

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: August 19, 2015
Judgment Pronounced on: September 04, 2015

W.P.(Crl.) 1214/2015

BHAWANI VERMA

..... Petitioner

Through: Mr. Pradeep Jain, Mr. Vikas
Sareen, Mr. Ashish Batra & Mr.
Navneet Panwar, Advocates.

versus

UOI & ANR.

..... Respondents

Through: Mr. S.K. Dubey, Mr. Jasmeet
Singh, CGSC, Ms. Aastha &
Ms.Shreya Sinha, Advocates.

CORAM:
HON'BLR MS. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to seek a writ in the nature of Certiorari to quash the detention order bearing F.No.673/13/2015-Cus.VIII dated 27.04.2015 passed under Section 3(1)(i) and

3(1)(iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (*hereinafter mentioned as 'COFEPOSA'*) against Sh. Deepak Verma (detenue)- the petitioner's husband and a direction to set at liberty the detenue from detention.

2. Vide impugned detention order dated 27.04.2015, detenue namely Deepak Verma was ordered by the respondent No.2, the Joint Secretary to the Government of India, to be detained and kept in custody in Central Jail, Tihar, New Delhi with a view to prevent him from smuggling of goods, transportation and concealment of the smuggled goods in future.
3. The facts giving rise to the present writ petition are that an information was received by the Directorate of Revenue Intelligence (DRI) that one syndicate was involved in illegal storage and illegal export of '*Red Sanders woods*' (*Pterocarpus Santalinus*) which is a prohibited item for export under the Foreign Trade Policy read with CITES. It was alleged that one Pawan Gupta and Deepak Verma were the kingpin of the syndicate who

were procuring sanders from South India and illegally exporting the same in containers through ICD, Tughlakabad by concealing the same with other items declared in the shipping bill. The illicit export of red sanders to Sharjah, UAE was being attempted in container No.TTNU-3869887/20 under the guise of “Acrylic Bath Tubs and Bath Tub Accessories” under shipping bill No.0018327 dated 16.10.2014 which was filed in the name of M/s Acqua Plus Global, Plot No.3, NSEZ, Noida. Said container was examined vide panchnama dated 21.10.2014 and 24.10.2014. On its examination, 12820 kgs of red sanders wood valued at Rs.6 crore was found apart from bath tubs. Residence of Anil Kumar Singh alleged accomplice of detainee was searched on 25.10.2014 and certain documents, a laptop and a pen drive were seized. He was taken to the godown at Bakhtawarpur, New Delhi where persons, namely, Thindu Sherpa, Manju Nath and Bobby were found. In the said godown, red sanders wood was also found. In their statements, Thindu Sherpa, Bobby and Manju Nath stated that they were working for the detainee, Pawan Gupta and his partner Bhimendra Kumar Goel and one Shankar who was allegedly engaged in the

buying and selling of red sanders at Bengaluru in the alleged crime. Anil Kumar Singh, Thindu Sherpa, Babu @ Bobby and Manjunath were arrested on 28.10.2014 and the DRI filed a complaint under Section 132, 135(1)(a),(b) & (c) of the Customs Act, 1962 against all of them on 24.12.2014 before the Ld. CMM, New Delhi.

4. After issuance of summons to the detainee, he applied for anticipatory bail on 10.11.2014 in which he was granted the interim protection. Vide order dated 14.11.2014, the Ld. ASJ dismissed the anticipatory bail application and granted custodial interrogation of the detainee. His statement was recorded on 11.11.2014 and 12.11.2014. During investigation, further allegations were made against the detainee with regard to his past conduct and filing of past cases also. Further summons were issued to the detainee and Pawan Gupta in the months of November and December, 2014 but they did not turn up, due to which complaints under Section 172 and 174 Indian Penal Code were also filed against them. On 27.02.2015, the detainee was apprehended by DRI from Kolkata and he was arrested on 28.02.2015. Ld. CMM, Kolkata vide order dated 28.02.2015, rejected the oral bail prayer of the detainee and he

