

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2025

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION HABEAS CORPUS NO.92 OF 2025

BETWEEN:

PRIYANKA SARKARIYA
AGED ABOUT 28 YEARS,
D/O RAJENDRA,
HOUSE NO.8, WARD NO.11,
FLOWER STREET,
NEAR BRUCEPET POLICE STATION,
VTC BELLARY, PO BELLARY,
BELLARY DISTRICT,
BELLARY, KARNATAKA-583 101.

...PETITIONER

(BY SRI. T.CHEZHIAN, ADV., FOR
SRI. KARTHIK N., ADV.)

AND:

1 . THE UNION OF INDIA
REP. BY ITS JOINT SECRETARY,
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
CENTRAL ECONOMIC INTELLIGENCE BUREAU,
COFEPOSA WING,

6TH FLOOR,
B-WING, JANPATH BHAWAN,
JANPATH, NEW DELHI-110 001.

2 . THE ASSISTANT SUPERINTENDENT OF POLICE
CENTRAL PRISON,
PARAPPANA AGRAHARA
BENGALURU-560 052.

...RESPONDENTS

(BY SRI. KULLOOR ARVIND KAMATH, ASGI WITH
SRI. SHANTHI BHUSHAN H., DSGI FOR R1
SRI. THEJESH P, HCGP FOR R2)

THIS WP(HC) IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA, PRAYING TO ISSUE APPROPRIATE
WRIT, ORDER OR DIRECTION IN THE NATURE OF HABEAS
CORPUS DECLARE THE DETENTION ORDER PASSED BY THE
FIRST RESPONDENT IN F.NO.PD-12001/03/2025 COFEPOSA
DATED 22.04.2025 ISSUED UNDER SECTION 3(1) OF THE
CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF
SMUGGLING ACTIVITIES (COFEPOSA) ACT, 1974 OF SAHIL
SAKARIYA JAIN S/O MAHENDRA KUMAR JAIN AS ILLEGAL AND
VOID ABINITIO.

THIS WP(HC) HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 01.12.2025 AND COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN
J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV JUDGMENT**(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)**

This Writ Petition (Habeas Corpus) is filed by Smt. Priyanka Sarkariya, petitioner and cousin of the detainee Shri Sahil Sarkariya Jain seeking a writ of Habeas Corpus to declare the detention order dated 22.04.2025, issued under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ("COFEPOSA Act" for short), as illegal.

2. We have heard Shri. T. Chezhiyan, learned Counsel along with Shri Karthik N, learned counsel appearing for the petitioner and Shri. Kuloor Arvind Kamath, learned Additonal Solicitor General of India along with Shri. Shanthi Bhushan H, learned Deputy Solicitor General of India appearing for respondent No.1 and Shri. Thejesh P, learned High Court Government Pleader appearing for respondent No. 2.

3. The facts of the case are as follows:-

Smt. Harshavardini Ranya, was intercepted on 03.03.2025 at the Green Channel of the Kempegowda International Airport, Bengaluru while attempting to leave the Airport after arrival from Dubai without making any declaration. A personal search revealed that she was attempting to smuggle 17 foreign- marked gold bars weighing approximately 14,213.050 grams of foreign origin gold brought from Dubai into India. Her voluntary statement was recorded on 04.03.2025. Thereafter, a search was conducted at her residence and cash of Rs.2,67,00,000/- and jewellery worth Rs.2,06,00,000/- along with two customs declaration were seized. Further, voluntary statements of Shri. Tarun Konduru Raju, who was implicated by the detainee and Shri. Sahil Sarkariya Jain, the detainee herein and several others were recorded. Based on these and other materials procured during the course of investigation a detention order under Section 3(3) of the COFESPOSA Act was passed on 22.04.2025.

4. The detainee's statements were recorded subsequently between 25.03.2025 and 02.04.2025. According to the grounds of detention, on four occasions the detainee allegedly admitted to assisting Smt. Harshavardhini Ranya in disposing smuggled gold and in facilitating Hawala transfers to Dubai.

5. The detainee's bail application before the Special Court for Economic Offences was rejected on 15.04.2025. Thereafter, on 22.04.2025, the detaining authority passed the impugned detention order under Section 3(1) of COFEPOSA Act (F.No.PD-12001/03/2025-COFEPOSA). The grounds of detention were served on the detainee on 23.04.2025 while he was in judicial custody.

6. The learned counsel appearing for the petitioner submitted that there is absolutely no material connecting the detainee to 03.03.2025 or 04.03.2025 transaction. There is no evidence to show the involvement of the detainee in the airport seizure or in any other transaction except four occasions allegedly admitted by him for November 2024, December 2024, January 2025, and February 2025.

