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

+ **W.P.(CRL) 2118/2014 & CRL.M.A.16333/2004**

% *Judgment dated 22nd January, 2015*

SUMITA DEY BHATTACHARYA Petitioner
Through: Mr.Pradeep Jain, Mr.A.Samand,
Mr.Shubhankar Jha, Kumar Vikram and Ms.Aakriti
Mathur, Advocates

versus

UNION OF INDIA & ANR Respondents
Through: Mr.Sanjay Jain, Additional Solicitor General
with Mr.Kirtiman Singh, Central Government Standing
Counsel, Mr.Waize Ali Noor and Ms.Shreya Sinha,
Advocate for the Union of India.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI (ORAL)

1. Pleadings are complete. With the consent of counsel for the parties, the present petition is taken up for final hearing and disposal.
2. Petitioner, wife of the detainee, has filed the present petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, for issuance of a writ or direction in the nature of certiorari for quashing the impugned detention order dated 18.2.2014 passed under Section 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'COFEPOSA') and the order dated 11.9.2014 confirming the detention order for a period of one year. For the sake of convenience, the detainee is

hereafter referred to as ‘the petitioner’.

3. The facts of the case, as per the writ petition *inter alia* are as under:

1. “The Directorate of Revenue Intelligence Head Quarter New Delhi initiated investigation on the basis of intelligence that one company M/s Gaurav Pharma Ltd. Sampla Haryana (owned by Mr. K.K. Arora), a 100% Export Oriented Unit had been diverting duty free imported pharmaceutical goods to domestic tariff area without payment of duty.
2. During the period 23.3.2013 to 26.3.2013 on the basis of allegation of diversion of duty free goods into local market, DRI raided various transporter’s place as well as in the premises of M/s. Gaurav Pharma Ltd and it’s consignees when goods were seized from their premises. Goods after testing from experts found to be “ascorbic acid (vitamin – C)” in place of declared Goods “ Calcium Phosphate ”, “Lime Powder”, “Playex tablet”. Hence it was alleged that imported inputs were diverted in Domestic Tariff Area without manufacturing and physical exports. Investigations were carried out by the DRI wherein statements of various persons were recorded.
3. It has been alleged that K.K. Arora along with Vitaysh Koser of M/s Billion Incorporation and the detenue hatched a conspiracy to divert duty free imported goods in the domestic tariff area and forged the bills of export / shipping bills, export certificate, ARE-1 and invoices to show proof of export of goods through merchant exporter M/s Billions Incorporation, New Delhi to Bangladesh via LCS Ghoadanga, West Bengal.
4. That export of bulk drugs has shown in the name of M/s Billion Incorporation through land Customs station Ghoadanga. However, the transporter’s statements brought out the fact that they never transported the subject goods claimed to have been exported and in fact, the movement of the transporters vehicle with these goods consignments was denied. That under this modus operandi the CHA who has been named by them was M/s United Shipping Agency Kolkata
5. That the name of the detenue has been given by Vitash Koser Proprietor of M/s Billions Incorporation in his statement dated 23/24.3.2013 wherein he inter alia stated that all his export

shipments were handled by Sh. Malay Bhattacharyya @ prabir in the name of M/s United Shipping Agency based in Kolkata.

6. That on 25.3.2013 statement of Ashok Mitra partner and G card holder of CHA United Shipping Agency based in Kolkata was recorded under section 108 of the Customs Act, 1962 who declined to have worked in the transaction since their licence was suspended w.e.f. 11.2.2012. That on 5.4.2013 M/s Gaurav Pharma made a deposit of Rs. 1 Crore by demand draft allegedly admitting their role towards the said alleged contravention of provisions of Customs Act in export / import. That on 7.4.2013 summons to detainee was given in the hands of Vitayash Koser who assured that detainee shall be present on 10.4.2013 before DRI Delhi.
7. That on 12.4.2013 Detainee's house was searched by DRI – Kolkata and retrieved one hand written paper and one computer print-out showing invoice no. and date etc. which appeared to be particulars of Bills of Exports/ Shipping Bills. On 16.04.2013 summon was issued to Detainee by DRI –Kolkata. Detainee attended on that day. Statement of detainee was recorded U/S 108 of Customs Act'1962 by DRI – Kolkata. Statement was recorded in Bengali language.
8. It has been alleged that on 3.5.2013 Detainee sent an affidavit admitting doing export jobs of the alleged firms and an assistant of Late Dilip Chakrabarty and retracted his earlier statement dated 16.04.2013 recorded before DRI -Kolkata. That summon was issued by DRI on 08.05.2013 for appearance on 17.05.2013 to Detainee.
9. It is alleged that on 17.5.2013 Detainee re-iterated his earlier affidavit dated 03.05.2013. This affidavit in fact, was prepared and sent by Sri Vitesh using detainee's blank signed documents obtained from him against personal loan and detainee had no knowledge about the same.
10. That on 22.5.2013 Detainee was served with letter from DRI – Delhi that the contents of detainee's letter was wrong and afterthought. That on 19.6.2014 Detainee was asked to attend the local police station at - Baduria PS over phone by the police official. The detainee attended P.S. On 19.06.2014 at about

6:35pm when Detention Order dated 18.02.2014 served on the Detenue (only English version). That on 20.6.2014 Detenue was placed in the Presidency Correctional Home, Kolkotta.

