

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

+ **W.P.(CRL) 2066/2013 and CrI.M (Bail) No.829/2014**

POORAN CHAND SHARMA

..... Petitioner

Through: Mr.Vikram Chaudhary, Sr.
Advocate with Mr. Naveen
Malhotra and Mr. Nitendra
Kumar, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Pavan Narang, Senior
Panel Counsel with
Ms.Vasundhara Chauhan and
Mr. Lohitaksha Shukla,
Advocates.

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Date of Decision : August 20, 2014

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

HON'BLE MR. JUSTICE S.P. GARG

J U D G M E N T

: REVA KHETRAPAL, J. (Oral)

1. The prayer in the present Writ Petition is for issuance of a writ of Habeas Corpus under Article 226 of the Constitution of India calling upon the Respondents to forthwith set the Petitioner at liberty after quashing and setting aside the detention order dated 02.06.2010

bearing No.673/08/10-Cus.VIII passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short 'the COFEPOSA Act').

2. The facts succinctly stated are that information was received by the Delhi Zonal Office of the Directorate of Enforcement, New Delhi that an organized Syndicate headed by one Naresh Kumar Jain was actively involved in illegal foreign exchange transactions through a wide hawala network and that the said Shri Naresh Kumar Jain had been a person resident outside India, who had stayed in Dubai from 1995 till May, 2009, and was currently in India without any valid documents. In Dubai, he was engaged in the arrangement and transfer of foreign exchange to various persons in India. At the same time, he also controlled the financial transactions and hawala receipts in India through a number of companies. In the said transactions, the export invoices were manipulated by constantly mixing licit and illicit financial transactions in India to give a genuine basis to the unauthorized transfer of foreign exchange through banking channels. Even after his return to India in May, 2009, he continued to engage in the same businesses in which he was engaged during his stay at Dubai including arranging foreign exchange for Indian parties. S/Sh. Manoj Garg, Pooran Chand Sharma (the Petitioner in the present writ petition), Bimal Jain and Satpal Jain other members of the Syndicate were actively associated with him (Shri Naresh Kumar Jain) and assisted him in the conduct of his illegal activities in and from India.

3. On the basis of the aforesaid information, searches were conducted under Section 37 of FEMA, 1999 read with Section 132 of

the Income Tax Act, 1961 at the residential and business premises of the Petitioner and at various other premises from where other members of the Syndicate were operating. As a result thereof, Indian currency, foreign currency, documents and articles were recovered and seized from all those premises vide 13 panchnamas. Four out of these 13 panchnamas were dated 03.09.2009, 8 panchnamas were dated 24.09.2009 and one panchnama was dated 17.11.2009. The statements of all the aforementioned persons including that of the Petitioner were also recorded. On 02.06.2010, on the basis of the documents seized from the various premises during the searches on 03.09.2009, 24.09.2009, 08.10.2009 and 17.11.2009 as per panchnamas, an order of detention under Section 3(1) of the COFEPOSA was passed by the Joint Secretary to the Government of India against the Petitioner.

4. Apprehending detention by way of execution of the order of detention passed by the Joint Secretary to the Government of India, the Petitioner on 25.08.2010 and 07.09.2010 filed two Writ Petitions (Criminal) bearing Nos.91/2010 and 97/2010 in the Hon'ble Supreme Court of India under Article 32 of the Constitution of India at the pre-execution stage. Writ Petition (Criminal) No.91/2010 was listed on 25.08.2010 before the Hon'ble Supreme Court and an order of stay of execution of the detention order was passed. Both the said writ petitions were however withdrawn on 01.10.2013.

5. On 18.11.2013, the Petitioner appeared before the officials of the Enforcement Directorate at 10-A, Jam Nagar House, Akbar Road, New Delhi-110001 and was served with the order of detention.

Currently, the Petitioner is detained in the Central Jail Tihar, New Delhi.

6. Allegedly on 21.11.2013/22.11.2013, the Petitioner was served with the Grounds of Detention and incomplete relied upon documents. Resultantly, on 03.12.2013, the Petitioner made a representation to the Joint Secretary to the Government of India, i.e., the detaining authority and requested for revocation of the detention order or in the alternative for supply of the documents detailed in the said representation.

7. On 06.12.2013, the Petitioner made another representation to the Secretary to the Government of India and requested for revocation of the detention order or in the alternative supply of the relied upon documents to enable him to make an effective representation.