7. It is further contended that all relied upon documents were not supplied to the detainee to enable him to make an effective and meaningful representation. Further, irrelevant and extraneous materials have been taken into consideration for passing the order of detention.

8. It is further contended that the detainee's involvement is alleged to have been traced only from digital evidence and subsequent statements dated 25.03.2025 to 02.04.2025, in which, he stated that he was an intermediary to Smt. Harshavardini Ranya and Shri. Avinash and has transferred hawala money on four occasions:

Date	Quantity	Value (Rs.)
14.11.2024	8,981.00	6,82,46,619.00
12.12.2024	12,621.78	9,94,34,382.34
11.01.2025	14,556.18	11,55,97,204.48
14.02.2025	13,443.00	11,80,00,000.00
Total	49,601.96	39,26,46,619.82

Except for these four transactions, there is no material to show his involvement in the incident of 03/04.03.2025 or in

the remaining 27 smuggling trips allegedly undertaken by the Syndicate.

9. The learned counsel appearing for the petitioner submits that the detention order is founded upon the incident which occurred on 03.03.2025, in which, the detainee had no role. Therefore, the mechanical attribution that the detainee was a part of the Syndicate involved in smuggling of 99.1337 kilograms of gold is completely unsupported by any material. Even if the contentions are accepted, the detainee's role is limited to four transactions involving 49.6 kilograms of gold. Out of 31 alleged trips, the detainee is not connected with 27 trips and the sweeping reference to his involvement in all transaction is based simply on conjecture and is vitiated by non-application of mind. It is further contended that the last transaction connecting the detainee as alleged by the respondents is on 14.02.2025 and there is no reason to justify the preventive detention of the detainee and there is no live and proximate link to the last incident on 14.02.2025 to justify the detention.

10. It is further submitted that although the detenue's bail was rejected on 15.04.2025, there was no material before the detaining authority to indicate any probable release on bail or otherwise or any real possibility of the detenue indulging in illegal activity if released. It is submitted that when a person is already in custody and no bail application is pending, there is no basis for assuming likelihood of release. Therefore, the subjective satisfaction recorded is vitiated. The detaining authority not having stated the real danger of release, continued detention is illegal.

11. It is contended that there is a violation of Article 22(5) of the Constitution of India, since a conclusion is drawn that the electronic devices seized from Smt. Harshavardhini Ranya establish a connection between her and the detenue. However, it is contended that the relied upon documents served upon the detenue do not contain the details of the transcripts from such electronic devices or the electronic evidence supporting the said conclusion.

12. The learned counsel appearing for the petitioner places reliance on the following decisions:-

- ***P.P. Ruikhiya v. Joint Secretary, Govt. & Anr.***, reported in **(2019) 20 SCC 740**;
- ***Rekha v. State of Tamil Nadu Through Secretary to Government & Another*** reported in **(2011) 5 SCC 244**;
- ***Binod Singh v. District Magistrate, Dhanbad, Bihar & Ors.***, reported in **(1986) 4 SCC 416**;
- ***Champion R. Sangma v. State of Meghalaya & Anr.***, reported in **(2015) 16 SCC 253**;
- ***Huidrom Konungjao Singh v. State of Manipur & Ors.***, reported in **(2012) 7 SCC 181**;
- ***Union of India v. Paul Manickam & Anr.***, reported in **(2003) 8 SCC 342**;
- ***Mohd. Yousuf Rather v. State of Jammu & Kashmir & Ors.***, reported in **(1979) 4 SCC 370**;
- ***Nenavath Bujji v. State of Telangana & Ors.***, reported in **2024 SCC OnLine SC 367**;
- ***Yumnam Mangibabu Singh v. State of Manipur & Ors.***, reported in **(1982) 3 SCC 18**;
- ***Sophia Gulam Mohd. Bham v. State of Maharashtra & Ors.***, reported in **(1999) 6 SCC 593**;

- ***Khaja Bilal Ahmed v. State of Telangana & Ors.,*** reported in ***(2020) 13 SCC 632;*** and
- ***Shalini Soni & Ors. v. Union of India & Ors.,*** reported in ***(1980) 4 SCC 544.***

13. Relying on these decisions, the learned counsel appearing for the petitioner submits that the detention order is vitiated and is liable to be set aside.

14. The learned ASGI appearing for the respondents contended that the detention order was legal and justified. The respondent submitted the co-accused, Smt. Harshavardhini Ranya and Shri. Tarun Konduru Raju, had their bail applications rejected by the Trial Court, and their appeals before the Sessions Court and later before this Court were also rejected or pending at the time the impugned detention order was issued. The detainee's own bail application was rejected on 15.04.2025. The detaining authority reasonably inferred that the detainee was likely to challenge the bail rejection before higher Courts and could obtain bail.