11. That on 23.6.2014 Grounds of detention was given to detenue with RUD in English (3063 Pages) on obtaining Detenue's thumb impression on most of the pages besides in some pages signature in Bengali/English were taken. Detenue sought Bengali transcription of detention Order along with ground & RUD when the Detenue was told that the same will be sent soon.
 12. That on 7.7.2014 after waiting for considerable time the Detenue made a request for Bengali transcription of Order/ Grounds of detention & RUD through jail Superintendent. That the request of the detenue made on 7.7.2014 was rejected on 17.7.2014 on the plea that detenue is aware of English and earlier correspondences sent by the detenue were in English. However they agreed to send Bengali transcription soon. That on 21.7.2014 reference was made to COFEPOSA Board.
 13. That on 7.8.2014 detenue filed Representation before the Special Secretary cum Director General of CEIB, and also to Chairman – COFEPOSA Board. That on 13.8.2014 the detenue was served some part of RUD in Bengali language.
 14. That on 2.9.2014 Detenue's representation dated 07.08.2014 was rejected and the Detenue received the letter on 04.09.2014 qua the said rejection. That the remaining RUD in Bengali Language was served on detenue on 9.9.2014.
 15. That order dated 11.9.2014 passed by the respondents thereby confirming the detention order which was served upon detenue on 16.9.2014.”
4. Mr.Pradeep Jain, counsel for the petitioner submits that the impugned orders are wholly unwarranted, per se, illegal, unconstitutional, passed without application of mind and are without any jurisdiction.
 5. The following four grounds have been urged by counsel for the petitioner:
 - (i) Non-supply of documents within the stipulated time in the

language known to the detainee;

- (ii) Delay in execution of the detention order
- (iii) Delay in disposal of the representation dated 8.8.2014; and
- (iv) Delay in passing the detention order;

I- NON-SUPPLY OF DOCUMENTS WITHIN THE STIPULATED TIME IN THE LANGUAGE KNOWN TO THE DETENUE;

6. The first submission of counsel for the petitioner is that the petitioner was not supplied with the documents within the stipulated time in the language known to him. Elaborating his arguments further, Mr.Jain, counsel for the petitioner contends that the petitioner was served with the detention order dated 18.2.2014 in English language on 19.6.2014, the petitioner at that stage orally requested for the order in Bengali language, as he was not conversant with English language.
7. It is submitted that on 23.6.2014 grounds of detention along with relied upon documents in English language were served upon the petitioner. The petitioner again requested for translation of the documents in Bengali language and finally the documents were supplied to the petitioner in Bengali language in two parts on 13.8.2014 and 9.9.2014 after expiry of about 80 days.
8. Counsel also submits that Bengali version of the documents were supplied in part on 13.8.2014 i.e. just one day before the hearing of the Advisory Board which was held on 14.8.2014 and the remaining part of the documents in Bengali language were supplied on 9.9.2014 i.e. long after the hearing of the Advisory Board and just two days before the confirmation by the Central Govt i.e. on 11.9.2014. Therefore, such act and conduct of the respondent is in complete violation / breach of Article 22 (5) of the Constitution of India therefore the detention order is liable to

be quashed on this score alone.

9. It is the case of the petitioner that respondents were well aware that the petitioner has studied only upto class 9th and he only knows Bengali language, which is also evident from the fact that his statement under Section 108 of the Customs Act was recorded on 16.4.2013 in Bengali language. Learned counsel for the petitioner has also placed reliance on the Memorandum dated 17.6.2014 wherein sponsoring authority has directed supply of Bengali version of the documents to the petitioner at the earliest. Thus on account of delay in receiving documents in Bengali the rights of the detentue as provided under Article 22(5) of the Constitution were violated. On account of non supply of documents in Bengali language, the petitioner has been prevented from making the effective representation against the detention order. In support of his submission, counsel for the petitioner has placed reliance in the case of **Ibrahim Ahmad Batti Vs. State of Gujarat and Ors.** reported at AIR 1982 SC 1500, wherein the Apex Court has held as under:

“13. Two propositions having a bearing on the points at issue in the case before us, clearly merge from the aforesaid resume of decided cases (a) all documents, statements and other materials incorporated in grounds by reference and which have influenced the mind of the detaining authority in arriving at the requisite subjective satisfaction must be furnished to the detentue along with the grounds or in any event not later than five days ordinarily and in the exceptional circumstances and for reasons to be recorded in writing not later than 15 days from the date of his detention and (b) all such material must be furnished to him in a script or language which he understands and failure to do either of the two things would amount to a breach of the two duties cast on the detaining authority under Article 22 (5) of the Constitution.....”

10. It is also the case of the petitioner that relying on the aforesaid judgment, the Delhi high Court in the case of **Poly Saha Vs. Union of India & ors.**

reported at 2013 (1) JCC 384 had quashed the detention order. It is also submitted that in the case of *Nandoli Mohamed Rafeeq Vs. Union of India and Ors.* reported at (2004) 12 SCC 218 the Supreme Court of India had quashed the detention order on the grounds that non supply of documents in the language known to the detainee renders the continued detention illegal.

11. In reply to this ground, learned Additional Solicitor General submits that the petitioner is well conversant with the English language, which is evident from the fact that various letters were addressed by him to the sponsoring authority during the investigation in English language. Reliance is also placed on Annexure -III filed along with the counter affidavit, wherein the petitioner had in his own writing made the following endorsement in English language:

“I have put my signature on each page of said detention order, as token of receipt. Received copy of grounds of detention containing pages serially numbered from 01 to 84.

Malay Bhattacharyya”

12. In support of his submission that the petitioner can read, write and understand English language, it is also submitted by counsel for the respondents that the petitioner had sent a retraction dated 17.5.2013, which was also written and signed by him in English. Counsel also contends that the petitioner had neither informed the officer, who served the grounds of detention to the petitioner nor the jail authorities through whom the grounds of detention and documents relied upon were served on the petitioner, that he does not know English language and only knows Bengali. It is contended that at no point of time respondents accepted that the petitioner is only conversant with the Bengali language and has drawn

the attention to the memorandum dated 17.7.2014, which is reproduced below:

“Though the Detaining Authority is satisfied from the various documents which detenu sent to the Directorate of Revenue Intelligence (DRI) during investigation, that detenu knows English, however, since he has made a request to have those documents in Bengali, it is conveyed that the request for providing Bengali transcription of the documents has been accepted by the detaining authority without accepting his contention of not knowing English.....”

