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

+ **Date of Decision: 01.05.2018**

% **W.P.(CRL) 1270/2018**

DHARANEESH RAJU SHETTY Petitioner

Through: Mr. Ashish Batra, Advocate

versus

UNION OF INDIA Respondent

Through: Mr. Amit Mahajan, CGSC with Mr.
Madhav Chitale, Advocate

% **W.P.(CRL) 1277/2018**

SAHIL MOHD ZAFAR Petitioner

Through: Mr. Ashish Batra, Advocate

versus

UNION OF INDIA Respondent

Through: Mr. Amit Mahajan, CGSC with Mr.
Madhav Chitale, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

VIPIN SANGHI, J. (ORAL)

1. These writ petitions have been preferred by two detenues, who stand detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act) by the Detaining Authority vide detention orders – both dated 03.04.2018, passed under Section 3 of the COFEPOSA Act. Whereas the petitioner in W.P. (Crl.) No. 1270/2018, Dharaneesh Raju Shetty was detained on 14.04.2018, the petitioner in W.P. (Crl.) No. 1277/2018, Sahil Mohd Zafar was detained on 09.04.2018.

2. The challenge to the detention of these petitioners is premised on a very narrow compass. Undisputedly, the Detaining Authority while detaining these petitioners supplied the Relied Upon Documents (RUD), out of which the documents at Sl. Nos.12 and 69 – in both the cases, are soft copies of documents contained in Compact Disks (CDs). The document relied upon at Sl. No.12 in the RUD in both the cases are the Whatsapp conversation taken from the mobile phone of one Sh. Krishan Nayak during recording of his statement on 30.12.2017 under Section 108 of the Customs Act contained in a CD (described as CD-1). At Sl. No.69 of the RUD, in both the cases, Call Detail Records (CDRs) obtained from service providers are listed, which are contained in 2 CDs (described as CD-2).

3. The submission of the petitioners is that they have merely been provided the soft copies of these documents on CDs, without the relevant hardware to read the said CDs i.e. either a CD player, or a desktop computer, or a laptop.

Consequently, they have not been able to view the contents of the said documents relied upon by the Detaining Authority while passing the detention orders against them. Resultantly, their right to make effective representations against their detention at the earliest has been denied, which vitiates their continued detention.

4. Learned counsel for the petitioners has placed reliance on a decision of the Division Bench of this Court in ***Smitha Gireesh v. Union of India*** in W.P. (Crl.) No. 1060/2016 decided on 02.06.2016 in support of his said submission – where this issue was raised and squarely considered by this court. In ***Smitha Gireesh*** (supra), some of the documents were supplied on CDs. The detainee in his representation had asked for a CD player to be able to view/ read the documents. Despite the said request, the CD player was not supplied to the detainee. In these circumstances, this court held that the non-supply of a CD player along with the CDs to enable the detainee to view/ read the documents contained in the CDs infringed Articles 21 and 22 of the Constitution of India i.e. the right of the detainee to make an effective representation at the earliest, which vitiated the detention.

5. The following extracts from the decision in ***Smitha Gireesh*** (supra) are pertinent, and have been relied upon by learned counsel:

*“57. It is a settled law when clause (5) of Article 22 and sub-section 3 of Section 3 of COFEPOSA Act provide that the grounds of detention should be communicated to the detainee within five or fifteen days, as the case may be, what is meant is that **the grounds of detention in their entirety must be furnished***

to the detainee. If there are any documents, statements or other material relied upon in the grounds of detention, they must also be communicated to the detainee, because being incorporated in the grounds of detention, as they form part of the grounds and the grounds furnished to the detainee cannot be said to be complete without them. It would not therefore be sufficient to communicate to the detainee a bare recital of the grounds of detention, but copies of the documents, statements and other materials relied upon in the grounds of detention must also be furnished to the detainee within the prescribed time. The stand of the respondents that they had shown the CDs to the detenu during the course of investigation is not a proper service as per law. The detaining authority heavily relied upon the CDs in the grounds of detention and thus were duty bound to show the entire contents of the same to the detainee as a matter of right. The Court cannot lose track of the fact that the detainee was in judicial custody and he could not have access to any facility for seeing the CDs and cannot be forced to rely on his memory for making an effective representation against the detention order. The right to make a representation is a right provided in the Constitution. The supply of 12 CDs as relied upon documents are not disputed by the respondents, but the respondents failed to provide the facility to see the CDs for making an effective representation even before the meeting of the Advisory Board which was held on 12.02.2016. There is no explanation why the respondents took a different approach against the request of the present detainee and could not provide a CD player to the detainee to view the CDs which form part of the relied upon documents.