8. By an order dated 20th December, 2013, the Petitioner was informed that his representation dated 03.12.2013 had been considered by the Joint Secretary COFEPOSA, the detaining authority and rejected. By a separate communication dated 23rd December, 2013, the Petitioner was informed that his representation dated 06.12.2013 had been considered by the Special Secretary and Director General, Central Economic Intelligence Bureau, Ministry of Finance, Department of Revenue and had been rejected. In neither of the two communications was the Petitioner informed about the reason/reasons for the rejection of his representations.

9. In the interregnum and prior to the rejection of his representations, the Petitioner instituted the present writ petition on 10th December, 2013.

10. It may be relevant to note at this juncture that on 27.01.2011 the detention order *qua* the co-detenu Naresh Kumar Jain, who was allegedly the master-mind of the Syndicate, was quashed by a Division Bench of this Court in W.P.(CrI.) No.967/2010. Subsequently, on 28.03.2014, the respective detention orders passed against co-detenus Satpal Jain and Bimal Kumar Jain were quashed by the Punjab and Haryana High Court.

11. In the present writ petition, Mr. Vikram Chaudhary, learned senior counsel appearing for the Petitioner has challenged the impugned detention order *qua* the Petitioner and strongly contended that the continued detention of the detenu is violative of Article 21 as well as Article 22 of the Constitution of India on the following grounds:-

- (i) Non-placement of relevant material and documents by the detaining authority before the sponsoring authority and/or non-consideration and non-advertence thereto by the detaining authority as well as **non-supply of the said documents referred to and relied upon in the Grounds of Detention despite specific demand by way of representations, to the detenu.**
- (ii) No independent consideration of the representation dated 06.12.2013 by the Central Government.
- (iii) Consideration of extraneous as well as irrelevant facts and material leading to the vitiation of the detention order.
- (iv) Reference to the past criminal history of the detenu in the Grounds of Detention without any material, leading to the

violation of the subjective satisfaction of the detaining authority.

- (v) Taking recourse to preventive detention when the ordinary law of the land was sufficient, which amounted to abuse of the powers vested by COFEPOSA.
- (vi) Recourse to preventive detention justified only in rare and exceptional cases and that too after compliance with procedural safeguards even if the detenu be involved in grave anti-national activity.
- (vii) Inordinate delay in passing of detention order.

12. Mr. Pawan Narang, the learned counsel for the Respondents sought to counter the aforesaid grounds of challenge by submitting that:-

- (i) The detention order did not suffer from the vice of non-placement of relevant materials and documents by the detaining authority before the sponsoring authority and/or non-consideration and non-advertence thereto by the detaining authority. With regard to the non-supply of documents sought through the representations dated 03.12.2013 and 06.12.2013 addressed to the detaining authority and the Central Government respectively, it was submitted that all the relied upon documents considered at the time of issuance of detention order had been supplied to the Petitioner with acknowledgment. The Petitioner in the representations had asked for supply of certain irrelevant documents which were never considered by the

detaining authority in passing of the detention order. It is settled law that it is not that each and every document mentioned in the Grounds of Detention has to be supplied to the detenu. Only those documents as are relied upon by the detaining authority have to be furnished and their non-supply alone would be fatal to continued detention. Documents which are merely referred to by the detaining authority *en passant* or as a mere narrative, are not required to and need not be supplied to the detenu. Further, non-supply of documents sought through the representations and otherwise would not be fatal to the detention of the detenu unless the detenu can spell out some prejudice having been caused to him on account of their non-supply. (See *Powanammal v. State of Tamil Nadu (1999) SCC (Cri) 231*, *State of Tamil Nadu & Anr. v. Abdullah Kadher Batcha & Anr. (2009) 1 SCC 333*, *Naresh Kumar Jain v. Union of India and Others (2011) 176 DLT 730*).

- (ii) There was no merit in the contention that there was no independent consideration of the representation dated 06.12.2013 by the Central Government. The representations had been duly considered independently and with proper application of mind by the concerned authorities. (See *Abdul Nasar Adam Ismail v. State of Maharashtra, (2013) 4 SCC 435*).