13. It is submitted that since the record was voluminous the translation took time, but it cannot be said that the petitioner was handicapped in any way or was prevented in making any effective representation, as guaranteed under Article 22(5) of the Constitution.
14. Learned counsel for the respondent has relied upon **Kubic Darusz v. Union of India And Ors.**, reported at (1990) 1 SCC 568, more particularly paras 10 to 13, which read as under:

“10. In the instant case we find that when the detention order and the grounds of detention were served the detenu received them and acknowledged the receipt thereof, as it appears from the records, putting his signature in English. He did not complain that the grounds of detention were not understood by him. On the other hand in the very grounds of detention it was stated that in course of interrogation he answered the questions in English including the questions as to how he happened to learn English. The gist of his answers in this regard was also given in the grounds of detention. We have perused the statements and find that those contained number of informations peculiar to the detenu himself which could not have been communicated by him to the interrogators unless he knew the English language. We also find that in several places he corrected the statements putting appropriate English words and signing the corrections. While the detention order was passed on 16-5-1989 his representation was admittedly dated only 13-6-1989. In the meantime bail petitions were moved

on his behalf before the Chief Judicial Magistrate and the High Court. There is nothing to show that he did not give instructions to his counsel. After all, the detenu is not required to write an essay or pass any language test. A working knowledge of English enabling him to understand the grounds would be enough for making a representation. He could very well send his representation in the language known by him.

11. [In Parkash Chandra Mehta v. Commissioner and Secretary, Government of Kerala & Ors.](#), [1985] 3 SCR 697, Venilal D. Mehta, his daughter Miss Pragna Mehta and son Bharat Mehta were detained under the COFEPOSA Act by an order dated 19th June, 1984 and the detention order was challenged in this Court under Article 32 of the Constitution of India. They were alleged to have been in possession of 60 gold biscuits of foreign origin. After their arrest the father and his daughter were taken to the Central Excise and Customs Department, Cochin where statements on their behalf were written in English by the daughter. The father Venilal D. Mehta put his signature in English as Balvant Shah but the daughter told the officers concerned that the correct name of her father was Venilal Mehta. In the writ petition it was the case of the father that he could not understand, read, speak or write English but could only sign his name in English. He was served with the grounds of detention in English language on 20th June, 1984. A Hindi translation of the grounds of detention was served on 30th June, 1984. On 27th May, 1984 the father made a representation in Gujarati to the detaining authority praying that he was unable to read and write either in English or Hindi or Malayalam and the grounds of detention may be given to him duly translated in Gujarati. In Court it was contended that the order and grounds should have been communicated to the detenu in the language or languages they understood and Venilal Mehta understood nothing except Gujarati. He did not understand English or Hindi or Malayalam. The Hindi translation was admittedly furnished beyond a period of 5 days and no exceptional circumstances were stated to exist. Following *Harikisan v. State of Maharashtra* AIR 1962 SC 911 and considering the definite case of Venilal Mehta, this Court observed that the facts revealed that the detenu Venilal Mehta was constantly in the company of his daughter as well as son and both of them knew English very well. The father signed a document in Gujarati which was written in English and which was his mercy petition in which he com-

pletely accepted the guilt of the involvement in smuggling. That document contained a statement--"I myself am surprised to understand what prompted me to involve in such activity as dealing in Imported Gold." On those facts and circumstances this Court observed: (SCC p.162, para 63)

"There is no rule of law that common sense should be put in cold storage while considering Constitutional provisions safeguards against misuse of powers by authorities though these Constitutional provisions should be strictly construed. Bearing in mind this salutary principle and having regard to the conduct of the detenu Venilal Mehta especially in the mercy petition and other communications, the version of the detenu Venilal in feigning lack of any knowledge of English must be judged in the proper perspective. He was, however, in any event given by 30th June, 1984 the Hindi translation of the grounds of which he claimed ignorance. The gist of the annexures which were given in Malayalam language had been stated in the grounds. That he does not know anything except Gujarati is merely the ipse dixit of Venilal Mehta and is not the last word and the Court is not denuded of its powers to examine the truth. He goes to the extent that he signed the mercy petition not knowing the contents, not understanding the same merely because his wife sent it though he was sixty years old and he was in business and he was writing at a time when he was under arrest, his room had been searched, gold biscuits had been recovered from him. Court is not the place where one can sell all tales. The detaining authority came to the conclusion that he knew both Hindi and English. It had been stated so in the affidavit filed on behalf of the respondent. We are of the opinion that the detenu Venilal Mehta was merely reigning ignorance of English."

12. After referring to the decisions in *Hadibandhu Das v. District Magistrate, Cuttack & Anr.*, *Nainmal Partap Mal Shah v. Union of India & Ors.*, and *Ibrahim v. State of Gujarat & Ors.* this Court in *Prakash Chandra Mehta* rejected the contention that the grounds of detention were not communicated to Venilal Mehta in a language understood by him.

13. Considering the facts and circumstances of the instant case and in view of the fact that no objection regarding non-communication of the grounds in a language understood by the detenu was made within the statutory period for furnishing the grounds and the fact that the representation was beyond the statutory period, almost a month after the grounds were served, along with the detenu's statements as to how he learnt English, we have no hesitation in holding that the detenu understood the English language, had working knowledge of it and was reigning ignorance of it, and there was no violation of Article 22(5) of the Constitution on the ground of non-communication of the grounds of detention in a language understood by him. The first submission of the detenu has, therefore, to be rejected.”

15. The submission of learned counsel for the petitioner that the detention order is liable to be quashed as the detention order and the relied upon documents were not served upon the petitioner in Bengali language is without any force. The petitioner was served with a detention order on 23.6.2014. While receiving the detention order the following endorsement was made by the petitioner in his handwriting in English language and the acknowledgement was also signed in English language, which reads as under:

“I have put my signature on each page of said Detention order as token of Receipt. Received Copy of Grounds of Detention contain pages serially Numbered from 01 to 84.

*Maloy Bhattacharya
(also signed in Bengali language)
23/6/2014”*

16. We may also notice that after receipt of the detention order the petitioner filed a representation on 7.8.2014 before the Special Secretary-cum-Director General, CEIB, and also to the Chairman COFEPOSA Board.

This representation was also made in English language.

17. The present case is fully covered by the case in the *Kubic Darusz* (supra). While dismissing the plea of the detainee, the Supreme Court of India took into consideration that the detainee was served with a detention order and he acknowledged the receipt thereof putting his signatures in English language.
18. The present case is on a better footing where not only the petitioner put his signatures in English language but he also made an endorsement, which is reproduced above, in English language in his handwriting.
19. The Court cannot lose track of the fact that the petitioner was working in a company. The petitioner has been carrying on a business, which would entail filling up of forms and addressing letters and, thus, it cannot be said that the petitioner does not understand or is not fully conversant with the English language.
20. The Supreme Court of India has also observed that what is required is a workable knowledge of language and not that the detainee is required to write an essay or pass any English test. In view of the settled position of law, this submission of learned counsel for the petitioner is rejected.