58. The law is well settled. Article 22(2) of the Constitution provides (1) the detaining authority must, as soon as may be, that is, as soon as practicable after the detention, communicate to the detainee the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detainee the earliest opportunity of making a representation

against the order of detention. Thus, the detenue has a right to receive documents taken into consideration by the detaining authority while formulating the terms of detention and non-supply of each and every document does not provide a ground for setting aside the detention order. The detenue, therefore, has a right to be supplied with material documents, on which reliance is placed and not a document referred to in the order, which is not relied upon for forming the opinion or made the basis of passing of the detention order. In case an audio file is heard prior to the passing of the detention order by the detenue is not reason enough to supply the CD or the player to enable him to hear or know the same. The audio/video files are primary evidence and are documents as defined in Section 3 of the Evidence Act.” (emphasis supplied)

6. The Division Bench also relied on the judgment of an earlier Division Bench of this Court in ***Devender Singh Chadha Vs. U.O.I. & Anr.***, W.P. (Crl.) No.615/2015 decided on 27.05.2015, wherein the Detaining Authority had relied upon certain audio recordings. Only the transcripts of those audio recordings were supplied to the detenue, and not copies of the audio recordings themselves. The Division Bench in ***Devender Singh Chadha*** (supra) faulted this lapse on the part of the Detaining Authority. The relevant extract from ***Devender Singh Chadha*** (supra), also relied upon in ***Smitha Gireesh*** (supra) reads as follows:

“20. The detaining authority, it has been accepted by the respondents during the arguments, had heard the audio file and also the sample voice recording. It is therefore contended by the petitioner that contrary to the pleadings, in the counter-affidavit dated 20th April, 2015 and

the assertion in the detention order, the detaining authority, for formation of opinion, had heard the two files to reach and form her conclusion that the detainee was one of the two persons in the said conversation. It is submitted that the assertion that the audio file and voice sample were not the primary evidence is wrong and incorrect. The audio files should have been provided.

21. We have referred to the said contentions on behalf of the detainee only to highlight the submission made that failure to supply the audio file of the conversation, in the facts of the present case, would cause prejudice and mere supply of the free translation was not sufficient for making weighty and effective representation. We find merit in the said contention in the facts of the present case. The detainee should have been supplied the audio file No.2 in order to make an effective representation. This was possibly the most patent, crucial and decisive material and evidence against the detainee. He had the right to meet and challenge this evidence. That right and chance should not have been denied. This would be contrary to equity and law. The detainee has right to show and support his contention that there was tampering and/or the conversation did not have his voice. He should know what was heard by the detaining authority, before formulating her opinion. In this context, it was submitted by the petitioner that every recording on the phone need not have detainee's voice. Free translation text would lose its connection with the detainee, in case the detainee was not the person, who had conversed with Chandan Kumar Jain or

if there was interpolation or tampering. We at this stage, note that as per the forensic report voice of Chandan Kumar Jain is present in the said audio file. The stand and stance of the detainee may be wrong, fallacious and farcical but the detainee has right to raise contentions and meet the assertions against him by referring to the evidence relied upon. Right to make representation is a precious and preserved right. Final decision is the conclusion and termination after examination of the representation”.
(emphasis supplied)

7. After referring to several other decisions, the Division Bench observed in **Smitha Gireesh** (supra):

“65. It has been repeatedly held by the Supreme Court of India that the relied upon documents must be supplied to a detainee. To say that at the time of recording of the statement under Section 108 of the Customs Act and at the stage when a show cause notice was issued to the detainee, copies of these CDs were provided to him and simply because the detainee was aware of what was the material which was contained in the CDs cannot be accepted.