was sent to Delhi on transit remand. Detenue was produced before the Ld. Duty MM, Delhi on 01.03.2015 and was granted four days' police remand. His statement under Section 108 of the Customs Act, 1962 was recorded on 03.03.2015. Thereafter, the impugned detention order was passed on 27.04.2015 and on the same day, complaint against the detenue under Section 132, 135(1) (a), (b) & (c) of the Customs Act, 1962 was filed before the Court of Ld. Duty MM, Patiala House Court, New Delhi, who passed an order to place the same before the Ld. CMM on 28.04.2015. On 29.04.2015, detenue was served with detention order and on 02.05.2015, he was served with the grounds of detention along with the relied upon documents.

5. The detention order has been challenged by the detenue on various grounds which are as under :

(i) There has been a long delay of about six months from the date of alleged activity till passing of the detention order dated 27.04.2014. The present case was detected in the month of October, 2014 and all the goods were recovered and seized during

the said month. In a preventive detention matter where the detenue has been taken into preventive detention, delay is not acceptable.

(ii) The subjective satisfaction drawn by the detaining authority assuming that there is likelihood that detenue would be enlarged on bail and also that detenue will be entitled for bail after 60 days under Section 167 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) in case the complaint is not filed, is completely baseless and without any cogent material. No bail application of the detenue was filed nor was pending before the Court.

(iii) The detention order has been passed on 27.04.2015 and on the same date, the complaint under Section 132/135 of the Customs Act, 1962 was filed before the Court of Ld. CMM, but said fact was withheld by the DRI from the detaining authority in order to get the detention order issued without supplying complete facts.

(iv) The sanction order for filing the complaint under Section 132, 135 of the Customs Act, 1962 was not placed before the detaining authority. Some other documents were also withheld by

the DRI from the detaining authority. The non-placement of said documents before the detaining authority renders the detention order liable for revocation.

(v) The grounds of detention which were relied and the documents pertaining to the same were served upon the detinue on 29.04.2015, but many vital documents supplied were either incomplete or illegible, which created impediment in the constitutional right of the detinue in making effective representation under Article 22(5) of the Constitution of India read with Section 3(3) of COFEPOSA.

(vi) The detaining authority has failed to consider as to why the ordinary law of land was not sufficient to deal with the present situation for which the preventive detention law had to be invoked.

(vii) The detaining authority has recorded that Shri Anil Garodia was actively involved in the activity of smuggling of red sanders wood. Reference has also been made to the name of an advocate Sh. Mahesh Anand. A reference has also been made to an application dated 26.11.2014, but no such letter has been relied

upon by the detaining authority. The detaining authority has not applied its mind to the material placed before it.

(viii) The representation dated 18.05.2015 sent by the detainee to the detaining authority has not been decided till filing of the present petition.

6. A point-wise joint reply has been filed on behalf of the respondents by way of an affidavit with regard to the grounds of objection raised by the petitioner which is as under :

(i) The respondents explained the delay in passing the detention order by mentioning that the proposal for preventive detention was initiated by DRI on 28.01.2015. On 17.02.2015, the proposal was put before the Screening Committee and on 24.02.2015, the Committee granted approval to the proposal for preventive detention of the detainee. Some documents were called on 26.02.2015. On 01.03.2015, it was found that the papers relating to seizure made by DRI Muzaffarpur in which the name of detainee surfaced were incomplete and the same were called for. On 03.03.2015, it was informed that the detainee was arrested in

Kolkata and thereafter necessary formalities were followed. On 09.04.2015, call detail records were examined. On 16.04.2015, the officer from DRI was called and on 17.04.2015 discussions were made by the detaining authority with the officer of DRI. From 17.04.2015 to 24.04.2015, ADG (C) was on tour for Advisory Boards meeting. On 23.04.2015, the detaining authority asked for some more details and on 27.04.2015, detention order was passed. Thus, there was no unnecessary delay in passing the detention order.