II- DELAY IN EXECUTION OF THE DETENTION ORDER

21. The second ground, which has been raised by the learned counsel for the petitioner, is the delay in executing the order of detention. It is contended by counsel for the petitioner that the order of detention was passed on 18.2.2014. This order was served on the petitioner after a gap of almost four months i.e. on 19.6.2014.
22. Counsel for the petitioner submits that there is delay in execution of the detention order inasmuch that order of detention was passed on 18.2.2014, the same was served on the petitioner on 19.6.2014, after a gap of 4

months. In support of his submission, reliance is placed on **Saud Nihal Siddique Vs. Union of India (UOI) and Anr.** reported at 2011 (2) JCC 884; and **Ferdousi Rahman Vs. Union of India (UOI) Anr.** reported in – 2013 (1) JCC 386.

23. Learned counsel for the petitioner has relied upon **T.A. Abdul Rahaman v. State of Kerala and Others**, reported AIR 1990 SC 225 more particularly para 2 wherein it has been held as under:

“2. Unexplained delay of 3 months between date of order of detention and arrest of detenu vitiates validity of order of detention.” the fact remains that the detaining authority has failed to explain the long delay in securing the arrest of the detenu after three months from the date of the passing of the detention order and this non-explanation in our view throws a considerable doubt on the genuineness of the subjective satisfaction of the detaining authority vitiating the validity of the order of detention.”

24. Reliance is also placed by counsel for the petitioner in the case of **Shafiq Ahmad v. District Magistrate, Meerut and Ors.**, reported at AIR 1990 SC 220, more particularly paras 4 and 5.
25. Reliance is also placed by counsel for the petitioner on Circular bearing F.No.671/6/2001-Cus.VIII, Government of India, Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau, in support of his arguments that the Department has recognised the fact that an order of detention is to be served expeditiously. The circular has also noticed that the sponsoring authority tends to harbour a feeling that they have no further role to play once the detention order has been passed and this notion needs to be dispelled. It has been highlighted in the Circular that the sponsoring authority must keep in mind the fact that their role and objective is not to have a detention order issued but also have the person detained because only then the object and purpose of issuing the detention

order is really achieved. It is also contended that there is no satisfactory explanation on behalf of the respondent in this regard. We find no force in the submission of learned counsel for the petitioner.

26. As per the reply which has been filed, the detention order passed on 18.2.2014 was sent to the executing authority. Thereafter the Joint Commissioner of Police (Crime), Kolkata, forwarded the detention order to the Deputy Inspector General of Police, CID, West Bengal, Alipore, Kolkata on 28.2.2014. On 8.3.2014 the detention order was forwarded from the Special Superintendent of Police, CID, Alipore, to the Superintendent of Police, CID, District-North 24 Paragans. Thereafter a look out circular was issued against the petitioner on 28.3.2014. As the petitioner was not apprehended respondent no.2 passed an order on 31.3.2014 under Section 7(1) b of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) ACT. A copy of the order dated 31.3.2014 was published in the official gazette as also in the local newspaper of Kolkata on 24.4.2014. Copies of the gazette and the newspaper have been placed on record. It has also been stated in the counter affidavit that on 1.5.2014 a report under Section 7(1)(a) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) Act was issued and the same was sent to ADG, DRI (Headquarters), New Delhi, for filing the same before the concerned Chief Judicial Magistrate.
27. In the case of **Indradeo v. State of West Bengal**, reported at AIR 1973 SC 1062, it has been held as under:

"Where at the time of the passing of detention order, the person sought to be detained was absconding and he was arrested ten months thereafter, mere omission to take steps under Sections 87, 88, Cr.P.C. in issuing proclamation etc. about the person absconding will not per se render the detention order either illegal or mala fide."

28. In the case of *M. Ahmed Kutty v. Union of India*, reported at 1990 SCC (Cri) 258, it has been held as under:

"Where after passing of the detention order the passage of time is caused by the detenu himself by absconding, the satisfaction of the detaining authority cannot be doubted and the detention cannot be held to be bad on ground of delay in execution of the Order."

29. In the case of *Dalbir Singh v. Union of India*, reported at 58 (1995) DLT 264 (DB) = (1995) 1 AD 170 it has been held as under:

"Delay in executing a detention order, if satisfactorily explained, cannot vitiate the detention. The detenu has been absconding or trying to evade arrest till he surrendered after initiation of procedure under Sections 82 and 83 Cr.P.C., the delay cannot be fatal. Mere fact that powers under Section 7 of COFEPOSA have not been invoked may not lead to inference of neglect. Delay due to lack of co-ordination between the detaining authorities and the officers executing the warrant may not also be fatal. If detenu was, in spite of frequent search, not found at his known residential address, that could be a valid explanation. Delay in translation of documents etc. is relevant. Delay for which the detenu is attributable, such as his moving Courts, is not fatal. Delay to be fatal must be of such length and remain unexplained so as to snap the nexus between the incident and the detention."

30. No doubt the underlying rule is that once a detention order has been passed every effort is to be made by the Department to ensure service of the detention order on the detenu and in case of unexplained delay, the order is liable to be quashed. The guidelines of the Department are also to the same effect.

31. The only question, which arises in the present case, is whether the Department had taken every possible step to serve the detenu in the shortest period of time or not. The reply explains the steps taken by the

Department to serve the petitioner. As the petitioner could not be served in the ordinary way a look out circular was issued on 28.3.2014. The Department took steps under Section 7(1)(b) of the COFEPOSA Act. A copy of the order dated 31.3.2014 was published in the official gazette. A publication was carried out in the local newspaper and a report was also sent to the ADG, DRI, for filing the same before the concerned Chief Judicial Magistrate.

32. In our view, the Department has been able to satisfactorily explain the steps taken by them to serve the petitioner and, thus, the submission of learned counsel for the petitioner is rejected.