66. In the case of Pawanammal v. State of Tamil Nadu & Ors., reported at (1999) 2 SCC 413, the Supreme Court explained the distinction between the document, which has been relied upon by a detaining authority on the grounds of detention in comparison to a document, which may find a mere reference in the grounds of detention. The Supreme Court also explained that non-supply of a copy of document, relied upon in the grounds of detention, has to be held to be fatal to continue detention and the detainee does not have to show that any prejudice was caused to him, as non-supply of such a document

and of not being afforded the opportunity of making an effective representation against the order.

67. In this case, the CCTV footage contained in the 12 CDs find mention in the grounds of detention.

68. There are reference to CCTV footage in paragraphs 87 to 89 and as many as 29 times in the entire grounds of detention. In effect, it can safely be said that to form a subjective satisfaction the detaining authority has relied on the CCTV footage, and thus, the CCTV footage in the 12 CDs are held to be relied upon documents. Merely because the CDs provided to the detainee along with the show cause notice or he was shown the CCTV footage at the time of recording of the statement under Section 108 of the Customs Act, in our view cannot take the place of providing the mechanism for viewing the CDs in view of the settled law of the land. On this ground as well, in our view, the order of detention is liable to be quashed.”

8. Learned counsel has drawn our attention to the Grounds of Detention (GOD) to submit that the documents contained in the CDs have been heavily relied upon by the Detaining Authority while passing the detention orders.

9. On the other hand, Mr. Mahajan, learned counsel for the respondents has submitted that there is material distinction between the facts of the present cases, and the facts considered by the Division Bench in **Smitha Gireesh** (supra). He points out that in **Smitha Gireesh** (supra), the detainee had made request for a CD player, which was not acceded to. However, in the present cases, the said requests were acceded to. The present writ petitions themselves were considered as representations, and the petitioners in both the cases were “shown” the documents on the computer screen. Mr. Mahajan has also drawn

our attention to Section 3(3) of the COFEPOSA Act, which stipulates that for 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. He submits that in the present case, the documents on CDs were shown to the detainees on 28.04.2018 i.e. on the 14th day after the detention of the detainee Dharaneesh Raju (since the detainee was detained on 14.04.2018), and in the case of the detention of detainee Sahil Mohd. Zafar, the same were shown on the 19th day after detention.

10. Mr. Mahajan submits that the Detaining Authority has recorded the “exceptional circumstances” due to which the said delay has occurred. He has tendered in court the relevant extract from the file of Detaining Authority in this respect. The said order appear to have been passed by Sh. Sitaram Kansari, IO, DRI, BZU, wherein he, inter alia, records:

“... ..The SIO further stated that, Shri. Dharaneesh Shetty was served with the Grounds of Detention along the Relied Upon Documents (RUD) on the 14th of April 2018 in the presence of the Additional Senior Jailor, of Arthur Road Jail, which consisted of documents and also CD. The SIO further stated that, Shri. Dharaneesh Shetty in his Writ Petition filed before the Hon’ble High Court of Delhi has conveyed that, he was not shown the contents of the CD that was handed over to him on the 14th of April 2018, thereby depriving him of his valuable constitutional as well as statutory right to make an effective and meaningful

representation, at the earliest opportunity. The SIO further informed us that, Shri. Dharaneesh Shetty did not make any specific request with reference to opening and showing the contents of the CD that was handed over as part of the RUD on 14th April 2018. The SIO informed us that, in terms of Sec. 3(3) of the COFEPOSA Act, 1974 the said circumstances have been considered as exceptional circumstances and therefore wishes to open and show the said CDs today the 28th of April 2018 which is within 15 days from the date of detention”.
(emphasis supplied)

11. Mr. Mahajan further submits that the supply of documents as soft copies of CDs is akin to supply of documents which may not be considered legible by the detainee. He submits that when the detainees made their request, they were provided with legible copies of the same, inasmuch, as, the documents contained in the CDs were “shown” on a computer screen. He further submits that when the documents were served upon the detainees, no such objection was raised at that time. Mr. Mahajan, therefore, supports the detention orders and argues that there is no illegality or unconstitutionality in the detention of the petitioners/ detainees.