- (iii) The contention that the detention order was vitiated by consideration of extraneous and irrelevant facts and non-placement/non-consideration of relevant material before the detaining authority was without merit. The High Court under Article 226 does not sit in appeal on the orders of preventive detention and has only to see whether the formalities enjoined by Article 22(5) have been complied with by the detaining authority and if so, the Courts cannot examine the materials before it and find that the detaining authority should not have been satisfied on the materials before it and detained the detenu under the Preventive Detention Act. The detention order had been passed on a careful consideration of all material facts and circumstances and on thorough examination of the statements and retractions thereto of the various persons involved.
- (iv) Likewise, there was no merit in the contention that the detention order stood vitiated on account of reference to the past criminal history of the detenu in the Grounds of Detention without any material.
- (v) There was no abuse of the powers vested in the detaining authority as alleged or at all in view of the fact that the powers vested under the COFEPOSA were different and distinct from the powers vested by the ordinary laws of the land.

- (vi) Recourse to the power of preventive detention in the instant case was completely justified and there was no non-compliance with the procedural safeguards as alleged or at all.
- (vii) There was no inordinate delay in passing of the detention order and the link between the date of search of the Petitioner's premises on 03.09.2009 and the passing of the detention order on 02.06.2010 was well maintained. Furthermore, it is settled law that where seemingly long time taken for passing of the detention order is the result of full and detailed investigation and consideration of the facts of the case, the detention order cannot be held to be bad on the ground of delay, and what has to be seen is whether the time lag between the commission of the offence of the detenu and the detention order was long enough to snap the nexus between the prejudicial activity and the purpose of detention, which would vary from case to case. Significantly also, in the case of *Naresh Kumar Jain v. UOI and Ors.*, (2011) 176 DLT 730, a Division Bench of this Court in the case of the co-detenu has settled this issue in favour of the Respondents.

13. In rejoinder, Mr. Vikram Chaudhary dilating upon the first ground urged by him that some documents which had allegedly been relied upon by the detaining authority had not been supplied to the Petitioner despite the fact that the Petitioner/detenu had sought for the supply of such documents (vide two specific representations dated

03.12.2013 and 06.12.2013 addressed to the detaining authority and the Central Government respectively), submitted that all the documents relied upon ought to have been supplied *pari passu* to the detenu along with the Grounds of Detention. He urged that in terms of settled law, the detenu has two rights viz., *firstly*, to be supplied with the documents relied upon *pari passu* along with the Grounds of Detention as per the constitutional guarantee afforded under Article 22(5) of the Constitution of India and as per Section 3(3) of the COFEPOSA. *Secondly*, even if a document is not specifically relied upon in the Grounds of Detention, if it is recovered under a mahazar/panchnama, which mahazar/panchnama is relied upon in the Grounds of Detention, the documents which are relevant to the enquiry, if asked for, must be supplied to the detenu.

14. Mr. Chaudhary contended that admittedly in the Grounds of Detention, the detenu has been described to be a member of the Syndicate headed by one Naresh Kumar Jain along with his co-detenus. This is borne out by the detention order and more particularly from paras 50 and 52 of the Grounds of Detention wherein it is stated as under:-

“50. The documents seized from various premises during the searches on 03-09-2009, 24-09-2009, 08-10-2009 and 17-11-2009 as per panchnamas and statements recorded from the aforesaid persons reveal the nexus of Shri Naresh Jain with you (Shri Pooran Chand Sharma) and other members of the Syndicate viz. Shri Manoj Garg, Shri Bimal Jain and Shri Satpal Jain as explained under:-

(a) Nexus between Shri Naresh Kumar Jain and you (Shri Pooran Chand Sharma) –

- (i) *Shri Naresh Jain in his statement had acknowledged that he knew Shri Pooran Chand Sharma (i.e. you) of 3rd Floor, 1170, Kucha Mahajani, Chandni Chowk, Delhi; and that he had paid AED 135248 in your account in Dubai.*
- (ii) *Documents seized from residence of Shri Naresh Jain exhibited your name as agent in his trial balance dated 06-01-2009, when he was in Dubai.*
- (iii) *The debit of 135248.00 dated 06-01-2009 in trial balance is explained and admitted by him that this was the amount of UAE Dirhams 135248 paid in your account.*
- (iv) *Documents seized from your (Shri Pooran Chand Sharma) residence and business premises and residence of your employee, Shri Parmanand Yadav exhibited a number of hawala entries before whom Naresh Jain was written in short form as NJ.*
- (v) *Shri Manoj Garg in his statement had stated that Shri Naresh Jain used to talk to you regarding hawala dealings. Documents seized from F-41, Milap Nagar pertaining to business dealings of Shri Manoj Garg (as stated by his father) contained account of Shri Naresh Kumar Jain and you.*
- (b) *Nexus between Shri Naresh Jain and Shri Manoj Garg –*
 - (i)
 - (ii)
 - (iii)
 - (iv)
 - (v)
 - (vi)
 - (vii)