III- DELAY IN DISPOSAL OF THE REPRESENTATION DATED 8.8.2014

33. Another ground urged by the petitioner is that the delay in deciding the representation made by the petitioner on 7.8.2014 before the Central Government i.e. the Special Secretary cum Director General, CEIB, Government of India, which was rejected on 2.9.2014. It is contended that on account of the unexplained delay in disposal of the representation the order of detention is liable to be vitiated.
34. In support of his submission with regard to delay in considering the representation of the petitioner, counsel has placed reliance on **Ichhu Devi Choraria Vs. UOI & Ors.** reported at AIR 1980 SC 1983, **Mahesh Kumar Chauhan @ Banti Vs. UOI & Ors.** reported at (1990) 3 SCC 148; **Rajamal Vs. State of Tamil Nadu & Anr.** reported at AIR 1999 SC 684; and **Rama Dhondu Borade Vs. Commissioner of Police And Ors.** reported at AIR 1989 SC 1861.
35. In counter affidavit, while denying that there has been delay in disposal of the representation, it is submitted by the learned Additional Solicitor General appearing for the respondents that representation dated 7.8.2014

was received from the Jail authorities on 11.8.2014 and on the same day the sponsoring authority was asked to give comments, which were received on 28.8.2014, thereafter the file was processed in the Section on 29.8.2014. The office was closed on 30th August and 31st August, being Saturday and Sunday and the same was presented by ADG COFEPOSA through his detailed note of 1.9.2014 to the competent authority, who considered the same on 2.9.2014 and rejected the same as it was without any merit.

36. It is thus the stand of the respondent that there is no delay in deciding the representation of the petitioner. Reliance is placed by learned Senior counsel for the respondent on *Pooja Batra Vs. Union of India and Ors.* reported at (2009) 5 SCC 296 and more particularly paragraphs 11, 12, 13 and 14 which are reproduced below:

“11. Coming to the contention relating to delay in disposal of the representation, it is true that whenever a representation is made either by the representative of the detenu or by the detenu himself, it is incumbent on the part of the named authority to consider, dispose of the same and pass appropriate orders and communicate it without any unreasonable delay. However, it depends upon the facts and circumstances of each case.

12. In the instant case, the detenu has taken the plea that he made a representation to the Secretary, Government of India as suggested in the detention order on 13.06.2008 which was received by the Suptd. of Jail on 16.06.2008, and on the very same day it was forwarded to COFEPOSA Department. It is the contention of the counsel for the appellant that though the representation was sent to the COFEPOSA Department on 16.06.2008 itself and the fact that the Jail and COFEPOSA Department both located in Delhi yet it took time for more than ten days to respond in obtaining the comments from the sponsoring authority and get the same disposed of which is fatal and accordingly the detention order deserves to be quashed.

13. As against the said detention, in the counter affidavit, it is clarified that the representation was received by them on 20.06.2008. The specific assertion made in the counter affidavit has not been refuted by the detenu in his rejoinder. On the same day, i.e., 20.06.2008 itself, it was sent to the sponsoring authority, i.e. Customs Authority, who sent their comments on 27.6.2008. The comments on the said representation were sent to the COFEPOSA department on 27.06.2008, 28/29.06.2008 were holidays being Saturday and Sunday and on the next day i.e. 30.06.2008, the representation of the detenu was considered by the competent officer of the COFEPOSA department and the same was rejected. The rejection order was communicated to the detenu on 01.07.2008 and received by him on 02.07.2008.

14. In the light of the details furnished in the counter affidavit, we do not find any substance in the contention and satisfy that there was any delay much more than the bare minimum time required to obtain the comments of the sponsoring authority accordingly, we reject the said contention also.”

37. Counsel for the respondent has also placed reliance on **Union of India Vs. Yumnam Anand Anand M.** reported at (2007) 10 SCC 190 and more particularly paragraphs 9 and 10 which are reproduced below:

“9. The High Court was of the view that parawise comments were not required to be called for and it was held that the same was fatal to the detention.

10. The question as to whether the views of the sponsoring authority are to be called for and whether they are necessary have been dealt with in several cases. *In Kamarunnissa v. Union of India and Anr.* (1991 (1) SCC 128) it was observed as under:

"7. The learned counsel for the petitioners raised several contentions including the contentions negated by the High Court of Bombay. It was firstly contended that the detenus had made representations on December 18, 1989 which were rejected by the communication dated January 30, 1990 after an inordinate delay. The representations dated December 18, 1989 were delivered to the jail authorities on December 20, 1989. The jail authorities

dispatched them by registered post. December 23, 24 and 25, 1989 were non-working days. The representations were received by the COFEPOSA Unit on December 28, 1989. On the very next day i.e. December 29, 1989 they were forwarded to the sponsoring authority for comments. December 30 and 31, 1989 were non-working days. Similarly, January 6 and 7, 1990 were non-working days. The comments of the sponsoring authority were forwarded to the COFEPOSA Unit on January 9, 1990. Thus it is obvious that the sponsoring authority could not have received the representation before January 1, 1990. Between January 1, 1990 and January 8, 1990 there were two non- working days, namely, January 6 and 7, 1990 and, therefore, the sponsoring authority can be said to have offered the comments within the four or five days available to it. It cannot, therefore, be said that the sponsoring authority was guilty of inordinate delay. The contention that the views of the sponsoring authority were totally unnecessary and the time taken by that authority could have been saved does not appeal to us because consulting the authority which initiated the proposal can never be said to be an unwarranted exercise. After the COFEPOSA Unit received the comments of the sponsoring authority it dealt with the representations and rejected them on January 16, 1990. The comments were dispatched on January 9, 1990 and were received by the COFEPOSA Unit on January 11, 1990. The file was promptly submitted to the Finance Minister on the 12th; 13th and 14th being non-working days, he took the decision to reject the representation on January 16, 1990 and the memo of rejection was dispatched by post on January 18, 1990. It appears that there was postal delay in the receipt of the communication by the detenus but for that the detaining authority cannot be blamed. It is, therefore, obvious from the explanation given in the counter that there was no delay on the part of the detaining authority in dealing with the representations of the detenus. Our attention was drawn to the case law in this behalf but we do not consider it necessary to refer to the same as the question of delay has to be answered in the facts and circumstances of each case. Whether or not the delay, if any, is properly explained would depend on the facts of each case and in the present case we are satisfied that there was no delay at all as is apparent from the facts narrated above. We, therefore, do not find any merit in this submission."