12. In his rejoinder, learned counsel for the petitioners submits that the obligation of the Detaining Authority to supply the RUDs stems from Article 22 of the Constitution of India, and not from a request or demand made by the detainee. The Detaining Authority was obliged to supply the RUDs on his own, without waiting for any such request or demand. The RUDs form an integral part of the Grounds of Detention (GOD). Without them the GOD are incomplete. In this regard, he has placed reliance on a decision of the Supreme

Court in *Mohd. Zakir v. Delhi Administration & Ors.* (1982) 3 SCC 216, wherein the Supreme Court, inter alia, observed:

*“2. ... In the view that we have taken in a number of decisions starting from *Icchu Devi Choraria* case [*Icchu Devi Choraria v. Union of India*, (1980) 4 SCC 531 : 1981 SCC (Cri) 25 : AIR 1980 SC 1983] to the case of *Kamla Kanyalal Khushalani* [*Kamla Kanyalal Khushalani v. State of Maharashtra*, (1981) 1 SCC 748 : 1981 SCC (Cri) 287 : (1981) 2 SCR 459 : AIR 1981 SC 814.] it is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention *pari passu* the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with. In the instant case, the detenu did make a representation promptly on December 30, 1980 but was seriously handicapped in making an effective representation because the aforesaid documents which were of vital importance were not supplied to him”. (emphasis supplied)*

13. Having heard learned counsels and perused the record, as well as the decisions relied upon by learned counsels, we are of the view that the detention of the petitioners stand vitiated on account of non supply of either the printed copies/ hard copies of the documents contained in the CDs enlisted at Sl. Nos.12 and 69 of the RUDs in both these cases, or the non provision of a CD player/ laptop/ Desktop computer to the petitioners, to enable them to read and peruse the documents contained in the CDs to be able to, firstly, know as to what documents the Detaining Authority has relied upon and, secondly, to be

able to deal with the said incriminating materials in their representations.

14. It is well settled in law that the RUDs are an integral part and parcel of the GOD. The GOD contains the reasons and justification provided by the Detaining Authority on the basis of which he arrives at his subjective satisfaction regarding the necessity of preventively detaining of the detainee under Article 22 of the Constitution of India, read with Section 3 of the COFEPOSA Act. It is obligatory on the part of the Detaining Authority to supply copies of all the RUDs on which the subjective satisfaction of the Detaining Authority is based. This obligation is cast by Article 22(5) of the Constitution of India, and is also specifically codified in Section 3(3) of the COFEPOSA Act, which reads as follows:

“(3) 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.”

15. The documents which are supplied on CDs, by themselves, are not viewable to the human eye. To read the documents on CDs, it is essential that the relevant hardware in the form of a CD player, or a laptop computer with the facility of reading the CD, or a Desktop computer with facility of reading a CD is employed. Without such aids, the person who is delivered the CD would never know as to what is the document, if any, contained therein. The CD is

only a storage medium. To retrieve the documents stored therein, the necessary equipment is essential.

16. The submission of Mr. Mahajan that supply of documents on CDs is akin to supply of illegible documents cannot be accepted. It is worse than supplying documents in a completely foreign language without true translations. It is like supplying documents in a locked trunk without the key to unlock the trunk. Supply of merely the CD serves no purpose, since the detainee will not be able to view or peruse the same.

17. The submission of Mr. Mahajan that the present cases are distinguishable from *Smitha Gireesh* (supra), because in *Smitha Gireesh* (supra) the detainee had specifically asked for a CD reader – which was denied to him, whereas in the present case the documents were “shown” on the computer screen to the detainees by treating their present writ petitions as representations, is misplaced. This is for the reason that it was the primary obligation of the Detaining Authority to supply the detainees with either the hard copies of the documents contained on CDs, or to provide them with the aids – so as to enable them to view the soft copies of the documents contained on CDs on a screen, on its own without waiting for any such request or representation. As held by the Supreme Court in *Mohd. Zakir* (supra), the question of demanding the RUDs is wholly irrelevant, because it is the constitutional mandate which requires the Detaining Authority to give the documents relied upon or referred to in the order of detention along with the grounds of detention, in order that the detainee may make an effective representation immediately, instead of waiting for the

documents to be supplied with upon his request. Without the legible copies of the documents contained in the CDs, the service of the GOD on the detenues was incomplete and ineffective, thereby denying the valuable rights of the detenues to make effective representations at the earliest.