(ii) The detaining authority was reasonably satisfied on cogent material that there was likelihood of release of detenu requiring prevention from indulging in prejudicial activities and this position is well settled in the cases of *Rameshwar Shaw v. District Magistrate Verdhman*, AIR 1964 SC 334 and in *Abdul Sathar Ibrahim Manik v. Union of India*, (1992) 1 SCC 1.

(iii) Since the date of filing of the complaint is same as that of detention order, therefore, its placement before the detaining authority did not arise.

(iv) All the relevant documents which were relied upon by the detaining authority were duly supplied to the detainee. Detenue sought copies of certain documents vide representation dated 13.05.2015 and 20.05.2015 which were supplied to him on 02.06.2015, however the same were not relied upon.

(v) There has been compliance of provisions of Section 3(3) of the COFEPOSA as well as Article 22(5) of the Constitution of India as grounds of detention and relied upon documents were served to the detainee.

(vi) The grounds on which the detention order was passed brings out in detail as to why preventive detention of the detainee was warranted.

(vii) In *Kavita W/o Sundere Shankardas v. State of Maharashtra and others, 1982 SCR (1) 138*, it has been held that clerical mistake cannot permit the detainee to take advantage of it.

(viii) The representation of the detainee was considered and decision was communicated to him vide Memo dated 25.05.2015 and 02.06.2015.

7. The grounds taken by the detaining authority in support of passing of the detention order are that the detainee hatched the conspiracy to smuggle red sanders wood along with Pawan Gupta, Thindu Sherpa and other members of syndicate. For the purpose of illegal export of red sanders, the detainee got certain documents fabricated in the name of M/s. Aqua Plus Global. The detainee also used the identity of Sh. Deepak Sharma while smuggling red sanders from Kolkata. The detainee was physically present while the red sanders were being concealed at Bakhtawarpur godown. The detainee planned a strategy to smuggle the red sanders. The detainee also converted ill-gotten money out of smuggling activities in procuring both movable and immovable properties in the name of his son and wife. The detainee introduced Sh. Shankar, supplier of red sanders to Pawan Gupta and lured others also to be the part of the act. The detainee met Sh. Satish Gami, a resident of Bihar in the year 2012 who used to give red sanders to one Sh. Satpal Sharma for illegal export from Kolkata. The detainee falsely got prepared documents in the name of other company and also mis-declared the description of goods. Call detail records of phone used by the detainee and his

accomplices at relevant time indicate his involvement in the crime. There is a likelihood of the detainee getting bail and in any case he will be entitled for bail after 60 days of arrest under Section 167 Cr.P.C., if no complaint is filed. Keeping in view the past conduct of the detainee, there is a possibility that he may continue with the said prejudicial activity if he is granted bail.

8. In the above circumstances, the present petition has been preferred. We have considered the submissions of the parties, in depth. During the course of arguments, the counsel for the petitioner restricted his arguments on grounds (i) to (v) only.
9. However, grounds (i), (ii) and grounds (iii) to (v) (collectively) are a matter of concern and requires detailed adjudication. Learned counsel for the petitioner has argued that the present case was detected by the sponsoring authority in the month of October, 2014, goods were seized in October, 2014, arrests of co-accused persons were made in the same month and the statements were recorded in November, 2014, but the detention order has been passed after a delay of around six months i.e. on 27.04.2015. In support of this

contention, reliance has been placed on judgment in the case of ***T.A. Abdul Rehman v. State of Kerala & Ors., 1989 SCR (3) 945*** in which it was observed by the Hon'ble Supreme Court that when there is unsatisfactory and unexplained delay between the date of the order of detention and the date of securing the arrest of the detainee, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority. On similar issue, he relied upon the judgment in the case of ***Rajender Arora v. Union of India and Ors., (2006) 2 SCC (CrL.) 418*** and ***Raj Kumar v. Union of India, AIR 2006 SC 938***.