(c) *Nexus between Shri Naresh Jain and Shri Bimal Kumar Jain –*

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi)
- (vii)

(d) *Nexus between Shri Naresh Jain and Shri Satpal Jain –*

- (i)
- (ii)
- (iii)
- (iv)
- (v) ”

51. x x x x

52. *From the above, it could be seen that you i.e. Shri Pooran Chand Sharma were an associate of Shri Naresh Kumar Jain who was running a syndicate engaged in hawala activities; manipulation of export invoices; receiving cash from the exporters against the proceeds of exports and other activities connected therewith, on a massive scale. As an associate of the syndicate, you also handled collection of money in cash, hawala distribution of money to various persons in India on a very large scale on instructions of persons resident abroad. The records indicate that such transactions undertaken by the syndicate involved staggering amount to the tune of over Rs.1000/- Crores (Rupees One Thousand Crores). This has adversely affected the conservation and augmentation of the foreign exchange resources of the country.”*

15. Mr. Chaudhary contended that paras 57 to 59 of the Grounds of Detention further showed that **the documents contained in the ‘List of Documents Relied Upon’ included all the documents seized from the various premises during the searches on 03.09.2009, 24.09.2009, 08.10.2009 and 17.12.2009 as per the 13 panchnamas** enumerated at Serial Nos.1 to 13 of the said list (Annexure-‘C’ to the petition) and the statements recorded of the persons alleged to be members of the Syndicate (Serial Nos.26, 29, 30 and 32 to 42) and which allegedly revealed the nexus of Shri Naresh Jain with the Petitioner (Shri Pooran Chand Sharma) and other members of the Syndicate viz., Shri Manoj Garg, Shri Bimal Jain and Shri Satpal Jain as set out in the detention order. For the sake of ready reference, we reproduce hereunder the contents of paras 57 to 59 of the Grounds of Detention:-

“57. While passing the Detention Order under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, I have referred to and relied upon the documents mentioned in the enclosed list.

58. You have a right to make representation against your detention to the Detaining Authority, to the Central Government and to the Advisory Board. You also have a right to be heard in person by the Advisory Board. If you wish to avail your right of making representation, you may submit your representation through the Jail Authorities, where you are detained in the manner indicated below:-

(i) Representation meant for the Detaining Authority should be addressed to the Joint Secretary (COFEPOSA), Central Economic Intelligence

Bureau, Department of Revenue, Ministry of Finance, 6th Floor, B-Wing, Janpath Bhawan, Janpath, New Delhi-110001.

(ii) Representation meant for the Central Government should be addressed to the Secretary to the Government of India, Department of Revenue, Ministry of Finance, 6th Floor, B-Wing, Janpath Bhawan, Janpath, New Delhi-110001.

(iii) Representation meant for the Advisory Board should be addressed to the Chairman, COFEPOSA Advisory Board, Delhi High Court, Sher Shah Road, New Delhi-110001. You are further informed that the Advisory Board shall hear you in due course, if, the Board considers it essential to do so or if you so desire.

59. The above grounds are communicated to you, for the purpose of clause (5) of the Article 22 of the Constitution of India and as required under section 3(3) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.”

16. Mr. Chaudhary submitted that it is in this backdrop that the Petitioner’s demand for supply of documents must be considered. He contended that the right enshrined under Article 22(5) of the Constitution of India is the right to make an effective representation and when some documents are referred to or relied on in the Grounds of Detention, without copies of such documents being furnished to the detenu, the Grounds of Detention would not be complete. The detenu had the right to be supplied with the Grounds of Detention along with the documents which were referred to and relied upon and if there was failure or even delay in furnishing those documents it would amount to denial of the right of making an effective representation. Further, it was a matter of irrelevance whether the

detenu already knew about the contents of the documents or not, but the non-supply of the copies thereof was fatal as held by the Hon'ble Supreme Court in a number of cases. It was emphasized that in order to appreciate this point, it would have to be kept in mind that the detenu is in jail and has no access even to his own documents. He relied upon the following observations in *M. Ahamedkutty v. Union of India*, (1990) 2 SCC 1:-