38. Mr.Sanjay Jain, learned senior counsel for the petitioner also points out

that during the period starting from 11.8.2014 to 28.8.2014 there were six holidays and thus it cannot be said that there was inordinate delay in deciding the representation of the petitioner.

39. Counsel for the petitioner has also relied in the case of **Rajamal Vs. State of Tamil Nadu & Anr.** reported at AIR 1999 SC 684 and more particularly paragraph 10 thereof, which is reproduced below:

“10. What happened in this case was that the Government which received remarks from different authorities submitted the relevant files before the Under Secretary on the next working day. Thus there is some explanation for the delay till 9.2.1998. Thereafter the file was submitted before the Minister who received it while he was on tour. The Minister passed the order only on 14.2.1998. Though there is explanation for the delay till 9.2.1998, we are unable to find out any explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 14.2.1998 is not a justifiable explanation, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen.”

[Emphasis added]

40. In the case of **Raj Kumar Vs. UOI & Ors.** [WP(Crl.)No.680/2008 decided on 05.08.2008], a Division Bench of this court has held as under:

“17. It is of importance to note that the Supreme Court has, on several occasions, laid down a period which is much shorter than that provided in Section 3(3) of COFEPOSA. This statute lays down that for the purposes of Clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the

detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention. We see no reason why very period prescribed for compliance of both the actions envisaged in Article 22 of the Constitution should similarly hold with full force for all other attendant actions. In the present case the Detenu was served with the impugned Order on 19.2.2008 from which date his detention on a preventive platform had commenced. It is not extraordinary or unreasonable to expect the Respondents to anticipate the filing of a Representation by the Detenu, which, in the present case, was served on the Respondents on 11.3.2008. Its disposal cannot be left to the whims and convenience of the Respondents, especially since it is a preventive and not a punitive detention that is being dealt with. We find no reason why the requisite decision was not taken on the representation “as soon as may be but ordinarily not later than five days”. The unsatisfactory and legally unacceptable reason which has been proffered is forthcoming, however that the Respondents were concentrating on making the Reference to the Advisory Board within the statutory period of five weeks. The Respondents are clearly mistaken and misdirected in doing so. They should have instead concentrated first on disposing of the Representation of the Detenu.”

41. On careful examination of the judgments sought to be relied upon by counsel for both the parties, it emerges that the representation is to be decided without any unreasonable delay and the explanation of the delay would depend on the facts and circumstances of each case. The objective of an expeditious disposal of the representation is closely associated with the liberty of a person. In the case of *Rajamal (Supra)*, the detention order was quashed and the explanation rendered that the Minister was on tour for five days was considered to be unjustifiable. In the present case as well the respondent was aware that once the order of detention was passed a representation was likely to be made, hence, the same should have been decided within the shortest period of time.

IV- DELAY IN PASSING THE DETENTION ORDER

42. Another ground which is strongly urged before this court is that there has been inordinate unexplained delay in passing the detention order. Mr.Pradeep Jain, counsel for the petitioner submits that the respondents have failed to explain the delay of about one year in passing the detention order from the date of the alleged incident of 1.2.2013, while the order of detention was passed on 18.2.2014. It is thus prayed that on this score alone the order of detention would stand vitiated.
43. Strong reliance has been placed by Mr.Jain, counsel for the petitioner on the time chart, showing chronological sequence of events in respect of the petitioner prepared by the Department, as per which on 1.2.2013 was the date when information was received against M/s Gaurav Pharma Ltd. regarding evasion of duty. Counsel thereafter pointed out that on 12.4.2013 as per the aforesaid chart the officers of DRI, Calcutta, searched the residential premises of the petitioner and resumed some incriminating documents relating to investigation. Statement of the petitioner was recorded by the DRI at Calcutta on 16.4.2013. Various other events were recorded in this chart up to 14.6.2013 when the proposal for issuance of the detention order under the provisions of COFEPOSA Act was sent to the Joint Secretary (COFEPOSA) New Delhi by DRI (HQ.), New Delhi.
44. Counsel for the petitioner submits that once a proposal is made for issuance of a detention order, it is presumed that the entire investigation in the matter would stand concluded and it is only after the department is fully satisfied would such a proposal have been made.
45. Mr.Jain, counsel for the petitioner further contends that on 28.6.2013 the Central Screening Committee held its meeting at New Delhi for considering proposal of preventive detention of the petitioner and the proposal was approved. It is thus contended that from this date the

department was to pass the detention order, which was passed as late as on 18.2.2014. It is thus contended that on account of the delay the live line between the alleged occurrence and the object of detention stood snapped.

46. Counsel for the petitioner has placed reliance on the guidelines issued by the Department while dealing with the matters related to COFEPOSA Act, 1974, which are reproduced below:

“A. Time gap between date of detention of a case and passing of Detention order should be shortest possible.

The Courts / Advisory Boards have taken adverse view of any undue / unexplained delay in passing the Detention Order. It must, therefore, be the constant endeavour to ensure that detention Orders are issued in shortest possible time from the time of detention of a case. For this purpose, the following important aspects must be kept in view by the Investigating / Sponsoring Authorities”

- (i) Soon after a case is detected an assessment of the nature and gravity of the case in the context of the object and purpose of Cofeposa Act, 1974 read with the existing guidelines issued from time to time for implementation of this Act should be made at a senior level concerned with investigation of the case. This is a crucial stage when a decision has to be taken by the concerned investigating / sponsoring Authority that the case is prima facie potential enough to generate a proposal for detention under Cofeposa Act.
- (ii) The investigation should be completed as far as possible keeping in view the requirement and purpose of preventive detention under the Cofeposa Act, 1974. It must be noted in this contest that preventive detention is distinct from punitive proceedings like adjudication or prosecution. For the purpose of invoking the provisions of Cofeposa Act, 1974 it will be enough to have that much satisfied about the role and involvement of any person (for whom the proposal is sought to be made) in the prejudicial activities from which he is required to be prevented. While further

investigation which may be necessary for the purpose of adjudication / prosecution may continue, the proposal for detention under Cofeposa Act, 1974 need not be kept pending till the completion of such elaborate investigation. The nexus between the date of incident and passing of the Detention Order is a vital factor as far as preventive detention is concerned. The essential distinction between the preventive detention and the punitive action must always be specifically kept in view. This would not only ensure drastic reduction in the time gap between the date of incident and the passing of the Detention Order and thus, the better proximity factor, but also cut down heavily the volume of material to be considered and relied upon, while the objection and purpose of issue of a Detention Order would still be satisfied.”