10. On the first contention, undisputedly the container containing red sanders wood was detained on 20.10.2014. But in the facts of the present case, the date of seizure of consignment, in our opinion, should not be treated as the starting point. In the present case, the detainee had remained in the background. Subsequent investigation as per the respondents, revealed his involvement. Search was conducted at the godown at Bakhtawarpur from 25.10.2014 to 27.10.2014 and the co-accused, namely, Anil Kumar Singh, Thindu Sherpa, Bobby and Manjunath were apprehended and their

statements were recorded. The seized goods were handed over to CWC, Gurgaon, Haryana on 28.10.2014. Search was conducted at the house of the detainee and Sh. Pawan Gupta, but they were not found there. On 11.11.2014 & 12.11.2014, statement of the detainee was recorded. On 14.11.2014, anticipatory bail application of the detainee was dismissed. On 17.11.2014 and 26.11.2014, summons were issued against the detainee but he was not found present at his house. Summons were once again issued to the detainee on 10.12.2014. On 24.12.2014, complaint was filed against remaining four co-accused persons under the provisions of Customs Act, 1962. On 27.02.2015, the detainee was spotted at Kolkata and on 28.02.2015 he was arrested. He was produced before the Ld. CMM, Kolkata who allowed the transit remand with the direction to produce him before the Ld. CMM, Delhi by 02.03.2015. On 01.03.2015, detainee was produced before Ld. CMM, Delhi. On 05.03.2015, the detainee was placed under judicial custody for 14 days. On 19.03.2015, his judicial custody was extended for another 14 days. Thereafter, various discussions had taken place between the officers of the sponsoring authority and the detaining authority.

The dates 25.04.2015 and 26.04.2015 were public holidays being Saturday and Sunday and on 27.04.2015, the detention order was passed against the detenue.

11. In our opinion, the respondents in the supplementary affidavit explained the delay and attributed the same to the extensive search of various premises in different places and examination of persons apart from departmental delays. It is only after completing the necessary investigation that the sponsoring authority sponsored the case for detention of the detenue. To show and establish the involvement of the detenue in the alleged crime, material and evidence has to be collected before a detention order is passed. Preventive detention order cannot be passed in haste and hurry and without cogent and reliable material, for otherwise, the detention order would be questioned on the ground that the investigation was incomplete or inchoate to implicate and condemn the detenue. Further, the detaining authority must have sufficient and adequate time to examine the evidence and statements, to have response to their queries and to apply their mind. Therefore, the judgments relied upon by the petitioner in case of ***T.A. Abdul Rehman***

(supra), ***Rajender Arora*** (supra) and ***Raj Kumar*** (supra) are of no assistance to the petitioner as the same are distinguishable from the facts and circumstances of the present case.

12. The Hon'ble Supreme Court in the case of ***Licil Antony v. State of Kerala & Anr., (2014) 11 SCC 326*** has observed as under:

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

13. After due consideration of the facts of the present case and in the light of the observations made in ***Licil Antony*** (supra), it is evident that the sponsoring authority has sufficiently explained the delay of

about six months in passing the detention order and therefore, it is difficult to hold that the live link had broken and had come apart.

14. Next limb of the argument advanced by the counsel for the petitioner is that the detaining authority has wrongly drawn the conclusion that the detenu is likely to be released on bail especially when the detenu has neither filed any bail application nor any bail application was pending and further in the case of the co-accused persons, all the bail applications filed before different Courts were rejected before the filing of the charge-sheet. Nothing has been submitted as to how and on what basis the subjective satisfaction was arrived at by the detaining authority. In support of these contentions, the petitioner has placed reliance on the judgment of *Huidrom Konungjal Singh v. State of Manipur and Others*, (2012) 7 SCC 181 in which it was observed as under:

“8. This Court while deciding the case in *A. Geetha v. State of T.N.* relied upon its earlier judgments in *Rajesh Gulati v. Govt. of NCT of Delhi*, *Ibrahim Nazeer v. State of T.N.* and *Senthamilselvi v. State of T.N.* and held:

“10. ...that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipse dixit of

the detaining authority.”
Its subjective satisfaction based on materials, normally, should not be interfered with.”

