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

+ W.P.(CRL) 3121/2019

SANJAY KUMAR

..... Petitioner

Through: Mr. Namit Saxena and Mr. Sarthak
Chaturvedi, Advocates.

versus

THE DETAINING AUTHORITY & ANR. Respondents

Through: Mr. Vinod Diwakar, CGSC with
Mr. Vishal Kumar Singh and
Mr. Abhishek Bhati, Advocates.

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Date of Decision: 18th December, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J (Oral):

1. Present petition has been filed by the petitioner seeking quashing of 'revised detention order' dated 11th January, 2019 passed by respondent No.1 against the petitioner under Section 3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as COFEPOSA). The petitioner further prays that a direction be issued to the respondents to investigate the matter fairly.

2. Mr. Namit Saxena, learned counsel for the petitioner states that the respondents had not taken sufficient steps to execute the first detention order dated 17th February, 2012. Consequently, he submits that the detention of the petitioner, eight years after the incident, in pursuance to

the revised detention order dated 11th January, 2019 is illegal. He relies upon the judgment of the Supreme Court in *Binod Singh vs District Magistrate, Dhanbad, Bihar and Ors. (1986) 4 SCC 416*.

3. *Per contra*, Mr. Vinod Diwakar, learned Standing counsel for the respondents states that the contention of the learned counsel for the petitioner is unfounded inasmuch as the detention order dated 17th February, 2012 could not be executed as the petitioner was absconding. He points out that the respondent authorities had taken several steps to locate the petitioner and execute the detention order. He relies upon the counter-affidavit dated 13th December, 2019 filed on behalf of respondents.

4. Having heard the learned counsel for the parties and having perused the record, this Court is of the view that the detention order dated 17th February, 2012 could not be executed due to the deliberate actions of the petitioner as he was evading execution of the said order. The details of the steps taken by the respondent authorities as mentioned in the Counter-affidavit are reproduced herein:-

“PRELIMINARY SUBMISSIONS

.... IV. *That it is trite to note that vide Order dated 06.07.2015 passed by the Ld. CJM, Jalaun the Petitioner herein has been proclaimed as an Absconding Offender under Section 82 of Cr. P.C as the Petitioner failed to appear before the Hon’ble Court in spite of all out efforts made by Answering Respondents.*

V. *That the Additional Director of Revenue Intelligence vide letter no. DRI F. No. 02/CL/IMP/DRI/SLG/ 2011-12- dated 11.01.2019 addressed to the Joint Secretary (COFEPOSA), Govt. of India, Ministry of Finance, Department of Revenue, New Delhi inter-alia, categorically mentioned that intelligence suggested that the Petitioner/detenué was still involved in prejudicial activities and his detention was therefore very much required as on date. Thus, the propensity of the petitioner herein in the matter of*

carrying out illicit dealings in Fake Indian Currency Notes much to the detriment of the Nation's economy is very much in vogue. Therefore, the execution of detention of the Petitioner was very much required as on date. Hence, for the convenience of the executing authority and for administrative and logistic related reasons the proposed place of detention was amended from Siliguri Correctional Home to Jalaun Correctional Home and accordingly the Impugned Detention Order dated 11.01.2019 was issued by the Detaining Authority.

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GAP OF 8 YEARS BETWEEN THE ISSUE OF THE DETENTION ORDER AND ITS EXECUTION

.....D. That the Detention Order dated 17.02.2012 was forwarded to the Director General of Police, Uttar Pradesh with a request to take immediate necessary action to detain the Petitioner. On 05.03.2012 the copy of the Detention Order along-with the photograph of the detainee was sent to the Director General of Police, Uttar Pradesh by the Additional Director General, Directorate of Revenue Intelligence, Kolkata Zonal Unit (KZU) vide his letter under D.R.I F. No. 02/CL/IMP/DRI/SLG/2011-12/735 dated 05.03.2012 for identification and immediate apprehension of the Petitioner herein,.....

E. That from 23.02.2012, the Petitioner did not appear before the Ld. Court. Consequently, the Ld. Court of ACJM, Siliguri on 21.04.2012 ordered issuance of Warrant of Arrest against the accused Shri Sanjay Kumar but the same could not be executed.....

F. That On 30.03.2012, in terms of Section 7(1)(b) of the COFEPOSA Act, 1974, the Order was issued and notified in the Official Gazette directing Shri Sanjay Kumar to appear before the Director General of Police, Uttar Pradesh within seven (07) days from the date of publication of the order.

G. That on 07.05.2012, the original Report under Section 7(1)(a) of COFEPOSA Act, 1974 was sent to DRI, KZU for being filed before the Chief Judicial Magistrate, Jalaun, as the Central Government had reason to believe that Shri Sanjay Kumar had absconded or was concealing himself so that the detention Order could not be executed. A copy of the same was also sent to the Director General of Police, Uttar Pradesh.....

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I. That on 11.07.2012 the original report under Section 7(1)(a) of the COFEPOSA Act, 1974 had been forwarded to DRI Lucknow Zonal Unit (LZU), for filing the same in the jurisdictional Court.....

J. That on 16.07.2012 the CEIB (Central Economic Intelligence Bureau) was intimated that the Order dated 30.03.2012 issued in terms of Section 7(1)(b) of the COFEPOSA Act, 1974 had been published in the Lucknow editions of 17.06.2012 issues of The Times of India and Amar Ujala.