47. In support of his submission reliance is placed on a judgment of this court in the case of Adarsh Pal Singh Vs. Union of India, [W.P.(CRL) 1208/2013 decided on 21.08.2014]; T.A. Abdul Rehman Vs. State of Kerala & Ors. reported at (2006) 5 SCC (Crl.) 418; Issac Babu Vs. Union of India and Anr. reported at (1990) 4 SCC 135; and Rajender Arora Vs. Union of India & Ors reported at (2006) 2 SCC (Crl.) 418.
48. Learned Additional Solicitor General submits that the delay in passing the detention order is explainable and has been discussed in paragraph 25 of the grounds of detention. Reliance is placed in the case of M. Ahmed Kutty v. Union of India, reported at (1990) 2 SCC 1, wherein it has been held that as long as time taken in passing the detention order is explainable the same cannot be termed as to make the detention order invalid, and has relied upon the following paragraph:

“Even in a case of undue or long delay between the prejudicial activity and the passing of detention order, if the same is satisfactorily explained and a tenable and reasonable explanation is offered, the order of detention is not vitiated. We must bear in mind that distinction exists between the delay in making of an order of detention under a law relating to preventive detention like

COFEPOSA and the delay in complying with procedural safeguards enshrined under Article 22(5) of the Constitution. In view of the factual scenario as aforesaid, we are of the opinion that the order of detention is not fit to be quashed on the ground of delay in passing the same.”

49. Since the counter affidavit has not explained the delay in passing the detention order and reference has been made to paragraph 25 of the grounds of detention, we deem it appropriate to reproduce paragraph 25 of the grounds:

“25. Having regard to the chronological sequence of events in this case and whatever time was required for scanning the proposal and the voluminous relied upon documents (RUDs), formulating the grounds for issuance of Detention order after the receipt of the proposal was for the purpose of better verification of material placed before me and for applying my mind to arrive at the subjective satisfaction. Therefore, I am satisfied that the nexus between the dates of incident and passing of this Detention Order as well as object of your detention has been well maintained.”

50. Reply to ground (d) in the Counter affidavit read with paragraph 25 of the grounds which according to the respondents explained the delay in passing of the detention order. However, we are of the view that the delay of 8 months has not been explained. We have in the paragraph foregoing noticed that the house of the petitioner was searched on 12.4.2013; his statement was recorded on 16.4.2013 and thereafter a proposal was sent on 14.6.2013 for issuance of a detention order; the screening committee in its meeting held on 28.6.2013 considered the proposal for preventive detention of the petitioner and approved the same.
51. In the case of **Rajinder Arora Vs. Union of India & Ors** reported at (2006) 4 SCC 796; and **Adishwar Jain Vs. Union of India** reported at

(2006) 11 SCC 339, the decision of the Supreme Court in the case of T.A. Abdul Rahaman v. State of Kerala and Others, reported at AIR 1990 SC 225 was considered. The Apex Court in the case of Rajender Arora (Supra) has held as under:

“21. The question as regards delay in issuing the order of detention has been held to be valid ground for quashing an order of detention by this Court in *T.A. Abdul Rahaman v. State of Kerala* stating: (SCC pp. 748-49, paras 10-11)

“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)”

52. The provisions of the COFEPOSA Act vests extra ordinary power in the Government to detain a person, without recourse to ordinary law of the land and without a trial by the Court, and thus, the power is to be exercised with due care and caution. In the case of **Rajesh Gulati Vs Government of NCT of Delhi** reported at (2002) 7 SCC 129, wherein, it has been held:

“The law permitting preventive detention must be meticulously followed with substantively and procedurally by the detaining authority. The object of detention under the Act is not to punish but to prevent the commission of certain offences. Section 3(1) of the Act allows the detention of a person only if the appropriate detaining authority is satisfied that with a view to preventing such person from carrying on any of the offence activities enumerated therein, it is necessary to detain such person. The satisfaction of the detaining authority is not a subjective one based on the detaining authorities’ emotions, beliefs or prejudices. There must be a real likelihood of the person being able to indulge in such activities, the inference of such likelihood being drawn from objective data”.

53. Mr.Sanjay Jain, learned Additional Solicitor General in support of his argument that undue importance is not to be attached to the technicalities, has relied upon in the case **Union of India & Anr. Vs. Chaya Ghoshal & Anr.**, reported at (2005) 10 SCC 97. We may, however, notice that in the same judgment and more particularly in paragraphs 13 and 15, the Court has highlighted that a person’s greatest of human freedoms i.e. personal liberty is deprived, and therefore, the laws of preventive detention are strictly construed and a meticulous compliance with the procedural safeguard, however, technical is mandatory. This jurisdiction has been

described as a jurisdiction of suspicion.

54. Learned Additional Solicitor General has relied upon *Rajendrakumar Natvaralal Shah Vs. State of Gujarat and Ors.* reported at (1988) 3 SCC 153 and more particularly paragraphs 9 and 10; on *Dalbir Singh Vs. Union of India*, reported at 1995 (58) DLT 264, and more particularly paragraphs 5, 8 and 9; and on *Gayatri Agarwal Vs. Union of India* reported at 2006 (7) AD (Delhi) 19 and more particularly paragraphs 11 and 22.
55. Learned ASG has also relied upon the case of *M. Ahamedkutty Vs. Union of India* reported at (1990) 2 SCC 1, wherein it has been held:

"7. Where the seemingly long time taken for passing the detention order after the prejudicial act is the result of full and detailed investigation and consideration of the facts of the case, the ground cannot be held to be remote and the detention cannot be held to be bad on that ground. In *Ashok Narain Vs. Union of India*, (1982) 2 SCC 437, where the detenu was apprehended for breach of foreign exchange regulation in February 1981 and without launching any prosecution the detenu was detained in October 1981 the passage of time being the result of full and detailed consideration of facts and circumstances of the case after thorough examination at various levels, this Court observed that it could not be said that the detention was in any way illegal inasmuch as the detaining authority had fully and satisfactorily applied his mind to the question of detention."