9. In view of the above, it can be held that there is no prohibition in law to pass the detention order in respect of a person who is already in custody in respect of criminal case. However, if the detention order is challenged the detaining authority has to satisfy the Court the following facts:

(1) The authority was fully aware of the fact that the detenu was actually in custody.

(2) There was reliable material before the said authority on the basis of which he could have reasons to believe that there was real possibility of his release on bail and further on being released he would probably indulge in activities which are prejudicial to public order.

(3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary.

In case either of these facts does not exist the detention order would stand vitiated.”

15. The counsel for the respondents, on the other hand, argued that the grounds of detention meet the test laid down by the Hon’ble Supreme Court in case of *Huidrom Konungjal Singh* (supra) itself i.e. (a) the detaining authority is aware that the detenue was already in detention; (b) there is likelihood of release of detenue on bail; (c) prayer for bail was rejected by CMM, Kolkata, therefore, it cannot be said that no bail application was filed or prayer for bail was

made; (d) in any case the detainee is entitled to be released on bail after 60 days under Section 167 Cr.P.C. if complaint is not filed; and (e) the propensity to continue to indulge in the prejudicial activities especially of smuggling of red sanders wood are summarised in the grounds of detention as mentioned above. The detainee was arrested on 28.02.2015 and the detention order was passed on 27.04.2015. There were only two days' left for the completion of the period of 60 days from the date of arrest and the complaint was not filed till that day.

16. We are of the view that subjective satisfaction is based upon the material facts. The detainee was arrested on 28.02.2015 and charge-sheet was filed on 27.04.2015. File was put up for consideration before the detaining authority on 24.04.2015 and 25th and 26th being Saturday and Sunday, the detention order was passed on 27.04.2015.
17. The argument advanced by the counsel for the parties shows that the process to proceed with the presentation of the charge sheet was initiated on 20.04.2015, but the same was not brought to the knowledge of the detaining authority. Counsel for the petitioner

has not pointed out any factual status which could lead to certainty for filing the charge-sheet within the prescribed time. Normally, the charge sheet is to be filed within 60 days from the date of arrest. If one meticulously counts the days, then the charge sheet was required to be filed by 29.04.2015, but even in the ordinary manner, the period was going to expire on 27.04.2015 i.e. date when the charge sheet was filed. Apparently, the charge sheet was presented before the Duty MM on 27.04.2015 and on the same date it was ordered to be placed before the CMM i.e. the competent authority for 28.04.2015 at 02.00 PM. Admittedly, there is an order passed by the Ld. CMM, Kolkata dated 27.02.2015 which clearly shows that the prayer for bail of the detainee was rejected by the Court.

18. As discussed above, it shows that for reaching the subjective satisfaction, there should be a likelihood that the detainee would be released on bail on the ground of technicalities. In the present case, the sanction to prosecute the detainee was obtained by the sponsoring agency i.e. DRI on 20.04.2015 and hardly a period of about one week was remaining for the filing of the complaint.

Apparently, the opinion of the detaining authority that the detainee

is likely to be released on bail under Section 167 Cr.P.C. in case the charge sheet is not filed within the period of 60 days, is well founded on the record. Even if the argument advanced by the counsel for the petitioner is presumed to be correct that the DRI was having time upto 29.04.2015 to file the charge-sheet, then also no fault can be found in recording the satisfaction that the detenu was likely to be released on bail. Also having regard to the past conduct of the detenu, there is a possibility that he might continue the said prejudicial activities especially smuggling of red sanders wood and considering the fact that he very boldly smuggled out red sanders wood by concealing it in export cargo in a false name and by mis-declaring the export cargo to be bath tubs, the detaining authority was justified in holding that the detenu had high potential to indulge in the aforesaid prejudicial activities again.