15. It is further contended that the detaining authority was aware of this likelihood of the detainee approaching appellate Courts for bail. Hence, the authority recorded the grounds of detention that though the detainee was in judicial custody and his bail application had been rejected; there existed a real possibility of his release and upon such release, a likelihood of him indulging in prejudicial activities relating to smuggling. Therefore, preventive detention under COFEPOSA Act was issued. It is further stated that the detainee did, in fact, challenge the bail rejection order before the Sessions Court, validating the detaining authority's assessment.

16. It is further submitted that a detention order against a person in custody is valid if (i) the authority is aware of the custody, (ii) there is reliable material indicating possibility of release on bail, and (iii) upon release, the detainee is likely to engage in prejudicial activities. All three conditions have been satisfied in the instant case. A detention order cannot be struck down merely because instead of contesting bail, the authority chose preventive

detention. An order is sustainable if it records awareness of custody and reasons to believe there is a possibility of release on bail. The detaining authority must show awareness of custody and assess whether antecedent activities indicate a high propensity to repeat offences.

17. It is further submitted that the detaining authority's satisfaction cannot be said to be an *ipse dixit*. The authority based its assessment on materials showing that the detainee had previously been engaged in smuggling operations and formed the view that he would continue such activities if released. Therefore, preventive detention was necessary in public interest.

18. It is further submitted that the detaining authority carefully reviewed all the material placed before it by the sponsoring authority and reached the informed subjective satisfaction that the detainee is essential to prevent the detainee from abetting smuggling in future under Section 3(1) of COFEPOSA Act.

19. It is further submitted that the detenue's claim that the detention is based solely on the 03.03.2025 and 04.03.2025 incident is false. The grounds clearly show that the detenue played an active role in a well-organised smuggling syndicate and is a repeat offender. The detenue has disposed of smuggled gold on multiple earlier occasions. He was also involved in another DRI Kolkata case involving 42,170.7 grams of gold. Therefore, the petitioner's claims are incorrect.

20. It is further submitted that the evidence gathered during investigation, including voluntary statements and digital material corroborates the detenue's repeated involvement. Therefore, the detention order is not based solely on a single incident. It is further submitted that the entire text of the voluntary statement of the detenue and the co-accused along with all supporting materials have been made available to the detenue in the grounds of detention and that the detention order is based only on the materials which have been duly provided to the detenue.

21. It is further contended that the detainee's name did not appear in the statements of co-accused on 03.03.2025 only because the gold was seized before it reached him for disposal, not because he was uninvolved. Further, it is contended that the detainee has acknowledged the receipt of the detention order dated 22.04.2025 along with all the relied upon materials has not filed any representation though he was perfectly aware of his chance to do so.

22. The learned ASGI appearing for the respondents places reliance on the following decisions:

- ***Ashadevi wife of Gopal Ghermal Mehta (Detenu) v K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat and Another*, reported in (1979) 1 SCC 222;**
and
- ***Smt. Icchu Devi Choraria v. Union of India and Others*, reported in (1980) 4 SCC 531.**

23. We have considered the contentions advanced. We notice that the detention order was passed on 22.04.2025. The detention order, along with the grounds of detention was served on the detainee on 23.04.2025. He

was specifically informed by the detaining authority of his opportunity to file his representation as follows:

"12. Shri Sahil Sakariya Jain i.e., you have the right to represent against your detention to the Detaining Authority, to the Central Government as well as the Advisory Board. If you wish to avail this right, you should send your representation through the Jail Authorities where you are detained, in the manner indicated below:-

- (a) Representation meant for the Detaining Authority should be addressed to the Joint Secretary (COFEPOSA), Government of India, Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau, 6th Floor, B-wing Janpath Bhawan, Janpath, New Delhi-110001.*
- (b) Representation meant for the Central Government should be addressed to the Director General, Central Economic Intelligence Bureau, Govt. of India, Ministry of Finance, Department of Revenue 6th Floor, B-wing Janpath Bhawan, Janpath, New Delhi-110001.*
- (c) Representation meant for the Advisory Board should be addressed to the Chairman, COFEPOSA Advisory Board, High Court of Karnataka, Bengaluru."*

However, no representation was filed by the detainee before the detaining authority, the Advisory Board or the Government. The detainee has signed the copy of the detention order acknowledging copies of the same as well as grounds for detention and supporting documents.