““ ...The constitutional imperatives in Article 22(5) are twofold: (1) The detaining authority must, as soon as may be, i.e. as soon as practicable, after the detention communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention. ***The right is to make an effective representation and when some documents are referred to or relied on in the grounds of detention, without copies of such documents, the grounds of detention would not be complete. The detenu has, therefore, the right to be furnished with the grounds of detention along with the documents so referred to or relied on. If there is failure or even delay in furnishing those documents it would amount to denial of the right to make an effective representation.***”

(emphasis supplied)

17. The Hon'ble Supreme Court in *M. Ahamedkutty v. Union of India* (*supra*) further clarified as follows:-

“20. It is immaterial whether the detenu already knew about their contents or not. In *Mehrunissa v. State of Maharashtra* [1981 (2) SCC 709] it was held that the fact that the detenu was aware of the contents of the documents not furnished was immaterial and non-

furnishing of the copy of the seizure list was held to be fatal. To appreciate this point one has to bear in mind that the detenu is in jail and has no access to his own documents. In Mohd. Zakir v. Delhi Administration [1982 (3) SCC 216] it was reiterated that it being a constitutional imperative for the detaining authority to give the documents relied on and referred to in the order of detention pari passu the grounds of detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with. The question of demanding the documents was wholly irrelevant and the infirmity in that regard was violative of constitutional safeguards enshrined in Article 22(5).”

18. Reliance was also placed by learned senior counsel for the Petitioner upon the judgment in *Union of India v. Ranu Bhandari*, (2008) 17 SCC 348, wherein it was held as under:-

“27. It has also been the consistent view that when a detention order is passed all the material relied upon by the Detaining Authority in making such an order, must be supplied to the detenu to enable him to make an effective representation against the detention order in compliance with Article 22(5) of the Constitution, irrespective of whether he had knowledge of the same or not. These have been recognized by this Court as the minimum safeguards to ensure that preventive detention laws, which are an evil necessity, do not become instruments of oppression in the hands of the authorities concerned or to avoid criminal proceedings which would entail a proper investigation.

28. In most cases the decision of this Court have gone in favour of detenu when even one of the grounds of detention did not satisfy the rigors of proof of its genuineness as a foundational fact in support thereof.

*The decisions rendered in **Ashadevi case**, **Mehrunita case**, **Ayya case** and **Ahamedkutty case**, all referred to hereinbefore, have relied on the principle that although the State is empowered to issue orders of preventive detention, since the liberty of an individual was in question, such power should be exercised by the Detaining Authority on consideration of relevant material, both against and in favour of the individual concerned, to arrive at a just conclusion that his detention was necessary in the interest of the public and to prevent him from continuing to indulge in activities which are against the public interest and the interest of the State.*

29. This brings us to the next question as to whether even such material as had not been considered by the Detaining Authority while issuing the detention order, is required to be supplied to the detenu to enable him to make an effective representation against his detention.

*30. The decisions cited by the Learned Additional Solicitor General in support of his contention that all documents mentioned in the detention order were not required to be served on the detenu, such as in **J. Abdul Hakeem case**, take note of the earlier decisions in **Ahamedkutty case** and **Radhakrishnan Prabhakaran case** which had made it mandatory for the Detaining Authority to supply copies of all documents which had been relied upon by the Detaining Authority to the detenu, whether he had knowledge of their contents or not.*

*31. Of course, in **Radhakrishnan Prabhakaran case** it was also made clear that there is no legal requirement that a copy of every document mentioned in the order has to be supplied to the detenu. What is, therefore, imperative is that copies of such documents which had been relied upon by the Detaining Authority for reaching the satisfaction that in the interest of the State and its citizens the preventive detention of the detenu is*

necessary, have to be supplied to him. Furthermore, if in this case, the detenu's representation and writ petition had been placed before the Detaining Authority, which according to the detenu contained his entire defence to the allegations made against him, the same may have weighed with the Detaining Authority as to the necessity of issuing the order of detention at all.

32. We are inclined to agree with the submissions made on behalf of the respondent that, notwithstanding the nature of the allegations made, he was entitled to the assurance that at the time when the detention order was passed all the materials, both for and against him, had been placed for the consideration of the detaining authority and had been considered by it before the detention order was passed, having particular regard to the orders passed by the Settlement Commission appointed under the provisions of the Customs Act, 1962, which absolved the detenu from all criminal prosecution.