18. We additionally find the aforesaid submission to be unsustainable for the reason that even now, apparently, all that has been done is to “show” the documents contained in the CDs to the detenues on the computer screen. They have not been provided with copies of the same even till date, and they have not been provided with the aids to be able to peruse and read the documents at the time of making their representations. In our view, it would be too much to expect the detenues to be able to remember the contents of the documents that they may view on the computer screen, and to be able to effectively make their representations thereafter. Only an exceptional genius may have a photographic memory, and may be able to recall and remember the contents of documents shown once on the computer screen. The Detaining Authority cannot reasonably expect normal human beings to be able to do so. The Detaining Authority cannot get away by rendering only lip service to his obligation to supply the copies of all the RUDs to the detainee. Supply of the RUDs is not an empty formality. It is essential to enable the detainee to make his representation at the earliest against his detention. Thus, the submission of Mr. Mahajan that, at least, one of the detenues, namely, Dharaneesh Raju Shetty has been “shown” the documents on the 14th day of his detention is of no avail.

19. Even otherwise, reliance placed on Section 3(3) of COFEPOSA Act is

misplaced for the reason that the said section itself mandates that the grounds of detention must be communicated to the detainee soon after the detention “*but ordinarily not later than five days*”. The use of the negative language in Section 3(3) itself shows that the Parliament, in ordinary circumstances, did not consider it appropriate to grant more than five days to the Detaining Authority to serve the GOD and the RUD upon the detainee. However, in exceptional circumstances and for reasons to be recording in writing, not more than fifteen days from the date of detention, have been provided for the purpose of serving the GOD and the RUD on the detainee.

20. The so-called exceptional circumstances sought to be made out by the respondents are non-existent. The circumstance that the detainees preferred the present writ petitions cannot be considered as to “exceptional circumstance”. The GOD stated that the detainee “*have the right to make representation against your detention to the Detaining Authority, to the Central Government as well as to the Advisory Board. If you wish to avail this right, you should send your representation through the Jail Authorities where you are detained,*”.

21. Thus, it was only to be expected that the detainees would agitate their legal rights, either by making their representations or by challenging their detention, and there is nothing exceptional about it.

22. The Detaining Authority (and in this case the order on the file has not even been passed by the Detaining Authority, but by the IO, DRI, BZU) cannot

make a self serving order, and claim that the fact - that the detenues have preferred the present writ petitions, constitutes “exceptional circumstances”. As to whether or not the circumstances are “exceptional” to justify service of the GOD and/ or RUD within 15 days of detention, would be determined by the Court, before whom the detention may be assailed.

23. We may also observe that the RUD contained in CDs taken note of herein above have been relied upon extensively in the GOD formulated by the Detaining Authority. The GOD are more or less identical in both the cases, since they stem out of the same transaction. The GODs repeatedly refer to the whatsapp messages contained in the CDs, as well as to the CDRs which have been relied upon by the Detaining Authority to establish the connection between the detainee and others concerned. We may reproduce the relevant extract of some of the GOD, which are identical in both the petitions:

“5. The above said Whats App conversations showed that Shri Dinesh was forwarding various documents like AWB, BL, commercial invoices, packing slips, authorisation letters pertaining to various IEC’s and connected documents along with description, weight and value of consignments. The chat conversations also revealed that, Krishna was also receiving details pertaining to IEC certificates, AWB, invoices etc., from you, whose number (9820076759) has been sorted as ‘Denesh’ in his mobile. The chat conversations also revealed that, Shri Dinesh was also forwarding various documents pertaining to imports of branded sunglasses, ladies/ girls tops etc., pertaining to various other importers. In all there were around 45IEC codes registered under names of various firms, through which the importer was importing various goods thereby creating a unique

modus operandi to evade payment of customs duty. The list of various importers along with their IE codes is enclosed as Annexure to the statement of Krishna.”