24. In **Rekha**'s case (supra), the Apex Court has held that there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending and if no bail application is pending, then there is no likelihood of the person in custody being released on bail, making the detention order illegal. The Court observed that there can be an exception to this Rule where a co-accused whose case stands on the same footing had been granted bail, in which cases the detaining authority can reasonably conclude that there is a likelihood of the detainee being released on bail even though no bail application is pending, since most Courts normally grant bail on this ground. However, the Court emphasized that details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed, and mere *ipse dixit* regarding the alleged imminent possibility of the accused coming out on bail without reliable material cannot sustain the detention order.

In **Ashadevi Wife of Gopal Ghermal Mehta (Detenue)'s** case (supra), the Apex Court held at paragraph No.6 as follows:-

"6. It is well-settled that the subjective satisfaction requisite on the part of the detaining authority, the formation of which is a condition precedent to the passing of the detention order will get vitiated if material or vital facts which would have a bearing on the issue and would influence the mind of the detaining authority one way or the other are ignored or not considered by the detaining authority before issuing the detention order. x x x x x . The principle that could be clearly deduced from the above observations is that if material or vital facts which would influence the mind of the detaining authority one way or the other on the question whether or not to make the detention order, are not placed before or are not considered by the detaining authority it would vitiate its subjective satisfaction rendering the detention order illegal. After all the detaining authority must exercise due care and caution and act fairly and justly in exercising the power of detention and if taking into account matters extraneous to the scope and purpose of the statute vitiates the subjective satisfaction and renders the detention order invalid then failure to take into consideration the most material or vital facts likely to influence the mind of the authority one way or the other would equally vitiate the subjective satisfaction and invalidate the detention order."

In ***Smt. Icchu Devi Choraria's*** case (supra), the Apex Court held at paragraphs No.5 and 6 as follows:-

"5. x x x x x The burden of showing that the detention is in accordance with the procedure established by law has always been placed by this Court on the detaining authority because Article 21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law. This constitutional right of life and personal liberty is placed on such a high pedestal by this Court that it has always insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the court that it has acted in accordance with the law. x x x x x.

6. x x x x x If there are any documents, statements or other materials relied upon in the grounds of detention, they must also be communicated to the detenu, because being incorporated in the grounds of detention, they form part of the grounds and the grounds furnished to the detenu cannot be said to be complete without them. It would not therefore be sufficient to communicate to the detenu a bare recital of the grounds of detention, but copies of the documents, statements and other materials relied upon in the grounds of detention must also be furnished to the detenu within the prescribed time subject of course to clause (6) of Article 22 in order to constitute compliance with clause (5) of Article 22 and Section 3 sub-section (3) of the COFEPOSA Act. x x x x x

25. In the instant writ petition, the ground of non-supply of the pen drive which is a relied upon document is not specifically raised. However, the detinue has acknowledged the receipt of the pen drive and the learned ASGI submits that in all these cases the pen drive had been taken to the prison and was played on a laptop available with the Officer and was shown in full to the detinue. Further, the entire relied upon material except two pages in Kannada, at pages No.1010 and 1011, which apparently are totally unconnected to the facts of this case, have been served to the detinue in English, a language which he admittedly knows and understands.

26. Further, the detention order specifically discusses the role of each of the detenues in the smuggling of gold into India and also specifically notices that the detinue was in judicial custody at the relevant time, his bail application had been rejected and his passport was in Court custody. But the order proceeds to specifically record that in the nature of the organised illegal activities of the detinue, the said steps are not sufficient to prevent the detinue from

indulging in organised smuggling if the detainee is not kept under detention.

27. The fact that the detainee was already in custody and that his bail applications had been rejected had not been specifically considered cannot be accepted. In view of these specific statements in the Detention Order, we find that the possibility of the detainee being released on grant of bail and his propensity to indulge in smuggling activities has also been specially noticed by the Detaining Authority.

28. The contention that the detainee was unconnected with the seizure which occurred on 03.03.2025 also cannot be accepted in view of the specific finding about his involvement in the continuous activities of smuggling. The ASGI would submit that all relevant materials which have been relied on to pass the order of detention have been made available to the detainee.

29. Having given our anxious consideration to all the grounds raised by the petitioner, the pleadings and the materials placed on record by the learned ASGI and the decisions relied on by both sides, we are of the opinion that

the safeguards as provided in Article 22(5) of the Constitution of India have been duly followed in the instant case. In spite of having been given the detention order with all the relied on materials, the detinue in the instant case had not chosen to make a representation before any of the authorities.

30. In view of the fact that the procedural safeguards have been followed and the order of detention and subjective satisfaction has been arrived at by the detaining authority after considering all relevant aspects in the matter. We are of the opinion that the order of detention does not call for interference. The writ petition accordingly fails and the same is ***dismissed***.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

cp*