33. In the instant case, as some of the vital documents which have a direct bearing on the detention order, had not been placed before the detaining authority, there was sufficient ground for the detenu to question such omission. We are also of the view that on account of the non-supply of the documents mentioned hereinbefore, the detenu was prevented from making an effective representation against his detention."

19. Mr. Chaudhary pointed out that the Petitioner in his representation dated 03.12.2013 had sought for the documents mentioned in paras 15 to 23 of the said representation, but the said documents had not been furnished to him despite the demand made by him, which demand was reiterated by him in his representation dated 06.12.2013 but to no avail. This, in itself, makes the detention

order illegal and bad in law, being violative of Article 22(5) of the Constitution in that those documents had been considered and relied upon for arriving at the conclusion that the Petitioner needed to be detained under the COFEPOSA.

20. *Per contra*, Mr. Narang contended that though the detenu would have been entitled to the documents which were taken into consideration while formulating the Grounds of Detention, he had no entitlement to documents which had no relevance to his detention, and there was no obligation cast on the detaining authority to supply each and every document. Such documents which do not relate to the subjective satisfaction of the detaining authority with regard to the detention of the detenu being inconsequential need not be furnished to the detenu. Only documents which were relied upon by the detaining authority in reaching its subjective satisfaction about the necessity of preventive detention of the detenu were required to be furnished. In the instant case, all such documents which had relevance to the detention of the Petitioner had been furnished to him. Mere non-supply of documents which were referred to in passing and in order to complete the narration of facts would not be fatal to the detention unless the detenu could spell out some prejudice having been caused to him on account of their non-supply.

21. In order to assess the relative merit of the respective contentions of the Petitioner's counsel and the Respondent's counsel, in the context of non-supply of documents, we had asked the counsel for the Petitioner to pin-point the documents, the non-supply of which had impaired the right of the Petitioner to make an effective

representation. From the chart furnished to us by the Petitioner's counsel, we have culled out the following documents which were not supplied to the Petitioner despite his representations dated 3rd December, 2013 and 6th December, 2013 and which were relied upon in the Grounds of Detention by the detaining authority:-

- (1) Panchnama mentioned at Serial No.1 of the 'Relied Upon Documents' (Pages 1842-1891), regarding seizure effected from the Petitioner's residence on 03.09.2009, i.e., in respect of the search at 61, Gopal Park, Chander Nagar, near Krishna Nagar, Delhi, was not furnished in its entirety. Both in the representation dated 03.12.2013 and 06.12.2013, the Petitioner demanded from the detaining authority the documents mentioned at Page No.4 of the Panchnama at Serial No.3, that is:

"The bunch of loose sheets containing documents marked as 'C' and containing Pages 1 to 5 duly signed by witnesses as well as by one Smt. Anita Sharma."

From a perusal of the detention order, we find that the said documents have been referred to and relied upon at Serial No.1 of Para 2 and Para 7(c) of the detention order apart from paragraph 57 thereof.

In the counter-affidavit, in para 4.12.1, there is a categorical admission that the bunch of documents marked as 'C' have not been furnished to the detenu. As noted hereinabove, the said documents have been relied upon by

the detaining authority to establish the nexus between Naresh Jain and the Petitioner vide paragraph 50 of the detention order.

- (2) Panchnama dated 03.09.2009 mentioned at Serial No.4 of the 'Relied Upon Documents' (Pages 1892-2581) regarding search and seizure made at the residential premises of Parma Nand Yadav at A-144, Gali No.1, Ist Pushta, Sonia Vihar, New Delhi-110004 was not furnished in its entirety. Both in the representation dated 03.12.2013 and 06.12.2013, the Petitioner demanded from the detaining authority the documents mentioned at Serial Nos.1 and 2, 12, 13 and 14 of 'Annexure-A' to the panchnama, i.e., Diary marked 'A' written pages 1 to 90 (Serial No.1), Folder marked 'B' containing pages 1 to 78 (Serial No.2), Writing-pad marked 'H' written pages 1 to 50 (Serial No.12), Writing-pad marked 'I' written pages 1 to 24 (Serial No.13) and Writing-pad marked 'J' written pages 1 to 34 (Serial No.14). Subsequently, however, the Petitioner had given up the document mentioned at Serial No.2.