56. We find force in the submissions made by counsel for the petitioner that there is unexplained delay in passing the detention order of approximately 8 months. The chart showing the chronological sequence of events prepared by the respondents would show that the proposal was approved for preventive detention of the petitioner on 28.6.2013, however, the detention order was passed only on 18.2.2014, we are not satisfied with the explanation which is sought to be relied upon by the respondent in the

counter affidavit as also in paragraph 25 of the detention order.

57. A Division Bench of the Delhi High Court in the case of **Raj Kumar Vs. Union of India**, [WP(Cr.)No.680/2008 decided on 05.08.2008] has held as under:

10. The impugned Detention Order has been passed two months after the initiation of prosecution on 15.12.2007, on which date investigation must be deemed to have been completed. We have to consider whether the passage of two months thereafter would constitute delay as it would vitiate the impugned Detention Order. It is trite that the decision to detain a citizen would not be sustainable if it does not manifest urgency and imminence since the vital links between an action of the Detenu and the decision to detain him would almost invariably stand snapped.

11. In these circumstances, we find that there is uncondonable delay in the passing of the impugned Order, the vital links necessitating preventive detention having snapped in the interregnum. Reference to the following passage from *Kundanbhai Dulabhai Shaikh –vs- Distt. Magistrate, Ahmedabad*, AIR 1996 SC 2998 would be advantageous to adumbrate the need for expeditious action:

Turning now to the main question relating to the early disposal of the representation, we may immediately observe that this Court, in a large number of cases, has already laid down the principle in clear and specific terms that the representation has to be disposed of at the earliest and if there has been any delay in the disposal of the representation, the reasons for the delay must be indicated to the Court or else the unexplained delay or unsatisfactory explanation in the disposal of the representation would fatally affect the order of detention and in that situation, continued detention would become bad. This has been the consistent view of this Court all along from its decision in *Sk. Abdul Karim v. State of West Bengal*, (1969) 1 SCC 433 : (AIR 1969 SC 1028); *In re: Durga Show*, (1970) 3 SCC 696 : *Jaynarayan Sukul v. State of West Bengal* (1970) 1 SCC 219 : (AIR 1970 SC 675); *Shaik Hanif v. State of West Bengal*, (1974) 1 SCC 637 : (AIR 1974 SC 679); *Raisuddin @ Babu Tamchi v. State of*

U.P., (1983) 4 SCC 537 : (AIR 1984 SC 46); Frances Coralie Mullin v. W.C. Khambra, (1980) 2 SCC 275 : (AIR 1980 SC 849); Mohinuddin alias Moin Master v. District Magistrate, Beed, (1987) 4 SCC 58 : (AIR 1987 SC 1977); Rama Dhondur Borade v. V.K. Saraf, Commr. of Police, (1989) 3 SCC 173 : (AIR 1989 SC 1861); Aslam Ahmed Zahire Ahmed Shaik v. Union of India, (1989) 3 SCC 277 : (AIR 1989 SC 1403); Mahesh Kumar Chauhan alias Banti v. Union of India, (1990) 3 SCC 148 : (AIR 1990 SC 1455), right upto its reiteration in Gazi Khan alias Chotia v. State of Rajasthan, (1990) 3 SCC 459 : (AIR 1990 SC 1361).”

58. There is no quarrel with the propositions laid down in the judgments relied upon by learned Additional Solicitor General appearing on behalf of the respondents, however, we are of the view that the judgments sought to be relied upon are not applicable to the facts of the present case. The counter affidavit is blissfully silent with regard to the delay in passing the order of detention and in the counter affidavit reference has been made to paragraph 25 of the grounds of detention on the basis of which the respondents wish to explain the delay. We have reproduced in the paragraph foregoing paragraph 25 of the grounds of detention, which in our view do not give any explanation, much less a satisfactory explanation with regard to delay. The underlying principle which cannot be ignored is that unexplained delay in passing the order of detention is likely to vitiate the order of detention and snap the nexus between the incident and the detention. No doubt there can be no hard and fast rule with regard to time period subject to however, the delay being satisfactorily explained. In this case, the alleged incident is of 1.2.2013 and on 14.6.2013 a proposal for issuance of the detention order under the provisions of the COFEPOSA Act, was sent to the Joint Secretary. To say that after the proposal was sent investigation was still being carried out, can be of no advantage to the respondents as when the proposal was sent, it is presumed that the

department was convinced that the order of detention has to be passed. In case the department did not have sufficient material, they would not have sent such a proposal. The proposal was accepted on 28.6.2013, but the order of detention was passed as late as on 18.2.2014, thus in the absence of satisfactory explanation for this gap of about 8 months, the judgments sought be relied upon would not be applicable.

59. Thus, we are of the view that the petition must succeed *primarily* on two grounds out of the four grounds, which have been urged by the petitioner. We are satisfied that the detention order was served upon the petitioner without any delay on the part of the respondent, as all necessary steps were initiated by the department to serve the petitioner. We are also of the view that the petitioner was conversant with the English language and petitioner has workable knowledge of English language and the department cannot be faulted for non-supply of the documents and the order of the detention in Bengali language. But there is unexplainable delay on the part of the department for deciding the representation of the petitioner. After passing of the detention order, the department was well aware that a representation is likely to be made, however, 17 days were taken to dispose of the representation, out of which it is claimed that there were six holidays, still it leaves a period of 11 days, which is considered to be an inordinate delay in the facts of this case. The petition must succeed even on the ground of not passing the detention order for a period of 8 months, after the proposal was accepted on 28.6.2013. The sole purpose of passing the detention order is that the live link between the occurrence and the order should not become stale. By the time the proposal is sent it is deemed that the investigation is complete, which is enough to detain a person, and any additional investigation which may have been carried out, cannot be a ground to explain the delay.

The department itself in its Circular bearing F.No.671/6/2001-Cus.VIII, Government of India, Ministry of Finance, Department of Revenue, Central Economic Intelligence Bureau, has taken note of this. Accordingly, the petition is allowed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 22, 2015

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