representation contemplated under Article 22(5) of the Constitution.

9. *In the case at hand, undisputedly the grounds were served later than fifteen days. No exceptional circumstances have been highlighted even for extending the period to fifteen days. According to Fruk & Waanall's Standard Dictionary "exceptional" means "of a nature to be excepted, constituting or relating to an exception, unusual uncommon". According to Murray's New English Dictionary "of the nature of forming an exception, out of the ordinary course, unusual, special". If the extended period upto fifteen days have to be availed, exceptions have to be spelt out and reasons why the circumstances are exceptional have to be recorded."*

35. The service of GoD and the RuD is a constitutional right and communication of the same has to be made within the prescribed period to enable the detainee to make a representation. Only in cases where there are exceptional circumstances does the law permit extension from the prescribed period of 5 days upto 15 days. In the present case, the so called exceptional circumstances furnished by the respondent have been set out herein above. In our view, the same cannot, under any circumstance, be classified as "exceptional circumstances". Admittedly, the detaining authority was informed of the execution of the detention order on 14.08.2014. Merely because the ADJ (COFEPOSA) was then on Kolkata for attending a hearing before the Advisory Board in another matter cannot be an excuse for the detaining authority in not taking steps for service of the GoD and the RuD upon the detainee at the earliest and positively within the period of 5 days. It is not the respondents case that apart from the ADJ (COFEPOSA), there are no other officers working in the office of the detaining authority. The failure of the executing authority to intimate the sponsoring authority of the

detention of the detainee on 13.08.2014 cannot be cited as an excuse to defeat the fundamental rights of the detainee. These are all matters of internal management of the respondents. If such like excuses were to be accepted as “exceptional circumstances”, in every case of preventive detention, the respondents would be able to justify the delay in service of GoD and RuD as some or the other officer in the office of either the detaining authority or the sponsoring authority or the executing authority would be either on leave or out of town for one or the other reason. Similarly, the closure of the Central Government offices between 15.08.2014 to 18.08.2014 is hardly an excuse which could be accepted as giving rise to an exceptional circumstance. The respondents should have been aware of the fact that they are heading for a long weekend and since the executing authority, admittedly, informed that the detention order had been executed on 13/14.08.2014, on 14.08.2014 itself the GoD and the RuD should have been served on the detainee without any delay.

36. In *Hem Lall Bhandari* (supra), the detainee was preventively detained on 29.09.1986 and kept in custody till 30.09.1986 in Bombay, before he was taken to Delhi. On 02.10.1986, under the orders of the Supreme Court, the detainee was produced before the CMM, Delhi. The Supreme Court had ordered that the CMM, Delhi might release him on bail, if he thought fit. Consequently, CMM, Delhi granted him bail on 01.10.1986, and thereafter, he returned to Bombay. The respondent claimed that the officer was given the grounds of detention to serve them to the detainee on 03.10.1986, who made efforts to serve them on 03.10.1986, 04.10.1986 and 05.06.1986, but all efforts failed. The officer returned to Gangtok on 06.10.1986. The

grounds were served thereafter on 14.10.1986. In this background, the Supreme Court examined the reasons as to why the GoD was served only on 14.10.1986. The Court observed as follows:

“13. In this case there is no acceptable or satisfactory explanation as to what the officer did after October 6, 1986. This inaction after October 6, 1986 till October 14, 1986, by itself is sufficient for us to hold that Section 8(1) has been violated by the officer concerned and on that ground alone the order of detention has to be quashed.

14. An attempt was made by the counsel for the respondents to contend that the delay in communicating the grounds of detention caused in this case has to be condoned and the rigour of the Section relaxed since the detenu had been released on 2-10-1986, and hence not in detention. This according to us is a specious plea which cannot stand legal scrutiny. If this contention is to be extended to its logical conclusion it would be clothing the authorities with powers to delay communication of the ground of detention indefinitely, whenever a detenu secures from a Court of law either bail or parole. To accept this contention would be to destroy the effect of the mandate of the Section. As indicated earlier, the mandate enacted in the Section is a safety valve for a citizen who is robbed of his liberty and to disable the authorities from manipulating the grounds of detention. The Section has to be interpreted literally. No relaxation is permissible. If the original time of 5 days has to be extended, such extension must be supported by an order recording reasons. If reasons are not so corded the order of detention will automatically fail. Even if reasons are recorded they have to inspire confidence in the Court and are subject to legal scrutiny. If the reasons are unsatisfactory, Courts would still quash the order of detention.”

(Emphasis supplied)

37. In the light of the aforesaid discussion, we cannot accept the respondents' plea that exceptional circumstances existed in the facts of this

case to justify the service of the GoD and the RuD beyond the period of five days.

38. So far as the submission of the petitioner with regard to delay in furnishing of the Hindi translation of the RuD is concerned, we may observe that the respondents have pointed out that on earlier occasions, the detainee had addressed letters in English and even stated that he can read, write and understand English language. Thus, it appears that there is a real controversy as to, whether or not the detainee bonafidely required translations of the GoD and the RuD to be able to make an effective representation. We do not propose to get into this aspect in the light of the aforesaid discussion, since the detention cannot be sustained on account of serious infirmities – firstly, on account of passing of the detention order; secondly, on account of delay in execution of the detention order, and; thirdly, on account of delay in service of the GoD and the RuD upon the detainee post the detention.

39. In view of the aforesaid discussion, we allow the present writ petition and quash the detention order dated 25.07.2014 passed by the respondents under Sections 3(1) of the COFEPOSA Act; the petitioner shall be set at liberty forthwith.

VIPIN SANGHI, J

S. RAVINDRA BHAT, J

DECEMBER 04, 2014