From a perusal of the detention order, we find that all the documents mentioned in the aforesaid panchnama have been relied upon at Serial No.4 of paragraph 2 of the detention order without distinction, apart from being relied upon in Para 57 of the detention order wherein it is specifically mentioned by the detaining authority that:

“While passing the Detention Order under the Conservation of Foreign Exchange and Preservation of Smuggling Activities Act, 1974, I have referred to and relied upon the documents mentioned in the enclosed list.”

In the counter-affidavit, in para 4.12.1, it is vaguely stated that the documents considered vis-à-vis the applicant detenu have already been supplied to him.

- (3) Panchnama dated 24.09.2009 and 08.10.2009 mentioned at Serial No.6 of the ‘Relied Upon Documents’ (Pages 1293-1500) regarding search and seizure made at F-41, F Block, Milap Nagar, Uttam Nagar, New Delhi of Manoj Garg. Both in the representation dated 03.12.2013 and 06.12.2013, the Petitioner demanded from the detaining authority the documents mentioned at Serial Nos.1, 6 and 8, i.e., diary marked ‘A’ containing written pages 1 to 21 (Serial No.1), Register marked ‘F’ containing written pages 1 to 57 (Serial No.6) and file marked ‘H’ containing pages 1 to 118 (Serial No.8).

From a perusal of the detention order, we find that the documents mentioned at Serial Nos.6 and 8, i.e., register marked ‘F’ and file marked ‘H’ are **specifically referred to and relied upon** in Paragraph 20 of the detention order and in particular page No.3, 6, 7, 10, 11,

28, 55, 56 and 57 of register marked 'F' and page Nos.76, 75, 74, 73, 62, 61, 60, 7 and 6 of file marked 'H'.

In the counter-affidavit, all that is stated in Para 4.12.3 is that the documents considered *vis-à-vis* the applicant-detenu have been supplied to him and the documents not considered at the time of the detention order have not been supplied to the detenu. Thus, there is no denial of the fact that the aforesaid documents have not been furnished to the Petitioner.

- (4) Panchnama dated 24.09.2009 mentioned at Serial No.5 of the 'Relied Upon Documents' (Pages 69-208) regarding search and seizure made at B-9, Shanker Garden, First Floor, Vikas Puri, New Delhi, office of Naresh Jain and Manoj Garg. Both in the representation dated 03.12.2013 and 06.12.2013, the Petitioner demanded from the detaining authority the documents mentioned at Annexure-B to the panchnama *viz.* bunch of loose sheets containing written pages 1 to 14.

A perusal of the detention order shows that the said documents have been referred to in Paragraph 2 of the detention order at Serial No.6 and at Paragraph 11 (f) and (j) and paragraph 17(b) of the detention order.

In the counter-affidavit, in Para 4.12.2, all that is stated is that the documents considered *vis-à-vis* the Petitioner have been supplied to him and since at the time of the passing of the detention order the documents

consisting the bunch of loose sheets containing written pages 1 to 14 were not considered in the case of the detenu, these have not been supplied to him.

- (5) Panchnama dated 24.09.2009 mentioned at Serial No.8 of the 'Relied Upon Documents' (Pages 38-43) regarding search and seizure made at JP-1, Poorvi Pritam Pura, New Delhi-110088, residential premises of Bimal Kumar Jain. Both in the representation dated 03.12.2013 and 06.12.2013, the Petitioner stated that only six documents had been communicated to him with regard to this panchnama while the documents mentioned at Serial Nos.1 to 4 had not been communicated.

A perusal of the detention order shows that the said documents have been referred to in Paragraph 8(d) and specifically relied upon in Paragraph 50(c) to establish the nexus between the Naresh Kumar Jain and the Petitioner (Shri Pooran Chand Sharma) and other members of the Syndicate.

In the counter-affidavit, in Para 4.12.4, all that is stated in this regard is that the documents considered *vis-à-vis* the applicant detenu have already been supplied to him and the documents not considered at the time of the passing of the detention order have not been supplied to the detenu.

- (6) Panchnama dated 24.09.2009 mentioned at Serial No.12 of the 'Relied Upon Documents' regarding search and

seizure made at Flat No.307-B, Pocket-2, Mayur Vihar, Phase-I, New Delhi of Shri Mahesh Kumar. Both in the representation dated 03.12.2013 and 06.12.2013, the Petitioner demanded from the detaining authority the documents enclosed with the said panchnama and stated that not a single document had been communicated to him as mentioned in the panchnama.