19. In *Binod Singh v. District Magistrate, Dhanbad, Bihar and Others, (1986) 4 SCC 416*, it was observed that:

“It is well settled in our Constitutional framework that the power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great

deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised.”

20. From a reading of the above quoted paragraph, it is apparent that if the detenue is in custody and there is no imminent possibility of his release then the rule of preventive detention should not be exercised. However, when there is an imminent possibility that the said detenue who is in custody may be released then in such cases, the power of preventive detention can be exercised. The satisfaction accorded by the detaining authority was on the basis of likelihood of getting bail by the detenue in the case by the competent court and in any case he will also be entitled for bail after 60 days under Section 167 Cr.P.C., if no complaint is filed before the expiry of the said period.

In the present case, the material available before the detaining authority satisfies the criteria that the detenue is likely to be released on bail under Section 167 Cr.P.C., if no complaint is filed. The detention order was passed on 27.04.2015 and the detenue was to be released shortly as no complaint was filed till

then. Thus, we uphold the detention on the ground mentioned in para 37.1 of the detention order.

21. The next point of argument which requires consideration is two-fold. It has been argued by the counsel for the petitioner that firstly, the sponsoring authority i.e. DRI withheld the filing of the complaint and the sanction order for filing the complaint from the detaining authority in order to get the detention order issued. Secondly, the relevant documents on the basis of which the detention order was passed were served upon the detainee only on 29.04.2015 and many vital documents supplied to the detainee were incomplete and illegible. It is nowhere the case of the petitioner that the sanction for prosecution was with the sponsoring authority and sponsoring authority, with malafide intention, with the purpose to conceal the documents from the detaining authority, withheld the documents.

22. Dealing with the first aspect of the contention, it is quite apparent that the authority which passed the detention order and the authority which filed the complaint against the detainee were two different authorities and also it is to be noted that the complaint was

not filed till the time of passing of the detention order, particularly when the prescribed period for filing the complaint was going to expire shortly. Admittedly, the detinue has filed the representation on 13.05.2015 without any delay. From no stretch of imagination, it can be said that the alleged non-supply of documents or supply of incomplete and illegible documents delayed the right of the detinue to file the representation.

23. The argument advanced by the counsel for the petitioner that the documents should have been brought by the sponsoring authority before the detaining authority, do not find any basis as the sponsoring authority has not been impleaded as party in the present matter to allege malafide against it, rather the words “non-submission of documents” were very safely used during the course of arguments. Even otherwise, the process of detention was initiated on 20.04.2015 and under all circumstances, the decision was required to be taken by 27.04.2015, particularly when two holidays i.e. 25.04.2015 being Saturday and 26.04.2015 being Sunday were falling in between. The argument that the detaining authority on 27.04.2015 should have further called for the report

whether the charge-sheet was filed or not, is neither part of the process nor desirable, as the time was running out, particularly in case of non-filing of the complaint by 27.04.2015.

24. As far as the other aspect of the matter is concerned, the counsel for the petitioner argued that the detainee vide letter dated 13.05.2015 had made request thereby seeking certain documents which were relied upon to which the ADG, COFEPOSA vide letter dated 25.05.2015 replied that all the relevant documents will be supplied to the detainee and thereafter on 02.06.2015, certain documents were supplied to the detainee. Most importantly, RUD 32 i.e. bail application No.551/2015 was not provided to the petitioner within the period of 5 days or extended period of 15 days as provided by Section 3(3) of COFEPOSA which is in violation of Article 22(5) of the Constitution of India which prevented the detainee in preparing his effective representation. In support of this contention, petitioner relied upon judgment in the case of *Smt. Icchu Devi Choraria v. Union of India and Ors., 1981 SCR (1) 640* in which it was observed as under:

“We must therefore now proceed to examine whether there was any breach of the requirements of Article 22 clause (5) of the Constitution and Section 3, sub-section (3) of the COFEPOSA Act, for that is the breach which is claimed by the petitioner as invalidating the continued detention of the detenu. Clause (5) of Article 22 of the Constitution reads as follows:

"Art. 22(5): When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

Section 3, sub-section of the COFEPOSA Act provides as under:

"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."