K. That vide letters dated 06.09.2012, 13.09.2013 & 24.01.2014, requests were made to ADG LZU by ADG KZU for intimating the status of the filing of reports Section 7(1)(a) of the COFEPOSA Act, 1974, in respect of the detainee. However, vide letter dated 28.01.2014, DRI LZU intimated that they did not receive the said letters.....

L. That accordingly vide letter dated 19.02.2014, DRI KZU intimated CEIB about the same and requested to make available fresh report under Section 7(1)(a) of the COFEPOSA Act, 1974. The CEIB vide its letter dated 24.02.2014, forwarded the report under Section 7(1)(a) of the COFEPOSA Act, 1974 dated 07.05.2012 with a request for filing of the same before the jurisdictional Judicial Magistrate. Accordingly, the said report was forwarded to DRI, LZU vide letter dated 04.03.2014, for filing the same before the jurisdictional Judicial Magistrate....

M. The DRI LZU vide letter dated 19.03.2014, intimated that further enquiries revealed that Sh. Sanjay Kumar has not been living or seen at the declared address for the several years and the present whereabouts were not known. Vide letter dated 04.04.2014, DRI LZU intimated DRI, KZU that the said report had been filed before Court of the Judicial Magistrate Jalaun, UP....

N. That vide order dated 03.04.2014, the Ld. Judicial Magistrate Jalaun, UP ordered for taking actions under Section 82 of the Criminal Procedure Code, 1973 and directing the Petitioner to appear before the Ld. JM, U.P on 02.05.2014.

O. That vide letter 05.04.2014 the order dated 03.04.2014 passed by the Ld. Judicial Magistrate Jalaun, UP was intimated to CEIB. The Additional Director, DRI, Lucknow Zonal Unit vide his letter under DRI F. No. VIII/48/27/LZU/2008/3436 dated 05.05.2014 informed the

Answering Respondents that a team of officers of DRI, Lucknow visited the native village of Shri Sanjay Kumar on 28.04.2015 but he could not be traced there as the address was found to be non-existent and the notice, in terms of the Ld. Court's Order dated 03.04.2014 could not be served. Then the notice was pasted at a conspicuous place in the village on drawing a proper Panchanama and reading out the contents of the notice loudly to the inhabitants....

P. That it is respectfully submitted that the Petitioner did not appear before the Hon'ble Court on 02.05.2014 as ordered. Vide letter dated 29.12.2014 the copy of Detention Order No. 673/37/2011-Cus. VIII dated 17.02.2012 was again forwarded to the Director General of Police, Uttar Pradesh by the Additional Director General, DRI, Kolkata, with a request to make a renewed effort for execution of the Detention Order against the Petitioner herein....

Q. That Director General of Police (Crime), Uttar Pradesh, vide letter dated 06.01.2015 intimated the Superintendent, Jalaun to serve the detention orders against Shri Sanjay Kumar and to intimate DRI KZU about the compliance of the same. The Director General of Police (Law and Order/Crime), Uttar Pradesh informed the Additional Director General, DRI, Kolkata vide his letter No. DG-Seven-S-10-(5770)/2011-Part-3 dated 02.02.2015 that as Shri Sanjay Kumar could not be detained as he was not found in his village neither his present whereabouts could be ascertained. However, the local police had been suitably instructed to make efforts for execution of the Detention Order.....

R. That vide letter dated 05.03.2015, DRI, LZU informed, inter alia, Shri Sanjay Kumar did not appear before the Ld. Court on 02.05.2014 in compliance with the Ld. Court's Order issued under Section 82(1) of Cr. P.C.

S. That further the local Councillor informed the officers of the DRI LZU that neither the said person nor the address given was in existence. The Ld. CJM was thus being approached for initiating proceedings under Section 82(2) for declaring the detenu as Proclaimed Offender. Since Shri Sanjay Kumar failed to appear before the Court of the Ld. CJM, Jalaun in terms of the Ld. Court's Order dated 03.04.2015, the Ld. Court was pleased to pass an Order dated 06.07.2015 of Proclamation under Section 82(2) (i)(ii) that was published in the 07th August, 2015 issue of Times of India and Dainik Jagaran requiring Shri Sanjay Kumar's

appearance before the Ld. Court within 30 days from the date of publication of the Order.”

5. It is apparent from the record that the respondent authorities had taken timely action in order to execute the detention order dated 17th February, 2012 which included initiating proceedings under Section 7(1) (a) and (b) COFEPOSA and Section 82 Cr.P.C. The petitioner had been declared a proclaimed offender by the competent Court vide order dated 6th July, 2015.

6. It is pertinent to mention that the petitioner has wrongly stated that the petitioner has been detained on account of the revised detention order, when in fact, the alleged revised detention order dated 11th January, 2019 is in continuation of the previous detention order dated 17th February, 2012. The detention order dated 11th January, 2019 only modifies the address of the jail where the petitioner has to be detained. It is not a revised detention as contended by the learned counsel for the petitioner.

7. In view of the abovementioned facts and material on record, this Court is of the opinion that the Detaining Authority committed no error in passing the impugned detention order against the petitioner. Consequently, the present petition, being bereft of merits, is dismissed.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 18, 2019

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