A perusal of the Grounds of Detention shows that the said document has been relied upon in Paragraph 50 of the Grounds of Detention to establish the nexus of Naresh Jain with the Petitioner and other members of the Syndicate.

In the counter-affidavit, in Para 4.12.6, all that is stated in this regard is that the seizure effected from Flat No.307, Pocket-B, Mayur Vihar, Delhi have not been relied upon and hence have not been supplied to the detenu.

22. From the aforesaid, it is abundantly clear that the detention order is based on the premise that there was a Syndicate comprising of Naresh Jain, the Petitioner (Pooran Chand Sharma), Parma Nand Yadav (an employee of the Petitioner), Manog Garg, Bimal Jain and Satpal Jain, and that search and seizure from the premises of the aforesaid persons were effected vide 13 panchnamas. Four out of these 13 panchnamas were dated 03.09.2009, 8 panchnamas were dated 24.09.2009 and one panchnama was dated 17.11.2009. The documents seized during the aforesaid searches and seizures were

thus considered *as an intrinsic whole*. The detention order passed against the Petitioner was passed by virtue of his being an associate of Shri Naresh Kumar Jain, who was running a Syndicate engaged in hawala activities as set out in Paragraph 52 of the detention order. In Para 50 of the detention order, the various panchnamas and statements of the aforesaid persons are stated to have revealed the nexus of Shri Naresh Jain with the Petitioner (Shri Pooran Chand Sharma) and other members of the Syndicate. Various documents referred to in the panchnamas have not been supplied to the Petitioner and even those specifically relied upon have not been furnished to him, despite specific demand made by him for the aforesaid documents.

23. Undoubtedly the established position in law is that documents which are merely referred to by the detaining authority in passing or as a mere narrative need not be supplied to the detenu and their non-supply would not be fatal to the detention unless the detenu can spell out some prejudice having been caused to him on account of their non-supply. But in the instant case, it is evident that the reference to the said documents in the detention order was not merely casual, *en passant* or as a part of the narrative. The documents, in our considered opinion, entered into the mind of the detaining authority and shaped his subjective satisfaction in passing the detention order against the Petitioner. Since the documents were not supplied to the Petitioner, the Petitioner's right to make an effective representation was seriously impaired and this, in itself, would be fatal to the detention order.

24. We are supported in coming to the aforesaid conclusion from the assertions made in the Counter-Affidavit by the Respondents themselves, the relevant portion whereof reads as under:-

*“As regards to the averment of applicant as to documents referred to by him having no concern with him, it is submitted that the present matter was considered by the detaining authority **as a whole and not in a piecemeal manner**, wherein the other members of syndicate and their roles and connections with one another were also considered, as has been enumerated under Para 50 of the Grounds of Detention. **The documents seized under various panchnamas concerning the investigations with the connected members of syndicate were considered by the detaining authority before arriving at the subjective satisfaction to pass detention order**, and all such documents considered by the detaining authority, vis-à-vis the present applicant, were supplied to him, thereby enabling him to make an effective representation post his detention.”*

25. With reference to the above, while we have no manner of doubt that the detaining authority considered the matter “as a whole” and “not in a piecemeal manner”, “wherein the other members of syndicate and their roles and connections with one another were also considered”, and “the documents seized under various panchnamas regarding connected members of the syndicate were considered by the detaining authority before arriving at the subjective satisfaction to pass detention order” against the Petitioner, we are also satisfied that the Petitioner has satisfactorily demonstrated that the non-furnishing of “all such documents” to him as were considered by the detaining authority, has prejudicially affected his right to make an

effective representation at all three levels viz., before the detaining authority, the Central Government and the Advisory Board.

26. In view of our aforesaid satisfaction, learned counsel for the Petitioner has given up/not pressed the remaining grounds urged by him in the writ petition for claiming the relief prayed for.

27. To conclude, we hold that on account of non-supply of vital documents which were considered by the detaining authority while passing the detention order, the Petitioner's right to make an effective representation was gravely impaired and this in itself is sufficient to vitiate the detention order.

28. As noticed above, the Petitioner has been in continuous preventive detention from 18.11.2013, i.e., for a period of nine months and his detention being for a period of one year, we deem it appropriate while setting aside the detention order to order his release forthwith and without any delay, if not required in any other case.

29. W.P.(CRL) 2066/2013 and Crl.M (Bail) No.829/2014 stand disposed of.

**REVA KHETRAPAL
JUDGE**

**S.P. GARG
JUDGE**

August 20, 2014
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