There can therefore be no doubt that on a proper construction of clause (5) of Article 22 read with section 3, sub-section (3) of the COFEPOSA Act, it is necessary for the valid continuance of detention that subject to clause (6) of Article 22 copies of the documents, statements and other materials relied upon in the grounds of detention should be furnished to the detenu alongwith the grounds of detention or in any event 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. If this requirement of clause (5) of Article 22 read with section 3, sub-section (3) is not satisfied the continued detention of the detenu would be illegal and void.”

25. As per the provisions of Section 5A of the COFEPOSA, the

grounds of detention are separable. Section 5A of COFEPOSA is reproduced as under:

“5A. Grounds of detention severable.

Where a person has been detained in pursuance of an order of detention under sub-section (1) of section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly

(a) Such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are-

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever, and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in subsection (1) of section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) The Government or office making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds.”

The language of Section 5A of COFEPOSA makes it abundantly clear that if the order of detention is made on two or more grounds, the said order of detention shall be deemed to have been separately on each ground and accordingly the detention order shall not be deemed to be invalid merely because one or some of

the grounds is or are invalid. In the present case, the bail applications relating to co-accused Manjunath, although was not supplied to the detinue along with the relied upon documents, RUD 32 i.e. bail application No.551/2015 within the prescribed time, but it was supplied on 02.06.2015 and this would not vitiate the detention order as it had been filed before the filing of the representation by the detinue. More the reason, the bail application of co-accused Manjunath is not the ground for detention of the detinue. The Hon'ble Supreme Court in the case of *Attorney General for India & Ors. v. Amratlal Prajivandal & Ors., (1994) 5 SCC 54* observed that :

“47. The section is in two parts. The first part says that where an order of detention is made on two or more grounds, "such order of detention shall be deemed to have been made separately on each of such grounds", while the second part says that such order shall not be deemed to be invalid or inoperative merely for the reason that one or some of the grounds are either vague, non-existent, irrelevant or unconnected. That the second part is merely a continuation of and consequential to the first part is evident from the connecting words "and accordingly". The second part goes further and says that the order of detention must be deemed to have been made on being satisfied with the remaining good ground or grounds, as the case may be. Both the parts are joined by the word "and".

48.In short, the principle appears to be this: Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity. The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity. That is the reason why single acts of wagon- breaking, theft of signal material, theft of telegraph copper wires in huge quantity and removal of railway fish- plates were held sufficient. Similarly, where the person tried to export huge amount of Indian currency to a foreign country in a planned and premeditated manner, it was held that such single act warrants an inference that he will repeat his activity in future and, therefore, his detention is necessary to prevent him from indulging in such prejudicial activity. If one looks at the acts the COFEPOSA is designed to prevent, they are all either acts of smuggling or of foreign exchange manipulation. These acts are indulged in by persons, who act in concert with other persons and quite often such activity has international ramifications. These acts are preceded by a good amount of planning and Organisation. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention.”

26. In the present case, the detention order has been passed on 27.04.2015 on the grounds mentioned in para 37.1 and does not have any mention about the bail application of co-accused

Manjunath. The bail application filed by co-accused Manjunath does not have any bearing on the grounds of detention, however the order passed in the bail application has already been supplied and even the copy of the bail application has been supplied immediately after serving the detention order along with the grounds of detention, without causing any delay in filing the representation.

27. We have reached the conclusion that the grounds of detention constitute a separate and independent ground under Article 22(5) of the Constitution of India read with Section 5A of COFEPOSA. The said grounds can be separated by applying the principle of segregation. The said grounds and the detention do not suffer from any infirmity.
28. In view of the aforesaid reasons, we do not find any merit in the present writ petition. The writ petition is accordingly dismissed.

P.S. TEJI, J.

KAILASH GAMBHIR, J.

September 04, 2015/dd