“14. When shown printouts numbered 29 to 31 of the Whats App communication you stated that the messages from 29 to 31 pertain to forwards of contact numbers. The name saved as Sukal Gand is actually Shukla Gandhar of Khar Market having mobile number 9920988858. The name saved as Mahesh Chainai is Shri Mahesh of Chennai having mobile number 9566205155. The name saved as Dipak Man is of Khar Market having mobile number 9664024540. The name saved as Vike Hilrd is of Vicky from Hill Road having mobile number 9987444443. The name saved as Dipak Khar is of Deepak Chauhan from Khar Market having mobile number 9930129130. Ejaj Khar Pacipic (9867914190), Hemant Rajmame (9819219902) and Narayan New (9920588670)”

“43. In order to conduct a detailed study of the modus operandi, the chronological sequence of goods/ documents and to ascertain the major players involved in this racket, the CDR/ SDR of the all the 16 persons figured during the investigation was called for from various mobile phone operators vide DRI/BZU/S-IV/ENQ-56/(INT-NIL)/2017/2307 dated 02.01.2018 seeking details of calls made for the last six months i.e. from 06.01.2017 to 31.12.2017 in respect of the mobile phone numbers used by the individuals were made known to the investigating officers vide their respective statements.”

44. M/s. Vodafone Mobile Services Limited, vide their letter dated 23.01.2018 had forwarded the Call Data Record's (CDR) and attested copies of the application form submitted by the subscribers at the time of obtaining the mobile connections pertaining to Mobile Nos. 9167847744, 9820056759, 9820065861, 9986088809, 9324832302, 9082106967 and

9619319144. M/s Bharti Airtel Limited, vide their letter dated 08.01.2018 had forwarded the Call Data Record's (CDR) and attested copies of the application form submitted by the subscribers at the time of obtaining the mobile connections pertaining to Mobile Nos.9945576999, 9900260205, 9845091226 and 9945660204. M/s BSNL vide their letter dated 20.01.2018 had forwarded the Call Data Record's (CDR) and attested copies of the application form submitted by the subscribers at the time of obtaining the mobile connections pertaining to Mobile Nos. 9480550606 & 9757215645. The analysis of CDR's for the period 01.06.2017 to 31.12.2017 submitted by various service providers was perused.

45. On perusal of the Subscriber Data Record (SDR) pertaining to mobile number 9480550606 being used by Shri Dinesh Gowda it was observed that the same were issued in the name of Shri Yashwaanath Kumar S/o. Govindegowda. Similarly, SDR pertaining to mobile number 916784774 being used by you, was issued in the name of Shri Saurabh Sunil Kadam s/o Shiv Kumar Ram. Summons have been issued to the persons on whom the said mobile phones have been registered to ascertain their relationship and as to how the sim cards were transferred to the accused. Analysis of the call records clearly indicates that:

- Shri Dinesh is one of the key persons operating from Bangalore, Karnataka and is in constant touch with you, Krishna and the transporter Shri Dhanraj Shetty.
- Shri Dinesh was also in touch with Shri Nasir on 06 occasions.
- Krishna was in constant touch with Shri Dinesh who, as per the statements of Krishna and Shri Dinesh dated 30.12.2017 was receiving directions with reference to mis-declaring the description, value and quantity of the imported goods to customs.

- *Krishna was also in constant touch with you who was also giving directions with reference to filing of documents with customs.*
- *Krishna was also in constant touch with Shri Dhanraj Shetty the transporter of imported goods from Bangalore to Mumbai during the period from June 17 to December 2017.*
- *Krishna was contacted Shri Sudheer on 34 occasions.*
- *Shri Sudheer, has contacted Krishna on 33 occasions and Shri Dinesh on 04 occasions during the period from 01.06.2017 to 31.12.2017.”*

“63. In view of the facts, circumstances, findings, corroborative evidences, WhatsApp conversation & Phone call-data analysis of the mobile phone belonging to you, Sahil Zafar, Krishna Naik and Shri Dinesh Gowda, I find that you were actively involved in smuggling of readymade garments etc. by mis-declaring descriptions, quantity and value of goods thereby evading duty and hence you were liable to be prosecuted under the Customs Act, 1962. This was not a one-time act but a well organised modus operandi to continually smuggle goods into India.”

“75. While passing the Detention Order under the provisions of the COFEPOSA Act, 1974, I have relied upon the documents mentioned in the enclosed list, which are also being served to you along with the grounds of detention”.

24. In these circumstances, we are of the considered view that the present case is squarely covered by the decision in **Smitha Gireesh**(supra). The detention of the petitioners under Section 3(1) of the COFEPOSA Act cannot be sustained. The detention of the petitioners are, accordingly, quashed and set

aside. The detenues be released forthwith in accordance with law, unless they are required in any other case.

VIPIN SANGHI, J

MAY 01, 2018

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P.S.TEJI, J

